



MEDICAID AND THE CRIMINAL-LEGAL SYSTEM: PUBLIC DEFENDERS

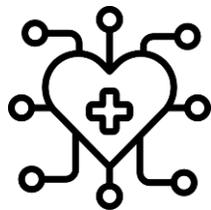
From advocating for less restrictive judgements or conditions of release to liaising with pretrial and specialty court programs, public defenders play an essential role in their clients' ability to hold jobs, remain housed, access to treatment for mental health or substance use disorders, and maintain health insurance coverage. This role is particularly difficult given the failures of other systems to address physical and mental health challenges many systems-involved individuals face.



While public health and public safety have historically been separated, both systems are increasingly recognizing that cross-sector collaboration can help improve individual's and communities' health and well-being. Partnering with the healthcare system provides public defenders more information with which to divert clients and to dedicate time to other individuals in their caseload.

This white paper describes present opportunities and upcoming Medicaid policy developments that will affect how healthcare is delivered in carceral settings and offers present opportunities for partnerships that can help improve individuals' lives and communities' safety.

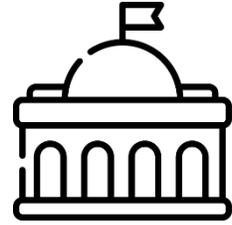
MEDICAID'S ROLE IN THE CRIMINAL-LEGAL SYSTEM



Medicaid is the health insurance program for low-income individuals and individuals who qualify based on certain financial and medical conditions. However, the Social Security Act forbids Medicaid from paying for most services while an individual is an "inmate of a public institution," including jails, prisons, and juvenile justice facilities. This means that people lose access to Medicaid with every booking. Upon release, it can take weeks or months for Medicaid agencies to reinstate medical and pharmacy benefits which impedes timely access to care.

The Consolidated Appropriations Act of 2023 made substantial changes to how Medicaid operates for incarcerated juveniles. Beginning in 2025, states must provide Medicaid's screening and diagnostic benefits to sentenced juveniles thirty days before release from a jail, prison, juvenile justice facility or other "public institution." It also requires thirty days of targeted case management before and after release. The law allows states to opt to maintain Medicaid benefits for pretrial juveniles.

At the same time, the federal government is approving plans to extend Medicaid benefits into carceral settings before release. California will offer eligible beneficiaries targeted services 90 days before release from a jail, prison or juvenile justice facility. This could provide public defenders with significant insights into the health needs of people before they leave incarceration and support planning that inform judiciary programs. Many states other have submitted waivers to change their state Medicaid plan to cover services for people during incarceration. These waivers will improve access to services that impact health and justice. State- and federal-



Examples of submitted waivers pending federal approval:

- **Kentucky:** Would provide **SUD treatment** to eligible incarcerated members throughout period of incarceration (including pretrial) and enroll eligible members into a Medicaid program thirty days prior to release.
- **Utah:** Would provide **full set of Medicaid State Plan** benefits to eligible members thirty days prior to release. Eligibility criteria includes chronic physical or behavioral health condition, mental illness, or opioid use disorder.
- **Arizona:** Focused on members at **high risk of experiencing homelessness**, waiver would provide Medicaid-reimbursable reentry services (case management, coordinating housing, linkages to physical and behavioral providers) to members thirty days prior to release.

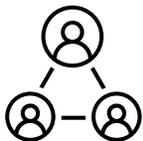
Source: [State Policies Connecting Justice-Involved to Medicaid Coverage and Care, Kaiser Family Foundation](#)

level Medicaid policies can improve your opportunities for collaborating with health partners, and your input is crucial to ensure that you can rely on Medicaid systems to sustainably screen and treat people in your programs.

RESOURCES FOR PUBLIC DEFENDERS

As the industry leader of health strategy for systems-involved populations, COCHS has identified ways that specialty court professionals can take advantage of these opportunities and prepare for collaboration with Medicaid as policies change.

Informed diversion programs: Lack of access to healthcare services can lead to an **increase in arrests and incarceration**. Creating pathways to treatment programs will help meet underlying needs that can help avoid entanglement with criminal-legal systems. Several jurisdictions across the country have embraced connecting to health and public safety with Medicaid-funded, innovative programs to address systems-involved populations’ unmet health and social needs.



Action item: Identify how your court refers clients to community resources. If your court refers clients to programs regardless of their specific need, work with your state health department to identify how tools like the ASAM Criteria can help you better fit screenings to services and receive reimbursement.

Collaborate with medical-legal partnerships: In addition to medical care, health and well-being also depend on access basic needs like housing, food, and employment. Medical-legal partnerships integrate expertise from clinicians, care managers, and legal

aid attorneys (including defenders' offices) to inform each other's service delivery. Medical-legal partnerships (MLPs) can help meet the civil-legal needs of people in the criminal-legal systems and aid in accessing benefits like SNAP and SSI/SSDI.

- **Action item:** In partnership with district attorneys' offices and courts, identify opportunities to divert individuals into non-carceral programs. There are many resources and funding sources to for local jurisdictions to explore where and how to divert individuals into more appropriate health settings, including the [Sequential Intercept Model](#).

Seek funding for pretrial services and enhanced screenings: Criminal-legal programs often involve functions that mirror health programs, such as risk and needs screening, case plans, and health-related diversion programs. Through Medicaid state plan amendments and waivers, some criminal-legal programs could receive reimbursement for care management services, screenings, staff time and salaries spent on the administration of such programs. These screenings will also afford public defenders the opportunity to create offramps from carceral systems by placing your client into a health-related setting that can appropriately meet their needs.

- **Example:** Use resources like the nonprofit [Kaiser Family Foundation](#) state waiver tracker to familiarize yourself with waivers and amendments in your state and how [other states](#) are using Medicaid to improve access to care. Begin a conversation with your partners in the health and criminal-legal systems and the state Medicaid agency about diverting people in your systems into Medicaid-funded health services.

THE FUTURE

Many people are stuck in a feedback loop of poor health outcomes and frequent incarceration. Public defenders can play a key role in breaking this cycle by partnering with the healthcare sector and incorporating approved Medicaid. COCHS is ready to help you prepare for these important conversations. As criminal-legal and healthcare systems come together to meet this challenge, we aim for a future where everyone can be healthy and safe.

