

FAQs About the New Statutory Changes to Medicaid

In December of 2022, President Biden signed the Consolidated Appropriations Act of 2023, which contained two provisions that will fundamentally change the way healthcare is delivered in carceral settings. These frequently asked questions will help justice system stakeholders understand what these provisions will mean for them.

What do these provisions change?

The Consolidated Appropriations Act of 2023 introduces two significant modifications to the Social Security Act—the law that created Medicaid. Firstly, under section 5121 states are required to offer Medicaid's screening and diagnostic benefits to sentenced juveniles up to thirty days prior to their release from a jail, prison, juvenile justice facility, or any other "public institution." Additionally, it mandates thirty days of targeted case management services both before and after their release. Secondly, section 5122 of the law gives states the option to maintain juvenile Medicaid benefits for the entire duration that an eligible juvenile is held in a "public institution" during the pre-trial period. The law also contains a provision that conforms CHIP to the Medicaid statute.

What is a "juvenile"?

Although both Medicaid and the criminal justice systems use the term "juvenile," they have distinct definitions. In the context of criminal-legal settings, "juvenile" typically refers to individuals who meet specific age criteria, have not committed serious crimes that would lead to adult legal proceedings, and are being handled within the juvenile justice system. However, Medicaid has a different definition of "juvenile." Under Medicaid, a juvenile is someone who is under the age of 18 and qualifies for Medicaid coverage. In some cases, individuals who have aged out of foster care may still be considered "juveniles" until the age of 24. The definition of a "juvenile" under Medicaid law can be complex, but the key point is that a Medicaid "juvenile" may be held in "adult" correctional facilities. Therefore, every jail, prison, juvenile justice facility, or any other "public institution" must ensure that the required services are offered to all eligible individuals. Failure to provide these services could expose the facility to potential lawsuits for noncompliance with the mandatory service provisions.

What is the inmate exclusion?

Medicaid serves as a health insurance program for low-income individuals and those who meet specific financial or medical criteria. However, the Social Security Act prohibits Medicaid from covering most services for individuals while they are considered "inmates of public institutions," including jails, prisons, and juvenile justice facilities. As a result, individuals lose access to Medicaid benefits upon their incarceration, and it often takes weeks or even months for their coverage to be reinstated after release.



When does this go into effect?

The law goes into effect January 1, 2025.

What facilities are covered by this change?

Any “public institution” as defined by the Social Security Act and executive branch guidance promulgated by the Centers for Medicare and Medicaid services. Jails, prisons, and juvenile justice facilities are “public institutions” under the law, and are thus affected by this change.

Are there other changes effecting the inmate exclusion?

Yes, besides statutory changes, there are many regulatory changes that states are requesting from the Federal government. In January 2023, California became the first state to receive approval for a Medicaid 1115 demonstration project, allowing Medicaid services to be provided to incarcerated individuals in jails, prisons, and juvenile justice facilities. In April, the Centers for Medicare and Medicaid Services released guidance encouraging other states to apply for similar demonstration projects, aiming to bring Medicaid’s quality, standards, and funding into carceral settings. Currently, there are fourteen states that have applied for similar waivers.

How can a state take advantage of these changes?

Medicaid agencies will need to rely on justice system partners for their expertise on how this statute can be implemented in meaningful ways. Seek opportunities in your state to be a part of the implementation process and identify opportunities to improve service delivery in your facility. Section 5121 is a mandatory benefit, which means all facilities will need to implement the law. Section 5122 will take effect at state option. Ensuring your voice is heard by the state Medicaid agency is important to inform the state’s decision. As states are looking into the changes required by the Consolidated Appropriations Act, it would be useful to also consider how these changes could be leveraged along with the 1115 guidance opportunities to create robust reentry systems and minimize the operational challenges of implementing the statutory changes alone. As Medicaid enters correctional settings, local jurisdictions will have significant opportunities to reinvest the local savings back into major changes to the justice system, including health information technology and improved diversion opportunities. These changes can improve the lives of people who are incarcerated in these facilities and also the staff who often are under resourced and under supported.