

# Sections 5121 and 5122 of the Consolidated Appropriations Act, 2023

## August 9, 2024



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# Call Agenda

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- Section 5121 of the Consolidated Appropriations Act, 2023
  - Background
  - Guidance on Provision of Medicaid and CHIP Services to Incarcerated Youth ([SHO# 24-004](#))
  - SPA Process
- Section 5122 of the Consolidated Appropriations Act, 2023
- Q and A

# Background

- Numerous studies show incarcerated youth **experience high rates of physical and behavioral health conditions**:
  - Youth who are incarcerated have a very high incidence of adverse childhood experiences, with as many as **90 percent of such youth having experienced trauma**.
  - Roughly **two-thirds of youth in the correctional system report at least one substance-related problem**, yet 12 percent of youth are in programs that do not offer substance use disorder (SUD) related services.
- **Improving health care transitions** for incarcerated youth is critically important.
- Many of these youth would otherwise be eligible or are already enrolled in Medicaid and the Children's Health Insurance Program (CHIP).
- **Access to services** may provide these youth with more stability.

# Background (continued)

- Congress has shown increasing interest in improving health care transitions for justice-involved individuals of all ages as they reenter the community:
  - Section 5032 of the SUPPORT Act:
    - Directed the Secretary of HHS to convene a stakeholder group to develop best practices and submit a report to Congress ([RTC](#)) summarizing those best practices.
    - Directed the Secretary to **issue a State Medicaid Director letter ([SMDL](#))** based on those best practices to inform the design of a section 1115 demonstration opportunity.
  - Section 1001 of the SUPPORT Act:
    - Amended section 1902(a) of the Social Security Act (the Act), to **prohibit states from terminating Medicaid eligibility for “eligible juveniles”** who become inmates of public institutions on or after October 24, 2019, due to their incarceration. CMS issued an [SMDL](#) on January 19, 2021.

# Background (continued)

- Medicaid and inmates of a public institution:
  - Medicaid regulations at 42 Code of Federal Regulations (CFR) 435.1010 define an inmate of a public institution as **"a person living in a public institution"** and define a public institution as **"an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control."**
  - **A correctional institution is considered a public institution** and may include state or federal prisons, local jails, detention facilities, or other penal settings (e.g., boot camps or wilderness camps).
  - CMS considers an individual of any age to be an inmate **if the individual is in custody and held involuntarily through operation of law enforcement authorities** in a public institution.
  - The **same definitions** described above for Medicaid **are also applied to separate CHIPs** through cross-reference at 42 C.F.R. 457.310(c)(2)(i).

# Background (continued)

- Medicaid inmate of a public institution payment exclusion:
  - Individuals who are held involuntarily in a public institution may be eligible for and enrolled in Medicaid, but **federal Medicaid funds may not be used to pay for services** for such individuals while they are incarcerated.
  - Payment exclusion does not apply to institutional care (e.g., inpatient hospitals, nursing facilities, etc.).
- CHIP eligibility exclusion:
  - Unlike Medicaid, incarceration status *is* a factor of eligibility in CHIP. **A child who is an inmate of a public institution is excluded from the definition of a targeted low-income child** and therefore, generally<sup>1</sup> is ineligible for a separate CHIP.

<sup>1</sup> States must maintain children who become incarcerated in CHIP for the duration of their continuous eligibility (CE) period, unless they experience an exception to CE.

# Section 5121

- As part of the Consolidated Appropriations Act, 2023 (CAA, 2023), section 5121 addresses Medicaid and CHIP requirements for certain Medicaid and CHIP eligible juvenile beneficiaries who are post adjudication of charges:
  - Section 5121 **is mandatory** and takes effect on **January 1, 2025**.
- States **must be mindful of and ensure** the policies, procedures, and processes developed to support implementation of these provisions **do not effectuate a delay of an individual's release or lead to increased involvement in the juvenile and adult justice systems.**

# Section 5121 Eligible Individuals

- For purposes of Section 5121, an **eligible juvenile** means the term defined in **section 1902(nn)** of the Act:
  - A Medicaid eligible individual **who is under 21 years of age**; or
  - An individual **between the ages of 18 and 26 who is eligible for Medicaid under the mandatory former foster care children group.**
- CHIP statute does not use the term “eligible juveniles.”
  - For purposes of section 5121, **children within 30 days of their release from incarceration are no longer considered to be subject to the eligibility exclusion**, as set out at section 2110(b)(7) of the Act.



# Section 5121 Medicaid Requirements

- Section 5121 **requires** state Medicaid programs **to have a plan in place** and in accordance with such plan, cover the following for an eligible juvenile **who is within 30 days of their scheduled date of release** from a public institution **following adjudication**:
  - **In the 30 days prior to release**, or not later than one week, or as soon as practicable after release, any **screenings and diagnostic services** which meet reasonable standards of medical and dental practice, as determined by the state, or as otherwise indicated as medically necessary, in accordance with the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) requirements, including behavioral health screenings or diagnostic services; and
  - **In the 30 days prior to release and for at least 30 days following release, targeted case management (TCM) services including** referrals to appropriate care and services available in the geographic region of the home or residence for the eligible juvenile, where feasible.

# Section 5121 Medicaid Requirements (continued)

- Under section 5121, the requirement to cover any screening and diagnostic services which meet reasonable standards of medical and dental practice, as determined by the state, is **independent of the reference in the statute to Medicaid EPSDT requirements**:
  - States have the flexibility to **utilize EPSDT standards** for screening and diagnostic services or **develop additional standards**.
  - State will **need to implement policies** based on reasonable standards for medical and dental practice **to ensure the provision of screening and diagnostic services** for populations that **do not typically receive EPDST benefits (i.e., individuals ages 21 and older who are enrolled in the former foster care group)**.

# Section 5121 Medicaid Requirements (continued)

- **In addition** to state-determined screening and diagnostic services, section 5121 **requires the provision of medically necessary EPSDT screening and diagnostic services in accordance with section 1905(r)(1)(A) and section 1905(r)(5) of the Act:**
  - **Screening services include assessing if the individual is up to date, and if not, providing the appropriate immunizations** in accordance with the Advisory Committee on Immunization Practices (ACIP) schedule for pediatric vaccines.
  - States **should cover screening and diagnostic services** for eligible juveniles under the age of 21 **in the same manner as for youth who are not incarcerated.**
  - States **must cover screening services** for eligible juveniles 21 and older **when they are medically necessary** to determine the existence of an illness or condition **as well as medically necessary diagnostic services** when a screening indicates the need for further evaluation.

# Section 5121 Medicaid Requirements (continued)

- In certain situations, an eligible juvenile may have been **screened and/or received a diagnostic service(s) prior to incarceration, upon entry to the carceral facility, and/or during other points of incarceration** prior to 30-days of their scheduled release date.
  - States **should establish policies and procedures** to determine if such services **align with the state's established standards and/or EPSDT requirements** for screening and diagnostic services.
- Targeted case management **includes the activities coverable under the targeted case management services benefit.**
  - Pre-release case management **should build a bridge** to post-release physical health, behavioral health, and health related social needs (HRSN) services.
  - The **case manager may be different** between pre- and post-release services.
    - A **warm hand-off is necessary** to ensure continuity of services.

# Section 5121 Medicaid Requirements (continued)

- Section 5121 **only applies** to eligible juveniles who are **within 30 days of the date on which they are scheduled to be released** from a public institution following adjudication.
- Screening and diagnostic services **must be provided in the 30 days prior to release** of the eligible juvenile. When that is not possible, such screening and diagnostic services **may be provided not later than one week or as soon as practicable** after release from the public institution.
- For TCM services, services **must be provided in the 30 days prior to release and for at least 30 days post release** of the Medicaid-eligible juvenile from the public institution.
- In certain situations, the **scheduled release date** of an eligible juvenile **may change**. If such change results in an eligible juvenile **no longer being within 30 days of their new scheduled release date**, state Medicaid programs should **suspend coverage of screening, diagnostic, and TCM services until such time** that the eligible juvenile is **within 30 days of their new scheduled release date**.

# Section 5121 CHIP Requirements

- Section 5121 includes **three provisions** that impact the **eligibility of incarcerated children under CHIP**:
  - First, section 5121 applies generally similar **pre-release case management, screening, and diagnostic services and timeframe requirements** under Medicaid to **incarcerated children under CHIP**.
    - **EPSDT is not required in separate CHIPs**, so there will be **differences across states** based on the screening and diagnostic services they **cover under their CHIP state plan**.
  - Second, section 5121(c) also **aligns CHIP rules with existing Medicaid rules (see [SMDL 21-002](#)) regarding suspension rather than termination of coverage** while a child is an inmate of a public institution and related requirements regarding **redeterminations** of coverage.
  - Third, for purposes of section 5121, **children within 30 days of their release from incarceration are no longer considered to be subject to the eligibility exclusion** at section 2110(b) of the Act.

# Section 5121 Internal Operational Plan

- CMS expects that states **will have in place an internal operational plan** to implement section 5121, and ensure compliance with the Medicaid and CHIP coverage requirements. The plan **should include**:
  - actions for establishing an operational system and updating the system as needed on an ongoing basis, to perform functions such as exchanging data with the carceral system;
  - procedures for Medicaid and CHIP eligibility, enrollment, applicable notifications, and claims processing;
  - processes to ensure the timeliest possible provision of screening and diagnostic services if they are not able to be covered beginning 30 days prior to release;
  - policies, procedures, and processes to ensure pre-release services do not effectuate delay of an individual's release or lead to increased involvement in the juvenile and adult justice systems;

# Section 5121 Internal Operational Plan (continued)

- new or updated written staff-level operational policies and procedures where workflows and processes are impacted by the new requirements;
- new or updated provider and beneficiary-level processes, procedures, policies, and systems related to accessing services such as case management, prior authorization, linkages to managed care plans, payment, claims processing, and data analysis, where these are impacted by the new requirements;
- training, education, and outreach actions; and



# Section 5121 Internal Operational Plan (continued)

- integration with current Medicaid and CHIP operations, such as disaster planning and continuity of operations, hearings and appeals, beneficiary notices, record retention, and other operational activities associated with program administration.
- States **should** have a plan in place **no later than January 1, 2025**, but are not required to submit this internal operational plan to CMS, except upon request.

# Section 5121 Providers and Settings

- States may choose to rely on **carceral and/or community-based health care providers** to furnish any of the required services during the pre-released period under section 5121.
- State must ensure that **all providers comply** with Medicaid and CHIP **provider participation and enrollment requirements**.
- Section 5121 **does not limit the types of carceral settings**.
  - The types of settings **could include** state prisons, local jails, tribal jails or prisons, and juvenile detention and youth correctional facilities.
  - **CMS will provide further guidance at a later date** on the applicability of section 5121 to federal prisons.

# Sections 5121 and 5122 Federal Financial Participation

- State Medicaid Agency (SMA) information technology (IT) system costs **may be eligible for enhanced federal financial participation (FFP)** that meets required criteria through an Advanced Planning Document (APD).
  - This may include IT systems that support data sharing between SMAs and correctional agencies, carceral facilities, Medicaid providers, and other systems (e.g., housing or other HRSN data systems/sources).
  - Enhanced FFP may be claimed for **new systems or improvements to existing systems**.
  - If states have questions related to IT topics and IT system expenditures, CMS encourages states to contact their Medicaid Enterprise Systems State Officer.
- SMAs may need to work with their state legislatures and other state partners to identify the appropriate state share for Medicaid FFP for services required under section 5121.
- Separate CHIPs are able to claim for any system changes at their regular Enhanced Federal Medical Assistance Percentage (EFMAP) rate as part of administrative costs, up to the ten-percent limit specified under section 2105(c)(2)(A) of the Act.

# Section 5121 State Plan Amendment (SPA) Process

- States **must submit a SPA** with an effective date of no later than January 1, 2025.
- For Medicaid, a state **must submit a SPA** no later than March 31, 2025, to have an effective date of no later than January 1, 2025.
- For CHIP, in order to have an effective date of January 1, 2025, a state **should submit a SPA** no later than the end of the state fiscal year in which January 1, 2025 falls.
- CMS is **developing SPA templates** to assist states.

# Section 5121 SPA Process (continued)

- The Center for Medicaid and CHIP Services (CMCS) is committed to **supporting the successful implementation** of section 5121 and **recognizes the complexities** associated with implementing this provision.
- CMCS has **developed a SPA review framework** that balances CMCS's **regulatory requirements** for reviewing SPAs, **general oversight responsibilities**, and the **statutory effective date** of January 1, 2025.
- The framework for reviewing SPAs will be **based on states' readiness** to fully implement section 5121. Depending on the level of readiness, states **will be determined** as either **fully ready, partially ready, or not ready** to implement section 5121.

# Section 5121 SPA Process – Full Readiness

- *Fully Ready States*

- States that are **prepared to operationalize section 5121 requirements** (i.e., the state has an internal operational plan, covers the services, has reimbursement methodologies in place) and have **worked with all carceral facilities in the state** to ensure they are prepared to participate (including provider enrollment and billing) in Medicaid and CHIP by January 1, 2025.
- CMCS will follow our **normal SPA processing procedures**, which may include issuing a **request for additional information (RAI) and/or approval or disapproval**.

# Section 5121 SPA Process – Partial Readiness

## ▪ *Partially Ready States*

- State Medicaid and CHIP programs that are **prepared to operationalize the section 5121 requirements** but: **only a limited number of carceral facilities are prepared** to participate in Medicaid and CHIP by January 1, 2025; **services are being delivered** by qualified and enrolled providers, **but not claimed for infrastructure reasons**; or carceral providers are **not ready and services are not actually being provided**.
- CMCS will **approve the SPA with sunset language** and issue a **companion letter** that documents areas of non-readiness and establishes a deadline for full readiness.
- States **should submit a new SPA to remove the sunset date** once fully ready.
- This approach allows states **to claim for services in carceral facilities** that are ready to participate in Medicaid and CHIP while giving states **additional time to achieve full readiness** with section 5121.

# Section 5121 SPA Process – Non-Readiness

## ▪ *Not Ready States*

- State Medicaid and CHIP programs that **are not prepared to operationalize the section 5121 requirements** by January 1, 2025, and, therefore, Medicaid/CHIP-covered services are not being provided in carceral facilities.
- CMCS will **issue an RAI** documenting areas of non-readiness with section 5121.
- This approach **retains the January 1, 2025 effective date** while the state continues working on fully implementing section 5121.
- If the state **makes sufficient implementation progress**, CMCS can **approve the SPA and follow the process for partially ready states**.



# Next Steps on Assessing Readiness for Section 5121 Requirements

- CMCS will **meet with each state this fall** to discuss state readiness to implement section 5121.
- We will **address topics** such as:
  - the internal operational plan;
  - coverage and reimbursement;
  - engagement with the carceral system;
  - provider enrollment; and
  - infrastructure needs.
- These discussions will **help inform the SPA approach**.

# Interaction with Reentry Section 1115 Demonstration Opportunity

- States may elect to either partially or fully implement the mandatory coverage required under section 5121 as part of a **Reentry section 1115 demonstration**.
- Although states may implement coverage via a reentry section 1115 demonstration, **all states must submit SPAs** attesting to meeting the requirements in section 5121.
- States that implement coverage via a reentry section 1115 demonstration **may satisfy the section 5121 internal operational plan requirement with the demonstration implementation plan** where the demonstration coverage also satisfies the coverage requirements of section 5121.
- For more information, contact your Section 1115 Project Officer.

# Section 5122

- As part of the Consolidated Appropriations Act, 2023 (CAA, 2023), section 5122 addresses Medicaid and CHIP requirements for certain Medicaid and CHIP eligible juvenile beneficiaries who are pending disposition of charges:
  - Section 5122 is **optional** and takes effect on **January 1, 2025**.
- States **must be mindful of and ensure** the policies, procedures, and processes developed to support implementation of these provisions **do not effectuate a delay of an individual's release or lead to increased involvement in the juvenile and adult justice systems.**

# Section 5122 Eligible Individuals

- For purposes of Section 5122, an **eligible juvenile** means the term defined in **section 1902(nn)** of the Act:
  - A Medicaid eligible individual **who is under 21 years of age**; or
  - An individual **between the ages of 18 and 26 who is eligible for Medicaid under the mandatory former foster care children group.**
- CHIP statute does not use the term “eligible juveniles.”
  - For purposes of section 5122, a state **may choose** to lift the eligibility exclusion **for children who are incarcerated and pending disposition of charges.**

# Section 5122 Requirements

- Under section 5122, states **will have the option to** provide Medicaid coverage (of all services to which an eligible juvenile would be entitled absent the inmate exclusion) to eligible juveniles who are inmates of a public institution **pending disposition of charges** and receive FFP under Medicaid for such services that are provided.
- Additionally, in CHIP, instead of applying the eligibility exclusion at section 2110(b)(2)(A) of the Act, **states will have the option to consider children who are inmates pending disposition of charges as eligible for CHIP** during that time.

# Section 5122 Providers and Settings

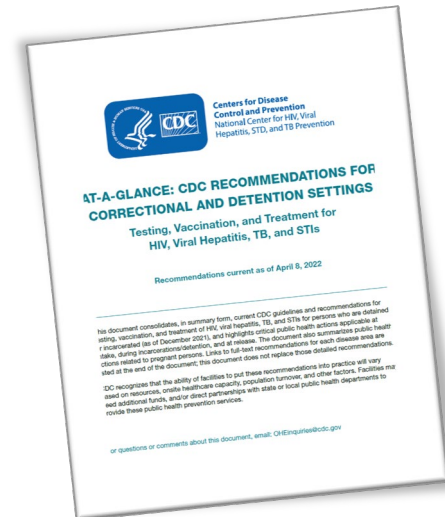
- States may rely on **carceral and/or community-based health care providers** to furnish any of the required services during the pre-release period under section 5122.
- State must ensure that **all providers comply** with Medicaid and CHIP **provider participation and enrollment requirements**.
- Section 5122 **does not limit the types of carceral settings**.
  - The types of settings **could include any type** of state prison, local jail, tribal jail and prisons, and all juvenile detention and youth correctional facilities.
  - **CMS intends to provide further guidance at a later date** on the applicability of section 5122 to federal prisons.

# Section 5122 State Plan Amendments

- States **may submit a Medicaid and/or CHIP SPA** at any time, with an effective date no earlier than January 1, 2025, **to implement the optional section 5122** coverage requirements (regarding services during incarceration pending disposition of charges).
- CMS is **developing SPA templates** to assist states.

# CDC recommendations for correctional and detention facilities

- CDC has HIV, viral hepatitis, STDs, and TB screening, treatment, vaccination recommendations for people who are incarcerated or detained
- Screening/diagnostic recommendations that include incarcerated youth:
  - Screen for HIV, HBV, HCV, TB and latent TB infection, gonorrhea, chlamydia, syphilis, and trichomonas
  - Test pregnant women for HIV, HBV, HCV, syphilis during each pregnancy
  - Test pregnant women <24 years (or 25 and older who are at increased risk) for chlamydia and gonorrhea
- Summary recommendations can be found at [www.cdc.gov/correctional-health/recommendations/](https://www.cdc.gov/correctional-health/recommendations/)





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Q&A**