



August 26, 2024

Kimberly Sullivan, J.D.
Medicaid Executive Director
Louisiana Department of Health
Bureau of Health Services Financing Medicaid Policy and Compliance
P.O. Box 91030
Baton Rouge, LA 70821-9030

Re: Louisiana Department of Health (LDH) 1115 Reentry Demonstration Waiver Amendment

Dear Director Sullivan:

The Center for Health Law and Policy Innovation of Harvard Law School (CHLPI), along with the undersigned, write in support of Louisiana's pending proposal to provide 90 days of pre-release Medicaid services to individuals leaving incarceration. We appreciate this opportunity to comment on the proposal and to highlight the ways in which Louisiana can help end our national HIV and hepatitis C epidemics. Reentry waivers and the services they allow are a critical tool for addressing health disparities and reducing the prevalence of infectious disease among people who experience incarceration. We urge Louisiana to bolster HIV and hepatitis C elimination efforts by leveraging additional allowable services, addressing legitimate privacy concerns linked to criminalization and stigma, and more intentionally inviting diverse, multi-stakeholder collaboration.

CHLPI, along with its partners, advocates for reforms to improve the health of underserved populations with a focus on the needs of low-income people living with or vulnerable to chronic illness. Our program has a long history of supporting innovative policies that combat HIV and hepatitis C, including through changes to state Medicaid programs. We believe pathways to pre-release Medicaid coverage for people who are currently incarcerated present great opportunity to increase access to and continuity of care for people living with HIV and hepatitis C, and to promote better health outcomes among currently and formerly incarcerated people.

1. Background

Louisiana has made notable efforts to address both hepatitis C and HIV, but stubborn rates of new HIV diagnosis and hepatitis-related cancers and deaths continue to be major drivers of the state's ranking as a leader in poor health outcomes.¹ The state hepatitis C elimination plan articulates a comprehensive approach to eliminating hepatitis and promoting prevention. Louisiana also has a novel subscription model to increase access to direct-acting antivirals, the

¹ LDH, *STI/HIV/Hepatitis B & C Update: Louisiana* (2022), available at: <https://ldh.la.gov/assets/oph/HIVSTD/Tables-Profiles/LouisianaAnnualProfile-2022.pdf>.

cure for hepatitis c, and has documented recent success in improving treatment and screening rates.² Despite these actions, recent studies confirm that carceral settings continue to be a key area of need for improving hepatitis elimination efforts.³

HIV also remains a significant concern for carceral health care in Louisiana, again despite increased efforts to enhance HIV care. Louisiana operates two HIV pre-release programs across eight state prisons with demonstrated improvements in care continuity, but Louisiana still ranks among the states with the highest proportions of people living with HIV in state custody.⁴ Louisiana also ranks as the third highest state in terms of HIV prevalence,⁵ with two parishes identified as priority jurisdictions for HIV elimination efforts.⁶

Our comments below offer strategies to leverage pre-release Medicaid coverage to continue Louisiana's important work in addressing hepatitis C and HIV.

2. We applaud Louisiana's choice to implement pre-release services in 13 parish jails, and to utilize the expertise of community-based providers through in-reach services.

HIV and hepatitis C are both disproportionately prevalent in jails and prisons, and expanded access to pre-release Medicaid coverage will serve to promote lower rates of transmission and better treatment outcomes. Access to pre-release Medicaid enrollment is expected to promote increased engagement in health care, better access to necessary prescription medications, and reduced reliance on emergency services post-release.⁷ We encourage the Louisiana Department of Health (LDH) and the Department of Public Safety and Corrections (DPS&C) to continue to prioritize people who are awaiting trial and people leaving jails as they roll out pre-release services. Finally, we are excited to see an explicit commitment to utilize infrastructure funds to support community-based providers in providing in-reach services.⁸ LDH should continue to leverage the expertise of community-based providers and include them throughout planning and implementation.

² Andrew H. Talal, Arpan Dharia, et. al., *Hepatitis C Virus Elimination Programs in Louisiana and Washington: Importance of Screening and Surveillance Systems* (Mar. 30, 2024), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10833194/>.

³ Risha Irvin, Gia Landry, et. al., *High Prevalence of Hepatitis C Virus Infection Among Incarcerated Persons* (Jul. 31, 2024), available at: <https://pubmed.ncbi.nlm.nih.gov/38758571/#:~:text=Through%20the%20Louisiana%20Hepatitis%20C,exit%20HC%20testing%20was%20introduced.>

⁴ Emily Widra, *New Data on HIV in Prisons During the COVID-19 Pandemic Underscore Links Between HIV and Incarceration* (Jun. 1, 2023), available at: https://www.prisonpolicy.org/blog/2023/06/01/hiv_in_prisons/.

⁵ AIDSvu, *Understanding the Current HIV Epidemic*, (last accessed Aug. 28, 2024), available at: <https://map.aidsvu.org/profiles/state/louisiana/overview>.

⁶ Get Loud Louisiana, *Ending the Epidemic Plan: 2021-2025* (2021), available at: https://louisianahealthhub.org/wp-content/uploads/2021/03/GLL-Community-Plan-v6_online.pdf.

⁷ Ashley Wennerstrom, Olivia K. Sugarman, et. al., *Health Services Use Among Formerly Incarcerated Louisiana Medicaid Members Within One Year of Release* (May 18, 2023), available at: <https://pubmed.ncbi.nlm.nih.gov/37200349/>.

⁸ LDH, *Louisiana Reentry Demonstration 1115 Waiver Application* (Aug. 1, 2024), available at: <https://ldh.la.gov/assets/medicaid/1115Reentry/Louisiana-Reentry-Waiver.pdf>. "LDH plans to utilize infrastructure investments to support the provision of pre-release services by community-based providers."

3. We urge LDH to commit to robust monitoring and oversight of privacy standards during design and implementation to protect the unnecessary or inappropriate disclosure of stigmatized health conditions.

Appropriately protecting health information, especially information related to stigmatized health conditions, should be at the forefront of reentry waiver design and implementation. Reentry waivers inherently contemplate communication between carceral facilities and community-based medical and social service providers to facilitate post-release planning and to provide health care services.⁹ Efficient sharing of health-related social needs assessments, post-release planning, and care coordination plans will likely require new data infrastructure, such as the implementation of electronic health record systems in carceral facilities. Provision of case management, consultation, and connection to post-release providers may similarly require more widespread adoption of telehealth. As new data infrastructure and systems are developed through the reentry waiver, LDH and their partners at DPS&C should be sensitive to the increased need for privacy protections in carceral settings.

Privacy protections are especially important for people living with stigmatized health conditions, such as HIV and hepatitis C. Stigma is an ongoing barrier to the widespread treatment of both conditions due to discrimination rooted in bias toward substance use issues, misinformation, and other stereotypes.¹⁰ In addition these forms of stigma often intersect with stigma against other marginalized identities, such as women, Black people, and LGBTQ+ individuals.¹¹ Moreover, while Louisiana has taken steps toward reducing the number of people incarcerated for possession and other non-violent offenses,¹² the state continues to criminalize the exposure of HIV.¹³ Criminalization is a known deterrent and barrier to engaging people in HIV care, especially in certain marginalized communities, and it contributes to stigmatization of the condition.¹⁴

⁹ CMS, *RE: Opportunities to Test Transition-Related Strategies to Support Community Reentry and Improve Care Transitions for Individuals Who are Incarcerated* (Apr. 17, 2023), available at: <https://www.medicaid.gov/federal-policy-guidance/downloads/smd23003.pdf>. “States are also asked to consider the technical requirements for coordinating care between carceral settings and community providers and public health entities.”

¹⁰ Abigail W. Batchelder, Moonseong Heo, et. al., *Shame and Stigma In Association with the HCV Cascade to Cure Among People Who Inject Drugs* (Oct. 31, 2023), available at: <https://pubmed.ncbi.nlm.nih.gov/37951006/>.

¹¹ Chioma Nnaji, et. al., *Engaging in Intersectional Liberation for Every(Black)Body Impacted by Anti-Blackness and HIV-Related Stigma* (Dec. 29, 2021), available at: <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2021.306711>.

¹² DPS&C, *Louisiana's Justice Reinvestment Reforms 2023 Annual Performance Report* (Dec. 11, 2023), available at: <https://doc.louisiana.gov/wp-content/uploads/2023/12/2023-JRI-Annual-Report-Final-12.11.23-3.06pm.pdf>.

¹³ Center for HIV Law and Policy, *HIV Criminalization Sourcebook: Louisiana* (Jan. 2024), available at: <https://hivlawandpolicy.org/sites/default/files/Louisiana%20-%20Excerpt%20from%20CHLP%27s%20Sourcebook%20on%20HIV%20Criminalization%20in%20the%20U.S..pdf>.

¹⁴ Louisiana Coalition on Criminalization and Health, *The Impact of HIV Criminalization in Louisiana* (Mar. 2024), available at: <https://www.hivlawandpolicy.org/sites/default/files/2024-04/The%20Impact%20of%20HIV%20Criminalization%20Full%20Report%20LCCH%20March%202024%20%281%29.pdf>.

To minimize any risks associated with health information disclosures, LDH and DPS&C should collaborate to implement additional safeguards that balance the goals of the reentry waiver to improve health outcomes with individual privacy concerns.

4. We urge LDH to implement coverage of prescription medications, physical health consultation, and diagnostic and treatment services during the pre-release window.

Prescription medication, physical health consultation, and diagnostic and treatment services are key to successfully addressing infectious disease in carceral settings. Direct-acting antivirals can cure hepatitis C in almost all cases in under 90 days—the same length of time Louisiana has chosen to request for pre-release services. Additionally, advancements in the treatment and prevention of HIV have evolved such that people with HIV can live long, healthy lives and avoid transmitting HIV to others through consistent access to medications and care. Connecting people to care prior to their release helps minimize administrative barriers post-release and is more conducive to supporting treatment adherence and avoid treatment interruptions, both of which are critical to ensuring better outcomes.

Coverage of pre-release prescriptions, physical health consultation, and diagnostic and treatment services are critical tools in treating HIV and hepatitis C, and LDH should include them in their proposal.

5. We urge LDH to prioritize the involvement of people with lived experience, including both currently and formerly incarcerated people.

Federal legislators and the Centers for Medicare and Medicaid Services (CMS) have made clear that people with lived experience (PWLE) are critical stakeholders in developing and implementing reentry waivers.¹⁵ Complex competing priorities, trauma, and limited communication with currently incarcerated people all complicate the ability of Medicaid departments to collaborate with people with criminal legal system involvement. CMS has explicitly pointed to one model, the Transitions Clinic Network, as a promising health intervention that both includes people with lived experience in care coordination and has proven better health outcomes for people who have been incarcerated.¹⁶

Successful community engagement in the waiver planning process requires proactive and supportive outreach, especially for engaging people who have been involved with the criminal legal system. However, community-led organizations—especially programs or initiatives with directly impacted people in leadership positions or meaningful advisory roles—have obvious potential to address those barriers and facilitate better relationships with Medicaid

¹⁵ *Supra* Note 6. “Inclusion of people with lived experience has been identified as an important feature by the... Such engagement increases the potential for this section 1115 demonstration opportunity to improve care transitions and quality of care to best meet individuals’ needs, regardless of their backgrounds or circumstances.”

¹⁶ Transitions Clinic Network, *A Roadmap for Evaluating 1115 Reentry Outcomes* (2024), available at: <https://transitionsclinic.org/wp-content/uploads/2024/01/A-Roadmap-to-Evaluating-1115-Reentry-Waiver-Outcomes.pdf>.

representatives. Additionally, Medicaid departments can create compensated advisory roles, as other states pursuing reentry waivers have done.¹⁷

LDH should create a compensated community advisory vehicle to allow direct feedback from directly impacted individuals and should intentionally leverage the expertise of community-led reentry and criminal justice organizations in planning for and implementing the waiver.

6. We encourage LDH to invest in community organizations that are led by or who work closely with PWLE by allocating reinvestment funds for their services and by incentivizing them to provide case management and other HRSN services through the waiver.

Louisiana holds itself out as a leader in decarcerating and reinvesting in community initiatives.¹⁸ In 2018, the Secretary of DPS&C, James M. Le Blanc summarized the goals of reinvestment and identified community-based services as a necessary corollary to decarceration.¹⁹ This sentiment remains true in the context of Louisiana's current reentry waiver proposal. Reentry waivers must include a reinvestment plan to detail how the state will spend savings born out of the demonstration on expenditures that support health for people who are formerly incarcerated. In doing so, CMS has highlighted that expenditures may be dedicated to upstream interventions that prevent reliance on incarceration. Community-led organizations, health interventions that reduce incarceration, and funding community-based providers to provide reentry services are all concrete examples of potential investments to support community health and decarceration.

LDH and DPS&C should prioritize these services in allocating new funds, and LDH should make an explicit commitment to do so in their reinvestment plan.

We appreciate and are grateful for LDH and DPS&C's commitments to improving health outcomes during reentry. We urge you to consider our recommendations to better serve people involved in the criminal legal system, people living with HIV, and people with hepatitis C. We look forward to future collaboration opportunities. If you have any questions, please contact Johnathon Card (jcard@law.harvard.edu).

Respectfully submitted by the following:

The Center for Health Law and Policy Innovation
The National Viral Hepatitis Roundtable
The Center for HIV Law and Policy
Capitol Area Reentry Program

¹⁷ MassHealth, *Bid Solicitation for Community Feedback Forum for Health and Justice* (last updated Apr. 12, 2024), available at: <https://www.commbuys.com/bsol/external/bidDetail.sdo?docId=BD-24-1039-EHS01-ASHWA-97691&external=true&parentUrl=close>.

¹⁸ James M. Le Blanc, *Criminal Justice in Louisiana* (Apr. 10, 2018), available at: https://doc.louisiana.gov/wp-content/uploads/2019/08/criminal.justice.in_.louisiana.-.position.paper_-.4.10.18.pdf.

¹⁹ *Id.*