March 27, 2024

Secretary Xavier Becerra
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Re: Arkansas Opportunities to Test Transition-Related Strategies to Support Community Reentry from Incarceration and Institutions for Mental Disease Section 1115 Application

Dear Secretary Becerra,

The Center on Budget and Policy Priorities and Georgetown University Center for Children and Families appreciate the opportunity to comment on Arkansas's application, the "Opportunities to Test Transition-Related Strategies to Support Community Reentry from Incarceration and Institutions for Mental Disease" Section 1115 demonstration.[1]

The Center on Budget and Policy Priorities (CBPP) is a nonpartisan research and policy organization based in Washington, D.C. Founded in 1981, CBPP conducts research and analysis to inform public debates and policymakers about a range of budget, tax and programmatic issues affecting individuals and families with low or moderate incomes. Georgetown University Center for Children and Families (CCF) is an independent, nonpartisan policy and research center founded in 2005 with a mission to expand and improve high quality, affordable health coverage for America's children and families. As part of the McCourt School of Public Policy, Georgetown CCF conducts research, develops strategies, and offers solutions to improve the health of America's children and families, particularly those with low and moderate incomes.

Arkansas is requesting a new carceral reentry demonstration to help stem the overdose crisis by improving coordination of care for people entering and leaving incarceration by providing services in the first and last 90 days of incarceration. We generally support the carceral reentry request only *during the last 90 days;* as detailed below, we have concerns about broadening section 1115 authority to authorize services during the first 90 days of incarceration. We therefore urge you to partially approve the policy requested by the state, subject to the recommendations detailed below. The state is also requesting authority to cover services in Institutions for Mental Disease (IMD) during the first and last 90 days of admission, which represents a quantitative and qualitative expansion of current CMS policy. We do not support such an expansion. Moreover, considering the distinct issues and impacts associated with carceral reentry and IMD waivers, respectively, we urge CMS to evaluate these as separate and independent demonstrations.

[1] Arkansas Department of Human Services, "Opportunities to Test Transition-Related Strategies to Support Community Reentry from Incarceration and Institutions for Mental Disease Section 1115 Demonstration Project," February 21, 2024, https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/ar-opport-transi-stratg-supp-comm-incar-instit-mentl-diseas-pa-02282024.pdf.

While we support Arkansas' overarching goal to improve care coordination for people entering and leaving institutions, we are concerned that the state's proposal reflects a disproportionate focus on identifying financing to support institutional services at the potential expense of filling gaps in community-based care options which, if filled, could help address the mental health and substance use challenges that in many cases result in institutionalization. We therefore urge CMS to approve elements of the proposal that are consistent with CMS guidance and existing proposals, and to work with Arkansas to identify alternative strategies to strengthen community-based care networks.

Targeted pre-release services _during the last 90 days_ of incarceration would reduce gaps in coverage and care, supporting successful transitions back to the community.

Arkansas is requesting approval to provide Medicaid coverage upon entry and immediately prior to release to individuals who would be eligible for Medicaid but for their incarceration in state prisons, county jails, and juvenile correctional facilities. Arkansas's request is broader than CMS's guidance on reentry demonstrations[2] and the demonstrations CMS has previously approved in other states in two major respects. First, Arkansas requests Medicaid coverage during the first 90 days of incarceration, which goes beyond CMS's current policy of covering only the last 90 days of incarceration. Second, Arkansas requests to provide coverage of *all* Medicaid services during these time periods, as opposed to a targeted set of services as outlined in CMS' guidance and approvals to date. We generally recommend CMS continue testing and evaluate the model proposed in current CMS guidance before expanding the scope of the demonstration opportunity as requested by Arkansas.

Therefore, we do not support the state's request for Medicaid funding to cover the *first 90 days* of incarceration, and we recommend that CMS not approve this part of the state's request. We are very cognizant of the grave health and equity outcomes associated with the first weeks of incarceration; 40 percent of jail deaths occur in the first week of entry.[3] However, Medicaid coverage during the first 90 days of incarceration would create a potential incentive for the state to accelerate incarceration as a result of shifting state costs onto the federal government. This is particularly true because the state has requested funding for *all* Medicaid services during the initial 90-day coverage period, as opposed to a narrow request targeting medication assisted treatment (MAT), other substance use disorder (SUD) services, and care coordination. We note that the state currently fully controls prison health care and could opt to provide any services itself. Using a section 1115 demonstration to refinance state spending is not a good use of federal dollars.

We are particularly concerned about Medicaid funding supporting the first months of incarceration in Arkansas due to the state's deeply troubling levels and growth of incarceration. The state currently has one of the highest incarceration rates in the country[4] and is reported to be

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[2] State Medicaid Director Letter, "Opportunities to Test Transition-Related Strategies to Support Community Reentry and Improve Care Transitions for Individuals Who Are Incarcerated, SMD 23-003, CMS, April 17, 2023, https://www.medicaid.gov/federal-policy-guidance/downloads/smd23003.pdf.

[3] Shelly Weizman, et al., O'Neill Institute for National and Global Health Law, "Dying Inside: To End Deaths of Despair, Address the Crisis in Local Jails," December 2022, https://oneill.law.georgetown.edu/wp-content/uploads/2022/12/ONL_Big_Ideas_Dying_Inside_P5.pdf.

[4] The Sentencing Project, U.S. Criminal Justice Data, https://www.sentencingproject.org/research/us-criminal-justice-data.

overcapacity in its prisons.[5] To make matters worse, in spite of this alarming data, the state recently implemented legislation that will likely further accelerate incarceration.[6] CMS's approval of 90 days of Medicaid funding for all services at the time of incarceration might effectively subsidize the state's increasing incarceration rates, to the detriment of all Arkansans and particularly populations that may be disproportionately targeted, such as communities of color or individuals who have behavioral health conditions. As an alternative, we urge Arkansas to work with CMS to strengthen access to community-based mental health and SUD services in a manner that could help reduce the need for incarceration among some individuals who are swept into the justice system when their health care needs go unmet.

Finally, we note that the state's requested coverage of the first 90 days of detention is an isolated cost-shift, not part of a comprehensive system to address care gaps. For example, the state does not provide information to assess how individuals will successfully transition off of coverage after the first 90 days. Without a transition plan, including, for example, continued access to MAT services after the first 90 days, the state's plan may merely shift the incarceration cliff—and related health outcomes—from the first week upon entry to the first week after the 90 days expires. Likewise, the state has acknowledged there are shortages of community-based providers, adding to the discontinuity of coverage before and after incarceration. Arkansas's proposal for coverage during the first 90 days will lead to new federal dollars for the state, but no continuous system of care for enrollees. In addition, we note that unlike most other states requesting pre-release demonstrations, Arkansas is not simultaneously investing in new services to address health-related social needs.

In contrast, we generally support Arkansas request for pre-release supports *during the last 90 days of incarceration* for adults and juveniles (though we address some specific issues for CMS review below), and we therefore recommend that CMS approve this part of Arkansas' request, consistent with CMS's recent letter to State Medicaid Directors, which outlined standards for approval of pre-release services.[7]

People in jail and prison have high rates of untreated, chronic conditions as well as a high incidence of substance use disorder and mental illness. However, they often return home without adequate access to medications or care coordination. Once home, health care often falls by the wayside as people face competing demands, including securing housing, finding work, filling prescriptions, connecting with family, and fulfilling court-ordered obligations. Gaps in coverage and care contribute to a litany of poor health outcomes and compound the harmful effects of mass incarceration and the over-policing of people of color. In addition, incarcerating children and young adults can cause serious harm to youth who are separated from their family and community, including long-term adverse impacts on individuals' physical and mental health.[8]

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[5] Arkansas Advocate, "Arkansas Sees Uptick in Incarceration as Crime Drops Slightly," January 3, 2024, https://arkansasadvocate.com/2024/01/03/arkansas-sees-uptick-in-incarceration-even-as-crime-drops-slightly.

[6] Arkansas Advocate, "Arkansas Senate Votes for 'Truth in Sentencing' Bill, Bucking National and International Trends," April 3, 2023, https://arkansasadvocate.com/2023/04/03/arkansas-senate-votes-for-truth-in-sentencing-bill-bucking-national-and-international-trends.

[7] State Medicaid Director Letter, "Opportunities to Test Transition-Related Strategies to Support Community Reentry and Improve Care Transitions for Individuals Who Are Incarcerated," SMD 23-003, CMS, April 17, 2023, https://www.medicaid.gov/federal-policy-guidance/downloads/smd23003.pdf.

[8] Cortney Sanders, "State Juvenile Justice Reforms Can Boost Opportunity, Particularly for Communities of Color,"

Arkansas's request for pre-release coverage is not entirely consistent with CMS guidance and prior approvals, in two ways. First, CMS guidance suggests states should cover a *targeted* set of services for people preparing to leave carceral settings.[9] Arkansas instead proposes coverage of *all* services. We recommend CMS follow the model set out in guidance, which requires coverage of a minimum set of services and opens the door to states covering additional services if the states "provide justification…for how such services would be likely to promote the objectives of the Medicaid program and facilitate meeting the demonstration goals."[10] As such, we believe CMS should not approve Arkansas to cover all Medicaid services, but could consider coverage of a targeted set of specific services for which the state can identify unmet needs and a close connection to discharge outcomes.

Second, Arkansas does not target carceral eligibility to a subset of at-risk Medicaid-eligible individuals. Though this feature of the Arkansas proposal differs from what has been proposed by some states, we do not believe that in the context of a targeted set of benefits it is inconsistent with the CMS guidance, which encourages states to make eligible a "broadly defined demonstration population." We recommend CMS approve this feature because it will reduce the administrative burden of identifying individuals who meet the risk-based targeting criteria and because the prevalence of risk is so high in the incarcerated population that risk stratification is inefficient at best.

Recognizing that transitions take time, we otherwise support the state's request to provide services in the 90-days prior to release. Engaging case managers to help people leaving incarceration select a Provider-Led Arkansas Shared Savings Entity (PASSE) plan and engaging community case managers post-release to facilitate warm handoffs to community providers will help promote continuity of care when people leave carceral settings.

As with other recent demonstration approvals, we urge CMS to prioritize the use of community-based providers to deliver the services. We recommend that CMS require all providers under the demonstration to be enrolled as Medicaid providers. We also urge CMS to require a Reentry Initiative Reinvestment Plan, consistent with approvals in other states, to ensure that Medicaid funding doesn't simply replace other current funding sources; we support this important new requirement, particularly in the event that CMS expands the scope of the demonstration beyond what is set out in guidance.

Center on Budget and Policy Priorities, July 27, 2021. https://www.cbpp.org/research/state-budget-andtax/statejuvenile-justice-reforms-can-boost-opportunity-particularly-for; Vincent Schiraldi, "Can We Eliminate the Youth Prison? (And What Should We Replace It With)?" Square One Project, June 2020, https://squareonejustice.org/paper/can-we-eliminate-the-youth-prison-and-what-should-we-replaceit-with-by-vincentschiraldi-june-2020/; Christopher Wildeman and Emily Wang, "Mass Incarceration, Public Health, and Widening Inequality in the USA," The Lancet 389, April 2017, https://doi.org/10.1016/S0140-6736(17)30259-3; Michael Massoglia and Brianna Remster, "Linkages Between Incarceration and Health," Public Health Reports, May 1, 2019, https://doi.org/10.1177/0033354919826563.

[9] State Medicaid Director Letter, "Opportunities to Test Transition-Related Strategies to Support Community Reentry and Improve Care Transitions for Individuals Who Are Incarcerated," SMD 23-003, CMS, April 17, 2023, https://www.medicaid.gov/sites/default/files/2023-12/smd23003.pdf.

[10] *Id.* a 26.

The state would enroll those eligible for reentry coverage in the PASSE program, at least through the first 12-month period after release (assuming they remain eligible), including in the 90-days prior to release. The PASSE program includes enhanced services like peer support, crisis intervention, and pharmaceutical counseling.[11] Some of these services are difficult to sufficiently administer in normal settings, let alone in carceral ones. We recommend that CMS require the state to identify which services will be available and how the state will ensure that all services offered through PASSE are available to eligible individuals (including provider capacity) in the 90-day period prior to release.

More importantly, the state indicates that after the first 12 months enrolled in PASSE, individuals would continue to receive care coordination through a PASSE, a Life360 HOME, or a Success Coach ("pending CMS approval"). Arkansas's proposed "Success Coach" model is not the same as care coordination and could result in individuals' actually having reduced access to care as the state's application was written. As detailed in previous comments, we oppose the mandatory use of Success Coaches and they in any case should not be used for the populations for whom this application seeks to provide care improvements.[12]

Arkansas requests additional federal funding for training and IT network development in support of its carceral reentry demonstration. Considering the significant investments that need to be made to establish carceral transition services and coordination, we support the request for infrastructure funding. We recommend that CMS limit funding consistent with parameters CMS has set for funding HRSN infrastructure investments.

Expanding current CMS policy on IMD waivers would harm access to valuable community-based care.

Arkansas has proposed an IMD exclusion waiver that goes well-beyond the outer limits of current CMS policy. CMS's current and consistent policy, as described in guidance and implemented in numerous states, is to approve IMD exclusion waivers allowing stays as long as 60 days, with an average not to exceed 30 days.[13] Arkansas, however, is requesting 90 days of coverage both upon admission and prior to discharge, for a *potential total of 180 days*. This represents a massive expansion of CMS's current 60-day policy, which itself already raises questions. Institutionalization for as long as 60 days already risks individuals losing housing, care providers, or other health supports that may complicate or make impossible transitions back to the community; institutionalization for 180 days will certainly raise this problem for many individuals. Allowing funding for 180 days of institutionalization would also further erode the incentives to develop community-based care alternatives. As such, CMS should not approve any expansion of the current IMD policy in

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[11] Arkansas Department of Human Services Website, "PASSE – Provider-Led Arkansas Shared Savings Entity," https://humanservices.arkansas.gov/divisions-shared-services/medical-services/healthcare-programs/passe.
[12] https://1115publiccomments.medicaid.gov/jfe/file/F_10ViELIiJmu1j4f.
[13] Questions & Answers Guidance, "Qualified Residential Treatment Program (QRTP) Reimbursement: Family First Prevention Services Act (FFPSA) Requirements," CMS, October 19, 2021, https://www.medicaid.gov/sites/default/files/2021-10/faq101921.pdf; State Medicaid Director Letter, "Strategies to Address the Opioid Epidemic," SMD 17-003, CMS, November 1, 2017, https://www.medicaid.gov/sites/default/files/federal-policy-guidance/downloads/smd17003.pdf; State Medicaid Director Letter, "Opportunities to Design Innovative Service Delivery Systems for Adults with a Serious Mental Illness or Children with a Serious Emotional Disturbance," CMS, November 13, 2018, https://www.medicaid.gov/sites/default/files/federal-policy-guidance/downloads/smd18011.pdf.

Arkansas. We recommend that if CMS considers a 60-day IMD exclusion waiver in Arkansas, CMS should only do so in the context of incentives, and a clear commitment from the state, to fill the gap of community-based care options that is the underlying and long-term problem.

Unlike those eligible through the proposed carceral reentry waiver, individuals eligible for Medicaid services through Arkansas's proposed IMD exclusion waiver would not be enrolled in the PASSE program. However, PASSE services and supports would seem to be very relevant to the potential IMD population under the waiver. Exclusion from PASSE may also raise cost-sharing issues, as the state's current cost sharing policy only excludes those who are enrolled in PASSE or with incomes at or below 20 percent FPL from any state plan cost sharing obligations. We recommend that CMS ensure that any individuals transitioning from IMDs can access the most appropriate delivery system to meet their needs.

Conclusion

Our comments include numerous citations to supporting research, including direct links to the research, for HHS's benefit in reviewing our comments. We direct HHS to each of the studies cited and made available to the agency through active hyperlinks, and we request that the full text of each of the studies cited, along with the full text of our comments, be considered part of the administrative record in this matter for purposes of the Administrative Procedure Act.

Thank you for the consideration of our comments. If you would like any additional information, please contact Joan Alker (jca25@georgetown.edu) or Allison Orris (aorris@cbpp.org).