Summary of Public Comments and HRSA Responses on the Draft Health Center Program Policy Guidance Regarding Services to Support Transitions in Care for Justice-Involved Individuals Reentering the Community

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Purpose

On April 10, 2024, the Health Resources and Services Administration (HRSA) requested public comment for the draft Health Center Program Policy Guidance Regarding Services to Support Transitions in Care for Justice-Involved Individuals Reentering the Community Policy Information Notice (JI-R PIN). HRSA published notice of the draft JI-R PIN in the Federal Register (89 FR 25636), and accepted comments until June 14, 2024. This document summarizes comments and provides HRSA responses to comments on the draft JI-R PIN.

The vast majority of commenters supported the JI-R PIN. HRSA revised the draft policy to incorporate key suggestions and clarifications received from a range of individuals and organizations (commenters), including:

- Health centers,
- Primary Care Associations,
- National Training and Technical Assistance Partners,
- Municipal governments,
- National associations of municipal government agencies,
- Universities,
- Justice-involved non-profit organizations, and
- Individuals.

Final Policy

HRSA's final PIN 2024-05: Health Center Program Policy Guidance Regarding Services to Support Transitions in Care for Justice-Involved Individuals Reentering the Community (PDF) (final JI-R PIN) became effective on November 29, 2024.

The final JI-R PIN:

- Establishes policy guidance for health centers to provide certain health services to JI-R individuals—delivered under the exclusive control and authority of the health center—to support their transition from the carceral setting[1] back into the community setting.
- Specifies that services the health center provides are limited to services that support reentry. It recognizes the responsibility of the carceral authority to provide a regular source of care for individuals who are incarcerated or detained.
- Confirms that, under Health Center Program policy, JI-R individuals include individuals who are within 90 calendar days of their expected release from the carceral authority. JI-R individuals also include detained individuals without an official expected or scheduled release date (for example, those in pretrial detention).

[1] Under the final JI-R policy, a carceral setting is the prison, jail, correctional facility, juvenile justice facility, or other facility where a JI-R individual is incarcerated or detained by state or local government. A carceral authority is the local or state government that is responsible for the care and custody of the JI-R individual. This policy does not apply to the care provided to JI-R individuals in the care and custody of the Federal Government.

Public Comment Summary and HRSA Responses

I. Background

Issue: Supports Overall Policy

Comments

Thirty-four commenters expressed overall support for the draft policy information notice that allows health centers to provide services to support the transition of justice-involved individuals from the carceral setting back into the community setting for up to 90 days before they are released.

HRSA Response

HRSA is appreciative of the positive feedback provided by the commenters who expressed support of the policy and the ability to provide services to support the transition of JI-R individuals from the carceral setting into the community.

II. Purpose of the JI-R Policy Information Notice

Issue: Definitions

Comments

Three commenters expressed appreciation for what they describe as HRSA's clear and inclusive definitions of carceral settings, justice-involved individuals, and re-entry services. Of these three commenters, one suggested adding post-release individuals to the definition of JI-R individuals.

HRSA Response

HRSA appreciates the comments. Post-release individuals are not included in the JI-R individuals definition within the final policy. HRSA considers post-release individuals as eligible to receive all required and additional health center services available to underserved communities and populations served by health centers.

Issue: Funding

Comments

One commenter urged HRSA to continue Fiscal Year (FY) 2025 Quality Improvement Fund - Transitions in Care for Justice-Involved Populations (QIF-TJI) funding. Currently, this is one-time funding and, as the comment noted, resulted in funding for up to 51 awards to 1,400 community health centers nationwide. Additionally, the commenter encouraged HRSA to build into any future funding opportunities the ability of applicants to include pre-release services. The commenter noted that pre-release services and additional funding can better support the complex and critical health needs of people leaving incarceration and expand and sustain reentry services.

HRSA Response

Fiscal Year 2025 QIF-TJI awards provided one-time funding for health centers to pilot and evaluate innovative approaches that connect or reconnect justice-involved individuals reentering the community. This includes in-scope services that address critical health and health-related social needs. HRSA will consider future funding based on available appropriations. Please also review the HRSA response discussing allowable in-scope services.

Issue: Pretrial Detention

Comments

Forty-two commenters requested that the final policy allow health centers to serve individuals in pretrial detention. The commenters suggested that addressing the health needs of this population prior to release would positively impact the health of their communities.

Commenters also noted that including individuals in a pretrial status are disproportionately low-income individuals and people of color, and that many individuals detained pretrial are unable to afford bail and to exclude them would reduce the benefits of the policy on the underserved populations health centers serve. Themes from these forty-two commenters include:

- Sixteen commenters shared that 70 percent or more of those detained in jails are in pretrial status and noted that by excluding pretrial individuals, the draft policy excludes approximately 460,000 individuals from receiving JI-R services.
- Nine commenters encouraged HRSA to align the final policy with the Centers for Medicare and Medicaid Services' (CMS) guidance to states seeking authorization under the agency's Section 1115 Medicaid waiver authority to provide services to this population (Reentry Demonstration Project), which does not exclude those in pretrial detention.
- Seven commenters shared data showing that the average length of pretrial detention is approximately 26 days and noted that this average length of pretrial detention falls within the 90-day pre-release timeframe proposed in the draft policy. Commenters also suggested that the final policy will not be as effective in reducing negative health outcomes if it does not allow health centers to provide JI-R services to those who are caught in a "revolving door" or "churn" of detention.
- Six commenters noted that medication adherence is particularly critical for the pretrial population to avoid severe health deterioration, new health problems, or death due to overdose. These commenters noted that approximately two-thirds of the jail population are being treated for substance use disorder-mental health (SUD-MH) issues, which underscores the critical need for SUD-MH services for JI-R individuals.

HRSA Response

HRSA considered these comments and revised its final policy to allow for the provision of health services to support reentry for individuals in pretrial detention without an official expected or scheduled release date. The final policy allows health centers to serve individuals in pretrial detention who do not have an expected or scheduled release date for up to 90 calendar days, under the presumption that the individual would be released during this time period and provides further guidance related to an individual's potential transition in status from pretrial detention to being incarcerated with an expected or scheduled release date. The final policy also recognizes that health centers cannot replace carceral authorities' obligation to provide medical care to individuals who are detained or incarcerated under the Eighth Amendment to the U.S. Constitution. It is the responsibility of the carceral authority to provide a regular source of care for individuals who are incarcerated or detained.

HRSA notes that a 2022 study showed that most individuals detained in jails are in pretrial status, and that the average length of pretrial detention is 30 days.[2] HRSA recognizes that making reentry health services available to JI-R individuals in pretrial detention supports improved health outcomes for those individuals.

[2]Smith, Sandra Susan. *The Difference A Day Makes*, Harvard Kennedy School, (March 2022).

III. Applicability

HRSA received no comments specific to the Applicability section.

IV. General Criteria for Including Activities for Justice-Involved Individuals Reentering the Community Within the Health Center Program Scope of Project

Issue: Community Health Workers (CHWs)

Comments

Four commenters asked HRSA to clarify the role of CHWs supporting community reentry and care coordination with other community-based organizations. Of these four commenters, one described how their organization hired a CHW with lived experience to help justice-involved individuals with scheduling health center appointments and to connect them to enabling services.

HRSA Response

HRSA appreciates the importance of CHWs for care coordination and community reentry. HRSA recognizes employing CHWs to provide enabling and care coordination services as an accepted practice under the Health Center Program (refer to the Health Center Program Compliance Manual, Chapter 5: Clinical Staffing). HRSA encourages health centers to provide culturally responsive services that incorporate the lived experience[3] of incarcerated individuals and to consider the unique barriers faced by JI-R individuals. The final policy includes as an example under "VI. Allowable In-Scope Services" that health centers may use staff such as CHWs or peer navigators with lived experience of incarceration.

Issue: Governing Boards

Comments

Two commenters highlighted the contributions that health centers' patient board members offer to inform decision-making and service delivery. Of these two commenters, one commenter encouraged HRSA to emphasize the role that individuals with lived experience in the justice system can offer to governing boards, which would also align with guidance in the Fiscal Year (FY) 2025 Quality Improvement Fund – Transitions in Care for Justice-Involved Populations (QIF-TJI).

HRSA Response

HRSA recognizes that patient board members provide valuable input to health center decision-making and service delivery, that previous JI-R individuals may add value to such governance, and that patient input is a foundational element of the Health Center Program. Health centers must comply with applicable program governance requirements and may choose to incorporate the lived experiences of justice-involved individuals into the HRSA-approved scope of project through patient representation on health center governing boards. Health centers also have discretion on how they collect patient feedback, including through patient surveys and advisory members or councils.

[3] Ramirez, Grace Guerrero, et al. "What Is Lived Experience?" *Office of the Assistant Secretary for Planning and Evaluation*, U.S. Department of Health and Human Services, 2022.

V. Specific Criteria for Providing Health Center Services to Support Transitions in Care for Justice-Involved Individuals Reentering the Community Within the Health Center Program Scope of Project

Issue: 90-Day Timeframe

Comments

Six commenters encouraged HRSA to provide flexibility to health centers when enforcing the requirement that JI-R services be provided within the 90-day period prior to scheduled or expected release. Commenters pointed to unpredictability in the judicial system, which could shift expected release dates for inmates, potentially extending beyond the 90-day timeframe. Commenters expressed concerns about the impact that this limitation will have on Federal Tort Claims Act (FTCA) coverage and a health center's willingness to work in carceral settings.

HRSA Response

As described in the final policy, health centers may only provide services to a JI-R individual within 90 calendar days of the individual's expected or scheduled release date, or in the case of an individual who is in pretrial detention, for a period no longer than 90 calendar days. HRSA recognizes that release dates may change, and the policy applies on the date of the first service. The policy provides clarification regarding circumstances when an individual's scheduled or expected release date changes after the health center has provided health services as described in this policy, including that the health services provided by the health center to that individual within the initial 90-calendar-day period would still be considered in-scope, including for purposes of eligibility for all Health Center Program project-related benefits.

Issue: Continuity of Care

Comments

Sixteen commenters questioned how HRSA will enforce the requirement for health centers to facilitate continuity of care for those residing outside the service area post-release. Of these sixteen commenters, nine proposed that HRSA implement a "good faith effort" standard, emphasizing the challenges of working with JI-R individuals. Five commenters requested HRSA provide guidance on how health centers can document efforts to ensure continuity of care.

Six commenters highlighted the administrative burden of transferring patient records from the carceral authority to the health center or from the health center to the post-release provider. One commenter suggested that, to better position health centers to comply with this requirement, HRSA should add telehealth services to the list of allowable services in the PIN.

HRSA Response

HRSA recognizes that ensuring continuity of care, including exchanging patient records between the health center and other providers, can be a complex undertaking. In the final policy, HRSA adds clarification that health centers should document a "reasonable effort" to exchange relevant health data and connect a JI-R patient to another community provider when appropriate.

The final policy does not include telehealth in the list of allowable services because HRSA considers telehealth to be a means of delivering services and not a separate service category. Health centers may use telehealth to increase access to care for health center patients. Refer to PAL 2020-01: Telehealth and Health Center Scope of Project (PDF) for more information.

Issue: Data Access

Comments

Eleven commenters encouraged HRSA to adopt final policy language that considers barriers to privacy, security, and integration of health data between the health center and the carceral authority. Of these eleven commenters, six expressed concerns related to sharing data between the health center and the carceral authority. Three commenters pointed to the administrative burden on health centers working with paper charts or different electronic health record (EHR) systems. Three commenters discussed the opportunities to leverage support from Health Center-Controlled Networks (HCCN) to advance EHR interoperability, since 83 percent of health centers participate in an HCCN. One commenter asked HRSA to be silent on the carceral authority patient medical record.

HRSA Response

HRSA acknowledges the issues associated with patient health information exchange between the health center and other providers. HRSA also encourages health centers to maximize their effort to reduce disruption of care and improve patient safety and quality of care. In the final policy, HRSA adds clarification that health centers should document a "reasonable effort" to provide access to relevant health records and health data, subject to applicable law. For example, a health center may document in their patient record efforts to share any relevant health data with other providers.

HRSA recognizes that most health centers participate in an HCCN. The agency encourages further health center participation in HCCNs who can support networks of health centers to leverage their use of health information technology (IT) and data to enhance how they deliver affordable, accessible, and high-quality primary care.

The draft policy stated, and the final policy maintains, that the health center is required to establish and maintain its own patient medical record. The final policy is silent on the obligations of the carceral authority to maintain patient health records and share such records with the health center, as neither HRSA nor the health center can require the carceral authority to adopt or change its internal policies or procedures. HRSA encourages health centers to communicate to carceral authorities their concerns about access to patient health information maintained by the carceral authority to support health care services by the health center to individual JI-R patients.

Issue: Expand Policy Beyond Service Area

Comments

Nineteen commenters encouraged HRSA to allow flexibility for health centers to work with carceral settings outside of their service areas. Of these nineteen commenters, thirteen noted that many JI-R individuals, especially those in state prisons or in rural areas, are often incarcerated outside of their home communities, often hours away.

Additionally, seven commenters requested that HRSA allow a health center to provide services to support transitions in care to JI-R individuals in carceral facilities just outside or adjacent to the health center service area. These commenters shared that such a change will improve continuity of care for these patients. Finally, three commenters shared that many prisons are located outside of any health center service area, and one of these commenters suggested an exception to the service area requirement where there is no health center serving the Zip Code Tabulation Area (ZCTA) where a prison is located.

HRSA Response
HRSA considered statutory and regulatory requirements governing service area and the final policy allows health centers to provide services in carceral facilities located in local political subdivisions (such as counties, townships, municipalities, or zip codes) that are adjacent to the health center's service area.

There are service area limitations in the Health Center Program's authorizing statute. Therefore, HRSA declined to allow health centers to provide JI-R services in carceral facilities located beyond local jurisdictions adjacent to the health center service area, even in cases where there is no health center serving the ZCTA where the carceral facility is located.

Issue: Existing Arrangements with Carceral Authorities

Comments
Ten commenters urged HRSA to provide an exception to all requirements in the draft policy for health centers with existing arrangements with carceral authorities (which commenters also described as "legacy," or "grandfathered" arrangements). Of those ten commenters, six requested that HRSA provide exceptions for existing arrangements where a health center is working with a carceral facility located outside of its service area.

Additionally, two commenters asked for an exception for a specific health center operating in the District of Columbia (DC), citing the unique relationship between the Federal Government and DC, where Congress has oversight of DC's budget. These commenters stated that because the Federal Government plays a distinct role in DC's justice system, HRSA has the authority to create an exception for this health center without creating a broader exception for other existing arrangements. One commenter requested an explicit exception for health centers serving as the contracted health care vendor for a carceral facility.

HRSA Response
The final PIN reflects HRSA's understanding of the appropriate limitations to the potential role of health centers in providing health services to individuals who are incarcerated or detained, allowing only for health centers to provide certain services to support transitions in care to JI-R individuals, while not duplicating or replacing the legal responsibility of carceral authorities to provide health care services to such individuals. HRSA will work with impacted health centers on their plans to come into compliance with the final policy.

A health center may choose to provide services in carceral settings as an "other line of business" which they would conduct outside the Health Center Program scope of project, is not subject to Health Center Program requirements, and for which HRSA approval is not required. These "other lines of business," because they are not within the scope of project, are not eligible for the federal benefits that extend to activities within the health center's scope of project (including the 340B Drug Pricing Program, FTCA coverage under Federally Supported Health Centers Assistance Act (FSHCAA) or reimbursement as an FQHC under Medicare/Medicaid/the Children's Health Insurance Program). In addition, the revenue generated from "other line of business" activities should be sufficient to support direct costs of the activity plus a reasonable share of overhead to ensure that Health Center Program federal award funds and other related income are not used inappropriately to support costs outside the approved scope of project.

Issue: Payor Contract

Comments

Two commenters urged HRSA to explicitly allow health centers to provide services to JI-R individuals pursuant to a "payor contract" with the carceral authority, under which the carceral authority retains responsibility to provide payment for such services while the health center maintains responsibility for the clinical services furnished by the health center's clinicians. The commenters stated that the presence of a contract does not automatically signify that the health center is acting on behalf of a third party. Commenters noted these types of contracts could be an arrangement between a health center and a non-traditional payor that reimburses the health center services furnished to eligible patients. These commenters noted that HRSA allows for other non-traditional payor sources for health centers, such as local employers.

One commenter noted that a health center receiving funds from a carceral authority under a payor contract can still meet all Health Center Program requirements, including maintaining authority over the services provided.

HRSA Response

HRSA declines to provide new language about the allowability of a "payor contract" in the final policy. The final policy maintains the language of the draft policy, which specifically prohibits a health center from serving as a carceral authority's contractor for provision of medical services on behalf of the carceral authority and in a manner inconsistent with the criteria in the policy.

Issue: Sliding Fee Discount Program (SFDP)

Comments

Two commenters requested clarification on SFDP requirements and flexibilities for JI-R services, including waivers. The commenters encouraged HRSA to clarify in the final policy that a sliding fee discount can slide to $0. Of these two commenters, one noted that strengthening the policy language to expressly reference a sliding fee discount to $0 without a separate waiver policy would benefit community health centers, as the approach is easier to administer. One commenter noted that the current language, "full discount" has resulted in long-standing confusion for health centers during operational site visits.

HRSA Response

All health centers, including those providing services to JI-R individuals, must comply with the program requirements as outlined in the Health Center Program Compliance Manual, including in Chapter 9: Sliding Fee Discount Program and Chapter 16: Billing and Collections. Health centers are required to implement a SFDP for their health center scope of project, that includes a sliding fee scale structure where:

- A full discount is provided for individuals and families with annual incomes at or below 100 percent of the current Federal Poverty Guidelines (FPG), unless a health center elects to have a nominal charge, which would be less than the fee paid by a patient in the first sliding fee discount pay class above 100 percent of the FPG.
- Partial discounts are provided for individuals and families with incomes above 100 percent of the current FPG and at or below 200 percent of the current FPG, and those discounts adjust based on gradations in income levels and include at least three discount pay classes.
- No discounts are provided to individuals and families with annual incomes above 200 percent of the current FPG.

Health centers have discretion to adopt a SFDP that includes no charge for patients under 100 percent of the FPG. The final policy clarifies that it is acceptable for a health center's waiver policy to include a specific circumstance when patients are detained as a JI-R individual and are unable to pay for costs associated with their health care.

VI. Allowable In-Scope Services to Support Transitions in Care for Justice-Involved Individuals Reentering the Community

Issue: Substance Use Disorder – Mental Health (SUD-MH) Services

Comments

Fifteen commenters emphasized the importance of making SUD-MH services available to JI-R patients or provided examples of how their organization supports access to these services. Commenters described the health center community as being well-positioned to respond to the SUD-MH challenges that JI-R patients experience, as health centers are already providing these services within their communities.

Of these fifteen commenters, seven described the increased risk to JI-R individuals for SUD and stressed the need to address Medication Assisted Treatment and Medication for Opioid Use Disorder (MAT-MOUD) challenges for pretrial detainees. Four commenters noted concerns specifically linked to overdose for populations re-entering the community, compounded by systemic racial inequities. Four commenters noted that pretrial detainees, which can make up to 70 percent of the incarcerated population, experience abrupt disruption in treatment of SUD or will be less likely to seek SUD treatment after release. Two commenters described statistics stressing the prevalence of mental health conditions in the JI-R population. One commenter described the link between substance use and oral health complications and the need for dental treatment.

HRSA Response

HRSA acknowledges the importance of mental health and substance use disorder services for JI-R individuals and appreciates the commenters for noting the specific challenges including MAT-MOUD treatment and the link between mental health issues, substance use disorders and oral health. The final policy retains the language that included examples for mental health and substance use disorder services for JI-R individuals.

HRSA also notes that the final policy allows for the provision of certain health services to support transitions in care for JI-R individuals in pretrial detention without an official expected or scheduled release date. Therefore, a health center may provide SUD-MH services, including MAT-MOUD, to individuals in pretrial detention for up to 90 calendar days.

Issue: More Services

Comments

Five commenters requested that HRSA allow health centers to provide services not included in the list of services appearing in the draft policy. These commenters suggested that there would be value to individual patients and their communities to allow additional JI-R services. Among these commenters, the following additional services for JI-R individuals were suggested:

- Dental services beyond preventative dental services,
- An expanded view of referrals to include a warm handoff,
- Provision of long-acting injectable pre-exposure prophylaxis (PrEP) and long-acting injectable HIV treatments, and

- Development of psychiatric advance directives (PADs).

Additionally, one commenter suggested that allowable JI-R services should mirror those appearing in Form 5A, while another suggested that health centers be allowed to provide whichever services they deem necessary.

HRSA Response
HRSA recognizes that JI-R individuals have complex primary health care needs. The final policy maintains the health services from the draft policy, which includes a wide range of JI-R services that may be considered within the health center's scope of project. HRSA considers the services included in the policy necessary to support the transition of JI-R individuals from the carceral setting back into the community setting. Primary health services and pharmaceutical services are allowable in-scope services; the provision of prescription medication as appropriate (including PrEP) would be appropriate as a part of those services. HRSA clarifies the final policy includes provision of PrEP (including long-acting injectable PrEP) as part of the allowable services of general primary medical care and supply of medications for use post-release.

Issue: Supports Service List in Draft Policy

Comments
Fourteen commenters supported the service list indicated in the draft policy. Of these fourteen commenters, four appreciated that the listed services aligned with existing required services for the Health Center Program and mirrored the allowable services CMS outlined in their Reentry Demonstration Project guidance to states. Two commenters asked HRSA to clarify that health centers have the discretion to determine which services described in the draft policy they may choose to provide.

HRSA Response
HRSA appreciates the supportive comments regarding the service list in the draft policy. The final policy clarifies that health centers have discretion as to whether to provide JI-R services and which JI-R services to provide based on the needs of the JI-R individuals, as well as the needs of the health center's overall patient population and the health center's capacity. HRSA notes that a range of commenters expressed that it is a priority to provide mental health and substance use disorder services to JI-R individuals, and the final policy maintains the ability for a health center to focus on these services.

VII. Documenting Services to Support Transitions in Care for Justice-Involved Individuals Reentering the Community

Issue: Form 5B

Comments
One commenter asked HRSA to allow health centers to add carceral facilities to Form 5B: Service Sites, so they can access FTCA and 340B Drug Pricing Program benefits for those activities.

HRSA Response
The final policy maintains that health centers will document any carceral settings where they provide in-scope services to JI-R individuals, in a manner to be determined by HRSA. If the JI-R services are determined to be within a health center's scope of project, they may be eligible for FTCA coverage and for discounts via the 340B Drug Pricing Program. The FTCA and the 340B Drug Pricing Program are

administered and implemented separately and have unique requirements, of which the Health Center Program scope of project is only one component. HRSA notes that the benefits afforded through the 340B Drug Pricing Program are limited to established eligible entities, and do not convey to carceral authorities under this policy.

VIII. Providing Health Services to Justice-Involved Individuals Reentering the Community and Eligibility for Other Federal Programs Associated with Section 330 of the Public Health Service Act

Issue: Federal Tort Claims Act (FTCA)

Comments

Fourteen commenters discussed the availability of FTCA coverage for JI-R services. Of those fourteen commenters, thirteen requested clarification about the applicability of FTCA coverage to activities provided under this policy. Ten commenters requested that the final policy clarify that when an expected release date is changed, services provided by the health center that now fall beyond the new 90-day pre-release period would still be considered in-scope and eligible for FTCA coverage. These commenters noted that lack of FTCA coverage for services provided beyond the expected 90-day period exposes health centers to significant legal and financial risks.

Three commenters requested that HRSA confirm that health centers providing JI-R services receive FTCA coverage for those activities. One commenter thanked HRSA for providing guidance on the services that may be provided in-scope to JI-R individuals, noting that this language in the policy supports FTCA coverage and removes one of the most significant barriers to health centers working in carceral facilities.

HRSA Response

HRSA recognizes that release dates for JI-R individuals may change for a variety of reasons. In the final policy, HRSA clarifies that if there is a change in the scheduled or expected release date, a service that was considered in-scope within the 90-calendar-day period at the time it was provided would be considered in-scope for the purposes of all Health Center Program Project-related benefits.

A health center's approved scope of project is fundamental to determining eligibility for FTCA coverage under FSHCAA for health services provided by the health center, if the health center receives grant funding under Section 330 of the Public Health Service Act and has been deemed as a Public Health Service employee under FSHCAA. However, inclusion of services within a health center's HRSA-approved Health Center Program scope of project does not guarantee the availability of FTCA coverage, which depends on all of the pertinent facts and circumstances of a given case or claim and whether those facts and circumstances support the availability of such liability protections. Additional policy information about the Health Center FTCA Program is available in the FTCA Health Center Policy Manual (PDF).