

QUESTION & ANSWERS

THE AFFORDABLE CARE ACT AND COUNTY JAILS

In 2012, county and other local jails admitted 11.6 million people, costing more than \$70.2 billion in county justice and public safety services. Justice programs are among the largest cost centers for county governments as they operate 3,105 county police and sheriff departments at \$30.2 billion each year, spend more than \$23.3 billion on correctional facilities and allocate another \$16.7 billion to county courts and legal services annually. In jails across the country, inmate health care costs range from 9 percent to 30 percent of corrections spending.¹

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The implementation of the Affordable Care Act (ACA) has set off reforms in health care systems across the country, including in county jails. Ninety percent of people who enter county jails have no health insurance.² Prior to arrest, 60 percent of the jail-involved population has income low enough to qualify for expanded Medicaid, with another 33 percent qualifying for subsidized insurance through the Health Insurance Marketplace.³ Additionally, jail inmates suffer from chronic health conditions at a higher rate than the general population and 64 percent experience mental illness.⁴ More than 76 percent of those with a mental problem also suffer from substance dependence or abuse, as does 53 percent of the general jail population.⁵ Many of those who cycle in and out of county jails may now be able to obtain health insurance through the Health Insurance Marketplace or expanded Medicaid. County jails are therefore in a unique position to connect those in their custody with health insurance during pretrial detention or prior to discharge. Evidence suggests this could contribute to reduced health care and criminal justice costs to the county and lower jail operating costs.⁶ This brief will answer some of the most commonly asked questions about the ACA and how it relates to county jails.

Further guidance is needed to provide clarification on some of the ACA's provisions. Counties should consult with their state insurance regulators and watch for updates.

Individuals' eligibility for Medicaid will be dependent on each state's decision to expand or not expand Medicaid under the ACA.

Which justice-involved individuals are eligible for coverage under the ACA?

| Status | Marketplace | Medicaid |
|----------------------------|--|---|
| Pretrial but not detained | Yes | Yes |
| Pretrial, detained | Yes, depending on specific plan requirements | No (unless he or she receives inpatient treatment outside the jail – see below) |
| Sentenced but not detained | Yes | Yes |
| Sentenced and incarcerated | No | No (unless he or she receives inpatient treatment outside the jail – see below) |

Q: Can jails bill Marketplace insurance plans for pretrial detainees?

ANSWER: Defendants being held “pending disposition” (in other words, pretrial) are eligible to enroll in and receive coverage through the Marketplace (assuming they are otherwise eligible for Marketplace coverage), subject to individual policy rules that could limit coverage based on detention status.^{7,8} If the plan does not suspend or terminate coverage for defendants held in jail pre-disposition, jails would be able to bill the defendant’s plan for services. However, incarceration exclusions are a common feature of health insurance and coverage often requires use of an in-network provider. Jails should explore the possibility of billing Marketplace insurance plans for health services provided and/or becoming an in-network provider.⁹ Further guidance would help clarify whether private insurance plans are required to provide or are prohibited from cancelling coverage during pretrial detention.

Q: Can jails bill Marketplace insurance plans for sentenced inmates?

ANSWER: No. Individuals who are incarcerated and serving a sentence (in other words, post-disposition) are not eligible to enroll in nor are they eligible for coverage under Marketplace insurance plans.¹⁰ Individuals who are incarcerated post-disposition while receiving Marketplace coverage are required to report their incarceration as a “life change.”¹¹

Q: Can jails bill Medicaid for pretrial detainees or sentenced inmates?

ANSWER: Generally, no. Unfortunately, the ACA did not directly change long-standing agency interpretation of the Medicaid statute that prohibits individuals from receiving Medicaid benefits if they are in detention, even if they have

not been convicted. Individuals can *enroll* in Medicaid (depending on state law) while they are in jail pretrial or post-conviction, which could help get needed care more quickly post-release.¹²

However, there is one important exception to this rule: A provision that expressly allows the use of federal Medicaid funding to pay for care provided to an eligible detainee or inmate when that individual is “a patient in a medical institution”¹³ for at least 24 hours. The Centers for Medicare and Medicaid Services (CMS) has clarified that this exception applies to incarcerated individuals who are treated as an inpatient in a hospital, nursing facility, juvenile psychiatric facility or intermediate care facility that is not a part of the state or local correctional system. Therefore, if an inmate is eligible for Medicaid and is transported out of the jail to receive inpatient hospital services for at least 24 hours, Medicaid may be billed to cover the cost of those services.

The ACA did not change this provision, but in states that are expanding Medicaid it does have the effect of increasing the number of inmates who are eligible for Medicaid and thus the inpatient exception – allowing jails to bill for more inmates who receive inpatient services outside of the jail.

Q: Will Medicaid or Marketplace insurance plans pay for court-ordered services?

ANSWER: If a detainee or inmate is eligible for coverage under a Marketplace plan or expanded Medicaid, those plans must cover ten “Essential Health Benefits.”

Essential Health Benefits must include items and services within at least the following 10 categories:

- ambulatory patient services
- emergency services
- hospitalization
- maternity and newborn care
- mental health and substance use disorder services, including behavioral health treatment
- prescription drugs
- rehabilitative and habilitative services and devices
- laboratory services
- preventive and wellness services and chronic disease management, and
- pediatric services, including oral and vision care.¹⁴

Given the high percentage of justice-involved individuals with mental health and substance use disorder needs, increased access to these treatments is of particular value to jails. The services actually provided under “mental health and substance use disorder services,” however, will vary by state.

If an eligible individual is court-ordered to receive any of these covered benefits, his or her insurance plan will decide if

it is a “medical necessity.” The definition of medical necessity is not spelled out in the ACA; Medicaid and Marketplace insurers define the term on their own, often based on state laws or regulations.¹⁵ County jails should research their state regulations on medical necessity in order to best advocate for reimbursement where appropriate. Additionally, if a judge orders treatment at a non-certified provider, Medicaid and Marketplace plans will not cover that cost.

Q: What if the open enrollment period has closed for the year?

ANSWER: Individuals can apply for Medicaid (regardless of whether a state is expanding Medicaid or not) at any time of the year. Open enrollment — the period of time during which individuals who are eligible to enroll in a Qualified Health Plan can enroll in a plan in the Marketplace — for coverage starting in 2015 runs November 15, 2014–February 15, 2015, but time in jail is a “qualifying life event” that qualifies individuals for a special enrollment period outside of open enrollment.¹⁶ After release from incarceration, an individual has 60 days to sign up for private insurance.¹⁷

Q: How can my jail enroll inmates?

ANSWER: Jails can determine eligibility and enroll detainees or inmates a number of different ways. First, jails can enlist several different designations of people qualified to provide assistance in understanding, applying and enrolling in coverage under the ACA. “Navigators,” “in-person assistance personnel” and “certified application counselors” are all individuals who are federally qualified to help with enrollment. These assisters are funded by federal or state grants and generally include individuals from community health centers, hospitals, other health care providers and/or social service agencies. Additionally, any agency that is already helping individuals apply for benefits as part of its work can assist in the application process under the ACA.

- To find certified application counselors in your county, visit <https://localhelp.healthcare.gov>
- To find more information on consumer assistance in the Health Insurance Marketplace, visit www.cms.gov/CCIIO/Resources/Files/Downloads/marketplace-ways-to-help.pdf

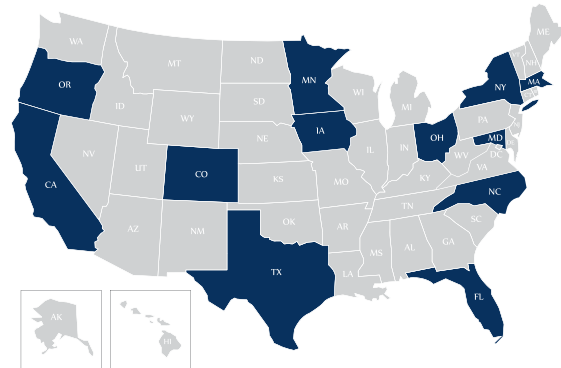
Jails can work with their community-based assister organizations to access these services. For example, the DuPage County (Ill.) Sheriff’s Office has partnered with a community resource center for children, youth and families that sends eligibility specialists to the jail two days a week to enroll inmates. In San Francisco County, Calif., the jail has assigned its own staff to be trained, certified and deliver enrollment assistance.

Eligibility determinations and enrollment in jail can occur during a detainee’s pretrial stay or in anticipation of an inmate’s release. Enrolling inmates pretrial may allow jails to bill Medicaid for a larger number of services provided under the inpatient exception. County jails should work closely with their community services partners and/or existing staff to determine how best to integrate enrollment into current jail practices and check with their state Medicaid authority to determine if state law allows for enrollment during incarceration.

Q: What’s the difference between suspending and terminating Medicaid coverage?

ANSWER: Although Medicaid will not pay for an individual’s care during incarceration, it does allow for continued eligibility for coverage for a person who is incarcerated. CMS encourages states and localities to suspend rather than terminate Medicaid eligibility during incarceration. Suspension allows for quicker reinstatement of benefits when a person leaves jail and fewer challenges in obtaining mental health, addiction or other health services during the critical first months post-incarceration. The provision of these services can prevent reoffending and a return to jail.¹⁸

STATES THAT SUSPEND RATHER THAN TERMINATE



■ STATES THAT SUSPEND

California, Colorado, Florida, Iowa, Maryland, Massachusetts (recently passed legislation requiring suspension and is in the process of creating a plan for its suspension and reactivation procedure), Minnesota, New York, North Carolina, Ohio, Oregon and Texas (suspends for only 30 days, then terminates).

Despite the benefits of suspending Medicaid upon incarceration, and the encouragement of the federal government to do so, most states still terminate a person’s eligibility when he or she is booked into jail.¹⁹ Counties can, however, work with their state Medicaid agency to create a system through which inmates’ Medicaid eligibility is suspended rather than terminated during incarceration in the county – even if the state policy is to terminate.²⁰

Q: Can individuals enroll if my state did not expand Medicaid?

ANSWER: There is no time restriction for Medicaid enrollment, even in states that have not expanded eligibility, so jails can still work to enroll any inmates that are eligible under their state requirements. All states, regardless of Medicaid expansion, will provide coverage through Marketplaces and some inmates will have incomes between 100 percent and 400 percent of the federal poverty level, making them eligible for Marketplace subsidies upon release. County jails should also consider working with their state Medicaid agency to create a system through which inmates' Medicaid eligibility is suspended rather than terminated during incarceration in the county – even if the state policy is to terminate – to increase reinstatement of benefits quickly upon release and support continuity of care.

Q: How can I find out what my state and county are doing to implement the ACA?

ANSWER: CMS has developed a state-specific tool called "Medicaid Moving Forward in 2014," which provides information on Marketplace and Medicaid eligibility in each state, including whether the state is expanding Medicaid coverage, the state Medicaid/CHIP application, a state consumer experience profile summarizing each state's application and enrollment process to date and the state Medicaid/CHIP eligibility verification plan. To find your state Medicaid Moving Forward in 2014 information, visit <http://medicaid.gov/AffordableCareAct/Medicaid-Moving-Forward-2014/Medicaid-Moving-Forward-2014.html>.

ENDNOTES

- 1 Schaenman, Phil, Davies, Elizabeth, Jordan, Reed, & Chakraborty, Reena. "Cost Savings in Inmate Health Care." Urban Institute, February 2013 at 3. Available at <http://www.urban.org/UploadedPDF/412754-Inmate-Health-Care.pdf>.
- 2 Somers, Stephen A., Nicoletta, Elena, Hamblin, Allison, McMahon, Shannon M., Heiss, Christian, & Brockmann, Bradley W. "Medicaid Expansion: Considerations for States Regarding Newly Eligible Jail-Involved Individuals." Health Affairs, Vol. 33 No. 3, March 2014 at 455.
- 3 Somers, Stephen A., Nicoletta, Elena, Hamblin, Allison, McMahon, Shannon M., Heiss, Christian, & Brockmann, Bradley W. "Medicaid Expansion: Considerations for States Regarding Newly Eligible Jail-Involved Individuals." Health Affairs, Vol. 33 No. 3, March 2014 at 455-456. It is also worth noting that most of the individuals who are eligible for subsidies for Marketplace insurance will likely be eligible for expanded Medicaid upon release from jail because they will likely no longer have income.

- 4 James, Doris J. & Glaze, Lauren E. "Mental Health Problems of Prison and Jail Inmates." Department of Justice, Bureau of Justice Statistics, September 2006 at 1. Available at <http://www.bjs.gov/content/pub/pdf/mhppji.pdf>. Accessed August 26, 2014.
- 5 James, Doris J. & Glaze, Lauren E. "Mental Health Problems of Prison and Jail Inmates." Department of Justice, Bureau of Justice Statistics, September 2006 at 5. Available at <http://www.bjs.gov/content/pub/pdf/mhppji.pdf>. Accessed August 26, 2014.
- 6 Californians for Safety and Justice. "Enrolling County Jail and Probation Populations in Health Coverage: A Toolkit for Practitioners." September 2013 at 5. Available at http://libcloud.s3.amazonaws.com/211/6d/b/242/CSJ_Health_Enrollment_Sept2013.pdf. Accessed June 9, 2014.
- 7 "Incarcerated People and Medicaid." Healthcare.gov. Available at <https://www.healthcare.gov/incarceration/>. Accessed June 9, 2014.
- 8 Regenstein, Marsha & Rosenbaum, Sara. "What the Affordable Care Act Means for People With Jail Stays." Health Affairs, Vol. 33 No. 3, March 2014 at 451.
- 9 Regenstein, Marsha & Rosenbaum, Sara. "What the Affordable Care Act Means for People With Jail Stays." Health Affairs, Vol. 33 No. 3, March 2014 at 451.
- 10 "Am I Eligible for Coverage in the Health Insurance Marketplace?" Healthcare.gov. Available at <https://www.healthcare.gov/am-i-eligible-for-coverage-in-the-marketplace/>. Accessed June 9, 2014.
- 11 "How Do I Report Life Changes to the Marketplace?" Healthcare.gov. Available at <https://www.healthcare.gov/how-do-i-report-life-changes-to-the-marketplace/>. Accessed June 9, 2014.
- 12 "Incarcerated People and Medicaid." Healthcare.gov. Available at <https://www.healthcare.gov/incarceration/>. Accessed June 9, 2014.
- 13 Social Security Act §1905(a)(A).
- 14 "Essential Health Benefits." Healthcare.gov. Available at <https://www.healthcare.gov/glossary/essential-health-benefits/>. Accessed June 9, 2014.
- 15 American Academy of Family Physicians. "Medicaid: Overview and Policy Issues." Available at <http://www.aafp.org/dam/AAFP/documents/advocacy/coverage/medicaid/ES-MedicaidOverviewandPolicyIssues-121305.pdf>. Accessed June 9, 2014.
- 16 "Open Enrollment Period." Healthcare.gov. Available at <https://www.healthcare.gov/glossary/open-enrollment-period/>. Accessed June 9, 2014.
- 17 "Incarcerated People and Medicaid." Healthcare.gov. Available at <https://www.healthcare.gov/incarceration/>. Accessed June 9, 2014.
- 18 Marks, James S. & Turner, Nicholas, "The Critical Link Between Health Care and Jails," Health Affairs, Vol. 33 No. 3, March 2014 at 445.
- 19 These states do allow for suspension rather than termination: California, Colorado, Florida, Iowa, Maryland, Massachusetts, Minnesota, New York, North Carolina, Ohio, Oregon and Texas (suspends for only 30 days, then terminates). Massachusetts recently passed legislation requiring suspension and is in the process of creating a plan for its suspension and reactivation procedure.
- 20 Maricopa County, Ariz., entered into an intergovernmental agreement with the Arizona Medicaid agency. For more information, see the Public Notice at <http://www.azahcccs.gov/publicnotices/Downloads/ImpactofMedicaidExpansion.pdf>. Accessed June 9, 2014.

