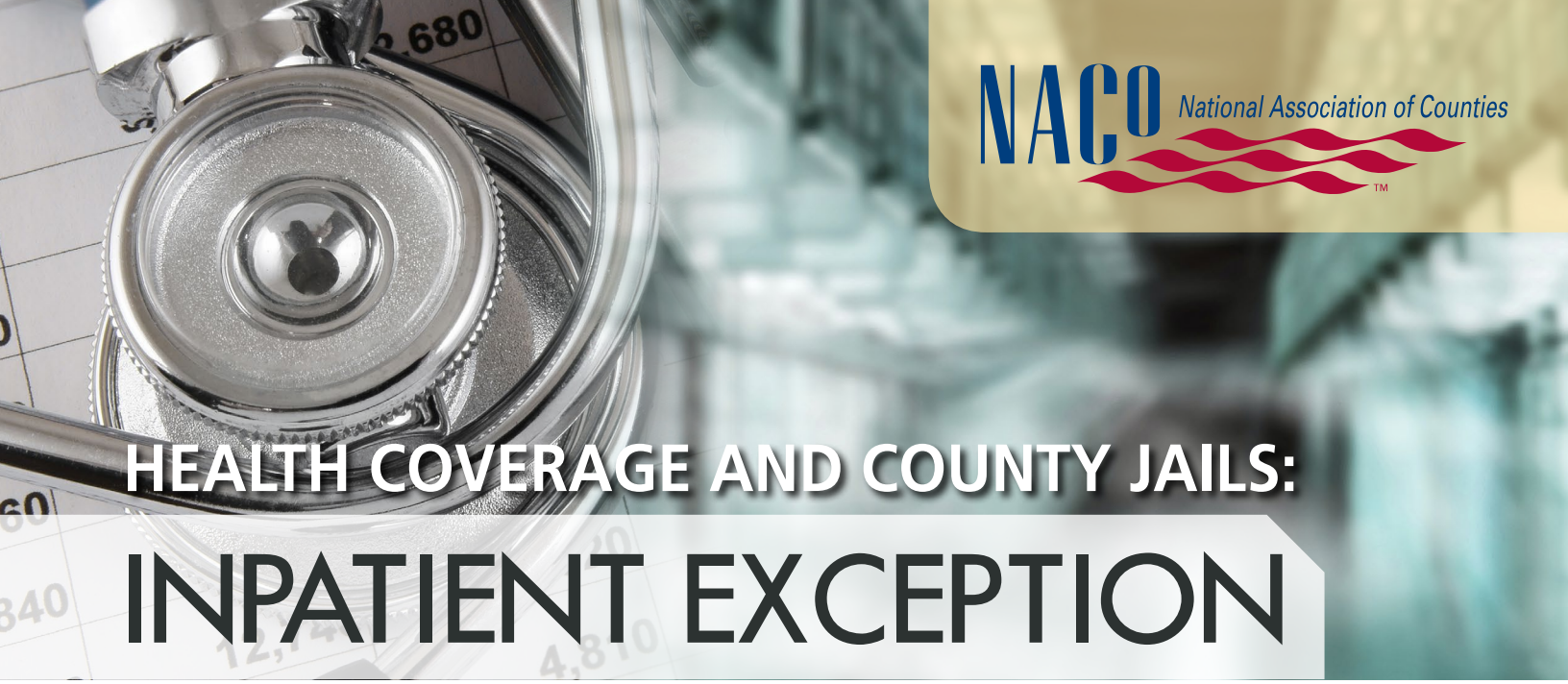

NACo National Association of Counties

HEALTH COVERAGE AND COUNTY JAILS:

INPATIENT EXCEPTION

At a cost of **$23.3 billion annually**, corrections are a huge budget item for counties. Approximately **11.6 million individuals** cycle through county jails each year.[1] Counties are required by state and federal law to provide adequate health care for inmates, which can add significantly to already high jail costs.[2]

The implementation of the Patient Protection and Affordable Care Act (ACA) is bringing about many changes to health care in the United States, and counties and jails are revisiting their Medicaid enrollment and billing practices for detainees and inmates. One Medicaid provision of note for county jails is the 24-hour inpatient exception, which allows jails to bill Medicaid when an eligible detainee or inmate is taken to a hospital or other medical facility for more than 24 hours.

As a general rule, a person becomes ineligible for Medicaid coverage when he or she is booked into jail, which means that counties are solely responsible for the cost of medical or behavioral health care provided to individuals in their jails. The inpatient exception, however, makes clear that these individuals are eligible for Medicaid reimbursement (known as federal financial participation, or FFP) "during that part of the month in which the individual is not an inmate of a public institution."[3] **This means that counties can seek Medicaid reimbursement for care provided to inmates who are treated for at least 24 hours in a medical institution outside of the jail.**

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. **This allows jails in those states to be reimbursed for more inmates who receive inpatient services outside of the jail.**

This brief is part of a series of publications on issues that could have a significant impact on county jail systems across the country as the Affordable Care Act continues to be implemented. NACo released *Questions & Answers: The Affordable Care Act and County Jails* in October 2014. These briefs will expand on many of the topics covered in that publication.

WHO IS ELIGIBLE FOR THE INPATIENT EXCEPTION?

There are two key terms important to this exception: "inpatient" and "medical institution." The Centers for Medicare and Medicaid Services (CMS) defines inpatient as an individual who receives "room, board and professional services" in a medical facility for a 24-hour period or longer or is expected to be in the facility for 24 hours or longer.[4] CMS has clarified that a medical institution is "a hospital, nursing facility, juvenile psychiatric facility, or intermediate care facility."[5] If an inmate meets both of these criteria, FFP is permitted to cover his or her care during his or her inpatient stay.[6]

> ***Example:*** *Inmate Smith is transferred to a hospital or other facility for treatment expected to last more than 24 hours, such as surgery or chemotherapy. He can be enrolled in Medicaid (or his coverage can be reinstated if his state suspends instead of terminates Medicaid coverage upon incarceration) and a federal contribution can be applied to the county's cost of Inmate Smith's entire stay. Even if Inmate Smith is released from the hospital in less than 24 hours, his stay is still eligible for FFP because treatment was expected to last at least that long.*

WHY IS THIS IMPORTANT TO COUNTIES?

Counties can achieve major cost savings by developing processes to enroll eligible individuals and bill Medicaid for their inpatient care.

> Federal reimbursement for medical services for newly eligible adults — most inmates will be newly eligible — is **100 percent** for 2014-2016, will be **96 percent** from 2017-2019 and will be permanently set at **90 percent** from 2020 and each year thereafter.[7]

For example, Hudson County, N.J., estimates that it will save approximately $700,000 per year by taking advantage of the inpatient exception. The county has also been able to get retroactive reimbursement from the state to January 1, 2014, (when the ACA and New Jersey's expanded Medicaid went into effect) for expenses the county paid for long-term hospital care of inmates.[8] One county in Minnesota has saved $96,000 on a single inmate and a second Minnesota county has saved $500,000 since the ACA went into effect.[9]

WHAT CAN COUNTIES DO TO TAKE ADVANTAGE OF THIS PROVISION?

Processes for enrollment and reimbursement will vary by jurisdiction depending on state laws, but all county jails should work to identify inmates who are eligible for Medicaid and, when possible, identify dates of planned future hospitalizations and start the necessary paperwork in advance. County jails can work with their local departments of health, directly with hospitals and other medical providers or hire external organizations to submit and process applications for inmates.

Because each state has its own unique Medicaid program, counties should be sure to work with their state department of health or comparable agency and their state Medicaid authority to understand the applicable laws and establish appropriate and effective processes.

Colorado

In Colorado, county jails send an inmate's Medicaid application to local Department of Human Services agencies, which then process the applications and advise the jail of the inmate's eligibility. If the inmate is eligible for Medicaid, the medical facility submits a Medicaid claim and is directly reimbursed.[10]

Oregon

Oregon county jails assist an inmate with submitting an application for Medicaid eligibility to the state health department (the Oregon Health Authority, or OHA). OHA then determines the inmate's eligibility and, if the inmate is eligible, approves or reinstates Medicaid coverage. When a hospital provides care for an eligible inmate, the hospital directly bills state Medicaid (the OHA's Division of Medical Assistance Programs).[11]

END NOTES

1. "Jail Inmates at Midyear 2012 – Statistical Tables." Bureau of Justice Statistics. Available at http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4655.

2. See Estelle v. Gamble, 429 U.S. 97, 103 (1976); Brown v. Plata, 131 S.Ct. 1910, 1928 (2011).

3. "Definitions relating to institutional status." U.S. Government Printing Office. 42 CFR 435.1009. Available at http://www.gpo.gov/fdsys/pkg/CFR-2007-title42-vol4/pdf/CFR-2007-title42-vol4-sec435-1009.pdf.

4. "Definitions relating to institutional status." U.S. Government Printing Office. 42 CFR 435.1010. Available at http://www.gpo.gov/fdsys/pkg/CFR-2007-title42-vol4/pdf/CFR-2007-title42-vol4-sec435-1010.pdf.

5. "Medicaid and Financing Health Care for Individuals Involved with the Justice System." The Council of State Governments Justice Center, December 2013, at Appendix 1. Available at http://csgjusticecenter.org/wp-content/uploads/2013/12/ACA-Medicaid-Expansion-Policy-Brief.pdf.

6. "Definitions relating to institutional status." U.S. Government Printing Office. 42 CFR 435.1009. Available at http://www.gpo.gov/fdsys/pkg/CFR-2007-title42-vol4/pdf/CFR-2007-title42-vol4-sec435-1010.pdf.

7. "Grants to States for Medical Assistance Programs: Definitions." Social Security Act, Sec. 1905(y)(1). Available at http://www.ssa.gov/OP_Home/ssact/title19/1905.htm.

8. Oscar Aviles. Phone interview. October 9, 2014.

9. Rochelle Westlund. Email interview. October 8, 2014.

10. "Medicaid Policy for Incarcerated or Inmates in a Correctional Facility." Colorado Department of Health Care Policy and Financing, March 2014. https://www.colorado.gov/pacific/sites/default/files/2014%20Agency%20Letters%20Number%2014-006.pdf.

11. "Medicaid Eligibility for Inmates of Jails and Prisons." Oregon Health Authority, June 2014. http://www.oregon.gov/oha/healthplan/tools/Training%20Slides%20-%20Medicaid%20Eligibility%20for%20Inmates%20of%20Jails%20and%20Prisons.pdf.

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