MEDICAID COVERAGE AND COUNTY JAILS
Understanding Challenges and Opportunities for Improving Health Outcomes for Justice-Involved Individuals
# TABLE OF CONTENTS

1. Counties’ Request to Federal Policymakers

2. The Role of Counties in Providing Health Services to Justice-Involved Individuals

3. Understanding the Federal Medicaid Inmate Exclusion

4. Why Counties Want to Improve Medicaid Coverage for Justice-Involved Individuals

5. County Jails Explained

8. Medicaid Explained

13. Suspension vs. Termination of Medicaid

15. A Look at Congress: Key Players and Committees of Jurisdiction

16. Legislative Activity

17. Administrative Advocacy

18. Key Messages for Advocacy

19. TAKE ACTION
COUNTIES’ REQUEST TO FEDERAL POLICYMAKERS

- Congress should pass legislation to ease and/or undo the federal Medicaid inmate exclusion and require states to suspend, instead of terminate, Medicaid coverage for justice-involved individuals.

- The U.S. Department of Health and Human Services (HHS) should exercise existing authority to provide additional state flexibility in the Medicaid program to cover justice-involved individuals.

  » Refer to page 16 for more details.
THE ROLE OF COUNTIES IN PROVIDING HEALTH SERVICES TO JUSTICE-INVOLVED INDIVIDUALS

• America’s 3,069 counties annually invest **$176 billion** in community health systems and justice and public safety services

• Counties are required by federal law to provide adequate health care for the more than **11.4 million** individuals who are admitted into **2,785** county-operated jails every year

• These individuals are **unable to access their federal Medicaid benefits** from the moment they are booked into jail, even though the majority are **pre-trial and presumed innocent**

  » Due to what is known as the “federal Medicaid inmate exclusion”

*Other federal health benefit programs (e.g. veterans) are subject to similar inmate exclusions

Counties annually invest **$176 BILLION** in community health systems and justice and public safety services.
UNDERSTANDING THE FEDERAL MEDICAID INMATE EXCLUSION

• Section 1905(a)(A) of the Social Security Act excludes federal Medicaid funding (also known as Federal Financial Participation) for medical care provided to “inmates of a public institution”

• Has been in place since Medicaid’s enactment in 1965

• Makes no distinction between:

  those who are pre-adjudicated and presumed innocent under the law (primarily housed in county jails) vs.

  those whom have been convicted of committing serious offenses (primarily housed in state and federal prisons)

KEY DEFINITIONS UNDER THE FEDERAL INMATE EXCLUSION

Inmate: an individual of any age in custody; held involuntarily through operation of law enforcement authorities in a public institution

Public institution: an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control, including a correctional institution such as a county jail
WHY COUNTIES WANT TO IMPROVE MEDICAID COVERAGE FOR JUSTICE-INVOLVED INDIVIDUALS

• Medicaid coverage gaps exacerbate health conditions by creating interruptions in necessary care and treatment

• More than 95 percent of local jail inmates eventually return to their communities, bringing their health conditions with them

• Individuals in jails suffer from higher rates of mental illness, substance abuse disorders and chronic diseases than the general public

• Individuals released from jails have an elevated risk of death, driven by factors including overdose, cardiovascular disease, liver disease, HIV-related conditions and suicide

• Former inmates have high rates of emergency department utilization and hospitalization

• Medicaid can reduce rates of recidivism for those with serious mental illness

Over 300 counties have passed resolutions and prioritized reducing the number of people with mental illness in jails. Learn more at www.stepuptogether.org
COUNTY JAILS EXPLAINED

• Counties serve as the entry point into the criminal justice system
• The majority of the jail population is **pretrial and low risk**
• Most individuals are simply being held awaiting resolution of their case

The average length of stay in jail is **23 DAYS**

Counts operate **2,875** of **3,160** local jails

In 2014, local jails admitted **11.4 MILLION PEOPLE**
LOCAL JAILS ANNUALLY ADMIT 18 TIMES MORE INDIVIDUALS THAN STATE OR FEDERAL PRISONS

MORE THAN 6 IN 10 INMATES ARE PRESumed INNOCENT
They haven’t been convicted of a crime but are in jail awaiting action on a charge or simply too poor to post bail

PROFILE OF POPULATION IN JAILS

- Typically non-violent
  - 75 percent of both pretrial and sentenced individuals are in jail for nonviolent traffic, property, drug or public order offenses
- Disproportionately people of color
  - While blacks and Latinos are 30 percent of the general population, they are 50 percent of the total jail population
- Sicker than the general population
  - 64 percent have a mental illness
  - 68 percent have a history of substance abuse
  - 40 percent have a chronic health condition, of which 40 percent use a prescription medication
<table>
<thead>
<tr>
<th>JAILS VS. PRISONS</th>
<th>JAILS</th>
<th>PRISONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>LOCAL GOVERNMENTS, MAINLY COUNTIES</td>
<td>OPERATOR</td>
<td>STATES OR THE FEDERAL GOVERNMENT</td>
</tr>
<tr>
<td>3,160</td>
<td>NUMBER OF FACILITIES</td>
<td>1,821</td>
</tr>
<tr>
<td>11.4 MILLION</td>
<td>NUMBER OF ADMISSIONS (2014)</td>
<td>627,000</td>
</tr>
<tr>
<td>UNCONVICTED AND CONVICTED</td>
<td>LEGAL STATUS</td>
<td>CONVICTED</td>
</tr>
<tr>
<td>MISDEMEANOR</td>
<td>CONVICTION TYPE OF SENTENCED POPULATION</td>
<td>FELONY</td>
</tr>
<tr>
<td>364 DAYS</td>
<td>MAXIMUM SENTENCE LENGTH</td>
<td>LIFE</td>
</tr>
<tr>
<td>23 DAYS</td>
<td>AVERAGE LENGTH OF STAY</td>
<td>37.5 MONTHS</td>
</tr>
</tbody>
</table>
MEDICAID VS. MEDICARE

The Medicaid and Medicare programs differ in how they are financed and the services provided to individuals. Although Medicare is administered solely by the federal government, Medicaid is financed and delivered by both the federal government and states, often with county assistance. In addition, Medicare does not have income requirements, whereas Medicaid does.

MEDICAID 101

Established in 1965, Medicaid is a federal entitlement program paid for by taxpayers that provides health and long-term care insurance to low-income families and individuals. Medicaid operates and is jointly financed as a partnership between federal, state and local governments. States administer the program, often with assistance from counties, with oversight by the federal government. The program is the largest source of health coverage in the United States, covering more than 74 million individuals, or nearly one-quarter of the population.

For more information on Medicaid, see NACo’s report, “Medicaid and Counties”
MEDICAID OPERATES AS A JOINT FEDERAL-STATE-LOCAL PARTNERSHIP

Counties are an integral part of the federal-state-local-partnership in the Medicaid program. The federal government sets broad guidelines for Medicaid, including minimum eligibility and benefit requirements.

States have flexibility within these guidelines and can seek waivers from the federal government to expand eligibility or available benefits.

Some states subcontract Medicaid to private insurers, while others pay health care providers, including county-operated providers, directly.

States utilize different Medicaid delivery systems, such as traditional fee-for-service systems that reimburse providers for each service provided and manage care systems that involve setting monthly payments.

Counties across the nation deliver Medicaid-eligible services and, in many instances, help states finance and administer the program.
**MEDICAID IS JOINTLY FINANCED BY FEDERAL, STATE AND LOCAL GOVERNMENTS**

- The federal contribution for each state varies based on the Federal Medical Assistance Percentage (FMAP) rate
- States have various options for financing the non-federal share; counties may contribute up to 60% of the non-federal share in each state

The maximum amount contributed by each state is 50%; poorer states contribute as little as 26% in sum, the federal share of Medicaid in fiscal year 2012 was 57%.

Based on FY 2012 data
Source: The Henry J. Kaiser Family Foundation
Counties also serve as health providers and deliver Medicaid-eligible services through:

- **961** county-supported hospitals
- **883** county-owned and supported long-term care facilities
- **750** county behavioral health authorities
- **1,943** county public health departments
PROFILE OF POPULATION ON MEDICAID

• Traditionally, Medicaid has served 3 categories of low-income people:
  » Families, children and pregnant mothers
  » The elderly
  » The disabled
• The Affordable Care Act (2010) allowed states the option to expand Medicaid coverage to low-income adults without children
  » This is the very population that disproportionately makes up the jail population (male, minority, and poor)
• Therefore, in states expanding Medicaid, the number of justice-involved individuals who are eligible for Medicaid has increased
31 STATES AND THE DISTRICT OF COLUMBIA HAVE EXPANDED MEDICAID (AS OF JULY 2016)

MEDICAID EXPANSION STATES

AR, IA, IN, MI, MT, and NH have approved Section 1115 waivers. WI covers adults up to 100% FPL in Medicaid, but did not adopt the ACA expansion.

Source: the Henry J. Kaiser Family Foundation
SUSPENSION VS. TERMINATION OF MEDICAID

• In order to avoid violating the statutory inmate exclusion, states have typically terminated Medicaid enrollment when an inmate is booked into jail

• When this occurs, it can take months for an individual to be reapproved for Medicaid upon release

• This interrupts access to needed medical, mental health and addiction treatment when an inmate reenters the community

• The coverage gap caused by terminating Medicaid coverage can lead to re-arrests and increased recidivism

• To address these issues, the U.S. Department of Health and Human Services (HHS) has issued guidance strongly recommending that states suspend, instead of terminate, Medicaid while individuals are in jail

HEALTH COVERAGE & COUNTY JAILS:

Inmates who receive treatment for behavioral health disorders after release spend fewer days in jail per year than those who do not receive treatments
To learn more go to www.naco.org/MedicaidSuspension
• **16 states** plus DC suspend Medicaid for the duration of incarceration

• **15 states** suspend Medicaid for a specific period of time (also known as “time-limited suspension”).

  » For instance, Medicaid may be suspended for only 30 days. If an inmate is incarcerated longer than that, then they would have to fully reapply upon release.

• **19 states** terminate Medicaid enrollment altogether when someone is incarcerated

*Colorado has passed a law changing its policy to time-limited suspension, but the state has not yet implemented this law.

**Hawaii has passed a law changing its policy to indefinite suspension, but the state has not yet implemented this law.

***Pennsylvania passed HB 1062, which allows for a two-year suspension, on July 8, 2016. The state is in the process of implementing the law.

****Washington passed SB 6430, which allows for indefinite suspension, but the law won’t be implemented until July 1, 2017.

Source: Families USA
A LOOK AT CONGRESS: KEY PLAYERS AND COMMITTEES OF JURISDICTION

SENATE FINANCE COMMITTEE

Orrin Hatch
(R-Utah)
Chairman
(Presumptive)

Ron Wyden
(D-Ore.)
Ranking Member

HOUSE ENERGY AND COMMERCE COMMITTEE

Greg Walden
(R-Ore.)
Chairman

Frank Pallone
(D-N.J.)
Ranking Member

SUBCOMMITTEE ON HEALTH CARE

Patrick Toomey
(R-Pa.)
Chairman

Debbie Stabenow
(D-Mich.)
Ranking Member

HEALTH SUBCOMMITTEE

Michael C. Burgess
(R-Texas)
Chairman

Gene Green
(D-Texas)
Ranking Member
LEGISLATIVE ACTIVITY

• H.R. 1925/S. 874, “At-Risk Youth Medicaid Protection Act of 2017”, sponsored by Reps. Tony Cardenas (D-Calif.) and Morgan Griffith (R-Va.) and Sens. Chris Murphy (D-Ct.) and Cory Booker (D-N.J.), would require states to suspend, instead of terminating, Medicaid for juvenile inmates

• H.R. 165, “Restoring the Partnership for County Health Care Costs Act of 2017,” sponsored by Rep. Alcee Hastings (D-Fla.), would remove limitations on Medicaid and other federal benefits to pretrial inmates

• H.R. 4005, “Medicaid Reentry Act of 2017,” sponsored by Rep. Paul Tonko (D-N.Y.), would remove limitations on Medicaid for the 30 days prior to an inmate’s release from jail

• H.R. 962, “The Reforming and Expanding Access to Treatment Act of 2017,” also known as the TREAT Act, sponsored by Rep. Mike Turner (R-Ohio), would remove limitations for substance abuse services specifically
ADMINSITRAIVE ADVOCACY

NACo, along with the National Sheriffs’ Association and the National Association of County Behavioral Health and Developmental Disability Directors, is urging HHS to use its waiver authority under the Medicaid statute to allow Medicaid reimbursement for certain services or inmates in county jails, such as:

- Identifying patients in county jails who are receiving community-based care and then maintaining their treatment protocols;
- Developing treatment and continuity of care plans for released or diverted individuals;
- Initiating medication-assisted therapy or other forms of medically necessary and appropriate intervention for jailed individuals with opiate addiction whose release is anticipated within 7 to 10 days; and
- Reimbursing peer counselors to facilitate reentry and increase jailed individuals’ health literacy.
KEY MESSAGES FOR ADVOCACY

- Increasing flexibility in Medicaid is crucial to helping counties fulfill their safety net obligations to justice-involved individuals and improve health outcomes.

- Increasing flexibility in Medicaid would allow for improved coordination of care while simultaneously decreasing short-term costs to local taxpayers and long-term costs to the federal government.

- Increasing flexibility in Medicaid would help counties break the cycle of recidivism caused or exacerbated by untreated mental illness and/or substance abuse, thereby improving public safety.
TAKE ACTION

• Educate your Members of Congress on the federal Medicaid “inmate exclusion” and the role of counties with jails and Medicaid

• Encourage your Representative and Senators to re-introduce and support legislation in the 115th Congress that improves health outcomes for justice-involved individuals