

QUESTIONS & ANSWERS:

HEALTH COVERAGE ENROLLMENT *for* JUSTICE- INVOLVED INDIVIDUALS

Counties spend \$176 billion every year on their criminal justice and health systems. 11.4 million individuals are admitted to jail each year, with more than 744,000 people in local jails on any given day. Many of these individuals have physical and behavioral health issues: People in jail are 1.19 times more likely to have hypertension and 2.57 times more likely to have hepatitis than the general population;¹ additionally, 64 percent of those in jail experience mental illness and 53 percent suffer from substance dependence or abuse.² More than 95 percent of incarcerated individuals will eventually return to the community, making their access to quality health care post-release an important public health issue. Medicaid coverage connects individuals to the care they need once they are in the community and can help lower health care costs, hospitalizations and emergency department visits, as well as decrease mortality and recidivism for justice-involved individuals.³

With so many individuals cycling in and out of jail each year, the nation's county jails are a unique and opportune setting to connect eligible individuals with Medicaid or other health coverage, which can help stop this cycle and save counties money in both health and justice systems while protecting public safety. In particular, the expansion of Medicaid, made possible through the Affordable Care Act (ACA), has provided the opportunity to enroll more justice-involved individuals into health coverage than ever before. The ACA provides support to states that expand Medicaid to adults with incomes up to 133 percent of the Federal Poverty Level. Federal reimbursement for medical services for newly eligible adults is 100 percent for 2016, 95 percent for 2017 and will gradually phase down to 90 percent from 2020 and beyond.⁴

This newly eligible group contains many individuals who are justice-involved. Ninety percent of people who enter county jails have no health insurance. 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. As of July 2016, 31 states and the District of Columbia have expanded Medicaid,⁷ but even counties in those states that have not expanded Medicaid can benefit from enrolling eligible justice-involved individuals into health coverage.

This brief will answer some of the most commonly asked questions about enrolling justice-involved individuals into health coverage and how it relates to county jails.



Which justice-involved individuals are eligible for health coverage?

STATUS	MEDICAID	MARKETPLACE
Pretrial but not detained	Yes	Yes
Pretrial, detained	No (unless he or she receives inpatient treatment outside the jail – see below)	Yes, depending on specific plan requirements
Sentenced but not detained (on probation or parole, in a halfway house)	Yes	Yes
Sentenced and incarcerated	No (unless he or she receives inpatient treatment outside the jail – see below)	No



Why is health coverage important for justice-involved individuals?

A: Incarcerated individuals have disproportionately high rates of chronic health conditions, infectious diseases and behavioral health disorders. For example, 14 percent of people in jail reported ever having an infectious disease, including tuberculosis, hepatitis B and C, and other sexually transmitted diseases, compared with 4.8 percent of the general population.⁸ Sixty-four percent of people in jail report symptoms of a mental health disorder, with 54.5 percent reporting symptoms consistent with bipolar disorder.⁹ Estimates also suggest that 47 percent of individuals in jail have problems with alcohol use and 53 percent suffer from drug dependency or abuse.¹⁰ On top of these health issues, individuals involved with the justice system are generally low-income and uninsured: One study showed that 90 percent of those who entered a county jail had no health insurance, while another found that more than 80 percent of those returning to the community from jail were uninsured 16 months after release.¹¹ Enrolling these eligible individuals into health coverage helps people maintain continuity of health care, which has been associated with lower health care costs, fewer hospitalizations and decreased mortality.¹² Continuity of care is also linked to reduced emergency department use and reductions in unnecessary procedures.¹³

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” 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 have expanded 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.

INDIVIDUALS’ ELIGIBILITY FOR MEDICAID WILL BE DEPENDENT ON EACH STATE’S DECISION TO EXPAND OR NOT EXPAND MEDICAID UNDER THE ACA.



Can jails bill Medicaid for pretrial detainees or sentenced inmates?

A: 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.¹⁴



Can county agencies like probation or parole bill Medicaid for justice-involved individuals who are in the community?

A: Yes. The Centers for Medicare & Medicaid Services (CMS) recently clarified that individuals who are on parole, probation or have been released to the community pending trial (including those under pretrial supervision) are not considered inmates, and therefore Federal Financial Participation (FFP) is available for covered services provided to these individuals if they are otherwise eligible for Medicaid.¹⁶ Additionally, FFP is available for covered services for Medicaid-eligible individuals who are living in corrections-related supervised community residential facilities, often called “halfway houses,” as long as the resident can work outside the facility, access community services and seek health care treatment to the same extent those in the general population can.¹⁷



Can jails bill Marketplace insurance plans for pretrial detainees?

A: 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.¹⁸ 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. Further guidance would help clarify whether private insurance plans are required to provide or are prohibited from cancelling coverage during pretrial detention.



Can jails bill Marketplace insurance plans for sentenced inmates?

A: 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.²¹ Individuals who are incarcerated post-disposition while receiving Marketplace coverage are required to report their incarceration as a “life change.”²²



What if my jail realized an individual was eligible for FFP after the medical care has already been provided?

A: FFP is available for Medicaid-covered inpatient services provided in a medical institution to an inmate in the three-month period prior to application if the individual would have been Medicaid-eligible, thanks to Medicaid retroactive eligibility provisions in section 1902(a)(34) of the Social Security Act.²³



Can individuals enroll if my state did not expand Medicaid?

A: Yes. 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. Additionally, there is no time restriction for Medicaid enrollment, even in states that have not expanded eligibility, so jails can always enroll any inmates that are eligible under their state requirements. 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 all for reinstatement of benefits more quickly upon release and support continuity of care.



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

A: If a detainee or inmate is eligible for coverage under a Marketplace plan or expanded Medicaid, those plans must cover 10 “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.²⁴

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.” Medicaid and Marketplace insurers define “medical necessity” on their own, often based on state laws or regulations.²⁵ 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.

TO FIND ENROLLMENT HELP IN YOUR COUNTY, VISIT [HTTPS://LOCALHELP.HEALTHCARE.GOV](https://LOCALHELP.HEALTHCARE.GOV)

States that Have Expanded Medicaid

Alaska	Hawaii	Michigan	North Dakota
Arizona	Illinois	Minnesota	Ohio
Arkansas	Indiana	Montana	Oregon
California	Iowa	Nevada	Pennsylvania
Colorado	Kentucky	New Hampshire	Rhode Island
Connecticut	Louisiana	New Jersey	Vermont
Delaware	Maryland	New Mexico	Washington
D.C.	Massachusetts	New York	West Virginia



How can my jail enroll individuals?

A: 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.²⁶ 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.



When can my jail enroll individuals?

A: Inmates who are eligible for Medicaid can apply at any time during the year,²⁷ and 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.

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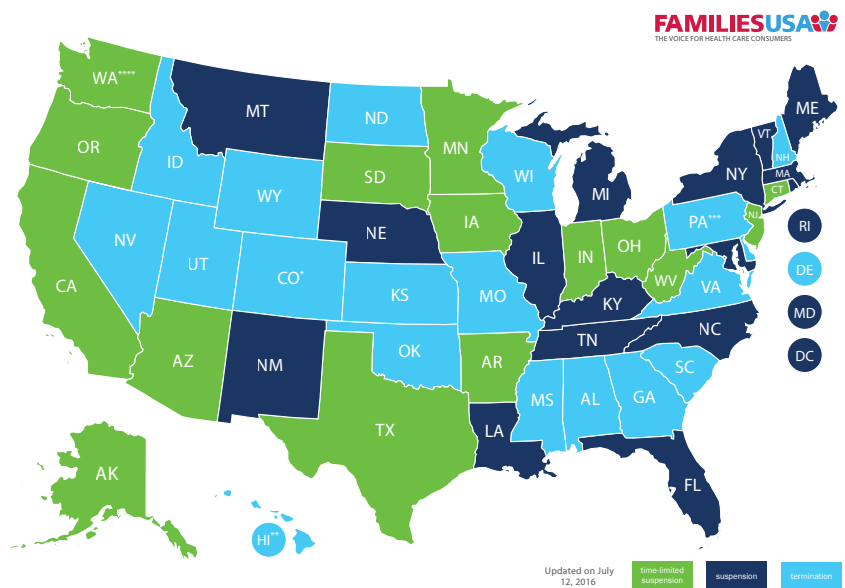


What’s the difference between suspending and terminating Medicaid coverage?

A: 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.²⁸ 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. Despite the benefits of suspending Medicaid upon incarceration, and the encouragement of the federal government to do so, many states still terminate a person’s eligibility when he or she is booked into jail.³⁰ 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.³¹

For citations, see electronic version at www.naco.org

State Status on Suspension vs. Termination



* 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.



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