

**MEDICAID INMATE
EXCLUSION POLICY
ADVOCACY TOOLKIT**



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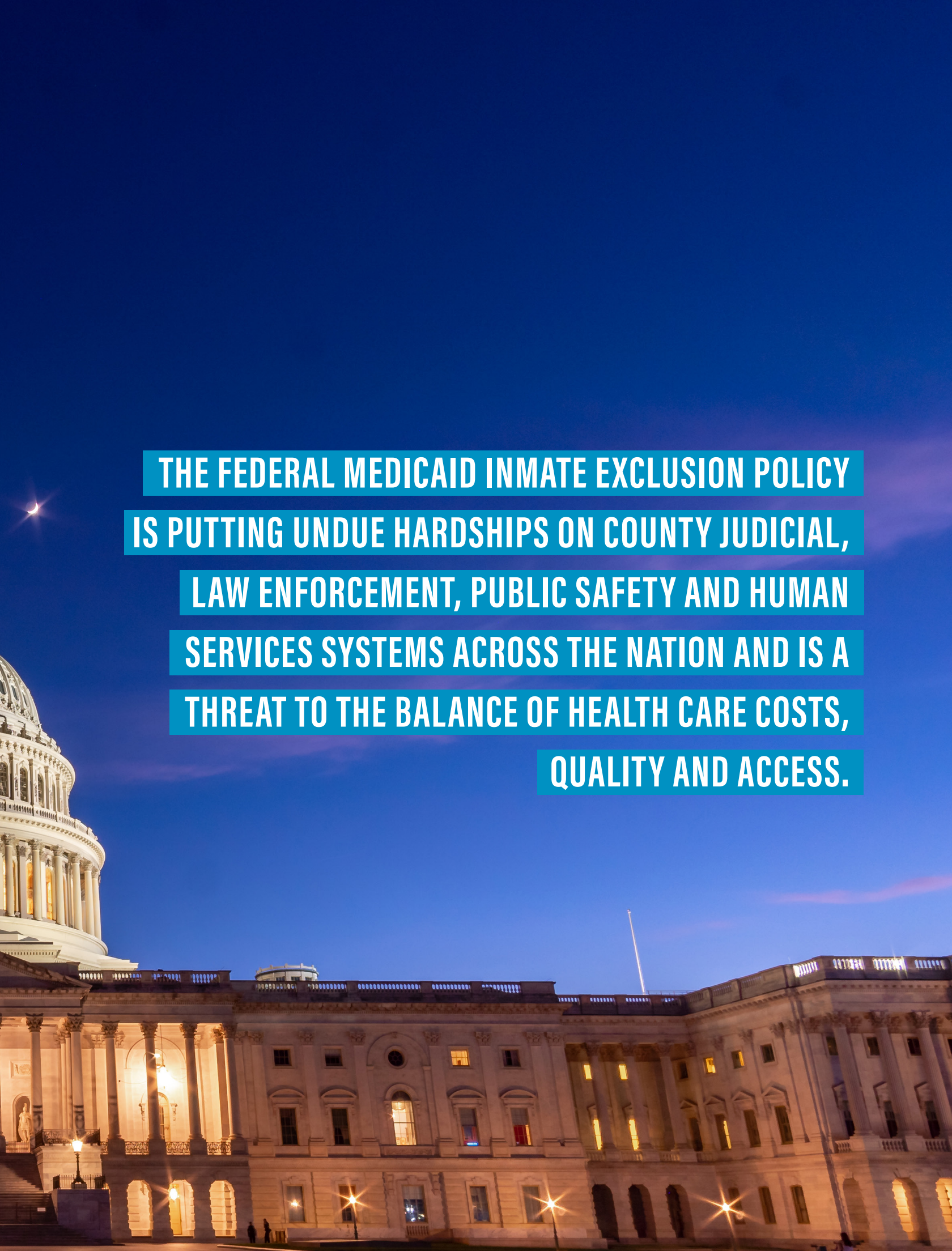
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A nighttime photograph of the United States Capitol building in Washington, D.C. The building is illuminated from within, with warm yellow lights glowing from the windows and the iconic dome. The sky is a deep, clear blue. The text is overlaid on the right side of the image in white, bold, sans-serif font, contained within several horizontal teal bars.

**THE FEDERAL MEDICAID INMATE EXCLUSION POLICY
IS PUTTING UNDUE HARDSHIPS ON COUNTY JUDICIAL,
LAW ENFORCEMENT, PUBLIC SAFETY AND HUMAN
SERVICES SYSTEMS ACROSS THE NATION AND IS A
THREAT TO THE BALANCE OF HEALTH CARE COSTS,
QUALITY AND ACCESS.**

THE MEDICAID INMATE EXCLUSION POLICY AND GRASSROOTS ADVOCACY

Across America, the double standard created by the Medicaid Inmate Exclusion Policy (MIEP) is putting undue strain on our local judicial, law enforcement, public safety and human services systems. This error in legislation and federal policy results in higher rates of recidivism, increased healthcare costs and poorer health outcomes for residents. This policy drives the over-incarceration of those suffering from mental health and substance use disorders, as county jails have become the largest behavioral health facilities in the nation.

Below you can find resources designed to help county officials educate Congress, the administration and the public on the importance providing access to federal health benefits for those awaiting trial and verdict decisions.

ACTION ITEMS



Write Your Members of Congress

A sample letter to Congress is included in this toolkit.



Publish a Letter to the Editor or Op-Ed

This toolkit includes a sample Op-Ed along with talking points on the importance of the MIEP to help you write your own.



Engage Congress Members on Social Media

Demonstrate how counties are providing important health care services to justice involved individuals through pictures and stories to encourage Congress to amend the #MIEP. Remember to tag your members of Congress in your social media posts. Sample tweets are provided in this toolkit.



*Scan the QR code
to access NACo's Medicaid Inmate Exclusion Policy
(MIEP) Advocacy Toolkit*

TALKING POINTS

- Having access to federal health benefits while awaiting trial and presumed innocent aligns with an individual's constitutional rights
- Access to federal health benefits for non-convicted individuals would allow for improved coordination of care, and also decrease short-term costs to local taxpayers and long-term costs to the federal government
- Providing access to federal health benefits for those awaiting trial and verdict decisions would help counties break the cycle of recidivism caused or exacerbated by untreated mental illness and/or substance use disorders, thereby improving public safety
- Counties are required by federal law to provide adequate health care for approximately 10.6 million individuals who pass through 3,100 local jails each year with an average length of stay of 25 days
- Counties nationwide annually invest \$176 billion in community health systems and justice and public safety services, including the entire cost of medical care for all arrested and detained individuals
- Medicaid is the single largest source of funding for behavioral health services in the United States, and the number of inmates who are eligible for health coverage has increased as more states have accepted Medicaid expansion
- More than 95 percent of prisoners eventually return to the community, bringing their health conditions with them. However, in many states, federal benefits are completely terminated instead of being suspended, and it can take months for former inmates to reenroll and regain their benefits following reentry



SAMPLE LETTER TO MEMBER OF CONGRESS

Utilize NACo's letter template and send a letter to Congress written on county letterhead, either through the U.S. Postal Service or via email, that explains why it is critical to your county that Congress amends the MIEP.

[DATE]

The Honorable **[FIRST NAME] [LAST NAME]**
United States **[SENATE/HOUSE OF REPRESENTATIVES]**
[ADDRESS LINE 1] [ADDRESS LINE 2]

Dear **[REPRESENTATIVE _____ OR SENATOR _____]**,

On behalf of the **[NUMBER]** residents of **[NAME]** respectfully request your urgent support for bipartisan legislation that amends the Medicaid Inmate Exclusion Policy (MIEP). This harmful federal policy, outlined under Section 1905(a)(A) of the Social Security Act, makes no distinction between individuals housed in jails versus prisons, and thus unfairly denies or revokes federal health benefits for adults and juveniles that are being housed in local jails prior to conviction. These individuals, who are pending disposition, are still presumed innocent under the United States Constitution.

The MIEP causes disruptions in primary and behavioral health care access for justice-involved populations that are enrolled in federal programs such as Medicaid, Medicare or the Children's Health Insurance Plan (CHIP). Not only does this discontinuity in care contribute to detrimental health outcomes for both individuals and their communities, but it also increases rates of jail recidivism. By contrast, uninterrupted health care helps those who enter the criminal justice system break the cycle of recidivism exacerbated by untreated physical and mental illnesses and substance use disorders.

Across our nation, approximately 11 million people cycle in and out of local jails each year, 60 percent of which are pre-trial detainees. The number of individuals being detained pre-adjudication has grown tremendously in the past several decades and paralleled the number of individuals in local jails that are experiencing mental illness and serious mental illness, often with co-occurring substance use disorders. In **[YOUR COUNTY NAME]**, there are approximately **[INSERT NUMBER]** pre-trial detainees housed in our jails on any given day, and **[INSERT STAT ILLUSTRATING BURDEN OF BEHAVIORAL HEALTH DISORDERS AMONG THIS POPULATION]**. This isn't exclusive to **[YOUR COUNTY NAME]**, **our nation's jails provide critical care to**

individuals with mental illness, who - without adequate community resources and continuous health care coverage - rely on the jail as de facto behavioral health hospitals and treatment facilities.

Recent federal action has reinforced the importance of continuing care coordination for incarcerated individuals with behavioral health conditions as the FY 2023 omnibus appropriations bill included a provision to give states the option to continue Medicaid coverage for juveniles in pre-trial status. Additionally, the U.S. Department of Health and Human Services (HHS), through the Centers for Medicare and Medicaid Services (CMS), released guidance encouraging states to apply for a Medicaid section 1115 demonstration opportunity allowing incarcerated individuals to receive health services under Medicaid at least 30 days prior to release from jail or prison.

Right now, Congress can build on these significant policy advancements and pass bipartisan legislation that would greatly improve care coordination for those individuals suffering from mental health, substance use and/or other chronic health conditions by allowing continued access to federal benefits such as Medicaid, Medicare and CHIP for eligible pre-trial detainees in local jails.

On behalf of **[NAME] County**, we urge we urge you to support the following bills that would address MIEP:

- **The Reentry Act (H.R. 2400/S.1165)**, which would allow Medicaid payment for medical services furnished to an incarcerated individual during the 30-day period preceding the individual's release.
- **The Due Process Continuity of Care Act (H.R.3074/S.971)**, which would allow pretrial detainees to receive Medicaid benefits at the option of the state and provide planning grant dollars to states for implementation of the MIEP repeal.

As we continue our work as county governments and local behavioral health providers to ensure better access to and the continuity of care in our communities, we recognize that these local efforts will be far more effective when carried out in partnership with state and federal counterparts.

Thank you for your continued service to the people of **[NAME] County**, we hope to have your support in fostering better behavioral health outcomes through your support of this important, bipartisan policy change.

Sincerely,

[COUNTY BOARD/COUNTY OFFICIAL/STATE]

Scan the QR code
to download the letter template



¹Underwood, L. A., & Washington, A. (2016). *Mental Illness and Juvenile Offenders. International journal of environmental research and public health*, 13(2), 228. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4772248/>.

PUBLISH A LETTER TO THE EDITOR OR OP-ED

Connect with your local media outlets to highlight the importance of Congress to amend the MIEP and the negative health and economic impact it has on counties. Write and submit op-ed columns, letters to the editor or guest commentaries to local newspapers outlining the importance of amending MIEP to your county and urging Congress to take action. Below find a sample Op-Ed to consider and remember, your ability to craft and tailor the message to fit your community is very important to publishing an op-ed. County-specific examples and other local information will significantly enhance your advocacy. NACo's Media Relations Guide for Counties is also available to assist county officials with local media outreach.

Eliminate the Medicaid Inmate Exclusion Policy

Our nation's founders made it clear: Individuals are presumed innocent until proven guilty. Despite this fundamental constitutional mandate, people who have a right to federal health benefits, such as Medicaid, Medicare or Children's Health Insurance Program for juveniles, are stripped of those benefits when arrested and jailed for an alleged crime, before conviction.

This antiquated policy – known as the Medicaid Inmate Exclusion Policy (MIEP) – is a clear violation of the spirit of the equal protection and due process clauses of the Fifth and 14th Amendments of the U.S. Constitution. Additionally, it produces unfavorable health outcomes for individuals and communities, and places undue financial and administrative burdens on our local jails.

An end to the MIEP would rectify a serious inequity that allows individuals who can afford to post bail to remain on these health benefits, while rescinding these benefits from our most vulnerable residents, despite their presumed innocence. This is unfair, and we must end it.

County governments operate 2,875 of our nation's 3,160 local jails, admitting approximately 11 million individuals across the United States each year. Many of these individuals have mental health or substance use issues, with serious mental illnesses being three to four times more prevalent among jail inmates than the general population. America's local jail population includes an estimated 40 percent of people with a serious chronic health condition, 44 percent with a major mental health illness and 63 percent with a substance use disorder. In **[YOUR COUNTY NAME]**, there are **[INSERT STAT ILLUSTRATING BURDEN OF BEHAVIORAL HEALTH DISORDERS AMONG YOUR COUNTY JAIL POPULATION]**.

We also know that about 60 percent of people in our local jails are awaiting trial and have not been convicted of a crime. In **[YOUR COUNTY NAME]**, there are approximately **[INSERT NUMBER]** pre-trial detainees housed in our jails on any given day. Individuals can stay in this pre-trial status for days, weeks or even months at a time. While many of these individuals would be eligible for federal benefits, the MIEP forces counties to bear the burden of their care and its cost. And even if they are released from jail

quickly, it often takes weeks or months for their previous health coverage to restart, making immediate, uninterrupted access to vital treatment almost impossible.

Recent federal action has reinforced the importance of continuing care coordination for incarcerated individuals with behavioral health conditions as the FY 2023 omnibus appropriations bill included a provision to give states the option to continue Medicaid coverage for juveniles in pre-trial status. Additionally, the U.S. Department of Health and Human Services (HHS), through the Centers for Medicare and Medicaid Services (CMS), released [new guidance](#) encouraging states to apply for a Medicaid section 1115 demonstration opportunity allowing incarcerated individuals to receive health services under Medicaid at least 30 days prior to release from jail or prison.

While these are promising wins for counties, more needs to be done to ensure continuity of care for incarcerated individuals across the country. Currently [14 states await CMS](#) approval of Medicaid reentry waivers, and there are two bipartisan bills under consideration in Congress that would greatly improve care coordination for those individuals suffering from mental health, substance use and/or other chronic health conditions by allowing continued access to federal benefits:

- ***The Reentry Act (H.R. 2400/S.1165)***, which would allow Medicaid payment for medical services furnished to an incarcerated individual during the 30-day period preceding the individual's release.
- ***The Due Process Continuity of Care Act (H.R.3074/S.971)***, which would allow pretrial detainees to receive Medicaid benefits at the option of the state.

Consistent federal health benefits for non-convicted individuals would allow for improved care while decreasing short-term costs to local taxpayers and long-term expenses to the federal government. A more efficient investment of resources would improve post-release care coordination and result in decreased crime, reduced recidivism, and better outcomes for the overall health and safety of our residents.

It is time for federal policymakers to eliminate the harmful Medicaid Inmate Exclusion Policy.

NAME

COUNTY/STATE/ORGANIZATION

TITLE

*Scan the QR code
to download the op-ed*



ENGAGE YOUR MEMBERS OF CONGRESS ON SOCIAL MEDIA

Demonstrate how counties are providing important health care services to justice involved individuals through pictures and stories to encourage Congress to amend the #MIEP. Most Senators and Representatives are on Twitter and monitor their Twitter feeds regularly. The easiest way to find your members of Congress is to utilize the search function on Twitter or by visiting your members' website. In addition to reaching out to your members of Congress on Twitter, consider engaging with House and Senate leadership. You can keep NACo in the loop on your social media advocacy by being sure to include both @NACoTweets and #MIEP in your tweets.

- 11 million individuals cycle through 3,100 local jails each year and many lose access to federal health benefits while they still await trial due to the #MIEP
- In #county jails across the country, #MIEP unfairly revokes pre-trial detainees' federal health benefits such as Medicaid, Medicare, and the Children's Health Insurance program
- #Counties operate 2,875 of our nation's local jails and the federal government forces counties into undue financial and administrative burdens to cover the cost of pre-trial detainees' loss of federal health benefits under #MIEP
- 60% of the 11 million individuals that cycle through local jails each year are pre-trial detainees that unfairly lose access to federal health benefits due to #MIEP
- The #MIEP causes disruptions in primary and behavioral health care access for justice-involved populations enrolled in federal health programs. This discontinuity in care contributes to detrimental health outcomes and increases rates of jail recidivism.
- Uninterrupted health care helps those who enter the criminal justice system break the cycle of recidivism exacerbated by untreated physical and mental illnesses and substance use disorders. Congress must #AmendtheMIEP
- Termination of health care coverage under #MIEP results in poorer health outcomes, increased recidivism and higher taxpayer costs to #counties
- Congress must amend Section 1905(a)(A) of the Social Security Act to allow for the continuation of federal health benefits for pre-trial detainees #MIEP
- Innocent until proven guilty. Having access to federal health benefits while awaiting trial with presumed innocence is an individual's constitutional right #AmendtheMIEP
- Congress can help #counties break the cycle of recidivism caused by untreated mental illness and substance use disorders by amending the #MIEP to allow access to federal health benefits for those awaiting trial
- #Counties applaud the inclusion of MIEP reforms in the recently passed FY2023 omnibus appropriations bill
- As a result of NACo advocacy, states now have the option to continue access to Medicaid and Children's Health Insurance Program benefits for juveniles awaiting trial and juveniles reentering their communities

ADDITIONAL MIEP RESOURCES

Learn More about the MIEP

- [NACo MIEP Concept Paper](#)
- [NACo-NSA Taskforce Report](#)
- [Medicaid and Jails](#)
- [MIEP Call to Action: Advancing Legislation that Addresses the Medicaid Inmate Exclusion Policy](#)

Estimated Cost of Health Care in Local Jails

- [Snapshot: Estimated Health Care Expenditures in Local Jails](#)

Learn More about the Medicaid Program

- [Medicaid 101](#)

Veterans in Our Local Justice System

- [Snapshot: Health Care Access Issues for Veterans in Our Local Justice Systems](#)

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