HEALTH COVERAGE AND COUNTY JAILS:

SUSPENSION VS. TERMINATION

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. In light of these changes, it is important for counties to reassess how they handle the Medicaid status of inmates and detainees.[3] Thirty-eight states and the District of Columbia terminate Medicaid coverage when an individual is incarcerated or detained. When a state terminates instead of suspends coverage, it can take months for an individual to be reapproved for Medicaid upon release from detention. This creates a break in access to needed medical, mental health and addiction treatment when inmates reenter their community, which can impact health outcomes and lead to re-arrest.[4,5,6,7] Medicaid allows for—and the federal government encourages—continued eligibility for coverage for a person who is incarcerated. Although the ACA did not address suspension versus termination, for states that are expanding Medicaid the number of inmates eligible for coverage will increase dramatically and the benefits to counties of suspending instead of terminating their coverage will be substantial.

When a state terminates instead of suspends coverage, it can take months for an individual to be reapproved for Medicaid upon release from detention.

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.

WHY IS THIS IMPORTANT TO COUNTIES?

County jails across the country experience significant turnover, including high recidivism rates. Jail inmates suffer from chronic health conditions at a higher rate than the general population and about 64 percent experience mental illness.[8] More than 76 percent of those with a mental illness also suffer from substance abuse issues, as does 53 percent of the general jail population.[9] Approximately two-thirds of those detained in jails are there pretrial, many of whom are being held simply because they can-

not afford their bail or have just been arrested and will be released in a few hours or days.[10] Terminating coverage for such short stays in jail affects a huge number of individuals and greatly slows the speed at which they can be reconnected to coverage upon release as well as can prevent them from obtaining needed treatment. Suspension of Medicaid coverage 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. These issues have a major impact on how much counties must spend on justice, public safety and correctional services. Maintaining a continuum of care between mental health, addiction and medical services delivered in jail and those available in the community upon release could prevent reoffending and a return to county jails.

A 2012 study of recidivism rates in the Philadelphia jail system found **higher re-incarceration rates among those with co-occurring mental illness and substance abuse** than those with no diagnosis. The study found the following re-incarceration rates:

- 54 percent for people with severe mental illness
- 60 percent for people with no diagnosis
- 66 percent for people with substance abuse, and
- 68 percent for people with co-occurring mental illness and substance abuse.

Amy Blank Wilson, Jeffrey Draineb, Trevor Hadley, Steve Metraux, Arthur Evans (2011). Examining the impact of mental illness and substance use on recidivism in a county jail. International Journal of Law and Psychiatry, v34, n4, July-August, p264-268 (Available at www.sciencedirect.com)

Creating a more streamlined process to enroll eligible inmates in Medicaid before they leave jail is the first critical step to ensuring access to care and could improve public safety, public health and county budgets.

ACCESS TO TREATMENT IMPACTS PUBLIC SAFETY

In Monterey County, Calif., a study found that inmates from the county jail who received treatment for behavioral health disorders after release spent an average of 51.74 fewer days in jail per year than those who did not receive treatment.

National Conference of State Legislatures. "Providing Health Care Coverage for Former Inmates." Vol. 22, No. 15 (April 2014). Available at http://www.ncsl.org/documents/health/lb_2215.pdf. Accessed August 15, 2014.

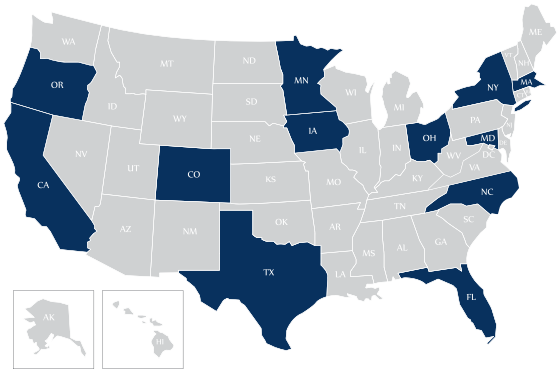
WHAT IS THE DIFFERENCE BETWEEN SUSPENSION AND TERMINATION OF MEDICAID COVERAGE?

In most states, Medicaid eligibility is automatically terminated upon an individual's detention or incarceration in a county jail, but termination is not required by federal law. Instead, federal law (42 U.S.C. §1396d (a)(28)(A)) only prohibits the use of federal funds for individuals while they are incarcerated, with the exception of 24-hour inpatient care.[11] The Centers for Medicare and Medicaid Services (CMS) encourages states to suspend rather than terminate Medicaid eligibility to limit long delays in access to healthcare services upon release.[12]

Termination of Medicaid coverage refers to the removal of an individual from a state's Medicaid rolls upon incarceration in a jail. The time between detention or incarceration and termination of coverage varies by state, but most states terminate Medicaid eligibility when an individual is booked into jail. Some states have passed laws to expand that timeframe to avoid terminating coverage for those being detained or serving short sentences.[13] Termination has no effect upon an individual's eligibility for the program. If an individual is terminated from the state's Medicaid rolls due to incarceration, he or she must submit a new application for Medicaid enrollment upon release. A new eligibility determination can take as long as 45 to 90 days under federal guidelines.[14]

Suspension of Medicaid coverage permits an individual incarcerated in a county jail to remain on the Medicaid rolls in a suspended status, which retains his or her eligibility for Medicaid coverage while cutting off benefits during incarceration. When an individual reenters the community following completion of their detention, Medicaid benefits can be reinstated more quickly without having to go through a new eligibility determination.[15]

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).

WHAT CAN COUNTIES DO?

Despite the benefits of and encouragement by the federal government to suspend Medicaid upon incarceration, most states still terminate a person's eligibility when s/he is booked into jail. 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.[16]

As states evaluate the first year of open enrollment under Medicaid expansion, **it is important for counties to demonstrate the impact that suspending Medicaid coverage rather than terminating coverage has had or could have** on their county justice, public safety and correctional services. Counties should work with their state Medicaid authority to communicate the burden on their budgets from terminating instead of suspending Medicaid coverage during detention or incarceration, including the length of time it takes to reinstate an individual upon release in the county and how many individuals they process that qualify for expanded Medicaid coverage.

Aside from suspending Medicaid eligibility, counties can also make an impact by ensuring that all individuals that are eligible for Medicaid are enrolled and prepared to access services when they are released.

Maricopa County, Ariz.

The county initiated an intergovernmental agreement (IGA) with the state Medicaid authority to allow individuals to have their Medicaid eligibility suspended instead of terminated during their incarceration. Through the IGA, in order to suspend eligibility, the county and Medicaid authority share data:

- County electronically submits a list of all individuals booked or released from jails in the county for the preceding 24 hours
- State Medicaid authority checks the list against their database and either suspends or reinstates all of the matches, and
- State Medicaid authority provides a daily list of results identifying the action taken and renewal of eligibility dates, when applicable.

As part of the IGA, Maricopa County is responsible for the state share of the Medicaid match. As a Medicaid expansion state, the amount the county must pay is far lower than it was prior to expansion and for current non-expansion states. The county is currently not responsible for any match and by 2020 the county will be responsible for 10 percent. Prior to expansion, the county was responsible for 32.77 percent of the cost.

Salt Lake County, Utah

The Division of Behavioral Health Services within the county's Department of Health and Human Services helped lead efforts to respond to the ACA's reforms impacting justice-involved populations. They created a health care services integration coordinator position to develop strategies and plan for enrolling the newly eligible among the jail-involved population into coverage. Although the state has chosen not to expand Medicaid in 2014, the county is actively enrolling those currently eligible in Medicaid to ensure that they can receive benefits upon release.

The state does not currently have a suspension policy. However, if an incarcerated individual has a known release date within 30 days that can be verified, the state Medicaid authority will allow enrollment. The county is currently submitting verification of the release date with inmate Medicaid applications to improve the continuum of care for inmates upon release from jail. The county directly employs state Medicaid eligibility determination workers by paying them the Medicaid administrative match rate and by working with other community partners.

California

In 2013, the California State Assembly passed and the Governor signed into law Assembly Bill 720. The law authorizes counties to assist eligible inmates in their jails to enroll in Medicaid before being released. The Board of Supervisors in each county are authorized to designate an entity to provide assistance to county jail inmates in applying for Medicaid coverage. The law also requires suspension instead of termination of Medicaid coverage when an individual is incarcerated and puts in place a requirement for county welfare departments to notify the state Medicaid authority within ten days of receiving information that an individual will be an inmate.

Oregon

In 2011, the state passed House Bill 3536 to allow for suspension[17] instead of termination for individuals that:

- Become an inmate of a local correctional facility, and
- Expect to remain in the local correctional facility for no more than 12 months.

Eligibility remains effective for 12 months unless the individual's circumstances change and retroactive eligibility is possible up to 90 days prior to an eligibility determination.

County jails in the state are required to:

- Review inmates' Medicaid eligibility through an online eligibility verification panel
- Notify the state Medicaid authority of eligible or potentially eligible inmates, and
- Send required application material within 5 calendar days of inmate release.

RESOURCES

• **Reentry Myth Buster** (One of a series of fact sheets developed by the Federal Interagency Reentry Council to clarify existing federal policies that impact the formerly incarcerated and their families): *http://csgjusticecenter.org/documents/0000/1181/Reentry_Council_Mythbuster_Medicaid_Suspension.pdf*

• **The Affordable Care Act and County Jails: A Practical Guide to Strategies and Steps for Implementation** (Toolkit developed by Denver City and County Sheriff's Department): *https://www.denvergov.org/Portals/776/documents/ACA_Brief.pdf*

• **NCSL Brief, Providing Health Care Coverage for Former Inmates** (includes county examples of recidivism reduction and length of stay reduction by providing MH/SUD treatment): *http://www.ncsl.org/documents/health/lb_2215.pdf*

END NOTES

1. For more information, see the Bureau of Justice Statistics (BJS) estimates of jail inmates 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. It is estimated that approximately 25-30 percent of people released from jails could enroll in Medicaid in expansion states and roughly 20 percent could enroll in a private insurance plan through the Health Insurance Marketplace. Also, people with jail stays will constitute nearly one-sixth of the new Medicaid enrollees and about one-tenth of new enrollees in the Health Insurance Marketplace. Regenstein, Marsha & Rosenbaum, Sara. "What the Affordable Care Act Means for People With Jail Stays." Health Affairs, Vol. 33 No. 3, March 2014 at 450.

4. Sheu, Mary, Hogan, Joseph W., Allsworth, J., Stein, M., Vlahov, D., Schoenbaum, E. E., Schuman, P., Gardner, L. & Flanigan, T. "Continuity of Medical Care and Risk of Incarceration in HIV-Positive and High-Risk HIV-Negative Women." Journal of Women's Health, Vol. 11 No. 8 (2002) at 743-750.

5. Adair, Carol E., McDougall, Gerald M., Mitton, Craig R., Joyce, Anthony S., Wild, Cameron T., Gordan, Alan, Costigan, Norman, Kowalsky, Laura, Pasmeny, Gloria & Beckie, Anora. "Continuity of Care and Health Outcomes Among Persons with Severe Mental Illness." Psychiatric Services, Vol. 56 No. 9 (2005) at 1061-1069.

6. Van Dorn, Richard A., Desmarais, Sarah L., Petrila, John, Haynes, Diane, Singh, Jay P. "Effects of Outpatient Treatment on Risk of Arrest of Adults with Serious Mental Illness and Associated Costs." Psychiatric Services, Vol. 64 No. 9 (2013) at 856-862.

7. Taxman, Faye S., "Reducing Recidivism through a Seamless System of Care," (paper presented at Office of National Drug Control Policy Treatment and Criminal Justice System Conference, February 20, 1998), available at *ncjrs.gov/ondcppubs/treat/consensus/taxman.pdf*.

8. 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.

9. 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.

10. Peter Wagner and Leah Sakala. Mass Incarceration: The Whole Pie. Prison Policy Initiative. *www.prisonpolicy.org/reports/pie.html.* Accessed September 2, 2014.

11. Federal law specifically excludes Federal Financial Participation (FFP) for services delivered to inmates of a public institution, unless the inmate is hospitalized in a medical institution for 24 hours or more (see corresponding brief). §1905(a)(A), Social Security Act. Medicaid will pay for medically necessary care provided to an eligible detainee or inmate when that individual is "a patient in a medical institution" for at least 24 hours.

12. Donna E. Shalala to Honorable Charles L. Rangel (Washington: Department of Health and Human Services, April 6, 2000); Tommy G. Thompson to Honorable Charles L. Rangel (Washington: Department of Health and Human Services, October 1, 2001). Available at *http://csgjusticecenter.org/wp-content/uploads/2013/12/ACA-Medicaid-Expansion-Policy-Brief.pdf. December 2013 at Appendix 2 and 3.* Accessed September 25, 2014.

13. For instance, Oregon passed the Interim Incarceration Disenrollment Policy that prohibits termination of an individual's enrollment in Medicaid for the first 14 days of incarceration. Texas and Washington do not terminate coverage for the first 30 days of incarceration. National Conference of State Legislatures. Returning Home: Access to Health Care After Prison. *http://legis.wisconsin.gov/lc/committees/study/2012/12CH51/files/memo2_returninghome_attach.pdf, at 3.* Accessed September 2, 2014.

14. U.S. Code of Federal Regulations, Title 42, Public Health, Section 435.911 [42 CFR 435.911] caps Medicaid eligibility determinations based on disability at 90 days and other applications at 45 days.

15. While undergoing a policy change from suspension to termination of Medicaid coverage in 2008, Colorado state officials exchanged a series of letters with officials from the Department of Health and Human Services (HHS). This exchange lays out a number of important issues as states consider this policy change, including that states do not need approval of a State Plan Amendment (SPA) from CMS. See Council of State Governments Justice Center, "Medicaid and Financing Health care for Individuals Involved with the Criminal Justice System." Available at *http://csgjusticecenter.org/wp-content/uploads/2013/12/ACA-Medicaid-Expansion-Policy-Brief.pdf. December 2013 at Appendix 4.* Accessed August 20, 2014.

16 . 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.

17. For more information about the Oregon law, see the presentation by the Oregon Health Authority Division of Medical Assistance Programs on Medicaid Eligibility for Inmates of Jails and Prisons at *http://www.oregon.gov/oha/healthplan/tools/Training%20Slides%20-%20Medicaid%20Eligibility%20for%20Inmates%20of%20Jails%20and%20Prisons.pdf.* Accessed August 19, 2014.

DECEMBER 2014

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