

Beginning the Conversation: The Affordable Care Act, Medicaid Expansion and Your Justice Agency

February 19, 2014
3:00-4:30 p.m. ET

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National Criminal
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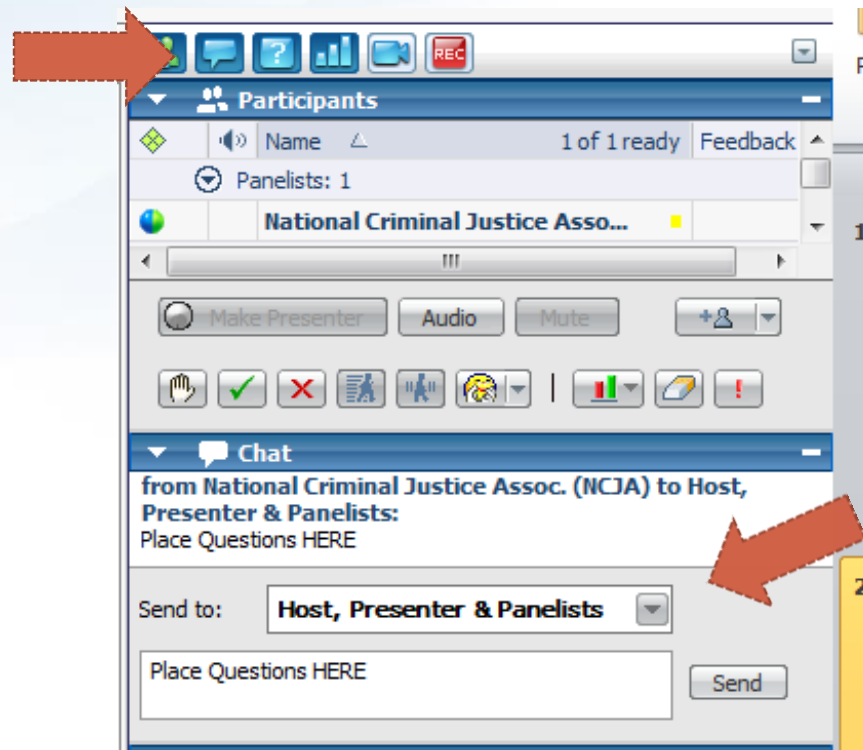
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Moderator



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Beginning the Conversation



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The COCHS Approach: Public Safety and Community Health

- Public safety and public health systems are intertwined.
- The health of the justice-involved population is intertwined with the health of the general population.
- Connecting health care in the criminal justice system to health care in the greater community preserves the investments jurisdictions make in their justice-involved populations.

The Affordable Care Act

The Affordable Care Act (ACA) expands health coverage to millions of previously uninsured Americans, creating access to needed services for many for the first time. Many of the newly insured will be justice-involved, and the increase in treatment resources could have a major impact on the criminal justice system. By harnessing the opportunities presented by the ACA, jurisdictions could improve health outcomes, reduce costs, and potentially reduce recidivism.

Overview

1. Characteristics of justice-involved populations
2. ACA Basics: New Eligibility, New Financing, New Benefits
3. New Opportunities for Criminal Justice

1. Characteristics of justice-involved populations

U.S. Correctional populations at year end 2012

- 3.9 Million people under probation supervision
- 0.9 Million people under parole supervision
- 0.7 Million people in jail
- 1.5 Million people in prison
- **7 Million people total under correctional supervision**

— Bureau of Justice Statistics, 2013

Jail Populations

- During the one-year period between July 2011 and June 2012, there were 11.6 million bookings into jails.
- At mid-year 2012 approximately 60% of the individuals in jail nationwide were pending disposition.

– Bureau of Justice Statistics, 2013

Most Individuals in Jail Return to the Community

- Nationally, only about 4% of jail admissions result in sentences to prison.

Or, in other terms...

- 96% of jail detainees and inmates return *directly* to the community from jail.

Health Status of Justice-Involved Individuals

- Justice-involved individuals are disproportionately young, male, persons of color, and poor.
- They have high rates of health problems (chronic and infectious disease, injuries), psychiatric disorders, and substance use disorders (SUDs).
- 80% of individuals in jail with chronic medical conditions have not received treatment in the community prior to arrest.

Health Status of Justice-Involved Individuals

- Jails have become *de facto* behavioral health providers in many communities:
 - A 2009 study estimated the current rates of serious mental illness among adult jail populations to be 15% for men and 31% for women.
 - Among individuals in jail with a diagnosed mental illness, 72% of men and 75% of women have a co-occurring substance use disorder.

Health Status of Justice-Involved Individuals

- 60% - 80% of arrestees tested positive for at least one drug.
- Fewer than 10% of arrestees at 8 of the 10 sites reported receiving outpatient drug or alcohol treatment in the prior year.
- 13% - 38% of arrestees tested positive for multiple substances.
- 13% - 30% of arrestees said they had been arrested two or more times in the prior year.

The ADAM II 2011 Report

Justice-Involved Individuals and Insurance Status

- Few justice-involved individuals are enrolled in Medicaid because they have not been historically eligible.
- One pre-ACA study showed that 90% of detainees had no health insurance upon release from jail.

Washington State and “The Mancuso Effect”: Reduced Crime, Improved Health & Safety

When chemical dependency treatment was offered to very low income adults—a population that included many individuals with histories of justice-involvement—research found:

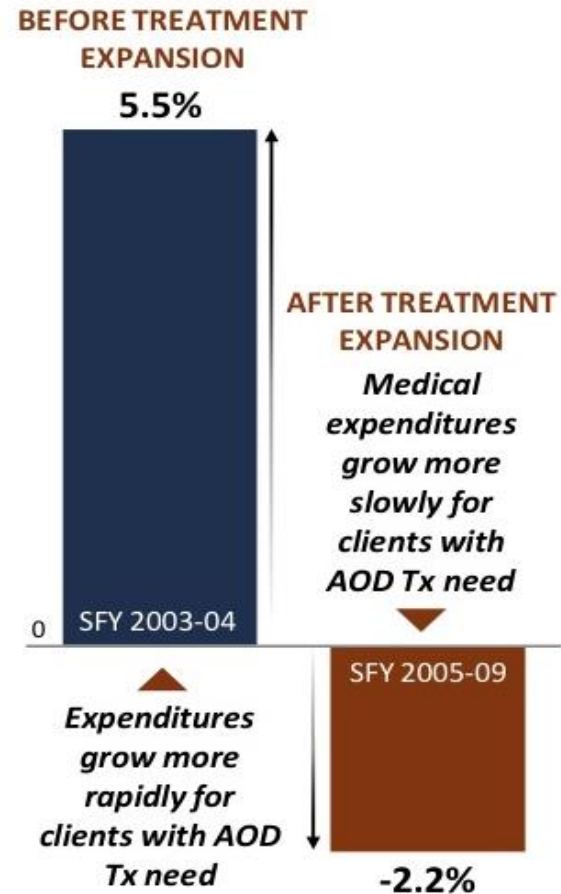
- Reduced crime and recidivism, and correlated savings to crime victims and criminal justice systems.
 - Improved physical and mental health, and significant cost savings in health care.
- Mancuso, D, Felver, B. *Bending the Health Care Cost Curve by Expanding Alcohol/Drug Treatment*, Washington State DSHS Research and Data Analysis Division, RDA Report 4.81 (Sept 2010).
 - Mancuso, D, Felver, B. *Providing chemical dependency treatment to low-income adults results in significant public safety benefits*, Washington State DSHS Research and Data Analysis Division, Report 11.130 (Feb 2009).

Washington State: Criminal Justice System Benefits

Decline in arrests relative to untreated comparison group	33%
Cost savings to criminal justice system per dollar of cost	\$1.16
Cost savings to crime victims and criminal justice system per dollar of cost	\$2.83

Washington State: Medical Costs Decrease with Treatment

Growth in medical costs
relative to coverage
group:



The Economics of Treating the Justice-Involved Population

- Without access to care, many justice-involved individuals will be “frequent flyers” of emergency room services, inpatient psychiatric services in the community, and jail health services.
- From a fiscal perspective, it will be in the interest of state and local jurisdictions to offer effective mental health and substance use disorder treatment to justice-involved individuals.

2. ACA Basics: New Eligibility, New Financing, New Benefits

The Individual Mandate

Beginning in 2014 individuals are required to have health coverage. There will be exemptions for many groups, including:

- Those who are uninsured for less than 3 months of the year.
- Those who don't have to file a tax return because their income is too low.
- Those for whom the lowest-priced available coverage would cost more than 8% of household income.
- **Those who are incarcerated and not awaiting disposition.**

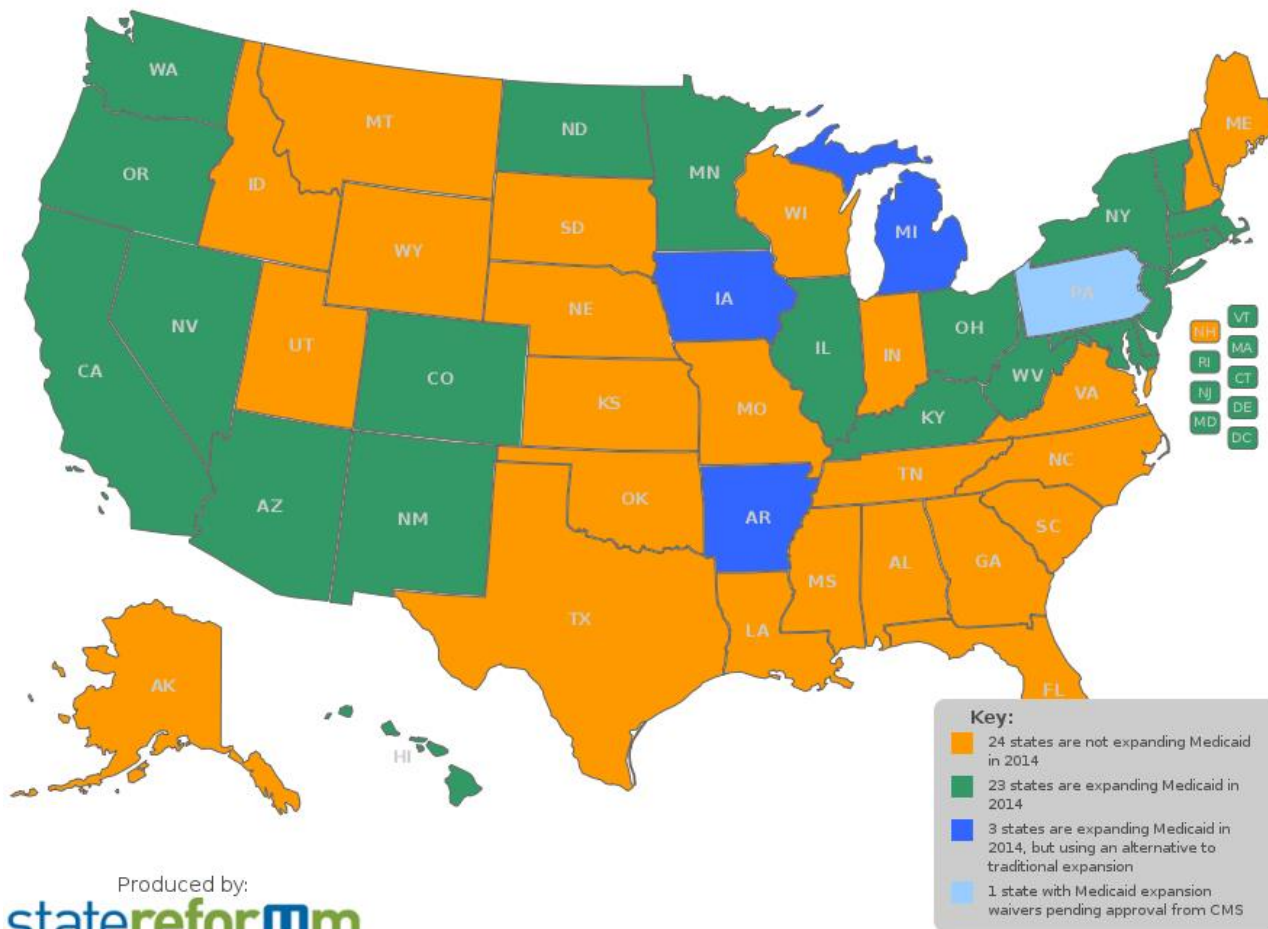
Expanded Coverage

- A. The ACA allows the expansion of Medicaid at state option.
- B. The ACA allows qualified individuals to enroll in private Qualified Health Plans (QHPs) offered through the new health insurance Marketplaces and, if eligible, to receive federal tax credits to assist with premium payments.

Expanded Coverage: Medicaid Eligibility

- In states that choose to expand Medicaid, Medicaid will be newly available to adults with income up to 138% FPL, about \$16,000 for an individual.

Medicaid Expansion as of February 2014



States that may expand Medicaid in 2014 or 2015

State	Uninsured	Estimated new enrollment	Federal funds for expansion through 2022
Florida	4.1 million (21%)	1.1 million	\$5 billion
Indiana	846,000 (13%)	399,000	\$2 billion
Missouri	786,000 (14 %)	322,000	\$2.2 billion
Montana	179,000 (18%)	54,000	\$196 million
New Hampshire	135,000 (12%)	36,000	\$409 million
Pennsylvania	1.3 million (11%)	465,000	\$4.8 billion
Tennessee	996,000 (14%)	307,000	\$2.1 billion
Virginia	1 million (13%)	276,000	\$2.8 billion
Utah	431,000 (15%)	151,000	\$719 million

Source: Kaiser Family Foundation, The Commonwealth Fund
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Medicaid Coverage for Justice-Involved

- Justice-involved individuals residing in the community (e.g., awaiting trial in the community, on probation/parole, etc.) can be eligible for Medicaid and can receive coverage (i.e., services provided can be paid for by Medicaid).
- The ACA did not change Medicaid eligibility or coverage policies as they relate to incarceration. If an individual is in jail or prison, regardless of whether they are pending disposition, they cannot be covered by Medicaid (i.e., services provided cannot be paid for by Medicaid).
- Although Medicaid *coverage* is not available for individuals in prison or jail, individuals who are otherwise eligible retain their *eligibility* while in prison or jail and can enroll.
 - 42 U.S.C. § 1396d(a)(27)(A); 42 CFR § 435.1010

Medicaid Coverage: Inpatient Hospitalization

There is an exception to the preclusion of Medicaid coverage for prison and jail inmates that predates the passage of the ACA:

- Medicaid coverage is available for prison and jail inmates who are eligible for Medicaid and who are inpatients in non-correctional medical facilities for at least 24 hours.
 - 42 U.S.C. § 1396d(a)(27)(A); 42 CFR § 435.1009(b)

Medicaid Coverage for Former Foster Youth

Under the ACA, young adults now remain eligible for Medicaid until they turn 26 if they were:

- In foster care when they turned 18
and
- A Medicaid beneficiary when they turned 18

Medicaid Expansion Funding

States that expand Medicaid will receive federal funding for services provided to the expansion population to the tune of:

- 100% in 2014 – 2016
- 95% in 2017
- 94% in 2018
- 93% in 2019
- 90% in 2020 and beyond

Marketplace Tax Credit Eligibility

- Qualified individuals with income from 100% - 400% FPL will be able to purchase QHPs with federal premium tax credits through the health insurance Marketplaces.
- Tax credits are awarded on a sliding scale depending on income.
- Marketplaces are available in all 50 states and the District of Columbia.

Marketplace Tax Credit Eligibility

		Number of people in your household					
		1	2	3	4	5	6
Private Marketplace health plans	You may qualify for lower premiums on a Marketplace insurance plan if your yearly income is between...	\$11,490 - \$45,960	\$15,510 - \$62,040	\$19,530 - \$78,120	\$23,550 - \$94,200	\$27,570 - \$110,280	\$31,590 - \$126,360
	<i>See next row if your income is at the lower end of this range.</i>						
	You may qualify for lower premiums AND lower out-of-pocket costs for Marketplace insurance if your yearly income is between...	\$11,490 - \$28,725	\$15,510 - \$38,775	\$19,530 - \$48,825	\$23,550 - \$58,875	\$27,570 - \$68,925	\$31,590 - \$78,975
Medicaid coverage	If your state is expanding Medicaid in 2014: You may qualify for Medicaid coverage if your yearly income is below...	\$16,105	\$21,707	\$27,310	\$32,913	\$38,516	\$44,119
	If your state isn't expanding Medicaid: You may not qualify for any Marketplace savings programs if your yearly income is below...	\$11,490	\$15,510	\$19,530	\$23,550	\$27,570	\$31,590

— <https://www.healthcare.gov/how-can-i-save-money-on-marketplace-coverage/>

Marketplace Eligibility and Coverage for Justice-Involved

- Justice-involved individuals residing in the community, (e.g., awaiting trial in the community, on probation/parole, etc.) can be eligible for QHPs available through the Marketplaces and can receive coverage.
- Incarcerated individuals who have been sentenced cannot enroll in or be covered by a Marketplace plan.

Marketplace Coverage for Pending Disposition

- Regarding QHPs available through the Marketplaces, the ACA specifies that: “[a]n individual shall not be treated as a qualified individual if, at the time of enrollment, the individual is incarcerated, other than incarceration pending the disposition of charges.”
- This means that, subject to the requirements of health plans, individuals may be able to newly enroll or maintain existing coverage in a QHP while *incarcerated while pending disposition of charges*.
- Services provided while the individual is pending disposition can potentially be paid for by the QHP.

Parity for Mental Health and Substance Use Treatment

- The ACA extends the requirements of the 2008 Mental Health Parity and Addiction Equity Act to millions of Americans, including those who will be newly eligible for coverage.
- These requirements aim “to ensure that when coverage for mental health and substance use conditions is provided, it is generally comparable to coverage for medical and surgical care.”
 - U.S. Department of Health and Human Services

Essential Health Benefits in Medicaid and QHPs

1. Ambulatory patient services
2. Emergency services
3. Hospitalization
4. Maternity and newborn care
- 5. Mental health and substance use disorder services, including behavioral health treatment**
6. Prescription drugs
7. Rehabilitative and habilitative services and devices
8. Laboratory services
9. Preventive and wellness services and chronic disease management
10. Pediatric services, including oral and vision care

3. New Opportunities for Criminal Justice

Enrollment Creates New Opportunities for Criminal Justice

At the point of initial contact with law enforcement:

- Expanded use of Crisis Intervention Teams

Prior to Booking:

- History and physical exam by qualified individual prior to booking

Pre-trial:

- Expand use of community-based pre-trial supervision combined with treatment

Enrollment Creates New Opportunities for Criminal Justice

Specialty courts:

- Coordinate between courts and providers to maximize resources

Inpatient hospitalization

- Bill Medicaid for jail and prison inmates who are hospitalized in non-correctional medical facilities for over 24 hours.

Re-entry:

- Preserve continuity of care

New Opportunities for Criminal Justice

All of these new opportunities would depend on enrollment.

Enrollment can be Challenging

- According to a 2010 NASADAD study, less than 3% of Massachusetts residents are uninsured, but the uninsured residents “are likely to have elevated rates of chronic SUDs.”
- In fact, approximately 22% of the admissions for publicly funded SAT in MA in 2009 were uninsured. The uninsured population was disproportionately low-income and young adult, Black, and Hispanic, characteristics that mirror the demographics of the jail-involved population.

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Financing Health Care for Individuals Involved in the Criminal Justice System



**DAN BELNAP
LEGAL ACTION CENTER**

**NCJA/BJA WEBINAR SERIES
FEBRUARY 19, 2014**

About LAC and the Coalition for Whole Health



- **Legal Action Center**
 - National law and policy organization that works to fight discrimination against people related to substance use disorders, HIV/AIDS, and/or criminal records
- **Coalition for Whole Health**
 - A coalition of over 100 national, state, and local organizations in the mental health and substance use disorder fields and allied organizations working to ensure health reform is successfully implemented for individuals with mental health and substance use disorder needs

What We'll Talk About Today



- Quick overview of Medicaid financing
- Medicaid eligibility, enrollment, and coverage for justice-involved individuals
- Opportunities to use Medicaid and ACA reforms to better meet the health needs of incarcerated and reentering individuals
- Opportunities to use Medicaid dollars to pay for eligible inmate inpatient care

A Little More on Medicaid



- State/federal partnership
- Within broad federal guidelines, states design and administer their Medicaid programs
- States and federal governments also share financing responsibilities
- Eligibility based on income, population group (children, pregnant women, parents, childless adults in expansion states), residency, and citizenship
- Current or past involvement in the criminal justice system does not affect an individual's eligibility (although there is a payment exclusion for those who are incarcerated)

How is Medicaid Financed?



- Federal and state governments share Medicaid financing responsibilities
- For most services provided to most beneficiaries, the federal government pays between 50 and about 73%
 - This is called the Federal Medical Assistance Percentage, or FMAP
- The FMAP in most states for services provided to the expansion population (childless adults and higher income parents up to 138% FPL) is 100% through 2016, and never less than 90%
- The federal government pays at least $\frac{1}{2}$ of allowable administrative costs

Eligibility for the Criminal Justice Population



- The ACA's Medicaid expansion with enhanced FMAP means improved opportunities to use Medicaid to help meet the needs of the CJ population
- Justice system involvement has no bearing on Medicaid eligibility or enrollment
- However, an exclusion applies to “payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution.)”

Medicaid and Incarcerated Beneficiaries



- The “inmate exclusion” prohibits federal Medicaid payments for care provided to any individual involuntarily confined in state or federal prisons, jails, detention facilities, or other penal facilities
 - As a result, states may not use federal Medicaid funds to pay for care provided to incarcerated individuals in most circumstances
- But Medicaid can pay for services when the incarcerated individual is a “patient in a medical institution”
 - When they’ve been admitted as an inpatient in a community-based hospital, nursing facility, juvenile psychiatric facility, or intermediate care facility for at least 24 hours
 - All medically necessary Medicaid covered services provided to that individual while admitted can be billed to Medicaid

Using Medicaid to Pay for Inpatient Care



- At least 14 states bill Medicaid for at least some eligible inmate inpatient care:

States Billing for Inpatient Care

Billing Medicaid for Inmate Inpatient Care: At least 14 states bill Medicaid for at least some eligible inmate inpatient care.



- Arkansas
- California
- Colorado
- Delaware
- Louisiana
- Michigan
- Mississippi
- Nebraska
- New York
- North Carolina
- Oklahoma
- Pennsylvania
- Vermont
- Washington

Using Medicaid to Pay for Inpatient Care



- It's saving states money:
 - North Carolina saved \$10 million in the first year (2011)
 - California saved about \$31 million in FY 2013
 - New York estimated in 2012 that it could save \$20 million annually if the state billed Medicaid for eligible inpatient care
- The enhanced FMAP that's now available can save expansion states considerably more money
 - By 2022, Ohio savings could be as high as \$34 million a year – Health Policy Institute of Ohio, Ohio State University

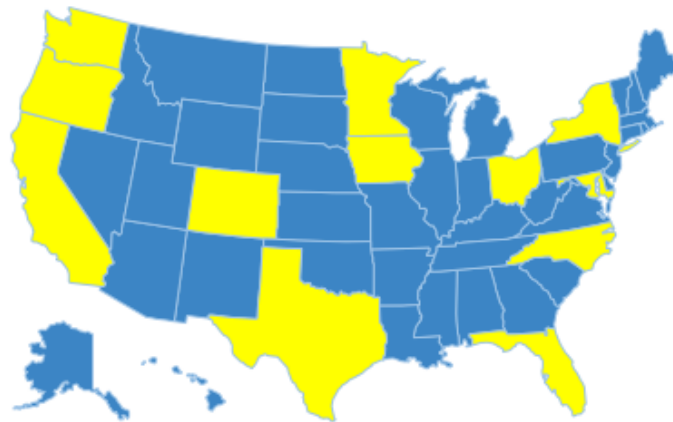
Enrolling Eligible Individuals into Medicaid



- Most states terminate Medicaid when someone becomes incarcerated
- Not only is termination not required, but there's no federal prohibition against screening for eligibility during incarceration

States Suspending Medicaid

Suspension of Medicaid Benefits upon Incarceration: At least 12 states have laws or administrative policies to suspend Medicaid enrollment of inmates.



- California
- Colorado
- Florida
- Iowa
- Maryland
- Minnesota
- New York
- North Carolina
- Ohio
- Oregon
- Texas
- Washington

Enrolling Eligible Individuals into Medicaid



- HHS has clarified “corrections department employees...are not precluded from serving as an authorized representative of incarcerated individuals for purposes of submitting a (Medicaid) application on such an individual’s behalf.”
- Enrollment can and should happen at all stages of justice system involvement

Enrolling Eligible Individuals into Medicaid



- New York State is starting to enroll every eligible person in prison into Medicaid
 - Coverage is suspended until it can be reinstated at discharge or when the beneficiary becomes a patient in a community-based medical institution
 - Eliminates the need for the individual to apply or reapply for Medicaid when they're released, ensuring continuity of coverage
- Eligibility screenings should at least be part of discharge planning

Medicaid Benefits for Expansion Population



- States are responsible for determining what Medicaid coverage for the expansion population looks like
- Benefits for the expansion population are determined differently from benefits provided to those who are traditionally eligible
 - “Alternative Benefits Plans”
 - Coverage may be very comprehensive or may look more like commercial health insurance

Medicaid Benefits for Expansion Population



- Regardless of how states design their benefits for the expansion population, coverage must include the 10 categories of Essential Health Benefits
- EHB includes mental health (MH) and substance use disorder (SUD) services
- MH/SUD coverage must be at parity with the other services provided
 - Parity=financial requirements and treatment limitations must be no more restrictive for MH/SUD services than for the other services covered by the Medicaid plan
- Certain beneficiaries are considered “medically frail,” including those with serious mental illness and chronic SUD, and cannot be required to enroll in an Alternative Benefit Plan

Medicaid & the ACA: Enormous Opportunities for Criminal Justice



- Opportunity to enroll millions of Americans in the criminal justice system into health coverage, thereby improving health and providing a huge infusion of federal funding to pay for care, reduce crime, and improve public safety
- Federal rules allow any eligible individual, including those who are incarcerated, to enroll in Medicaid coverage, and states that design systems to facilitate enrollment and retention can maximize health coverage and cost-savings

Medicaid & the ACA: Enormous Opportunities for Criminal Justice



- Medicaid can be used to finance care provided to eligible incarcerated individuals in community-based settings if individual is admitted as inpatient for at least 24 hours
- Enhanced FMAP means that the federal government will pay for all or almost all of the Medicaid costs for care provided to most justice-involved beneficiaries
- Medicaid enrollment and other administrative activities may qualify for at least 50% federal funding
- States have the opportunity to provide comprehensive benefits, including MH/SUD benefits

Questions or for More Information

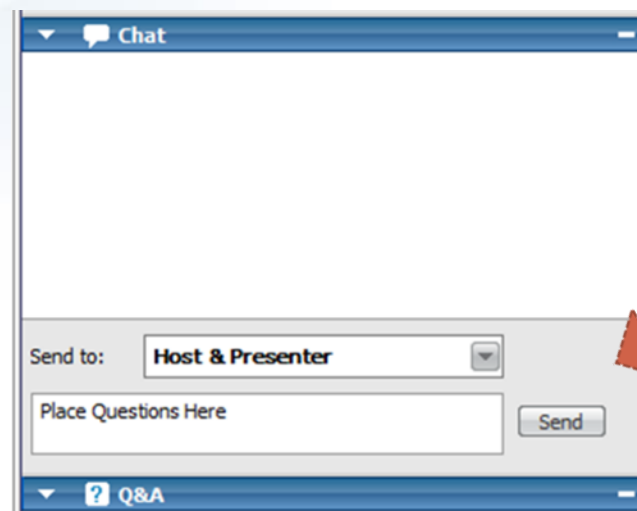


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Q & A

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Please select **Host and Presenter**



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Q & A

Moderator

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Innovations in Substance Abuse Treatment and Abstinence Reinforcement

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This webinar series is supported by Grant No. 2010-DB-BX-K086 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime. Points of view or opinions are those of the speakers.