

MEMORANDUM

February 3, 2015

TO: Health and Human Services Committee
Public Safety Committee

FROM: Linda McMillan, Senior Legislative Analyst 

SUBJECT: **Affordable Care Act (ACA) impacts on the Department of Correction and Rehabilitation Inmate Population**

Expected for this session:

Art Wallenstein, Director, Department of Correction and Rehabilitation
Uma Ahluwalia, Director, Department of Health and Human Services
Anthony Sturgess, Health Services Manager, Department of Correction and Rehabilitation
Ka Wong, Benefits Specialist, Department of Correction and Rehabilitation
Dourakine Rosarian, Special Assistant, Department of Health and Human Services

The expansion of Medicaid and the availability of health insurance through the exchanges have provided new opportunities for those who are in the correctional system to both become educated about and have access to ongoing health care. For many in the correctional population, care for physical health and mental health is unaffordable. At the same time, the correctional population is known to have higher rates of chronic physical health conditions as well as mental health and substance abuse disorders. (Mental health and the correctional population will be discussed more in-depth in Agenda Item #2.)

The RicciGreene Associates/Alternative Solutions Associates' Montgomery County, Maryland Master Confinement Study (2014) noted that in 2012:

- There were 13,790 bookings in the central processing unit.
- Of those booked, 8,631 were admitted to jail custody.
- Approximately 50% of those booked are either released at the bail review hearing or within 5-6 days after arrest.

Representatives from DHHS and DOCR will explain how the departments work to try to increase the number of people who sign up for health benefits. These efforts include the work of the benefits specialist in DOCR and outreach by the Capital Region Health Connector (DHHS) to send navigators and assistors twice a week to the jail to engage this population. It is important to note that because such a high percentage of people who are booked at CPU do not go through intake into the jail or leave jail within 48 to 72 hours, many people do not benefit from the current efforts that may occur as a part of assessments prepared for bond hearings or as a part of discharge planning.

While many jurisdictions are finding ways to increase the number of inmates who apply for Medicaid or other health insurance, it will be critical not only to look at the number of applications submitted but the actual acceptance rate and whether in certain instances policies around presumptive eligibility should be used.

Attached at ©1-3 is information from the Healthcare.gov website on coverage for incarcerated people. It says:

- “Incarceration” does not include being incarcerated while awaiting the disposition of charges. It also does not include being on probation, parole, or home confinement.
- After a person is released from incarceration, there is a 60-day Special Enrollment Period to sign-up for private health insurance.
- A person does not have to pay the penalty for not having insurance while they are incarcerated. However, once released a person must either have insurance, pay the fee, or get an exemption.
- Medicaid will not pay for medical care while someone is incarcerated; however, enrolling in Medicaid while incarcerated may allow someone to get care more quickly once released. (While the information at ©1-3 does not say this, Medicaid may pay for an incarcerated inmates hospital stay of 24 hours or more which may result in substantial cost savings to jail systems.)

A New York Times article, “Little-Known Health Act Fact: Prison Inmates Are Signing Up,” (©4-6) notes that an estimated 35% of those newly eligible for Medicaid are people with a history of criminal justice system involvement. The article notes that Cook County, Illinois’ jail intake process include starting an application for health insurance. It also cites the director of Colorado’s Department of Correction as saying that while billing Medicaid will save money, more important is the chance to coordinate care for prisoners after their release.

Incarcerated people

Health coverage for incarcerated people

If you're incarcerated, some special rules apply to your health care options.

Incarceration and the Marketplace

For purposes of the Marketplace, "incarcerated" means serving a term in prison or jail.

- Incarceration doesn't mean living at home or in a residential facility under supervision of the justice system, or living there voluntarily. In other words, incarceration doesn't include being on probation, parole, or home confinement.
- You're not considered incarcerated if you're in jail or prison pending disposition of charges—words, being held but not convicted of a crime.

If you're incarcerated, you can't use the [Marketplace \(/quick-guide/\)](#) to buy a private insurance plan. After you're released you can.

The Marketplace after release from incarceration

When you apply for health coverage after being released from incarceration, you may qualify for [lower costs on monthly premiums \(/lower-costs/save-on-monthly-premiums/\)](#) and [out-of-pocket costs \(/out-of-pocket-costs/save-on-out-of-pocket-costs/\)](#). This will depend on your [household size and income \(/income-and-household-information/\)](#) during the year you're seeking coverage.

After you're released, you have a 60-day [Special Enrollment Period \(/coverage-outside-open-enrollment-special-enrollment-period/\)](#) to sign up for private health coverage. During this time, you can enroll in private health insurance even if it's outside the Marketplace open enrollment period.

After this 60-day Special Enrollment Period, you can't buy private health insurance until the next Marketplace [open enrollment \(/glossary/open-enrollment-period\)](#) period (unless you qualify for another Special Enrollment Period).

Incarcerated people and the fee for being uninsured

Because you aren't eligible to buy private health insurance through the Marketplace while in prison you don't have to pay the penalty that some others without insurance must pay.

After you're released, you must either have health coverage, [pay the fee \(/fees-exemptions/fee-for-not-being-covered/\)](#), or get an [exemption \(/fees-exemptions/exemptions-from-the-fee/\)](#).

If you're incarcerated pending disposition of charges

If you're in jail or prison but haven't been convicted of a crime, you may [use the Marketplace to buy private health insurance plan \(/apply-and-enroll/\)](#). This assumes you are otherwise [eligible \(/quick-guide/eligibility/\)](#) to get coverage through the Marketplace.

Incarceration and Medicaid

If you're incarcerated you can use the Marketplace to apply for [Medicaid \(/medicaid-chip/eligibility\)](#) coverage in your state. Medicaid won't pay for your medical care while you're in prison or jail. But enroll in Medicaid while you're incarcerated you may be able to get needed care more quickly after released.

There are 3 ways to apply for Medicaid:

- Online, at either HealthCare.gov or your state's Marketplace website. ([Get a checklist \(PDF\) \(http://marketplace.cms.gov/outreach-and-education/marketplace-application-checklist.pdf\)](#) that will help you gather needed information before you apply.)
- With a [Marketplace paper application \(PDF\) \(http://marketplace.cms.gov/applications-and-forms/marketplace-app-for-family.pdf\)](#) that you fill out and mail in.
- Directly through your state Medicaid office. Use the "Get state information" dropdown menu [Medicaid page \(/medicaid-chip/eligibility/\)](#) to get contact information for your state Medicaid office.

State Medicaid policies and incarceration

A number of state Medicaid policies may influence your decision to apply for Medicaid while in jail

prison. These include:

- Whether your state has decided to expand Medicaid coverage (</medicaid-chip/medicaid-expand-you/>) to all adults with incomes up to 138% of the federal poverty level
- Whether incarcerated people can stay enrolled while in prison or jail. Remember that enrolling in Medicaid while incarcerated doesn't allow Medicaid to pay the cost of your care while in prison or jail. But it may help you get needed care more quickly after you're released.

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Little-Known Health Act Fact: Prison Inmates Are Signing Up

By ERICA GOODE MARCH 9, 2014

In a little-noticed outcome of President Obama's Affordable Care Act, jails and prisons around the country are beginning to sign up inmates for health insurance under the law, taking advantage of the expansion of Medicaid that allows states to extend coverage to single and childless adults — a major part of the prison population.

State and counties are enrolling inmates for two main reasons. Although Medicaid does not cover standard health care for inmates, it can pay for their hospital stays beyond 24 hours — meaning states can transfer millions of dollars of obligations to the federal government.

But the most important benefit of the program, corrections officials say, is that inmates who are enrolled in Medicaid while in jail or prison can have coverage after they get out. People coming out of jail or prison have disproportionately high rates of chronic diseases, especially mental illness and addictive disorders. Few, however, have insurance, and many would qualify for Medicaid under the income test for the program — 138 percent of the poverty line — in the 25 states that have elected to expand their programs.

Health care experts estimate that up to 35 percent of those newly eligible for Medicaid under Mr. Obama's health care law are people with histories of criminal justice system involvement, including jail and prison inmates and those on parole or probation.

“For those newly covered, it will open up treatment doors for them” and potentially save money in the long run by reducing recidivism, said Dr. Fred Osher, director of health systems and services policy for the Council of State Governments Justice Center.

He added that a 2009 study in Washington State found that low-income

adults who received treatment for addiction had significantly fewer arrests than those who were untreated.

In Chicago, inmates at the Cook County Jail are being enrolled in Medicaid under the health care law as part of the intake process after they are arrested; the county has submitted more than 4,000 applications for inmates since Jan. 1.

In Colorado, state prisoners are being signed up when they need extended hospitalization; 93 applications for inmates and 149 for parolees have been submitted so far.

In the Portland area, more than 1,200 inmates have been enrolled through the state exchange, Cover Oregon, while Delaware and Illinois expect to start soon.

Devon Campbell-Williams, an inmate serving time for assault in the Multnomah County Inverness Jail in Portland, Ore., applied for Medicaid in January with the help of an eligibility worker hired by the county to enroll inmates. When he gets out of jail in May, he said, he will have health insurance for the first time, coverage that will allow him to get treatment for his ankle, which he broke in 2007 and has been bothered by ever since.

"It's going to mean a lot," Mr. Campbell-Williams said, adding that in the past, "I just went to the hospital, that was really about it."

Opponents of the Affordable Care Act say that expanding Medicaid has further burdened an already overburdened program, and that allowing enrollment of inmates only worsens the problem. They also contend that while shifting inmate health care costs to the federal government may help states' budgets, it will deepen the federal deficit. And they assert that allowing newly released inmates to receive Medicaid could present new public relations problems for the Affordable Care Act.

"There can be little doubt that it would be controversial if it was widely understood that a substantial proportion of the Medicaid expansion that taxpayers are funding would be directed toward convicted criminals," said Avik Roy, a senior fellow at the Manhattan Institute, a conservative policy group.

Language in the health care law also allows private insurance plans purchased through state exchanges to cover health care for people who are in jail awaiting trial, even in states that have not expanded Medicaid. But few prisoners have incomes high enough to afford the plans, even with federal subsidies, and most state and county correction systems are not yet set up to

benefit from that coverage.

In the past, states and counties have paid for almost all the health care services provided to jail and prison inmates, who are guaranteed such care under the Eighth Amendment. According to a report by the Pew Charitable Trusts, 44 states spent \$6.5 billion on prison health care in 2008. In Ohio, health care for prisoners cost \$225 million in 2010 and accounted for 20 percent of the state's corrections budget. Extended hospital stays — treatment for cancer or heart attacks or lengthy psychiatric hospitalizations, for example — are particularly expensive.

Stuart Hudson, managing director of health care for Ohio's Department of Rehabilitation and Correction, said his department, which plans to start enrolling inmates in Medicaid when they have been in the hospital for 24 hours, expects to save \$18 million a year through the practice, "although it's hard to know for sure, because there's other eligibility factors we have to keep in mind."

Nancy Griffith, Multnomah County's director of corrections health, said the county expected to save an estimated \$1 million annually in hospital expenses by enrolling eligible inmates and passing the costs to the federal government.

More money could be saved over the long term, she added, if connecting newly released inmates to services helps to keep them out of jail and reduces visits to emergency rooms, the most expensive form of care.

"The ability for us to be able to call up a treatment provider and say, 'We have this person we want to refer to you and guess what, you can actually get payment now,' changes the lives of these people," Ms. Griffith said.

Rick Raemisch, executive director of Colorado's Department of Corrections, said that billing Medicaid for hospital care would save "several million dollars" each year. But as important, he said, was the chance to coordinate care for prisoners after their release.

About 70 percent of prison inmates in the state have problems with addiction, he said, and 34 percent suffer from mental illness.

Without health coverage, inmates leave prison with 30 days' worth of medication and are then mostly left to their own devices.

"If they go off their medication, oftentimes it can once again lead to more criminal activity," Mr. Raemisch said. "So by keeping them medicated and keeping them mentally healthy, it really helps us in our re-entry efforts."

It costs far more to keep an inmate in prison than to provide treatment

outside. Yet most health care experts agree that health coverage alone is not enough to keep chronic offenders on track.

As essential as health insurance is for people trying to put together their lives after being incarcerated, the challenge of getting them into treatment, when they often did not have housing or jobs, was “a whole other kettle of fish,” said Bradley Brockmann, executive director of the Center for Prisoner Health and Human Rights in Providence, R.I. He is an author on articles in a collection on the topic in the March issue of *The Journal of Health Affairs*.

“The potential for this is so huge,” he said, “and it will take a lot more than just getting returning prisoners their Medicaid cards.”

A version of this article appears in print on March 10, 2014, on page A1 of the New York edition with the headline: Little-Known Health Act Fact: Prison Inmates Are Signing Up.