

## The Affordable Care Act (ACA) and Justice-Involved Populations

### 1. Can Medicaid pay for any health care services provided within jails or prisons?

No. Under the ACA (and prior to the ACA), no health care services provided to detainees or inmates in jails or prisons are paid for by Medicaid. Those services are paid for the same way they were prior to the enactment of the ACA.

### 2. For individuals covered by Medicaid in the community, what happens to that coverage when they enter a jail or prison? Does anything change as a result of the ACA?

Depending on the laws of a particular state, when an individual enters a jail or prison their Medicaid is either suspended or terminated, and no health care services provided in the jail or prison can be covered by Medicaid. Suspension or termination varies state by state. The ACA does not change any law relative to this policy.

### 3. Has the ACA changed the inpatient hospital benefit for detainees or inmates of jails or prisons?

No. Care received by detainees or inmates in a community hospital (outside the jail or prison) for a period of more than 24 hours can be billed to Medicaid provided these individuals are eligible. This is not new under the ACA. It remains the same as prior to the ACA, with the distinction being that the overall pool of people who may now be eligible for Medicaid may be larger if a state opts for Medicaid expansion.

Medicaid cannot pay for health care services for detainees and inmates in jails or prisons who visit a community hospital for less than 24 hours. That also remains the same as prior to the ACA.

### 4. What's the difference between jails and prisons?

Prisons are correctional institutions operated by the state or federal government to confine offenders who are judicially sentenced following a trial or guilty plea. Jails are usually county-run and funded correctional facilities that confine accused persons awaiting trial. Jails also can be used to incarcerate convicted individuals with sentences of up to one year, usually for misdemeanor offenses. Simply put, jails have a much stronger connection with local communities than do prisons. Local jails process 13 million admissions per year, or approximately 10 million unique individuals, compared to the approximately 750,000 who are admitted annually to prison. Jails are located in local communities, whereas prisons tend to be situated far away from them. And unlike prison, where inmates serve sentences of at least one year, most people in jail are released quite quickly – usually in a matter of days or weeks – back to the communities from which they came.



## 5. Who's in jail?

Approximately 10 million people cycle through the nation's 3,300 county and local jails every year. For the most part, they are nonviolent, low-level detainees who are in jail because they can't post bail and are awaiting disposition of their cases. As a group, they are disproportionately male, persons of color, and poor<sup>1</sup>, with high rates of health problems (mental health and substance use disorders, chronic and infectious diseases) that frequently contribute to their criminal behavior. Very few of them have any kind of health insurance. In fact, 80 percent of detained individuals with a chronic medical condition have not received treatment in the community prior to arrest. Only about 4 percent of jail admissions result in a prison term. In other words, 96 percent of jail detainees and inmates do not go to prison, but instead return directly to the community from jail, along with their often untreated health conditions.

Statistics on the Jail Population:

- In 2011, 61 percent of people in jail were “unconvicted” – that is, they were awaiting disposition of the charges against them.<sup>2</sup>
- Half of the jail population is confined for violating conditions of probation or parole, or for bond forfeiture, with only 22 percent charged with violent crimes.<sup>3</sup>
- One-quarter are in jail for property offenses such as burglary, theft, and fraud.
- One-quarter are in jail for drug offenses, although many others have significant drug and alcohol use issues.
- Only 4 percent of jail admissions result in a prison sentence.<sup>4</sup>
- Homelessness is much more common in the jail-involved population, with 15 percent of inmates experiencing homelessness in the year prior to arrest, a rate 7 to 11 times higher than the general population.<sup>5</sup>
- Most are young men of color ages 18 to 54.<sup>6</sup>
- Most have low levels of education: Approximately 44 percent of jail inmates lack a high school diploma or a GED, compared to 17 percent of the general population.<sup>7</sup>
- Prior to coverage expansion under the ACA, an estimated 10 percent of the jail-involved population had health insurance when in the community.<sup>8</sup>

<sup>1</sup> Minton TD. “Jail Inmates at Midyear 2009-Statistical Tables.” Bureau of Justice Statistics Statistical Tables (NCJ 230122). Washington: U.S. Department of Justice, 2010.

<sup>2</sup> Ditton P: Mental Health and Treatment of Inmates and Probations. PUB no NCJ. Washington, DC, US Department of Justice, Bureau of Justice Statistics, 2013.

<sup>3</sup> James DJ. “Profile of Jail Inmates, 2002.” Bureau of Justice Statistics Special Report (NCJ 201932). Washington: U.S. Department of Justice, 2004.

<sup>4</sup> Ditton P: Mental Health and Treatment of Inmates and Probations. PUB no NCJ. Washington, DC, US Department of Justice, Bureau of Justice Statistics, 2013.

<sup>5</sup> Greenberg, G & Rosenheck, R. Jail Incarceration, Homelessness, and Mental Health: A National Study. *Psychiatric Services* (2008). 59:2. <http://ps.psychiatryonline.org/article.aspx?volume=59&page=170>.

<sup>6</sup> Ditton P: Mental Health and Treatment of Inmates and Probations. PUB no NCJ. Washington, DC, US Department of Justice, Bureau of Justice Statistics, 2013.

<sup>7</sup> Harlow, C.W. (2003). Education and correctional populations. Bureau of Justice Statistics. NCJ 195670.

<sup>8</sup> Wang EA, White MC, Jamison R, Goldenson J, Estes M and Tulsy JP. Discharge planning and continuity of healthcare: Findings from the San Francisco county jail. *American Journal of Public Health*, 2008, 98(12), 2182-4.

## 6. How does the ACA impact individuals cycling in-and-out of jails?

Because the ACA extends Medicaid eligibility to extremely low-income people regardless of disability status or whether they are parents of minor children, many people who are jail-involved will qualify for Medicaid coverage when they are living in the community (Medicaid coverage is suspended or terminated when an individual is in jail or prison). In this way, they may, for the first time be able to get continuing care for their mental illness, substance use disorder or other health problems that will not only make them healthier but also help them stay out of jail. The results? Improved public health, improved public safety, and reduced costs to society.

## 7. How does the ACA impact costs related to the population cycling in-and-out of jails?

Research from Washington State (and emerging research in other states like Colorado and Florida) suggests that improving access to health services – and substance use and mental health disorder treatments in particular – for justice-involved individuals could improve public safety and lead to cost savings in the criminal justice and health care systems. The ACA, by extending Medicaid eligibility and providing parity for mental health and substance use disorder treatments, creates opportunities for improving public health and public safety and for reducing costs.

Washington State studied the impact of extending chemical dependency (CD) treatment to low-income individuals, a group that was frequently involved with the criminal justice system, and found:

- Average medical cost savings of \$2,500 annually per person treated.<sup>9</sup>
- Reductions in arrest rates ranging from 17 percent to 33 percent.<sup>10 11</sup>
- Additional estimated savings of \$5,000 to \$10,000 per person treated for local law enforcement, jails, courts, and state corrections agencies, all from reductions in crime.<sup>12</sup>
- An increase of \$2,000 in average annual income for people who received substance use disorder treatment.<sup>13</sup>

In addition, according to the National Institute on Drug Abuse (NIDA), for every dollar spent on addiction treatment programs, there is an estimated \$4 to \$7 reduction in the cost of drug-related crimes. With outpatient programs, total savings can exceed costs by a ratio of 12:1.<sup>14</sup>

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<sup>9</sup> Wickizer TM, Krupski A, Stark KD, et al. "The Effect of Substance Abuse Treatment on Medicaid Expenditures among General Assistance Welfare Clients in Washington State." *Milbank Quarterly*, 84(3), 555-576, 2006

<sup>10</sup> Shah MF, Mancuso D, Yakup S and Felver B. The Persistent Benefits of Providing Chemical Dependency Treatment to Low-Income Adults. Washington State Department of Social and Health Services, Research and Data Analysis Division, November 2009, <http://publications.rda.dshs.wa.gov/1397/>.

<sup>11</sup> Mancuso D and Felver B. Providing Chemical Dependency Treatment to Low-Income Adults Results in Significant Public Safety Benefits. Washington State Department of Social and Health Services, Research and Data Analysis Division, February 2009, <http://publications.rda.dshs.wa.gov/1372/>.

<sup>12</sup> Mancuso D and Felver B. Same as above.

<sup>13</sup> Shah MF et al, op cit.

<sup>14</sup> National Institute on Drug Abuse. Principles of Drug Abuse Treatment: A Research-Based Guide. National Institutes of Health Publication No. 00-4180. U.S. Department of Health and Human Services. 1999

These findings show that a well-designed Medicaid benefit package addressing the needs of the jail-involved population can more than pay for itself in terms of both improved public safety and reduced public expense.

## **8. Why are sheriffs like Tom Dart in Cook County, IL, calling jails “the new insane asylums”?**

Individuals suffering with severe mental illness currently incur a huge cost and care burden on the criminal justice system, because so many of them cycle continually in and out of the nation’s jails.<sup>15</sup> Many lack basic health care coverage and there’s often a dearth of community treatment alternatives. As a result, jails have become de facto mental institutions, a role they are unfairly tasked with and ill-suited to tackle. Disconnected systems of care between community and correctional health only exacerbate the problem and ensure that these complex, high-need individuals drain resources on both ends.

Under the ACA, Medicaid expansion and parity for mental health and substance use disorder treatments means that for the first time, many individuals in the community will be covered for and may have access to these services.

## **9. Do the characteristics of the population in jail mirror the characteristics of other segments of our society?**

Jails mirror the larger society. Areas with higher rates of poverty and health disparities for racial and ethnic minorities in the community share a similar population demographic to our nation’s jails. In fact, most people in custody reside in a handful of zip codes in each state.

Racial and ethnic minorities historically have encountered substantial and persistent disparities in health care. By offering health care coverage to an estimated 32 million Americans – many of whom will be members of racial and ethnic minorities – through Medicaid expansion and the creation of health insurance exchanges – health reform will help reduce health disparities. In order to ensure that health reform fully addresses racial and ethnic disparities, justice-involved populations need to be connected to health coverage and care in their communities.

Perhaps most significantly, many justice-involved individuals will for the first time have access to treatment for mental health and substance use disorders, conditions at the root of many criminal behaviors. Thus, expanded mental health and addiction treatment for justice-involved individuals could reduce not only health disparities but also crime and recidivism in the community

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<sup>15</sup> Department of Justice: Survey of Inmates in Local Jails. Inmate Mental Illness. National Institute of Mental Health, 2002. <http://www.nimh.nih.gov/statistics/1DOJ.shtml>.

## **10. Do states, cities or counties benefit from the ACA expansion relative to the justice-involved population?**

While it is still too early to understand the full financial impact of the ACA, including the impact of potentially billing Medicaid for more people in a jail or prison who receive care in a community hospital for a period of more than 24 hours, we do know incarceration rates in the United States have dramatically increased since the 1970s and health outcomes are poor for justice-involved individuals. Providing individuals with access to comprehensive health services when they return to their community is cost effective at the state and local level. High rates of re-incarceration exact heavy costs on society. Access to regular health care is essential to the successful return of jail-involved individuals to their communities. Without it, these people are at greater risk of falling through the cracks and committing new crimes -- jeopardizing public safety and public health, and increasing public spending on incarceration.

## **11. Are incarcerated individuals eligible for Health Insurance Exchanges?**

Incarcerated individuals are not eligible to be enrolled in a qualified health plan in an Exchange unless they are still pending disposition of charges while in jail (during this period they are presumed to be innocent).

Statutory language is specifically included in the ACA exempting incarcerated individuals from an exchange and also from the individual mandate, which requires individuals to maintain health insurance coverage starting January 1, 2014 or be subject to a penalty tax.