

Medicaid Coverage for Jail Inmate's Inpatient Hospitalizations

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In 1976, the United States Supreme Court ruled in *Estelle v. Gamble* that people held in jails and prisons have a constitutional right to health care, establishing the requirement for correctional institutions to provide people held in their facilities with access to appropriate care.¹ Providing jail health care can be a challenge for Sheriff's Departments and local governments. However, as this brief discusses, there is an opportunity for Sheriff's Departments and local governments to use Medicaid to assure quality care for people in jail who require inpatient hospitalization.

Rising health care costs nationwide, combined with aging prison and jail populations, have made correctional health care a major expense for states and local jurisdictions. The Pew Charitable Trusts recently reported that prison health care spending totaled \$7.7 billion in 2011 after reaching a peak of \$8.2 billion in 2009.² While data on aggregate jail health care spending is not available, it is likely that county Sheriff's Departments and local jurisdictions are similarly hard hit by health care costs. In fact, local jurisdictions may face proportionately greater challenges in funding health care for people in jail, as smaller local budgets may be less able to absorb unexpected costs. Similarly, most Sheriff's Departments and jails do not have the capacity to perform the same level of quality assurance (QA, or policies and procedures designed to ensure high quality care) and utilization management (UM, or policies and procedures designed to ensure that services provided are necessary) functions that most community-based health organizations are able to achieve.

In addition to care provided within correctional facilities, care provided to jail and prison inmates in outside facilities contributes to high correctional health costs as well. Under the *Estelle* framework, if a person in jail or prison requires care that exceeds a given correctional facility's capabilities,

the jail or prison is required to arrange care for that person at an appropriate facility. Because most jail and prison inmates have historically had no health insurance, this has meant that correctional facilities have either paid directly or indirectly (through contracted correctional health providers) for necessary outside care. Given their lack of QA and UM capacity, Sheriff's Departments could be taking on high expenditures with little assurance of the quality or the necessity of care.

The 1997 Inmate Inpatient Hospitalization Option

Sheriff's Departments and local jurisdictions could help assure high quality care and also offset health care costs by pursuing an option (one that predates the ACA) to use Medicaid to pay for services provided at some non-correctional medical facilities. Because the Affordable Care Act (ACA) gave states the option to expand Medicaid eligibility to childless adults with income up to 138% of the Federal Poverty Level (roughly \$16,000 in 2014), it is likely that many people in jail or prison in expansion states would be newly eligible for Medicaid.

Although Federal Financial Participation (FFP, the federal portion of Medicaid funding) cannot be used for services provided in jails or prisons, it can pay for some services for jail and prison inmates provided in outside facilities if the inmates are otherwise eligible for Medicaid. Moreover, despite the preclusion of FFP, jail and prison inmates who are otherwise eligible retain their eligibility for Medicaid and can apply while incarcerated. The ACA's Medicaid expansion means that, for the first time, a significant number of inmates are likely to be eligible.

The federal Department of Health and Human Services issued a guidance letter in 1997 outlining the circumstances under which Medicaid could pay for an inmate's health care services. The letter states:

...an exception to the prohibition of FFP is permitted when an inmate becomes a patient in a medical institution. This occurs when the inmate is admitted as an inpatient in a hospital, nursing facility, juvenile psychiatric facility, or intermediate

1 *Estelle v. Gamble* (429 U.S. 97 [1976])

2 The Pew Charitable Trusts and the John D. and Catherine T. MacArthur Foundation, *State Prison Health Care Spending: An Examination*, 2014, <http://www.pewtrusts.org/-/media/Assets/2014/07/StatePrisonHealthCareSpendingReport.pdf>.

care facility. Accordingly, FFP is available for any Medicaid covered services provided to an ‘inmate’ while an inpatient in these facilities provided the services are included under a State’s Medicaid plan and the ‘inmate’ is Medicaid-eligible.³

The Code of Federal Regulations defines an inpatient as a patient who is admitted to a Medical institution for 24 hours or longer, or one who is expected to remain for 24 hours or longer but who—because of death, discharge, or transfer—ends up leaving before 24 hours have gone by.⁴ What this means is that Medicaid could pay for hospital services for any Medicaid-eligible inmate (which, given their income, is likely to be the vast majority) admitted to an outside hospital or other facility listed above, as long as the specific services are covered by Medicaid. In addition to potentially paying for services currently paid for by Sheriffs’ departments and local governments, Medicaid possesses the capacity to perform QA and UM functions that could ensure that care provided to inmate inpatients would be both high quality and necessary.

Many states have started to aggressively pursue the inmate inpatient hospitalization option for prisoners, with promising early results. For example, Ohio reported that it reduced prison health care spending by \$10.3 million in FY 2014 compared to FY 2013 because of savings attributable to Medicaid-covered inpatient hospitalizations; Michigan, which recently began to implement the option, estimated that it could save \$16.8 million in the first year; and California has estimated that it could save up to \$70 million per year.⁵

Although similar data on jail health care savings have not been publicized, jails have started to pursue the option as well. A 2013 California Law, AB 720, created an option for Sheriffs’ Departments or other county-designated entities to submit applications for Medi-Cal (the state’s Medicaid program) on behalf of inmates who need inpatient hospitalization, without requiring the inmates’ signatures

3 Letter from the Department of Health and Human Services to All Associate Regional Administrators of the Division for Medicaid and State Operations (since consolidated within the Centers for Medicare and Medicaid Services) regarding “Clarification of Medicaid Coverage Policy for Inmates of a Public Institution,” December 12, 1997, available at <http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251618397983&ssbinary=true>.

4 42 CFR § 440.2 - Specific definitions; definitions of services for FFP purposes, http://www.ecfr.gov/cgi-bin/text-idx?type=simple;c=ecfr;cc=ecfr;rgn=div5;idno=42;q1=433.139;sid=6a425ea8a3628957f896d8f1e451244d;view=text;node=42%3A4.0.1.1.9#se42.4.440_110.

5 California Healthline, Billing Medicaid for Inmate Care Saves Calif., Other States Millions, September 24, 2014, <http://www.californiahealthline.org/articles/2014/9/24/billing-medicare-for-inmate-care-saves-calif-other-states-millions>.

(this authority does not apply in other circumstances).⁶ Several California counties, including San Joaquin, Alameda, and San Francisco, have designated county entities to perform Medi-Cal intake activities in accordance with AB 720.⁷ Counties can pursue the inmate inpatient option using traditional Medicaid application processes as well, and Sheriffs’ Departments and local governments nationwide could potentially realize significant savings.

Policy Considerations

The following policy considerations may help Sheriffs’ Departments and local governments who are interested in pursuing the inmate inpatient hospitalization option. Sheriff’s Departments and local governments could consider:

Coordinating with the State Medicaid Agency regarding Medicaid termination and suspension. The State Medicaid Agency is the state-level entity in charge of a state’s Medicaid program. When a Medicaid beneficiary is admitted to a jail or prison, his or her Medicaid enrollment can either be terminated

6 California Assembly Bill 720 (2013-2014), http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB720.

7 For San Joaquin, see http://www.sjgov.org/board/Board%20Meetings/Agendas/112613/MG94745/AS94757/AI97761/DO97762/DO_97762.PDF; for Alameda, see http://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_05_27_14/PUBLIC%20ASSISTANCE/Regular%20Calendar/SSA_Sheriff_203415.pdf; for San Francisco, see <http://www.sfbos.org/ftp/uploadedfiles/bdsuprvrs/ordinances14/o0045-14.pdf>.

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or suspended, depending on the state. In 2004, the Centers for Medicare and Medicaid Services (the federal regulatory body in charge of Medicaid) issued a letter to State Medicaid Directors urging them to suspend, rather than terminate, Medicaid enrollment when people enter jails and prisons. Suspension, the letter states, would facilitate re-entry because it would eliminate unnecessary re-applications.⁸ Suspension, moreover, could also facilitate the inmate inpatient hospitalization option, as it could be easier to re-instate an inmate's suspended Medicaid enrollment than to submit a full application. Sheriffs' Departments and local jurisdictions could consider coordinating with State Medicaid Agencies to determine whether their state terminates or suspends Medicaid. In termination states, Sheriffs' Departments could consider advocating for suspension in order to facilitate billing for inpatient hospitalization and re-entry.

Coordinating with the state and/or county social services agencies to develop Medicaid application and enrollment processes. Depending on the state, either state or county entities (usually the state or county social services departments) administer Medicaid eligibility and enrollment. Because these entities process Medicaid applications and make eligibility determinations, they could be a valuable partner in developing inmate application and enrollment processes. Strategies are likely to differ by state and/or county, but it could be possible, for example, for Sheriffs' Departments and social services agencies to develop expedited application and eligibility determination processes for jail inmates.

Re-evaluating correctional health and/or hospital contracts in light of the inmate inpatient hospitalization option. Depending on the jurisdiction, Sheriffs' Departments may have contracts with hospitals to pay for hospital services. In some jurisdictions, Sheriffs' Departments may pay directly for services as needed. In jurisdictions that contract for correctional health services with public or private health providers, the provision of hospital services may be factored into overall correctional health contracts. For example, contracts could stipulate that Sheriffs' Departments and correctional health providers share a portion of patients' hospital bills. The inmate inpatient hospitalization option means that many or most hospital services provided to jail inmates could instead be covered by Medicaid. Sheriffs' Departments and local governments could consider restructuring contracts with hospitals and/or correctional health providers to reflect the opportunity to refinance hospital bills onto Medicaid.

⁸ Letter from the Centers for Medicare and Medicaid Services to State Medicaid Directors regarding "Ending Chronic Homelessness," May 25, 2004, <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Community-Living/Downloads/Ending-Chronic-Homelessness-SMD-Letter.pdf>.

The 1997 inmate inpatient hospitalization option opened the door for Sheriffs' Departments to assure high quality care and reduce some correctional health care costs, although the opportunities to do so were few and far between. The ACA's Medicaid expansion changed this dynamic, greatly expanding eligibility among jail inmates, and, therefore, opportunities to bill Medicaid for inpatient hospitalizations. As a result, Sheriff's Departments and local government that are able to implement the necessary processes to begin billing Medicaid for inpatient hospitalizations stand to achieve significant gains in care quality and sustainable savings alike. ✪

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