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COMMUNITY ORIENTED CORRECTIONAL HEALTH SERVICES

The Reentry Act's Impact on Health Care and the Criminal Justice System: A Fact Sheet

Key Takeaway

In May, as part of COVID-19 response legislation, the House of Representatives approved a provision to better meet the health needs of people who are incarcerated as they prepare to leave prison or jail and return to their communities. This reentry provision would:

- → allow Medicaid to cover services provided to incarcerated individuals during the thirty days preceding their release from prison or jail;
- → advance the COVID-19 response by strengthening continuity of health care services for people who are incarcerated and preparing to return to their communities; and
- → recalibrate fiscal responsibility for providing health care services at reentry by closing a longstanding gap in Medicaid coverage, relieving pressure on state and local budgets.

The Senate has not yet acted on this legislation. This fact sheet describes the provision and its potential impact, with a focus on the significant impact it would have on jails.

The Reentry Act in the House bill would advance access to and continuity of services for people involved in the justice system

The recent COVID-19 response package passed by the House contains a reentry provision that would, for the first time, permit Medicaid to cover health care services for incarcerated Medicaid-eligible individuals during the thirty days immediately preceding their release. This provision would apply to jails, prisons, and juvenile justice facilities and would close a substantial gap in services for people who are incarcerated, many of whom are Medicaid eligible. Currently, Medicaid coverage of services stops when someone enters a correctional facility, even though these individuals' substantial behavioral and physical health conditions follow them into, and out of, incarceration. This discontinuity in care challenges an effective public health response to a crisis like COVID-19, which is spreading rapidly in prisons and jails.

This reentry provision is found in Section 30110 of the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, an emergency supplemental appropriations bill passed by the House of Representatives on May 15, 2020, to help address the COVID-19 pandemic.[1] This provision was first introduced as the Medicaid Reentry Act, a bipartisan bill sponsored by Representative Paul Tonko (D-NY), Michael Turner (R-OH), and James Sensenbrenner (R-WI).[2] Senator Brian Schatz (D-HI) recently introduced a provision similar to the Medicaid Reentry Act in the Senate.[3]

The Reentry Act would substantially advance health care for people who are incarcerated

Providing thirty days of coverage for Medicaid services prior to release has the potential to substantially advance access to quality health care at reentry for those in jails, prisons, and juvenile detention centers. This proposal is particularly salient for the jail population, which accounts for a majority of our nation's justice-involved individuals because:

- Each year, individuals go to jail nearly 10.6 million times.[4]
- Most stays, however, are very short. In 2018, the weekly jail inmate turnover rate was fifty-five percent, and the average jail stay was only twenty-five days.[5]

Should the reentry provision take effect, a substantial proportion of the jail population would for the first time be assured coverage under Medicaid for healthcare services provided while they are incarcerated.

The Reentry Act would close a longstanding gap in Medicaid coverage for people involved in the justice system

Although most people who are incarcerated are eligible for Medicaid, Medicaid cannot pay for services that are provided to someone once they are booked into jail. Many state and local governments are developing approaches to correctional health care that allow individuals to maintain their Medicaid enrollment while incarcerated as well as better coordinate care as those individuals are released, but structural barriers that unnecessarily complicate the transition between jail and community providers remain.[6] This is because by law, Medicaid prohibits payment for services during incarceration.[7] The result is a gap in coverage that limits providers' ability to treat and care for the justice-involved population, a gap that is filled by services within the jail that are divorced from the broader network of community providers, and that are funded by local dollars. These gaps challenge supportive approaches to reentry because providers and plans cannot reach "behind the wall" of the correctional facility.[8] In the past, this exception has prevented coordinated support at reentry. Today, it exacerbates the COVID-19 crisis, where testing and treatment must be accomplished among multiple payers and providers who lack adequate coordination. In fact, reentry service providers report that they are reducing services as a result of difficult fiscal conditions.[9] The reentry provision would help establish a continuum of care needed to address COVID-19, as well as the other chronic health conditions that are prevalent within the incarcerated population.

Who would benefit from the Reentry Act?

The Reentry Act would enable healthcare providers, state and local governments, and managed care plans better meet the health and reentry needs of people who experience incarceration.

- **People who are involved with the justice system**. The nation's jail population is disproportionately poor and made up of people of color: Black people are three times more likely to be in jail than white people, and American Indians and Alaska Natives (AIANs), as well as Native Hawaiians, are also incarcerated in jails at disproportionately high rates.[10] People who are incarcerated are more likely to suffer from chronic, complex health issues, including hypertension, diabetes, tuberculosis, HIV/AIDS, and Hepatitis B

and C, as well as substance use disorders and mental health issues.[11] Justice-involved individuals should have the ability to access consistent medical care, particularly at entry and release when their health is most vulnerable: having Medicaid coverage increases treatment rates, improves overall health, and reduces mortality.[12] In denying such coverage during incarceration, the current system compounds existing inequities in our health care markets. By closing this gap, the reentry provision will promote access to services and treatment, including those for mental health and substance use disorders.

- **Public safety officials.** By default, jails have become a leading provider of mental health services in the U.S. Public safety officials have argued that this arrangement results in poor behavioral health outcomes, contributes to higher recidivism rates, and drives up costs for taxpayers and state and local governments.[13] Expanding Medicaid's role at reentry can help promote safety and address recidivism.

- **State and local governments.** Permitting Medicaid coverage for services rendered prior to release would advance the provision of needed care with the support of Medicaid matching funds.[14] This would alleviate the fiscal burden on state and local jurisdictions have assumed providing care, including behavioral health services in correctional settings, an important consideration given the COVID-19-induced revenue decreases we are witnessing today.

- **Health care providers and managed care plans that serve people with complex needs.** In providing Medicaid-covered services 30 days ahead of release, the Reentry Act will enable providers, health systems, and Medicaid managed care plans to establish continuity of care as individuals enter and live within a correctional institution, and then transition back out into their communities. Having Medicaid coverage in the 30 days prior to release would strengthen reentry services and in-reach programs, and help establish stronger connections to community providers.

Conclusion

The Medicaid Reentry Act offers an opportunity to address COVID-19 and the complex health needs of people who are incarcerated. It could also help advance broader efforts to address racial equity in our health and criminal justice systems. Permitting Medicaid coverage of services in the thirty days prior to release would advance goals shared by a broad array of stakeholders – providing more effective provision of health care services, remedying longstanding concerns about the role jails are playing as health care providers, and better meeting the needs of communities that are disproportionately affected by incarceration.[15] It is a simple step that Congress could take to improve public health and establish a more sustainable and equitable system of health care for justice-involved individuals.

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[1] U.S. Congress, House, *The HEROES Act*, HR 6800, 116th Cong., introduced in House May, 12, 2020, https://www.congress.gov/bill/116th-congress/house-bill/6800/text.
[2] U.S. Congress, House, *Medicaid Reentry Act*, HR 1329, 116th Cong., introduced in House February, 25, 2019, https://www.congress.gov/bill/116th-congress/house-bill/1329/text.

[3] U.S. Congress, Senate, *Emergency GRACE Act*, S 3698, 116th Cong., introduced in Senate May 12, 2020, https://www.congress.gov/bill/116th-congress/senate-bill/3698/text.
[4] Wendy Sawyer et al., "Mass Incarceration: The Whole Pie 2020," Prison Policy Initiative, March 24, 2020, https://www.prisonpolicy.org/reports/pie2020.html.
[5] Zhen Zeng, *Jail Inmates in 2018* (Washington, DC: Bureau of Justice Statistics, 2020), 8 (*available at* https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6826).
[6] Vikki Wachino et al., *How Connecting Justice-Involved Individuals to Medicaid Can Help Address the Opioid Epidemic* (Washington, DC: Kaiser Family Foundation, 2019)(*available at* https://www.kff.org/medicaid/issue-brief/how-connecting-justice-involved-individuals-to-medicaid-can-help-address-the-opioid-epidemic/) ; Jocelyn Guyer et al., *State Strategies for Establishing Connections to Health Care for Justice-Involved Populations: The Central Role of Medicaid* (Washington, DC: The Commonwealth Fund, 2019) (*available at* https://www.commonwealthfund.org/publications/issue-briefs/2019/jan/state-strategies-health-care-justice-involved-role-medicaid).
[7] This prohibition, which is generally referred to as the Medicaid inmate exclusion, is established in section 1905(a)(30)(A) of the Social Security Act, Medicaid's authorizing law. U.S. Congress, *United States Code: Social Security Act, 42 U.S.C. §§ 301-Suppl. 4 1934*, 1934, Periodical, https://www.ssa.gov/OP_Home/ssact/title19/1905.htm.
[8] Kevin Fiscella et al., "The Inmate Exception and Reform of Correctional Health Care," *American Journal of Public Health* 107, no. 3 (March 2017): 384 (*available at* https://pubmed.ncbi.nlm.nih.gov/28177816/).
[9] "Survey Shows Reentry Services Halting Across U.S.," Council of State Governments: Justice Center, April 22, 2020, https://csgjusticecenter.org/survey-shows-reentry-services-halting-across-u-s/?mc_cid=13c23b1fd9&mc_eid=d901682358.
[10] Zhen Zeng, *Jail Inmates in 2018*, 4; *The Impact of the Criminal Justice System on Native Hawaiians* (Honolulu, HI: Office of Hawaiian Affairs, 2014) (*available at* https://www.oha.org/wp-content/uploads/2014/11/factsheets_final_web_0.pdf).
[11] "Jails and Healthcare," Community Oriented Correctional Health Services, June 2020, https://cochs.org/jails/.
[12] Benjamin Sommers et al., "Health Insurance Coverage and Health – What the Recent Evidence Tells Us," *New England Journal of Medicine* 377, no. 6 (August 2017) (*available at* https://pubmed.ncbi.nlm.nih.gov/28636831/).
[13] NACo-NSA Joint Taskforce, *Addressing the Federal Medicaid Inmate Exclusion Policy* (Washington, DC: National Association of Counties and National Sheriffs' Association, 2020) (*available at* a https://www.naco.org/resources/featured/naco-nsa-joint-task-force-report-addressing-federal-medicaid-inmate-exclusion-policy).
[14] The matching rate for services provided to Medicaid expansion beneficiaries is 90 percent, while matching rates for other beneficiaries vary by state.
[15] NACo-NSA Joint Taskforce, *Addressing the Federal Medicaid Inmate Exclusion Policy*; letter to the Centers for Disease Control and Prevention, April 9, 2020, https://www.drugpolicy.org/sites/default/files/cdc-letter-decarceration_0.pdf.