Breaking the Cycle of Inadequately Treated Behavioral Health Disorders, Crime and Incarceration

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NATIONAL DRUG CONTROL STRATEGY
2014

Table of Contents

ACA – Medicaid Reform
Jail inmates eligible as of 2014

- Prior to 2014, 5-10% of adult detention center and prison inmates nationally were eligible for Medicaid ("prior-eligibles")
- As of 2014, approximately 90-95% of inmates are eligible, and about 90% of those inmates are "newly-eligibles," their Medicaid paid 100% by the Federal government 2014-2016, then phased down to 90% match by 2020

Substance Use and Mental Disorders in Jails and Prisons

- Nationally, ~68% of jail inmates have substance use disorders (SUDs) – 5-6x the community rate
  - 87% of inmates in NM prisons have SUDs
  - 80% of inmates at MDC in BernCo have SUDs
- Nationally, 16% of inmates have severe mental disorders – 3-4x the community rate
  - 60% of people with SUDs also have at least one mental disorder

Risk Factors for Poor Outcomes/ Recidivism After Discharge

Targets for Wraparound Services

- **Lack of access to health care – no insurance and/ or lack of linkage to providers**
- **Untreated substance use and/or mental disorder during and after incarceration**
- Homelessness/poor or unsafe living environment
- Unemployment / lack of finances and SSI benefits
- Food insecurity
- Poor social support and stressors in re-unifying with family

Senate Bill 65 – 2013 Session

The "no-brainer" bill

Senator Ortiz y Pino

- Mandated prerelease application and enrollment by time of discharge of eligible inmates into Medicaid in all corrections facilities (state prisons, CYFD facilities, county adult and juvenile facilities) for all inmates incarcerated 30 days or more
- Required **suspension** of Medicaid benefits instead of termination for those incarcerated already on Medicaid
- To begin 1/1/2014 to coincide with the ACA Medicaid expansion
- Passed House and Senate with strong bipartisan support but **vetoed** by the Governor

Suspension of Medicaid Benefits

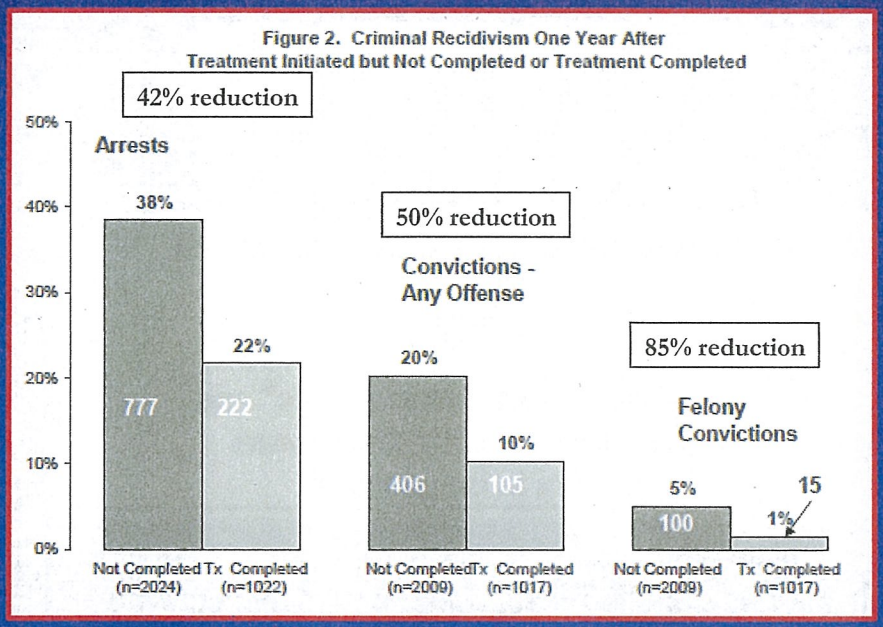
- Federal Medicaid allows inmates to keep Medicaid but will not pay for medical services during incarceration unless inmate is hospitalized for > 24 hours
- Suspension thus allows for:
  - Inmates to retain Medicaid and be discharged with full benefits
  - Inmates not on Medicaid to get signed up while incarcerated and then be put in suspension status until discharge
- About 15 states now have a Medicaid suspension policy
- HSD says cost to put suspension category in system: $170k – actual cost to HSD is $17,000

Senate Bill 65

Anticipated Results

- Seamless reentry for many into substance use and mental disorder treatment from incarceration - **$12 return for every $1 invested in treatment**. Leverage federal Medicaid dollars for treatment, 100% paid by Feds for most.
- Reduction in crime and recidivism (3-year recidivism rates for both are about 50%) – cost of incarceration:
  - State prisons - $40,000 annually per person
  - Metro Detention Center - $26,000 annually per person ($72/day)
- Large reduction in overdose and suicide with treatment
  - 130x rate of overdose in first two weeks after discharge
  - 8x rate of suicide in first month after discharge
- Public health – reduce spread of disease after discharge
- Increase in public safety

Substance Use Disorder Treatment Substantially Reduces the Likelihood of Recidivism in SSI Clients With History of Arrest or Conviction in Past 2 Years



Washington State Supplemental Security Income Cost Offset Pilot Project, 2002

The Savings

Treatment for Substance Use Disorders

- *Substance Abuse and Mental Health Services Administration* (SAMHSA): **Treatment saves $12 for every $1 spent***
  - $7 in criminal justice costs
  - $5 in medical costs
- Treatment has been demonstrated to reduce:
  - Criminal recidivism, and thus costs of incarceration, courts, legal expenses and law enforcement
  - Spread of Hepatitis and HIV to inmates and community
  - Other medical complications of addiction
  - Mental and physical health hospitalizations

***97% of all Medicaid costs of treatment for discharged inmates paid by federal gov't and 3% paid by the state, 2014-2016.**

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Substance Abuse and Mental Health Services Administration
Center for Substance Abuse Treatment
www.samhsa.gov

Substance Abuse and Mental Health Services Administration
SAMHSA

For every **$100,000 spent on treatment,**

$487,000 of health care costs[4] and $700,000 of crime costs were shown to be avoided[5].

[4,5] **Cost-effectiveness studies conducted in CA in 1999 and 2006:**
Hartz DT, et al. Am J Drug Alcohol Abuse. 1999;25(2):207-218.
Ettner SL, et al.Health Services Research. 2006;41(1):192-213.

Current NM Medicaid Policies

- Termination of Medicaid after 30 days in jail or prison despite its own regulation saying 60 days
- No suspension category
- Not accepting applications from inmates – must be discharged first
- Allowing trained jail and prison employees to sign up inmates after discharge using presumptive eligibility
- Paying for short-term Medicaid when inmates are hospitalized for >24 hours

Presumptive Eligibility Helps but is Far From the Solution

- Only allowed once per year
- Some eligible for Medicaid may be missed
- Staffing issues – weekend/after hours discharges
- Difficult to do discharge planning for treatment
- Still have to do primary application and will need to have contact with NM MAD to give documentation – capacity issues of inmates
- Unable to get SNAP and TANF at discharge

What the Feds Say About These Policies

Excerpts from letter from national Medicaid Director Cindy Mann to HS

- "incarceration does not preclude an individual from being determined Medicaid eligible. Inmates are permitted to file an application for Medicaid during the time of their incarceration"
- "The Centers for Medicare & Medicaid Services (CMS) has a longstanding policy that permits states to establish a process under which a Medicaid-eligible inmate is placed in a suspended eligibility status"
- "In fact, we have informed states that there is no legal basis for terminating the Medicaid eligibility of inmates of public institutions solely on the basis of their status as inmates. The suspension process provides for continuity of care…"

Conclusion

There is no good reason why the NM Medical Assistance Division cannot accept applications from incarcerated individuals and create a suspension category of Medicaid eligibility.

Thank You!

Harris Silver, MD

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DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850

CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR MEDICAID & CHIP SERVICES

AUG 1 5 2013

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Dear Dr. Silver:

Thank you for your letter regarding Medicaid coverage for incarcerated individuals in New Mexico. You raise a number of important issues that we are addressing in light of the new Medicaid coverage opportunities available through the Affordable Care Act. I know that you communicated with staff to gather some of the information you asked for in your letter, but I wanted to respond to make sure we addressed each of the issues you raise.

As you know, incarceration does not preclude an individual from being determined Medicaid-eligible. Inmates are permitted to file an application for Medicaid coverage during the time of their incarceration, and assuming they meet all applicable Medicaid eligibility requirements, may be enrolled in the Medicaid program before, during, and after the period of time spent in the correctional facility. Incarceration does, however, affect the state's ability to claim federal financial participation (FFP). We have previously informed states that this is a payment exclusion only, not an eligibility exclusion, and does not affect the eligibility of the individual inmate for the Medicaid program. States can receive FFP for Medicaid-covered state plan services provided to Medicaid-enrolled inmates when inmates become inpatients in hospitals, nursing facilities, juvenile psychiatric facilities, or intermediate care facilities. Furthermore, the payment exclusion does not apply when the inmate is paroled, on probation, or on home release, except when the individual reports to the prison for an overnight stay. However, the exclusion does apply where the individual is an inmate awaiting criminal proceedings, penal dispositions, or other involuntary detainment determinations.

The Centers for Medicare & Medicaid Services (CMS) has a longstanding policy that permits states to establish a process under which a Medicaid-eligible inmate is placed in a suspended eligibility status while the inmate exclusion is applicable. This suspension process prevents the state from erroneously claiming FFP for services furnished to the incarcerated individual, while ensuring that the individual returns to active enrollment when the inmate exclusion no longer applies (absent a redetermination that results in a termination for other reasons). In fact, we have informed states that there is no legal basis for terminating the Medicaid eligibility of inmates of public institutions solely on the basis of their status as inmates. The suspension policy provides for continuity of care so that the individual can immediately access covered benefits when the inmate exclusion no longer applies, and enables the state to receive FFP for such benefits.

We are aware that many states are dealing with legacy eligibility and enrollment system challenges when placing Medicaid-eligible incarcerated individuals in a suspended status. The availability of enhanced federal funding for new or improved eligibility systems, as specified in the final rule, "Federal Funding for Medicaid Eligibility Determination and Enrollment Activities," that CMS published in April 2011, should help many of these states make the necessary modifications to their Medicaid eligibility systems to incorporate this functionality. Subject to the seven standards and conditions articulated by CMS, states can receive 90 percent FFP for the design, development, and installation or enhancement of Medicaid eligibility determination systems and 75 percent FFP is available for maintenance and operation of these systems. Previously, the state was only eligible to receive a 50 percent federal matching rate for these activities. The enhanced funding provided by the new rule was intended to help states prepare for the Medicaid improvements and expansion that will come in 2014, and to facilitate all of the systems changes required for states to modernize their systems and implement the provisions of the Affordable Care Act.

Additionally, states will receive 100 percent federal funding support for Medicaid coverage provided to newly eligible adults in 2014, 2015, and 2016; 95 percent in 2017, 94 percent in 2018, 93 percent in 2019; and 90 percent by 2020, remaining at that level thereafter. With this expansion of Medicaid eligibility in 2014, many inmates and individuals who are discharged who would not previously have qualified for Medicaid coverage will be newly eligible to receive Medicaid benefits, including the mental health and substance abuse services that you mention. We agree that it is critical for incarcerated and discharged individuals to be able to access coverage when appropriate.

We appreciate your efforts on behalf of the people of New Mexico, to help ensure coverage for all eligible individuals. If you have any further questions or concerns, you may contact either Jennifer Ryan, Acting Director of the Children and Adults Health Programs Group at Jennifer.Ryan@cms.hhs.gov, for matters related to Medicaid eligibility and enrollment, or Barbara Edwards, Director of the Disabled and Elderly Health Programs Group at Barbara.Edwards@cms.hhs.gov for benefits and coverage policy matters.

Sincerely,

Cindy Mann
Director