

Repeal the “Inmate Exception” for Federal Health Benefits

Issue: “Inmate exception” for federal health benefits for individuals in custody in public institutions pending disposition of charges.

NACo policy: NACo supports changes in current federal law or regulation that will allow an otherwise eligible person, who is in custody but not convicted, to continue to receive federal health benefits until such time as they may be convicted and sentenced to an institution.

Action needed: Ask your Member of the House of Representatives to support reintroduction of the *Restoring the Partnership for County Health Care Costs Act* (H.R. 2209) introduced in the 111th Congress by Congressmen Alcee Hastings (D-Fla.), Rush Holt (D-N.J.) and Michael Burgess (R-Texas). This bill would restore federal health benefits to otherwise eligible persons in custody pending final disposition of charges. Ask your Senator to introduce companion legislation in the Senate.

Background: Currently a person incarcerated in a county jail or juvenile detention center may not receive federal Medicaid benefits once they enter the facility. Section 1905(a)(A) of the Social Security Act, which governs the Medicaid program, excludes Federal Financial Participation (FFP) for medical care for “inmates of a public institution”. As a consequence, the cost of medical care for these inmates becomes a county responsibility upon arrest and detention. The cost to counties for persons who would otherwise be receiving federal entitlement payments is significant based on county estimates. Most states maintain that they are unable to assure the federal share of providing medical services to eligible persons and to terminate eligibility.

If the individual has been terminated from these programs, it may take months for these benefits to be restored once they leave the institution. What is clear is that the immediate cessation of benefits occurs prior to the issuance of formal charges or conviction when the individual is presumed innocent.

Many people awaiting trial, who are charged with crimes, are released upon posting of bond, released on their own recognizance, released under house arrest or other alternative means of detention. These accused people continue to be eligible for federal matching payments under Medicaid while awaiting trial. Some individuals who are charged with crimes and incarcerated in county jails are ultimately acquitted of the crime or the charges may be dropped and the individual released. All individuals who are eligible for federal payment of medical benefits prior to arrest should continue to be eligible until such time as they have been convicted of a crime and become a ward of the state or county.

Medicare, Children’s Health Insurance Program (CHIP) and Veterans benefits are similarly limited.

NACo succeeded in having a provision included in the Affordable Care Act that, beginning in 2014, will require plans offered on the new state based health insurance exchanges to cover persons in custody pending disposition of charges.

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