

# Maximizing Medicaid:

## An Innovative Approach to Finance Health Care for Criminal Justice Populations

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# Council of State Governments Justice Center

- National non-profit, non-partisan membership association of state government officials
- Engages members of all three branches of state government
- Justice Center provides practical, nonpartisan advice informed by the best available evidence



# The National Reentry Resource Center

- The NRRC is a project of the CSG Justice Center and is supported by the Bureau of Justice Assistance.
- NRRC staff have worked with nearly 600 SCA grantees, including 40 state corrections agencies.
- The NRRC provides individualized, intensive, and targeted technical assistance training and distance learning to support SCA grantees.

<http://csgjusticecenter.org/nrrc/>



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# What Works in Reentry Clearinghouse

Practitioners – Policymakers  
– Funders – Researchers

*How do I find and decipher research?*

*What are the key takeaways that I need to know?*

*How do I know if the research is reliable?*

*How do I determine the relevance of the research?*



## What Works in Reentry Clearinghouse

The *What Works in Reentry Clearinghouse* offers easy access to important research on the effectiveness of a wide variety of reentry programs and practices. It provides a user-friendly, one-stop shop for practitioners and service providers seeking guidance on evidence-based reentry interventions, as well as a useful resource for researchers and others interested in reentry. To get started, click the button below for additional information about this project or how to use this site; or, click on a focus area topic on the left to begin exploring. You can also conduct a customized search by clicking the advanced search link on the right.

Click here for more information about the *What Works in Reentry Clearinghouse* and information on how to use this site

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Ratings Key		
High Rigor	Basic Rigor	
		Strong evidence of a beneficial effect
		Modest evidence of a beneficial effect
		No statistically significant findings
		Modest evidence of a harmful effect
		Strong evidence of a harmful effect

<http://whatworks.csgjusticecenter.org/>

# Webinar Agenda

## **Introduction**

*Dr. Fred Osher, Council of State Governments Justice Center*

## **Financing Health Care for Individuals Involved in the Criminal Justice System**

*Gabrielle de la Guéronnière, JD, Legal Action Center*

## **An Introduction to Medicaid Eligibility and the Application Process**

*Terri L. Catlett and Larry Huggins, LCSW, North Carolina Department of Public Safety*

*William Appel, North Carolina Department of Health and Human Services*

## **Moderated Q&A Session**

*Dr. Fred Osher, Council of State Governments Justice Center*

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# Overview

- Health spending is becoming an increasingly large share of state corrections budgets<sup>1</sup>
- A large portion of the criminal justice population is likely eligible for Medicaid
  - Federal law, specifically section 1905 of the Social Security Act, prohibits “payments with respect to care or services for any individual who is an inmate of a public institution”<sup>2</sup>
  - The law does provide an exception to this prohibition when an individual is “a patient in a medical institution” for at least 24 hours
- If states take advantage of billing Medicaid for eligible inpatient care expenses, there is an opportunity for significant cost savings

1. Pew Center on the States, *Managing Prison Health Care Spending* (Washington, DC: The Pew Charitable Trusts, 2013), 3.

2. §1905(a)(A), Social Security Act

# Financing Health Care for Individuals Involved in the Criminal Justice System

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**GABRIELLE DE LA GUERONNIERE,  
LEGAL ACTION CENTER**

**CSG JUSTICE CENTER WEBINAR  
JUNE 24, 2014**

# About LAC and the Coalition for Whole Health

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- **Legal Action Center**
  - National law and policy organization that works to fight discrimination against people related to substance use disorders, HIV/AIDS, and/or criminal records
  - Grant through BJA to support a number of grantees on health reform and the criminal justice system
- **Coalition for Whole Health**
  - A coalition of over 100 national, state, and local organizations in the mental health and substance use disorder fields and allied organizations working to ensure health reform is successfully implemented for individuals with mental health and substance use disorder needs

# What We'll Talk About Today

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- Quick overview of Medicaid financing
- Medicaid eligibility, enrollment, and coverage for justice-involved individuals
  - Specific discussion on opportunity to bill Medicaid for an incarcerated individual's community-based inpatient care
- Opportunities to use Medicaid policy to better meet the health needs of incarcerated and reentering individuals

# A Little More on Medicaid

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- State/federal partnership
- Within broad federal guidelines, states design and administer their Medicaid programs
- States and federal governments also share financing responsibilities
- Eligibility based on income, population group (children, pregnant women, parents, childless adults in expansion states), residency, and citizenship
- Current or past involvement in the criminal justice system does not affect an individual's eligibility (although there is a payment exclusion for those who are incarcerated)

# How is Medicaid Financed?

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- Federal and state governments share Medicaid financing responsibilities
- For most services provided to most beneficiaries, the federal government pays between 50 and about 73%
  - This is called the Federal Medical Assistance Percentage, or FMAP
- The FMAP in most states for services provided to the expansion population (childless adults and higher income parents up to 138% FPL) is 100% through 2016, and never less than 90%
- The federal government pays at least 1/2 of allowable administrative costs

# Eligibility for the Criminal Justice Population

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- The Medicaid expansion with enhanced FMAP means improved opportunities to use Medicaid to help meet the needs of the CJ population
- Justice system involvement has no bearing on Medicaid eligibility or enrollment
- However, an exclusion applies to “payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution.)”

# Medicaid and Incarcerated Beneficiaries

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- The “inmate exclusion” prohibits federal Medicaid payments for care provided to any individual involuntarily confined in state or federal prisons, jails, detention facilities, or other penal facilities
  - As a result, states may not use federal Medicaid funds to pay for care provided to incarcerated individuals in most circumstances
- But Medicaid can pay for services when the incarcerated individual is a “patient in a medical institution”
  - When they’ve been admitted as an inpatient in a community-based hospital, nursing facility, juvenile psychiatric facility, or intermediate care facility for at least 24 hours
  - All medically necessary Medicaid covered services provided to that individual while admitted can be billed to Medicaid

# Using Medicaid to Pay for Inpatient Care

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- Most states terminate Medicaid when someone becomes incarcerated but a number of states have recognized the huge potential for cost savings
  - North Carolina saved \$10 million in the first year (2011)
  - California saved about \$31 million in FY 2013
  - New York estimated in 2012 that it could save \$20 million annually if the state billed Medicaid for eligible inpatient care
- The enhanced federal Medicaid share in expansion states presents an even greater opportunity

# Using Medicaid to Pay for Inpatient Care

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# Using Medicaid to Pay for Inpatient Care

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- Medicaid can be suspended during incarceration
  - Although federal rules prohibit payment for services for incarcerated individuals, this has no effect on eligibility or enrollment
- The federal government (CMS) has encouraged states to suspend not terminate Medicaid
- There is no federal prohibition against screening for eligibility during incarceration
  - HHS has also clarified “corrections department employees...are not precluded from serving as an authorized representative of incarcerated individuals for purposes of submitting a (Medicaid) application on such an individual’s behalf.”
- Enrollment can and should happen at all stages of justice system involvement

# Enrolling Eligible Individuals into Medicaid

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- **New York State is starting to enroll every eligible person in prison into Medicaid**
  - Coverage is suspended until it can be reinstated at discharge or when the beneficiary becomes a patient in a community-based medical institution
  - Eliminates the need for the individual to apply or reapply for Medicaid when they're released, ensuring continuity of coverage
  - In 2013, about 11,000 individuals had suspended status

# Medicaid Coverage: Enormous Opportunities for Criminal Justice

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- Opportunity to enroll millions of Americans in the criminal justice system into health coverage, thereby improving health and providing a huge infusion of federal funding to pay for care, reduce crime, and improve public safety
- Federal rules allow any eligible individual, including those who are incarcerated, to enroll in Medicaid coverage, and states that design systems to facilitate enrollment and retention can maximize health coverage and cost-savings

# Medicaid Coverage: Enormous Opportunities for Criminal Justice

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- Medicaid can be used to finance care provided to eligible incarcerated individuals in community-based settings if individual is admitted as inpatient for at least 24 hours
- Enhanced FMAP means that the federal government will pay for all or almost all of the Medicaid costs for care provided to most justice-involved beneficiaries
- Medicaid enrollment and other administrative activities may qualify for at least 50% federal funding

# Medicaid Coverage: Enormous Opportunities for Criminal Justice

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- States have the opportunity to provide comprehensive benefits, including MH/SUD benefits
  - Huge need for access to mental health and substance use disorder services
  - Recent improvements through the federal parity law (MHPAEA) and the Affordable Care Act, which requires coverage of MH and SUD services at parity with other medical and surgical benefits
  - Critical importance of coverage continuity as individuals transition from incarceration back to the community

# Potential steps to take: information-gathering and planning

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- **Determine your state's policies and practices related to Medicaid status for incarcerated people**
  - Specific state law and/or policy on Medicaid suspension or termination for incarcerated people?
  - Specific policies and practices to enroll justice-involved individuals?
  - Process for certifying agencies for enrollment activities? (state-based)
- **Understand the landscape of decision-makers and serve as a resource**
  - Critical need for health and criminal justice stakeholders to work together
  - Role for the State Medicaid agency, the State health insurance exchange board and community care providers with corrections and other justice decision-makers and stakeholders

# Potential steps to take: education and collaboration

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- **Educate your colleagues about the community inpatient care exception to bill federal Medicaid**
  - Inform state decision-makers about the requirements of the law
  - Discuss how other states have set up their systems and have achieved significant savings
- **Incorporate eligibility screenings and enrollment into your system**
  - Support enrollment at various points of contact; incorporate the application process into existing intake and screening processes
  - Time the application process to coincide with transition planning
  - Ensure that work to update and coordinate technology systems include corrections and other criminal justice decision-makers

# LAC's Field-Initiated Project with the Bureau of Justice Assistance

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**AIP**  
Advocates for  
Human Potential, Inc.



**TASC**  
Treatment Alternatives for Safe Communities

# Helping the Criminal Justice Field to Maximize the Opportunities of the ACA

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- **Determining the technical assistance needs and supporting a number of BJA's grantees**
  - Review of the existing landscape
  - Creating additional educational materials and practical tools to support enrollment and linkage to care and broadly disseminating them
  - Providing assistance through TA calls, webinars, trainings, and workshops
  - Compiling and disseminating concrete examples of successful practices and policies as well as barriers to implementation and ways of overcoming these barriers.

AN INTRODUCTION TO MEDICAID ELIGIBILITY  
and  
THE APPLICATION PROCESS

The North Carolina Department of Public Safety, Division  
of Adult and Juvenile Facilities  
and  
The North Carolina Department of Health and Human  
Services, Division of Medical Assistance

# Federal Law

- \* 1905(a)(A) of the Social Security Act prohibits federal matching funds (FFP) for medical care or services for inmates in a public institution.
- \* 42 CFR 435.1009 and .1010 provide an exception to the definition of “inmate of a public institution” for individuals admitted to a hospital or nursing facility with the expectation that the individual will remain there for at least 24 hours.

# Centers for Medicare and Medicaid Services (CMS) Guidance

- \* CMS has made it clear that FFP is available for any eligible inmate who becomes an inpatient of a nursing facility or a hospital.

# 2010 Performance Audit

- \* The NC State Auditor conducted field work from March to June 2010 to review inmate medical cost containment.
- \* Deficiencies noted in system of internal controls
- \* Recommendations:
  - \* Provide payment based on the following:
    - \* Negotiated contracts
    - \* Medicare or Medicaid rates
    - \* Rates paid under the other programs for indigent care
    - \* Discounted insurance provider rates
- \* It was estimated that the Department could save 11.5 million dollars per year if Medicaid were pursued for inmate inpatient hospitalizations.

# Billing/Reimbursement

- Federal Financial Participation
  - 70%
- State Match\*
  - 30%
- \*North Carolina Department of Public Safety pays the Division of Medical Assistance (DMA) on a quarterly basis.

# North Carolina State Law

- \* 2010 Budget Bill: Session Law 2010-21, Senate Bill 897, Section 19.6 (c)
- \* Effective July 1, 2010

# Section 19.6 (c)

- \* The Department of Correction shall consult with the Division of Medical Assistance in the Department of Health and Human Services to develop protocols for prisoners who would be eligible for Medicaid if they were not incarcerated to access Medicaid while in custody or under extended limits of confinement.

# Section 19.6 (c) (Cont.)

- \* The Department shall seek reimbursement from Medicaid for those health care costs incurred by the Department in those instances when an inmate's Medicaid eligibility has been temporarily reinstated due to hospitalization. The Department of Correction shall also work with the Division of Medical assistance to determine the feasibility of applying for a Medicaid waiver to cover the inmate population.

# Memorandum of Understanding (MOU)

- \* Prior to the formal operationalization of this program, the Secretaries of the Department of Correction and the Department of Health and Human Services will enter into a mutually beneficial comprehensive, cooperative, collaborative memorandum specifying the individual duties and responsibilities of each department in order to satisfy the Special Provisions in Section 19.6 (c) of the 2010 Budget Bill.

# MOU (cont.)

- \* Defines the agencies working relationship
- \* Specifies statutory Regulations
- \* Clarifies custodial relationship of Division of Prisons with inmates (NC GS 148)
- \* Defines sharing of information between agencies
- \* Stipulates protection of privileged information

# DMA/DOP Partnership

- \* Department of Medical Assistance (DMA) and the Division of Prisons (DOP) developed a strong working relationship which was key to implementing this program.
- \* DOP hosted several meetings which included individuals involved in prison health care, Medicaid policy, and HIPAA compliance as well as IT personnel from both Divisions.

# Potentially Medicaid Eligible Population in the Division of Prisons

- Inmates who are 65 years or older
- Inmates who are under 21
- Inmates who are determined to be Disabled
- Female inmates who are Pregnant

# ADDITIONAL ELIGIBILITY REQUIREMENTS

- \* Be a U.S. citizen or provide proof of eligible immigration status. Individuals only applying for emergency services are not required to provide documentation of immigration status.
- \* Live in North Carolina, and provide proof of residency.
- \* Have a Social Security number or have applied for one.
- \* Inpatient Hospitalization in a Non-Division Facility

# Screening Process for Eligibility

- \* Past History of Medicaid Eligibility is reviewed during initial Inmate Processing
- \* Daily data sharing with NC DHHS
- \* Daily review of inpatient hospitalization data via Utilization Review information to determine possible eligibility

# Data Sharing

- \* DOP sends a daily file to DMA containing names, DOB and SSN of the newly incarcerated and newly released.
- \* DMA matches these names against current Medicaid enrollment.
- \* A data file of matches is sent back to DOP.

# Auto Suspension

- \* DMA automatically suspends the Medicaid eligibility of the newly incarcerated beginning the first day of the following month.
- \* Suspension prevents all but inpatient claims from being paid.
- \* Suspension is accomplished by changing the living arrangement code in the eligibility system.

# Eligibility Review

- \* Identifiers for the newly incarcerated and newly released are placed in a report broken out by county and caseworker number and sent electronically to the counties.
- \* The counties determine if the newly incarcerated remain eligible – CHIP, Refugee Assistance, Non-Qualified Aliens, Caregivers and Medicare Savings Program (not fully dual) are not eligible.
- \* If no longer eligible in any program, the county sends adequate notice and then terminates the individual.
- \* The newly released have their suspension lifted if still eligible.

# MEDICAID APPLICATIONS

- \* Medicaid applications for inmates potentially eligible are completed utilizing Division of Medical Assistance guidelines as outlined in the NC Medicaid Manual.
- \* DOP sends Medicaid applications and signed authorizations to the county DSS in the county where the inmate last resided.
- \* DOP social workers are trained to prescreen so that applications are not made for inmates who clearly do not fit an eligibility category.

# Medicaid Applications (cont.)

- \* If an inmate refuses to participate or withdraws the request for application at the time the application is being completed, DOP may complete the application process as the responsible representative of that inmate via prior agreement with the NCDHHS.
- \* DOP sends 1 year of medical records and supporting documentation along with the application for Medicaid for the Disabled.
- \* Applications are made retroactively following an inpatient hospitalization.

# HIPAA

- \* Due to DOP's custodial relationship with inmates, there is no HIPAA impediment to sharing PHI with DOP.

# End of Suspension

- \* When the daily file from DOP indicates that an inmate has been released, DMA automatically reinstates Medicaid benefits.
- \* Full Medicaid coverage is effective the first day of the month of the release date.

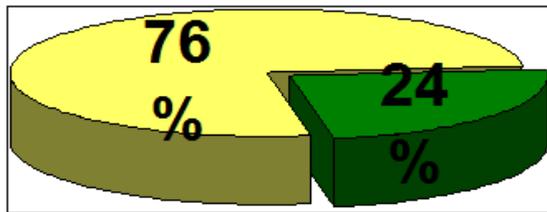
# DPS Medicaid Program Statistics

- \* Project Implementation Date 02/01/2011
- \* Additional Staff (4)
- \* At the end of the first year of operations (01/31/2012) there were 550 Unique Eligible Hospitalizations
  - A follow up Audit Report issued in May 2012
    - North Carolina saved approximately \$10.8 million
    - Program was successful; average estimated savings per hospitalization were \$18,181,81.
  - From February 2011 – November 30, 2013 it is estimated that North Carolina Department of Public Safety has realized \$34.6 million savings with 1,908 eligible hospitalizations.

# DPS Medicaid Program Statistics (cont.)

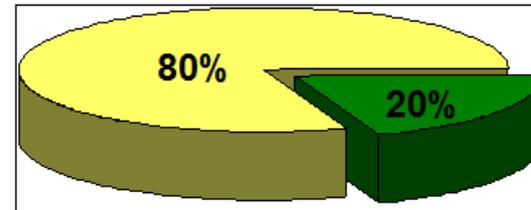
**Fiscal Year 2011-2012**

Eligible Ineligible



**Fiscal Year 2012-2013**

Eligible Ineligible

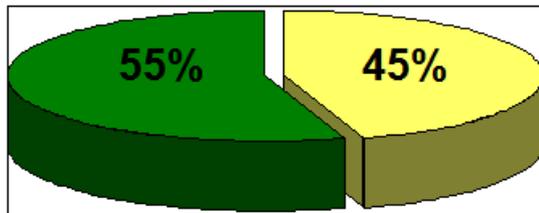


80% of all applications submitted are approved for Medicaid Eligibility

# DPS Medicaid Program Statistics (cont.)

**Fiscal Year 2011-2012**

■ Eligible ■ Ineligible



**Fiscal Year 2012-2013**

■ Eligible ■ Ineligible



- 51% of all inpatient hospital stays are approved for Medicaid Eligibility

# DPS Medicaid Program Statistics (cont.)

- As of May 31, 2014 there were 2228 unique Medicaid Eligible hospital stays
- Current cost savings per month as compared to prior Non Medicaid costs has been estimated to equal approximately 1.3 million dollars

# Questions???

# Presented By:

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Deputy Director - Health Services  
NC Department of Public Safety

William Appel  
Project Director  
NC DHHS, Division of Medical Assistance

Larry Huggins LCSW  
Social Work Director – Medicaid Program Supervisor  
NC Department of Public Safety

# Moderated Q&A Session

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**A Ten-Step Guide to Transforming Probation Departments to Reduce Recidivism**

This guide draws extensively on the experience of a multi-year effort in Travis County, Texas, to reduce recidivism among probationers.

The graphic features a vertical stack of numbers 10, 9, 8, 7, 6, 5 in various colors, with the title 'A TEN-STEP GUIDE to Transforming Probation Departments to Reduce Recidivism' and navigation arrows.

## RECENT POSTS

- New Mental Health Court Standards Training in Georgia
- Behavioral Health Conference's New "Criminal Justice Track" Emphasizes Collaboration with the Criminal Justice System to Improve Outcomes

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