

# **FEDERAL POLICY IMPACTS ON COUNTY JAIL INMATE HEALTHCARE & RECIDIVISM**

How Flawed Federal Policy is Driving Higher Recidivism Rates

MARCH 2019



## **EXECUTIVE SUMMARY: CALL FOR CONGRESSIONAL ACTION**

Amend Section 1905(a)(A) of the Social Security Act to allow the continuation of federal benefits, such as Medicaid, Medicare and Children's Health Insurance Plan, for those enrolled and eligible individuals who are pending disposition in local jails, especially those individuals suffering from mental health, substance abuse and/or other chronic health illnesses.

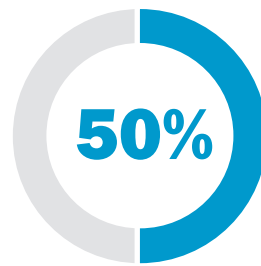
# KEY TALKING POINTS:

Known as the Medicaid Inmate Exclusion Policy (MIEP), this current federal policy provision:

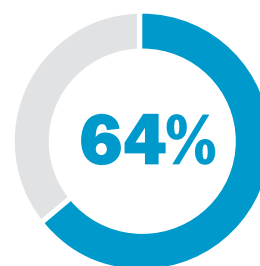
- 1. Denies federal benefits to individuals who are pending disposition and still presumed innocent** under the Due Process and Equal Protection clauses of the 5th and 14th Amendments of the U.S. Constitution, respectively
- 2. Creates a double standard** since other individuals pending disposition who are released back into the community remain eligible for federal benefits such as Medicaid, Medicare, CHIP and VA benefits
- 3. Results in higher rates of recidivism, treatment disruptions, health care costs and overall poorer outcomes** for individuals suffering from mental health, substance abuse and/or chronic health illnesses
- 4. Shifts the full cost of health care services for pretrial, incarcerated individuals to local taxpayers,** rather than the traditional federal-state-local government partnership for safety-net services

Across America, the double standard of the Federal Medicaid Jail Inmate Exclusion is putting undue hardships on our county judicial, law enforcement, public safety and human services systems. It results in poorer health outcomes and quality of life for our residents. It drives the over-incarceration of those suffering from mental health and substance abuse, as our county jails are now among the largest behavioral health facilities in the nation. It also puts an undue financial burden on local taxpayers to provide the full cost of health treatment services that would normally be shared among federal, state and local governmental partners.

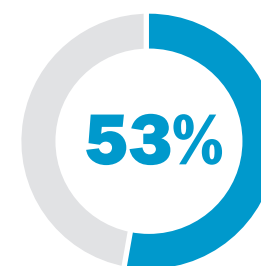
## BREAKING DOWN HEALTH NEEDS IN LOCAL JAILS



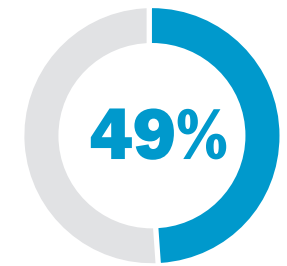
with serious chronic health condition



with major mental health illness



with drug dependency or abuse



with co-existing mental health and substance abuse conditions

# UNDERSTANDING THE LOCAL JAIL LANDSCAPE

- The **Social Security Act, Sec. 1905(a)(A)** prohibits the use of federal funds and services, such as **Child Health Insurance Program (CHIP), Medicare and Medicaid**, for medical care provided to “inmates of a public institution”. While this language was intended to prevent state governments from shifting the health care costs of convicted prison inmates to federal health and disability programs, it has an unintended impact of local jail inmates who are in a pretrial status and pending disposition
- County governments **operate 2,875 of our nation’s 3,160 local jails**, serving as the front door to our criminal justice system. Historically, jails were designed for short-term stays mainly for those pending disposition or sentencing, as well as for those convicted of lower level crimes such as misdemeanors
- Nationally, **local jails admit nearly 11 million individuals each year**. Today, our local jails are being used increasingly to house those individuals with mental health, substance abuse and/or chronic health conditions, including an estimated:
  - » 50 percent with a serious chronic health condition
  - » 64 percent with a major mental health illness
  - » 53 percent with drug dependency or abuse, and
  - » 49 percent with co-existing mental health and substance abuse conditions.
- For inmates with serious behavioral and public health conditions, the current federal policy of terminating or suspending the federal healthcare coverage for these individuals results in **poorer health outcomes**, ultimately driving up recidivism (re-arrest) rates and overall public sector costs
- While many of these individuals would normally be eligible for federal benefits, including health care coverage under Medicaid, Medicare and CHIP, a significant misunderstanding of the difference between *local jails* primarily serving those pending disposition vs. *state prisons* housing convicted individuals has resulted in the loss of federal benefits for millions of Americans

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## KEY DEFINITIONS UNDER THE FEDERAL INMATE EXCLUSION

**Inmate:** an individual of any age in custody; held involuntarily through operation of law enforcement authorities in a public institution

**Public institution:** an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control, including a correctional institution such as a county jail

## UNDERSTANDING THE FEDERAL MEDICAID INMATE EXCLUSION

- Section 1905(a)(A) of the **Social Security Act excludes federal Medicaid funding** (also known as Federal Financial Participation) for medical care provided to “inmates of a public institution”
- Has been in place since Medicaid’s enactment in 1965
- Makes no distinction between:

those who are **detained prior to trial** and have not been convicted of a crime (primarily housed in county jails)

vs.

those whom have been **convicted of committing serious offenses** (primarily housed in state and federal prisons)

## **COUNTIES' REQUEST TO FEDERAL POLICYMAKERS**

**Congress should make allowances for the continual access of all federal benefits (Medicaid, Medicare, Children's Health Insurance Plans, Veteran's benefits) until the adjudication process is complete for those individuals in a pretrial status.**

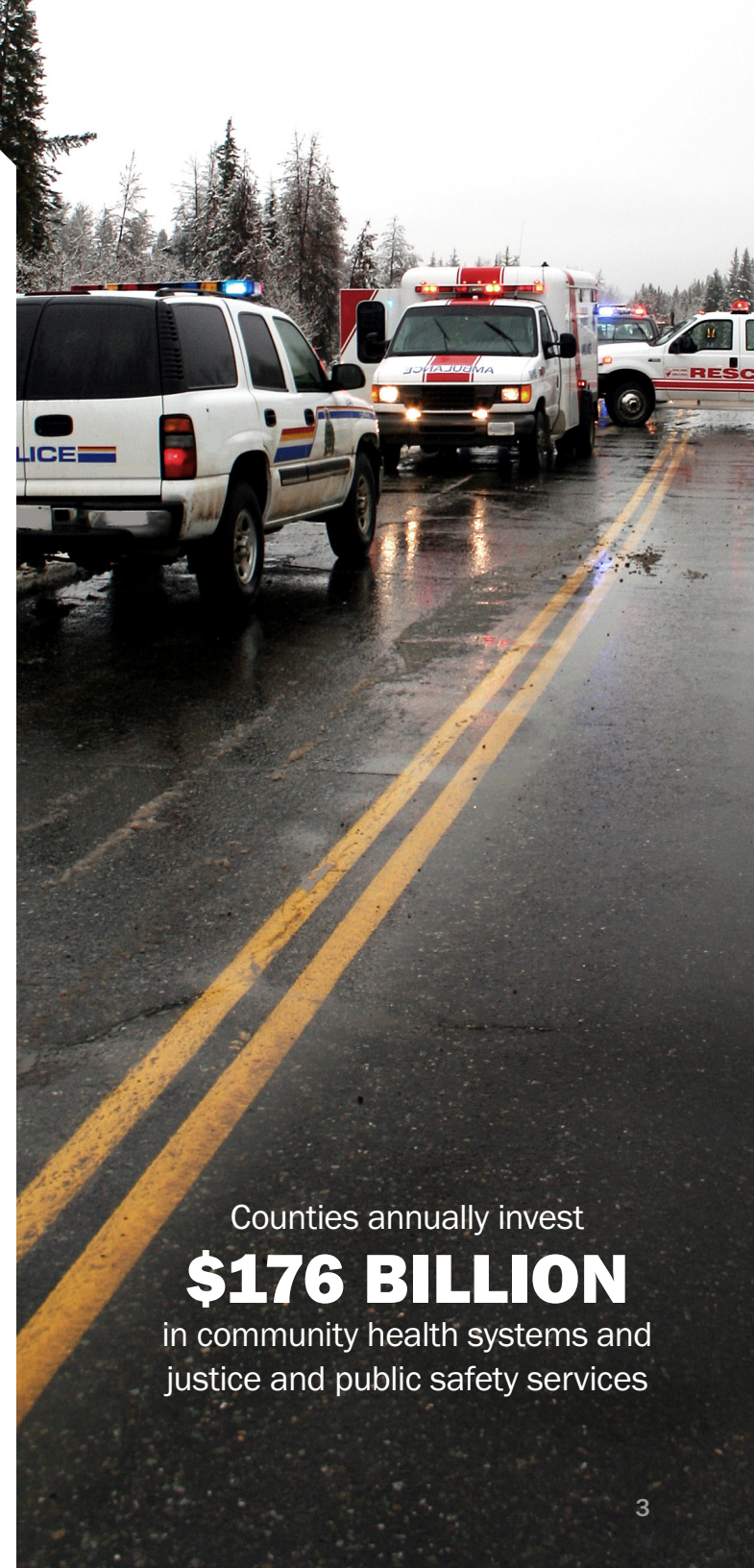




## THE ROLE OF COUNTIES IN PROVIDING HEALTH SERVICES TO JUSTICE-INVOLVED INDIVIDUALS

- America's 3,069 counties annually invest **\$176 billion** in community health systems and justice and public safety services
- Counties are required by federal law to provide adequate health care for the more than **10.6 million** individuals who are admitted into **2,785** county-operated jails every year
- Under the **8th Amendment** of the U.S. Constitution, failure of prison authorities to address the medical needs of an inmate constitutes "cruel and unusual punishment"
- These individuals are **unable to access their federal health benefits\*** from the moment they are booked into jail, even though the majority are **pre-trial and presumed innocent**
  - » Due to what is known as the "federal Medicaid inmate exclusion." This policy denies federal benefits to individuals who are pending disposition and still presumed innocent under the Due Process and Equal Protection clauses outlined under the **5th and 14th Amendments** of the U.S. Constitution, respectively

\*These federal health benefit programs may include medicaid, medicare, CHIP, and VA benefits depending on state statutes



Counties annually invest  
**\$176 BILLION**  
in community health systems and  
justice and public safety services



## WHY COUNTIES WANT TO IMPROVE HEALTH CARE COVERAGE FOR JUSTICE-INVOLVED INDIVIDUALS

- Medicaid, CHIP and VA coverage gaps exacerbate health conditions by creating interruptions in necessary care and treatment
- More than **95 percent** of local jail inmates eventually return to their communities, bringing their health conditions with them
- According to data from the Bureau of Justice Statistics and the National Institutes of Health, individuals in jails suffer from higher rates of mental illness, substance abuse disorders (marijuana, heroin and opiates) and chronic diseases such as cervical cancer and hypertension than the general public
- A study done by the New England Journal of Medicine revealed that individuals released from jails have mortality rates that are **12 times** higher than the general public
- Former inmates have high rates of emergency department utilization and hospitalization

Nearly 500 counties have passed resolutions and prioritized reducing the number of people with mental illnesses in local jails. Learn more at [www.stepuptogether.org](http://www.stepuptogether.org)

## COUNTY JAILS EXPLAINED

- Counties serve as the entry point into the criminal justice system
- 65% percent of local jail inmates are in **pretrial status and low risk**
- Most individuals are simply being held awaiting resolution of their case

The average length of stay  
in jail is

**25 DAYS**



In 2016, local jails admitted  
**10.6 MILLION  
PEOPLE**



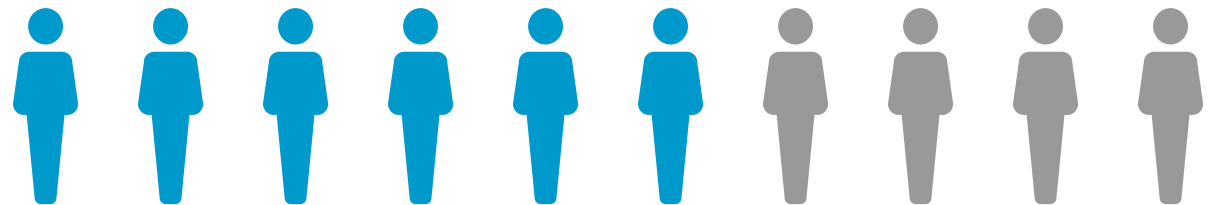
**LOCAL JAILS ANNUALLY ADMIT 18 TIMES MORE INDIVIDUALS THAN STATE OR FEDERAL PRISONS**

**MORE THAN 6 IN 10 INMATES ARE PRESUMED INNOCENT**

They haven't been convicted of a crime but are in jail awaiting action on a charge or simply too poor to post bail

## PROFILE OF POPULATION IN JAILS

- **Typically non-violent**
  - » 75 percent of both pretrial and sentenced individuals are in jail for nonviolent traffic, property, drug or public order offenses
- **Disproportionately people of color**
  - » While blacks and Latinos are 30 percent of the general population, they are 50 percent of the total jail population
- **Sicker than the general population**
  - » 64 percent have a mental illness
  - » 68 percent have a history of substance abuse
  - » 40 percent have a chronic health condition, of which 40 percent use a prescription medication



Source: *Jails & Health: The Critical Link Between Health Care and Jails*; *Mass Incarceration: The Whole Pie 2018*; Bureau of Justice Statistics: *Indicators of Mental Health Problems Reported by Prisoners and Jails Inmates*; Bureau of Justice Statistics, *Health Affairs & Prisonpolicy.org*

## JAILS

## JAILS VS. PRISONS

## PRISONS

LOCAL GOVERNMENTS, MAINLY COUNTIES

**OPERATOR**

STATES OR THE FEDERAL GOVERNMENT

3,163

**NUMBER OF FACILITIES**

1,821

10.6 MILLION

**NUMBER OF ADMISSIONS (2016)**

602,000

UNCONVICTED AND CONVICTED

**LEGAL STATUS**

CONVICTED

MISDEMEANOR

**CONVICTION TYPE OF SENTENCED POPULATION**

FELONY

364 DAYS

**MAXIMUM SENTENCE LENGTH**

LIFE

25 DAYS

**AVERAGE LENGTH OF STAY  
IN GENERAL**

37.5 MONTHS

## MEDICAID VS. MEDICARE

The Medicaid and Medicare programs differ in how they are financed and the services provided to individuals. Although Medicare is administered solely by the federal government, Medicaid is financed and delivered by both the federal government and states, often with county assistance. In addition, Medicare does not have income requirements, whereas Medicaid does.

## MEDICAID 101

Established in 1965, Medicaid is a federal entitlement program paid for by taxpayers that provides health and long-term care insurance to low-income families and individuals. Medicaid operates and is jointly financed as a partnership between federal, state and local governments. States administer the program, often with assistance from counties, with oversight by the federal government. **Medicaid covers approximately 73 million individuals.**



For more information on Medicaid, see NACo's report, "Medicaid and Counties"

# MEDICAID OPERATES AS A JOINT FEDERAL-STATE-LOCAL PARTNERSHIP

Counties are an integral part of the federal-state-local-partnership in the Medicaid program

The **federal government sets broad guidelines** for Medicaid, including minimum eligibility and benefit requirements

States have **flexibility** within these guidelines and can seek waivers from the federal government to expand eligibility or available benefits

Some states **subcontract Medicaid to private insurers**, while others pay health care providers - including county-operated providers - directly

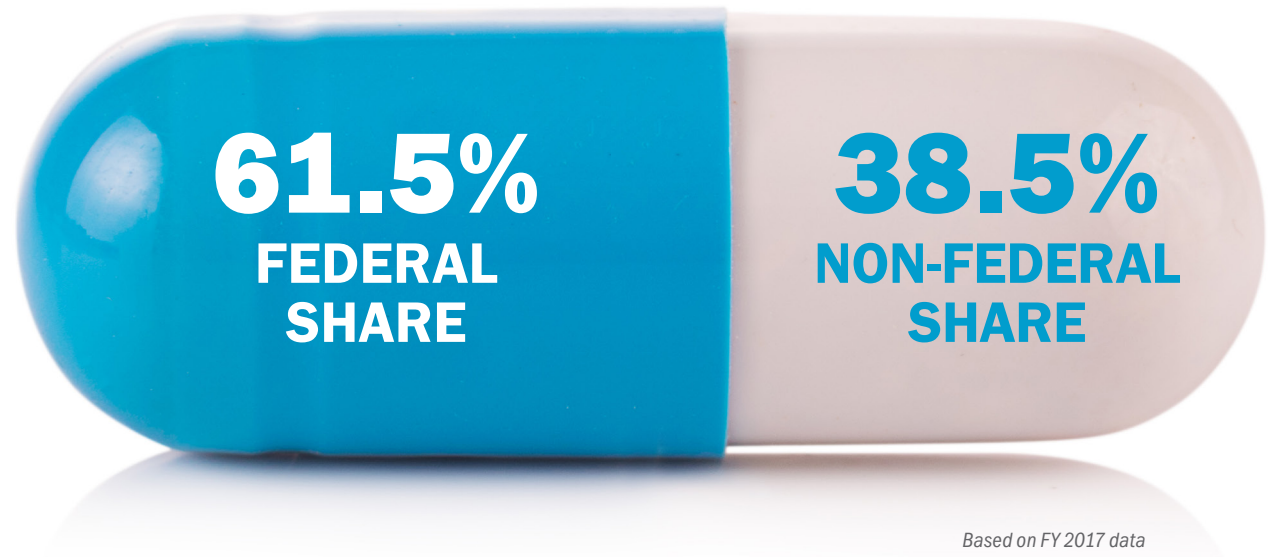
States utilize **different Medicaid delivery systems**, such as traditional fee-for-service systems that reimburse providers for each service provided and managed care systems that involve setting monthly payments

**Counties across the nation deliver Medicaid-eligible services and, in many instances, help states finance and administer the program**

## **MEDICAID IS JOINTLY FINANCED BY FEDERAL, STATE AND LOCAL GOVERNMENTS**

- The federal contribution for each state varies based on the Federal Medical Assistance Percentage (FMAP) rate
- States have various options for financing the non-federal share
  - » Counties may contribute up to 60% of the non-federal share in each state
  - » \$28 billion is contributed by local governments to the non-federal share of Medicaid

**THE MAXIMUM AMOUNT CONTRIBUTED BY EACH STATE IS 50%; POORER STATES CONTRIBUTE AS LITTLE AS 26%. THE FEDERAL SHARE OF MEDICAID IN FY 2017 WAS 61.5%, WHILE THE STATE SHARE WAS 38.5%**



*Based on FY 2017 data  
Source: The Henry J. Kaiser Family Foundation*



Counties also serve as health providers and deliver Medicaid-eligible services through:

**961**

county-supported hospitals



**824**

county-owned and supported long-term care facilities



**750**

county behavioral health authorities



**1,943**

county public health departments

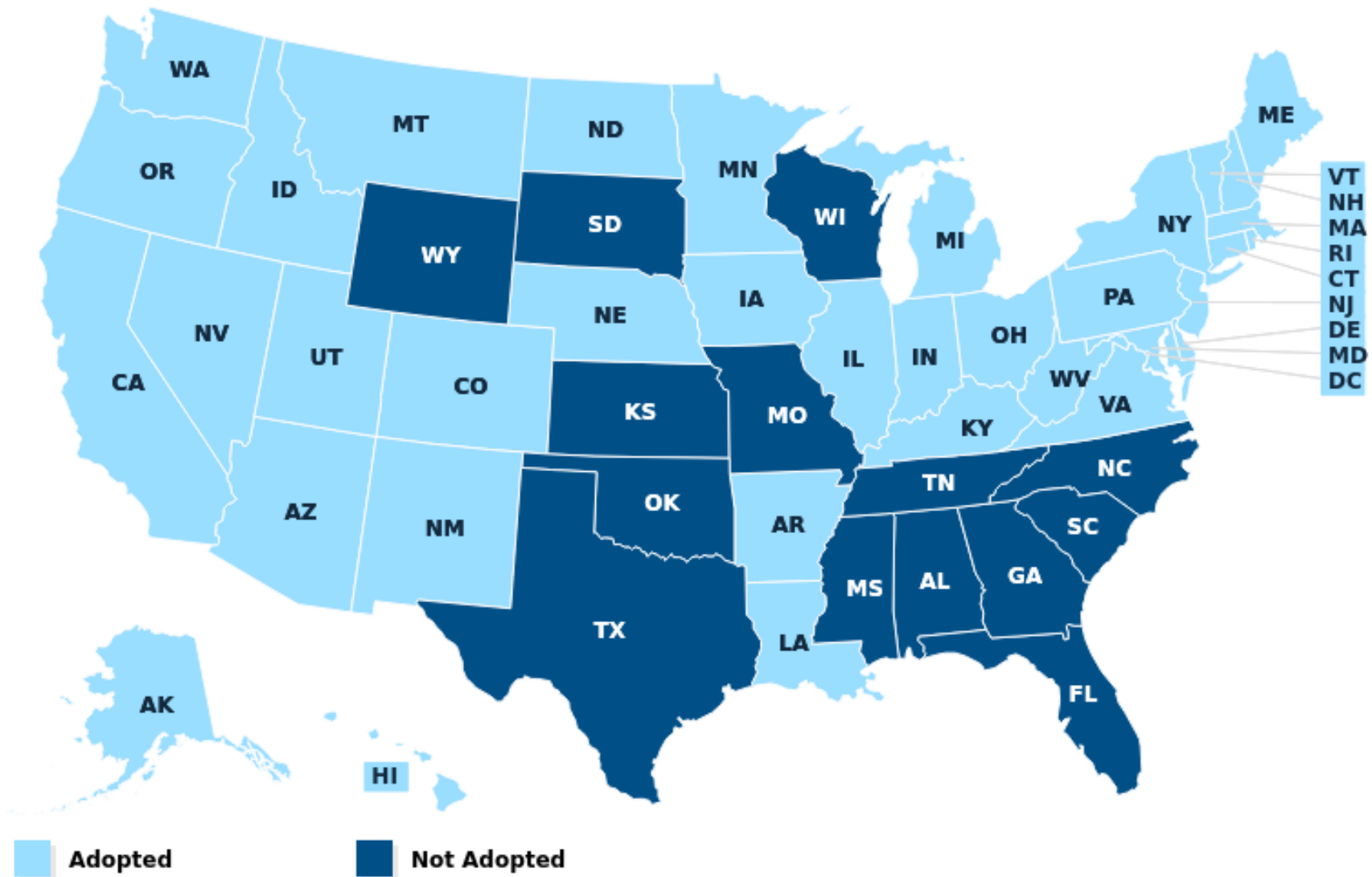


## PROFILE OF POPULATION ON MEDICAID

- Traditionally, Medicaid has served 3 categories of low-income people:
  - » Families, children and pregnant mothers
  - » The elderly
  - » The disabled
- The Affordable Care Act (2010) allowed states the option to expand Medicaid coverage to low-income adults without children
  - » This is the very population that disproportionately makes up the jail population (male, minority, and poor)
- Therefore, in states expanding Medicaid, the number of justice-involved individuals who are eligible for Medicaid has increased



# STATUS OF STATE ACTION ON THE MEDICAID EXPANSION DECISION: CURRENT STATUS OF MEDICAID EXPANSION DECISION, AS OF FEBRUARY 13, 2019



SOURCE: Kaiser Family Foundation's State Health Facts.

## SUSPENSION VS. TERMINATION OF MEDICAID

- In order to avoid violating the statutory inmate exclusion, **states have typically terminated Medicaid** enrollment when an inmate is booked into jail
- When this occurs, **it can take months for an individual to be reapproved** for Medicaid upon release
- This interrupts access to needed medical, mental health and addiction treatment when an inmate reenters the community
- The **coverage gap caused by terminating Medicaid coverage can lead to re-arrests and increased recidivism**
- To address these issues, the U.S. Department of Health and Human Services (HHS) has issued guidance strongly recommending that states suspend, instead of terminate, Medicaid while individuals are in jail

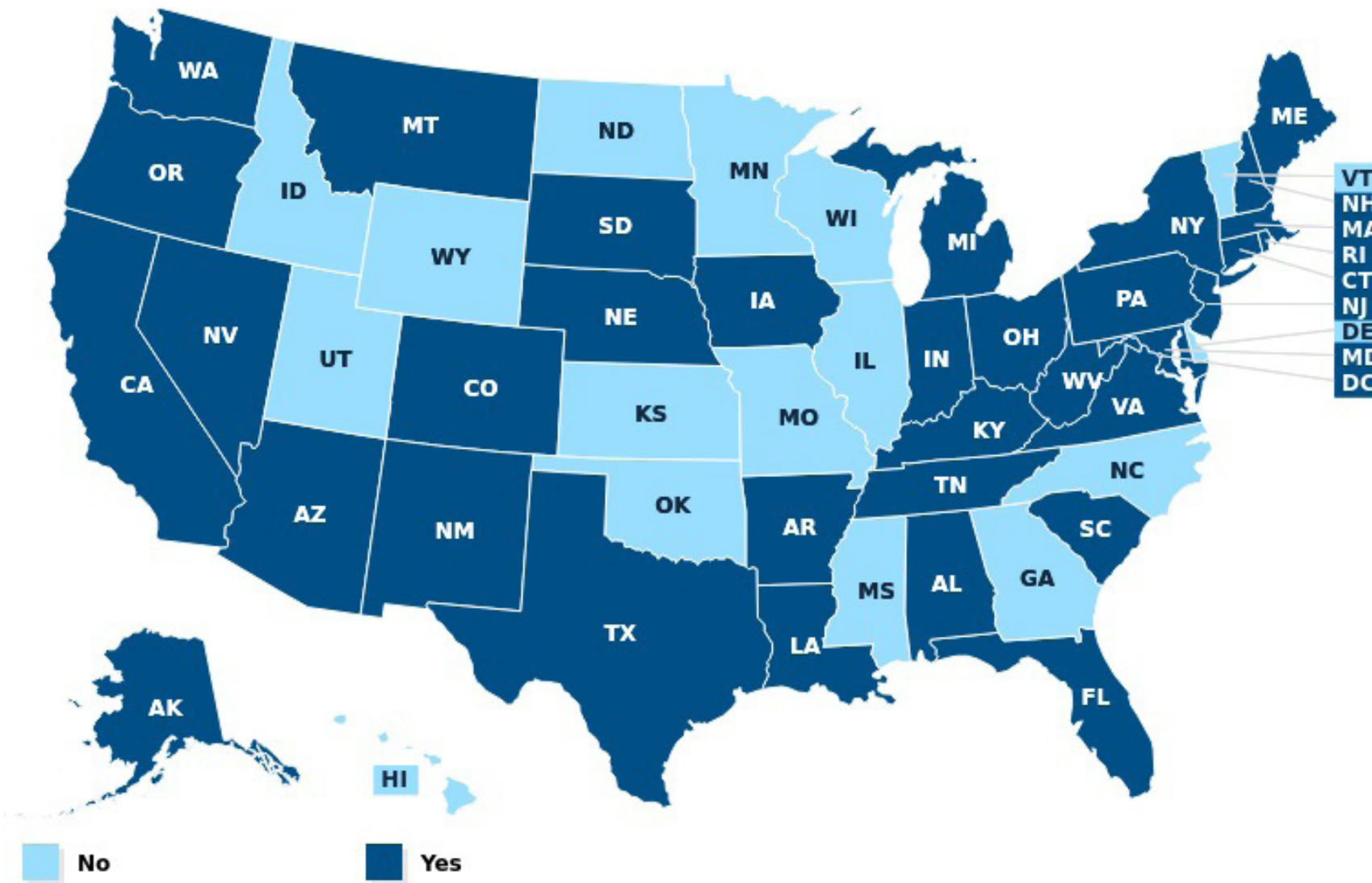
## HEALTH COVERAGE & COUNTY JAILS:

SUSPENSION *vs.*  
TERMINATION

Inmates who receive treatment for behavioral health disorders after release spend fewer days in jail per year than those who do not receive treatments

To learn more go to [www.naco.org/MedicaidSuspension](http://www.naco.org/MedicaidSuspension)

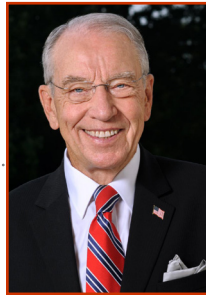
# STATES REPORTING CORRECTIONS-RELATED MEDICAID ENROLLMENT POLICIES IN PLACE FOR PRISONS OR JAILS: MEDICAID ELIGIBILITY SUSPENDED



SOURCE: Kaiser Family Foundation's State Health Facts.

# A LOOK AT CONGRESS: KEY PLAYERS AND COMMITTEES OF JURISDICTION

## SENATE FINANCE COMMITTEE

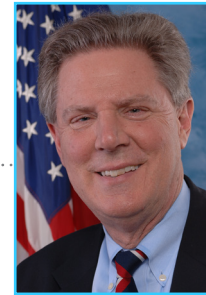


**Chuck Grassley**  
(R-Iowa)  
Chairman



**Ron Wyden**  
(D-Ore.)  
Ranking Member

## HOUSE ENERGY AND COMMERCE COMMITTEE



**Frank Pallone**  
(D-N.J.)  
Chairman



**Greg Walden**  
(R-Ore.)  
Ranking Member

## SUBCOMMITTEE ON HEALTH CARE



**Patrick Toomey**  
(R-Pa.)  
Chairman



**Debbie Stabenow**  
(D-Mich.)  
Ranking Member

## HEALTH SUBCOMMITTEE



**Anna Eshoo**  
(D-Calif.)  
Chairwoman



**Michael C. Burgess**  
(R-Texas)  
Ranking Member

## LEGISLATIVE ACTIVITY

- H.R. 1925/S. 874, the *At-Risk Youth Medicaid Protection Act*, (in italics please starting and ending, “At... Act”!) sponsored by Reps. Tony Cardenas (D-Calif.) and Morgan Griffith (R-Va.) passed as part of a comprehensive opioid package, the *SUPPORT for Patients and Communities Act (P.L. 115-271)* and **requires states to suspend, instead of terminate, Medicaid benefits for juvenile inmates**
- H.R. 165, “Restoring the Partnership for County Health Care Costs Act of 2017,” sponsored by Rep. Alcee Hastings (D-Fla.), **would remove limitations on Medicaid and other federal benefits to pretrial inmates**
- Similar to the *At-Risk Youth Medicaid Protection Act*, the *Medicaid Reentry Act of 2017* passed as part of the comprehensive opioid legislation, and directs the U.S. Department of Health and Human Services (HHS) to issue best practices around providing health care for justice-involved individuals returning to their communities from county correctional facilities. The original legislation, which **would restore Medicaid benefits for individuals 30 days prior to their release**, was reintroduced in February 2019
- H.R. 982, “The Reforming and Expanding Access to Treatment Act of 2017,” also known as the TREAT Act, sponsored by Rep. Mike Turner (R-Ohio), **would remove limitations for substance abuse services specifically**
- H.R. 7079, the Corrections Public Health and Community Re-entry Act of 2018, sponsored by Rep. Ann Kuster (D-N.H.), would provide grants to state and local governments seeking to expand medication-assisted treatment (MAT) for justice-involved individuals with opioid use disorders

## ADMINISTRATIVE ADVOCACY

NACo, along with the National Sheriffs' Association and the National Association of County Behavioral Health and Developmental Disability Directors, is urging U.S. Department of Health and Human Services to use its waiver authority under the Medicaid statute to allow Medicaid reimbursement for certain services or inmates in county jails, such as:

- Identifying patients in county jails who are receiving community-based care and then maintaining their treatment protocols
- Developing treatment and continuity of care plans for released or diverted individuals
- Initiating medication-assisted therapy or other forms of medically necessary and appropriate intervention for jailed individuals with opiate addiction whose release is anticipated within 7 to 10 days
- Reimbursing peer counselors to facilitate reentry and increase jailed individuals' health literacy

*NACo was pleased to see new flexibility around the IMD exclusion that expands states' treatment capacity for adults with serious mental illness (SMI) and children with serious emotional disturbance (SED)*





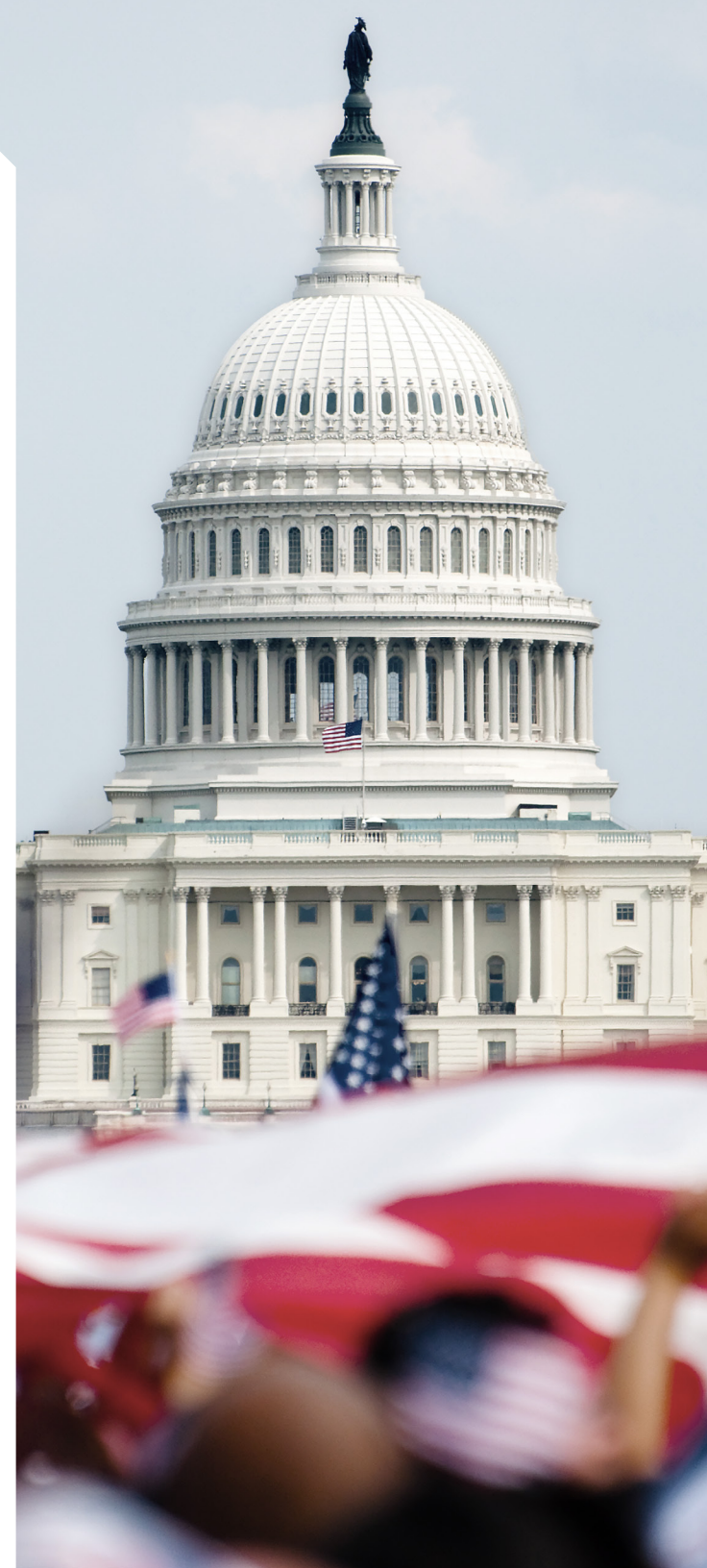


## **KEY MESSAGES FOR ADVOCACY**

- Providing access to federal health benefits for those pending disposition and still presumed innocent is a U.S. constitutional right
- Access to federal health benefits would allow for improved coordination of care while simultaneously decreasing short-term costs to local taxpayers and long-term costs to the federal government
- Access to federal health benefits would help counties break the cycle of recidivism caused or exacerbated by untreated mental illness and/or substance abuse, thereby improving public safety

## TAKE ACTION

- Educate your Members of Congress on the federal Medicaid “Inmate Exclusion” and the role of counties with jails and Medicaid
- Encourage your Representative and Senators to re-introduce and support legislation in the 116th Congress that improves health outcomes for justice-involved individuals





## **NACo STAFF CONTACTS**

**Matt Chase**

Executive Director  
mchase@naco.org

**Deborah Cox**

Deputy Executive Director and  
Director of Government Affairs  
dcox@naco.org  
202.942.4286

**Blaire Bryant**

Associate Legislative Director  
bbryant@naco.org  
202.942.4246

**Lindsey Holman**

Associate Legislative Director  
lholman@naco.org  
202.942.4217

**STRONGER COUNTIES.  
STRONGER AMERICA.**

660 North Capitol St. NW  
Suite 400  
Washington, D.C. 20001  
202.393.6226  
[www.naco.org](http://www.naco.org)



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