THE AFFORDABLE CARE ACT AND ITS EFFECTS ON JUVENILE DEFENSE

Medicaid Overview

Medicaid serves as the nation's primary source of health coverage for the indigent. Each state administers its own Medicaid program, establishes its own eligibility standards, and determines the scope and types of services they will cover (with some new standards created by the ACA). The federal Centers for Medicare and Medicaid Services (CMS) monitors the state-run programs. Medicaid programs are financed jointly between the federal government and states.

Affordable Care Act Overview

The Patient Protection and Affordable Care Act (ACA), enacted in March 2010, aims to improve access to health care in the United States. Some of the most important components of the ACA are new insurance consumer protections, including prohibiting most health plans from imposing lifetime or annual dollar limits on health benefits, denying coverage due to pre-existing conditions, and imposing limits on cost-sharing; providing funding to states to create health insurance exchanges,[1] or mechanisms for people to purchase health insurance; expanding Medicaid eligibility to include most people with very low incomes (but note the U.S. Supreme Court's ruling that allows states to refuse to expand Medicaid without penalty); and creating subsidies to help low-income individuals purchase insurance. Under the ACA, Americans must obtain coverage (through government insurance or exchanges) or they may be penalized.

What Should Defenders Know?

- An estimated 4.2 million uninsured adolescents aged 10-19 will be eligible to gain health care coverage under the Affordable Care Act, beginning Jan. 1, 2014.
- New health insurance exchanges will provide access to coverage and subsidies for families not eligible for Medicaid with incomes up to 400% of federal poverty level (FPL) and who do not have access to employer-sponsored health insurance.
- The individual mandate (the requirement that all Americans maintain health insurance coverage) does not apply to incarcerated individuals or to those who cannot afford it.
- Under the ACA, young people can remain on their parents' health insurance until age 26 and former foster children can receive Medicaid up to age 26.
- The ACA eliminates out-of-pocket costs for adolescents obtaining immunizations, behavioral assessments, obesity screening, FDA-approved contraception and patient education counseling, and STD prevention counseling and screening for sexually active adolescents.[2]
- The ACA requires private insurance plans to cover pediatric services, including dental and vision, to age 19, and mental health and substance use coverage with federal parity requirements beginning on January 1, 2014.
- Federal law prohibits federal Medicaid funding from being used to pay for care or services for inmates of a public institution. Thus, federal Medicaid funding cannot be used to pay for the health needs of youth while they are incarcerated.[3]
- State Medicaid agencies can either suspend or terminate eligibility for juveniles in facilities.
    - It is easier to restore Medicaid benefits where eligibility has been suspended.
    - Many states have processes which allow juveniles in facilities to be immediately enrolled in Medicaid as soon as they return to their communities.

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* This NJDC factsheet was developed by David Shapiro with generous assistance by Sarabeth Zemel of the National Academy for State Health Policy, November 2013.

[1] In some states, exchanges may be called marketplaces, or may go by another state-specific name.

[2] Patient Protection and Affordable Care Act § 2713 [hereinafter ACA]; *What are my Preventive Care Benefits?*, HEALTHCARE.GOV, https://www.healthcare.gov/what-are-my-preventive-care-benefits/#part=3 (last visited Oct. 16, 2013).

[3] 42 U.S.C.A. § 1396d(a)(29)(A); 42 CFR § 435.1009.

- Individuals are eligible for enrollment into health plans through the exchange as long as they are not incarcerated, other than pending disposition of charges. An exchange *may* terminate enrollment when an individual is no longer eligible for coverage, and must allow the health plan to terminate coverage.[4]
- With the establishment of health insurance exchanges, partnerships between Medicaid and juvenile justice agencies could evolve to support enrollment into private health plans.
- Identifying youth eligible for Medicaid is an important first step towards enrollment, but only 12 of 28 juvenile justice agencies surveyed reported they screen or identify youth at intake for Medicaid purposes.[5]

What Should Defenders or Defender Associations Do?

- Meet with the administrators of your local juvenile facilities to discuss the new Medicaid eligibility and enrollment provisions, and identify feasible actions that will better connect your clients to health services upon release.
    - Develop relationships with correctional programs to ensure Medicaid enrollment is a priority of both re-entry case managers and parole and probation officers.
- In keeping with prior CMS guidance to states, illustrate to your state policymakers the benefits of suspending—rather than terminating—Medicaid benefits for your incarcerated clients.[6]
- The term "incarcerated" is not defined in the ACA. The federal government will most likely have to issue an administrative rule to define the term at some point in the future. You should use your or your agency's voice in the notice and comment period of the agency rulemaking, on this subject and others relevant to your work.[7]
- The ACA requires states to develop a "single, streamlined application form" available electronically to determine eligibility of any individual for the state's health insurance exchange and various government-funded health programs for low-income people. Learn about this form and what your clients and their family should know to determine their own eligibility. Each state's exchange website, where individuals can search for and apply for coverage, can be found here: https://www.statereforum.org/state-exchange-websites.
- Make sure your state is conducting outreach to your client population—the ACA requires new and increased efforts to enroll underserved populations in Medicaid and the Children's Health Insurance Program.[8]
- In 2014, exchanges must contract with "Navigators" and other types of assisters whose job it will be to support individuals, including special populations, to provide unbiased, clear information in selecting and enrolling in appropriate coverage. Look into becoming an assister or providing information to your clients to help them obtain health coverage.
- Learn to identify and address disruptions in continuity of care resulting from changes in covered benefits or provider networks which may occur due to transitions from one form of health coverage to another as a family's or individual's income fluctuates.

For more information on the ACA, contact the National Juvenile Defender Center at inquiries@njdc.info or the National Academy for State Health Policy at 202-903-0101 / www.nashp.org.

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[4] 45 CFR 155.430(b)(2).

[5] SARABETH ZEMEL & NEVA KAYE, NATIONAL ACADEMY FOR STATE HEALTH POLICY, MODELS FOR CHANGE, MEDICAID ELIGIBILITY, ENROLLMENT, AND RETENTION POLICIES: FINDINGS FROM A SURVEY OF JUVENILE JUSTICE AND MEDICAID POLICIES AFFECTING CHILDREN IN THE JUVENILE JUSTICE SYSTEM 12 (2009).

[6] Letter from Centers for Medicare & Medicaid Svcs. to State Medicaid Directors (May 25, 2004).

[7] PATRICIA BLAIR ET AL., AM. BAR ASS'N, INCREASING ACCESS TO HEALTH INSURANCE COVERAGE FOR PRE-TRIAL DETAINEES AND INDIVIDUALS TRANSITIONING FROM CORRECTIONAL FACILITIES UNDER THE PATIENT PROTECTION AND AFFORDABLE CARE ACT (Feb. 2011).

[8] ACA § 2201(b)(1)(F).