

2014

## Protecting Public Health from Inside a Jail Cell

Sarah Geduldig

Follow this and additional works at: <http://lawcommons.luc.edu/pilr>



Part of the [Health Law and Policy Commons](#)

---

### Recommended Citation

Sarah Geduldig, *Protecting Public Health from Inside a Jail Cell*, 19 Pub. Interest L. Rptr. 77 (2014).  
Available at: <http://lawcommons.luc.edu/pilr/vol19/iss2/2>

This Feature is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Public Interest Law Reporter by an authorized administrator of LAW eCommons. For more information, please contact [law-library@luc.edu](mailto:law-library@luc.edu).

No. 2 • Spring 2014

*FEATURE ARTICLE*

**PROTECTING PUBLIC  
HEALTH FROM INSIDE A  
JAIL CELL**

*by* SARAH GEDULDIG

The Affordable Care Act (ACA) has provided Cook County Jail with a new tool to combat overcrowding, overspending, and reduce the likelihood of recidivism.<sup>1</sup> The ACA allowed Illinois to opt into Medicaid expansion in order to increase access to health care for low-income individuals.<sup>2</sup> Taking advantage of this, Cook County Jail has started the Medicaid application process for inmates as part of its intake process.<sup>3</sup> Though Medicaid does not cover inmates while they are incarcerated, once released, many will have health coverage for the first time.<sup>4</sup> This coverage has the potential to ease the process of commu-

Loyola Public Interest Law Reporter

nity reentry and improve the health of both former inmates and the community.<sup>5</sup>

#### HEALTH CARE AND THE JAIL POPULATION

Jails see the largest number of people filtering in and out of the criminal justice system.<sup>6</sup> In contrast to prisons, jails generally house people pending trial and those whose sentence requires imprisonment of less than one year.<sup>7</sup> The majority of inmates, two thirds of the inmates, are not confined because they are seen as a threat to the public, but instead because they are unable to post bail.<sup>8</sup>

Cook County is one of the largest single-site jail facilities in the country.<sup>9</sup> The jail has a daily population of around 9,000 inmates and incarcerates roughly 100,000 people annually.<sup>10</sup> The typical inmate at Cook County Jail is a single, 32 year old, African-American male from the Chicago metropolitan area.<sup>11</sup> Cook County provides health care coverage to all of these individuals while they are incarcerated, as required by the United States Constitution.<sup>12</sup>

Under the 8th Amendment's prohibition of cruel and unusual punishment by state actors, the United States Supreme Court has held that inmates must receive adequate health care while they are held in jails.<sup>13</sup> Providing this care can be very expensive and can consume a large part of a jail's budget.<sup>14</sup> Inmate health care expenses are on the rise; 44 states reported increased health care spending in jails and prisons from \$4.3 billion in 2001 to \$6.5 billion in 2008.<sup>15</sup>

With few exceptions, the jail pays the cost of health coverage for a person who is incarcerated, including hospitalization for more than 24 hours.<sup>16</sup> However, when a person is released from jail, there is no guarantee of health care coverage.<sup>17</sup> If an individual had health insurance through Medicaid prior to being incarcerated, they are disqualified from Medicaid while they are incarcerated.<sup>18</sup> Once released, difficulties in reenrolling may cause gaps in the former inmate's coverage lasting several months.<sup>19</sup> This assumes that they will be able to reenroll; however such reenrollment is not certain.<sup>20</sup>

## MEDICAID AND THE EXPANSION UNDER THE ACA

Medicaid is a government-funded health insurance plan covering low-income individuals.<sup>21</sup> Prior to the enactment of the ACA, many inmates, particularly males, did not qualify for Medicaid.<sup>22</sup> Medicaid was only available to those who met a specific set of criteria, generally meaning that the person was a child, mother, pregnant, or an individual with a severe disability.<sup>23</sup> This precluded most low-income males who did not have a qualifying disability.<sup>24</sup>

One of the goals of the ACA was to provide health care coverage to underserved and vulnerable populations.<sup>25</sup> To accomplish this, the ACA set out to encourage the expansion of Medicaid on a state level, by providing financial incentives to those states that chose to opt in.<sup>26</sup> If a state chose to opt into the Medicaid expansion, all individuals whose income falls below 138 percent of the federal poverty level would be eligible for Medicaid coverage.<sup>27</sup> The jail population is primarily composed of individuals who would be eligible under this Medicaid expansion income criterion.<sup>28</sup> This eligibility makes jails a viable point of access enabling the enrollment of a large number of the targeted low-income population.<sup>29</sup>

Medicaid expansion holds the possibility of reducing spending, including jail spending, and helping states meet their budget constraints.<sup>30</sup> Though under the expansion jails will still be required to cover the cost of health coverage for its inmates, having healthier inmates upon entry and release is expected to reduce jail health care costs.<sup>31</sup> In Cook County the Medicaid expansion was implemented through CountyCare; a partnership with the State of Illinois and the Cook County Health & Hospital System.<sup>32</sup>

CountyCare is an Illinois Medicaid program run by Cook County, which allows the newly eligible individuals under the ACA to enroll in Medicaid.<sup>33</sup> Through a Federal Section 1115 Demonstrations waiver, which provides approval for experimental programs that promote the objectives of Medicaid, CountyCare was able to start accepting applications in November of 2012.<sup>34</sup> Recognizing that the jail population contains a high percentage of individuals who would benefit from health care coverage, Cook County Jail, with the help of Treatment Alternatives for Safe Communities (TASC), has established a program where, during the intake process, inmates are assisted in initiating the

\jciprod01\productn\L\LPR19-2\LPR207.txt

unknown

Seq: 4

6-OCT-14

13:04

Loyola Public Interest Law Reporter

CountyCare application.<sup>35</sup> As of early March 2014, over 13,000 applications had been initiated.<sup>36</sup>

#### INMATE HEALTH AND THE COMMUNITY

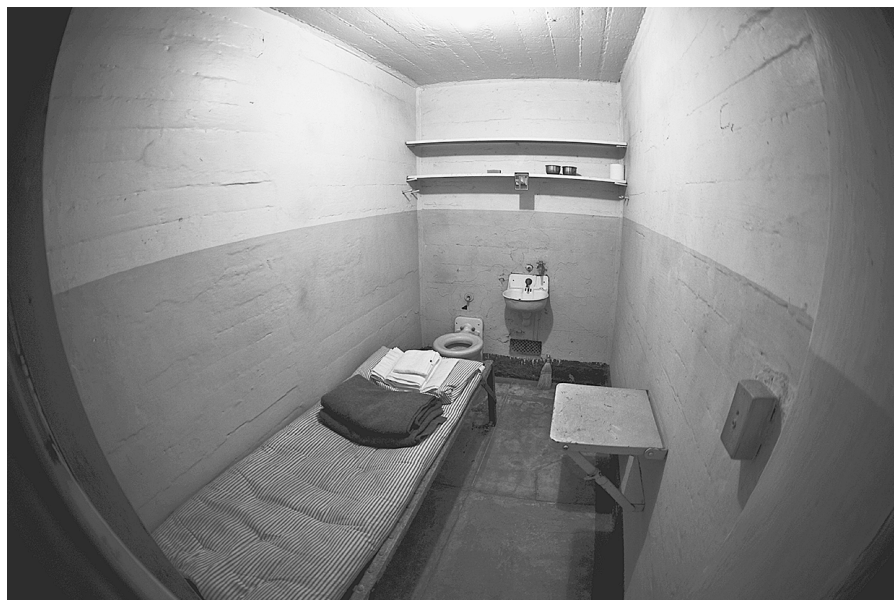
Each year 70,000 ex-offenders return to the community throughout the U.S.<sup>37</sup> These former inmates have a disproportionately high-rate of infectious disease, chronic disease, and mental illness.<sup>38</sup> This problem was historically ignored because it was viewed solely as an issue affecting the rights of the prisoner rather than as an issue of public health and affecting the whole community.<sup>39</sup> Now, through this latter view, many are acknowledging and bringing awareness about how the prevalence of illness can take a huge toll on the community — both through the spread of disease and the impact of illness on those in close contact with the former inmates.<sup>40</sup>

Generally, inmates have poor health, and the health coverage they receive in jail is of low quality.<sup>41</sup> This poor health care results in large populations living in close proximity to each other, with a high possibility of spreading disease.<sup>42</sup> Compounding the problem, 90 percent of inmates are uninsured, and though they may be aware that they have some sort of illness, have never received treatment.<sup>43</sup> The average inmate at Cook County Jail spends 54 days in jail, with the most common length of stay being 12 days.<sup>44</sup> During this time, it is not uncommon for the inmate to contract a contagious disease or other illness affecting their health.<sup>45</sup> The inmate is then released back into the community, where they remain untreated and may spread diseases to friends and family.<sup>46</sup>

The spread of contagious disease is not the only impact reentry has on the community; chronic illness, addiction, and mental illness can also take a toll.<sup>47</sup> These conditions can result in difficulty finding and retaining jobs, cause financial hardship, housing insecurity for both the former inmates and their families and lead to reoffending.<sup>48</sup> Treatment, specifically for substance abuse, can help a former inmate stay away from illegal activity, which they previously were around in order to pay for their habit.<sup>49</sup> Studies have shown that having health coverage upon release is associated with lower rates of rearrests and drug use, which result in a decrease in violence that is often associated with drug use.<sup>50</sup>

Untreated mental illness in particular is an issue that leads to increased recidivism in former inmates.<sup>51</sup> Cook County Jail is particularly affected by mental illness because it is one of the largest providers of mental health services in the U.S.<sup>52</sup> During the course of one day in Cook County Jail, 60 percent of the individuals who completed intake stated they have been diagnosed with a mental illness.<sup>53</sup> Not only is mental illness expensive to treat, but it can also lead to criminal activity and self-management through drug and alcohol use.<sup>54</sup> These offenses may land individuals in jail where, as discussed above for other illnesses and drug addiction, they may receive some treatment, but as soon as they are released, they face few beneficial options.<sup>55</sup> Under the ACA expansion of Medicaid, mental health treatment is covered.<sup>56</sup> Through this expanded enrollment program, more individuals will receive treatment for mental health issues and will be less likely to subsequently commit crimes in the community.<sup>57</sup>

Treating infectious disease and managing addiction, chronic illness, and mental health should decrease the rate that former inmates reoffend.<sup>58</sup> Lowering this rate will likely reduce overcrowding and decrease spending and budget pressures.<sup>59</sup> It should also improve the overall health and well being of the community.<sup>60</sup>



\\jciprod01\productn\L\LPR\19-2\LPR207.txt

unknown

Seq: 6

6-OCT-14

13:04

Loyola Public Interest Law Reporter

## ISSUES IN RECEIVING TREATMENT

Even with increased coverage under CountyCare, there are still several logistical issues that former inmates will face when attempting to receive treatment. First, though enrollment occurs during intake procedures, there are staffing constraints that will limit the number of inmates who are screened.<sup>61</sup> Currently TASC is helping with enrollment in Cook County Jail to ease this problem in Chicago, but other jails may continue to face this problem.<sup>62</sup> Furthermore, when individuals are arrested and incarcerated, they often do not have the required information needed to enroll.<sup>63</sup> Many may not have any identification or other required information, e.g. social security number, causing the application process to be incomplete.<sup>64</sup>

Once enrolled, there is still the problem of accessing prior medical records.<sup>65</sup> In order to properly treat these newly enrolled individuals, their doctors need to be able to access former records to gain knowledge on prior diagnoses, treatment, and other beneficial information they contain.<sup>66</sup> However, many former inmates have scattered records documenting their health histories, visiting different emergency rooms and clinics when serious health issues arise.<sup>67</sup> Even with the increased use of electronic medical records, collecting all past, relevant health records for a patient can be very difficult and the absence of such records could impede further treatment.<sup>68</sup>

Along with lack of continuity in sharing medical records, there may be a shortage in providers. The increase in people seeking treatment may flood the overworked staff in local clinics — resulting in many individuals having coverage and seeking treatment and preventative services with no place to go. There also may be a shortage in physicians that are willing to accept Medicaid, further limiting options for newly enrolled.<sup>69</sup> The degree of this shortage may, in part, depend upon the number of those who are covered that actually seek treatment.<sup>70</sup> The projected increased benefits of health coverage depend on whether these new enrollees actually seek treatment and adhere to their doctor's directions.<sup>71</sup>

## CONCLUSION

The Medicaid expansion under the ACA should lead to greater coverage for populations, particularly former inmates, that otherwise would not have access to health coverage.<sup>72</sup> This population is very representative of individuals filtering through the jail system.<sup>73</sup> The enrollment program for CountyCare has the potential to increase access for hundreds of thousands of people including a large proportion of former inmates, benefitting the health of the whole community while decreasing recidivism.<sup>74</sup>

## NOTES

- 1 Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010).
- 2 *CountyCare*, Cook County Health & Hospital Services, <http://www.cookcountyhhs.org/patient-services/county-care/> (last visited 04/21/2014).
- 3 Mark Niquette, *Jails Enroll Inmates in Obamacare to Pass Hospital Costs to U.S.*, BLOOMBERG (Feb. 6, 2014).
- 4 *Id.*
- 5 *Id.*
- 6 Harold Pollack, *Our Insane Health-Care System: Free Health Care in Prison, Nothing Afterward*, THE WASHINGTON POST (last updated Dec. 26, 2013), <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/12/26/our-insane-health-care-system-free-health-care-in-prison-nothing-afterward/>.
- 7 MARSHA REGENSTEIN & JADE CHRISTIE-MAPLES, *MEDICAID COVERAGE FOR INDIVIDUALS IN JAIL PENDING DISPOSITION*, Dep't of Health Policy George Washington Univ. (2012).
- 8 *Id.*
- 9 *About Cook County Jail*, COOK COUNTY DEPARTMENT OF CORRECTIONS (March 21, 2014), [http://www.cookcountysheriff.com/doc/doc\\_main.html](http://www.cookcountysheriff.com/doc/doc_main.html).
- 10 *Id.*
- 11 David E. Olson & Sema Taheri, *Population Dynamics and the Characteristics of Inmates in the Cook County Jail*, *Criminal Justice & Criminology* (2012).
- 12 Joel B. Teitelbaum & Laura G. Hoffman, *Health Reform and Correctional Health care: How the ACA can Improve the Health of Ex-Offenders and their Communities*, 40 *Fordham Urb. L.J.* 1323, 1324 (2013).
- 13 *Id.*
- 14 Niquette, *supra* note 3.
- 15 *Id.*
- 16 *Id.*
- 17 *Id.*
- 18 Regenstein, *supra* note 7.
- 19 Pollock, *supra* note 6.
- 20 *Id.*



\\jciprod01\productn\L\LPR19-2\LPR207.txt

unknown

Seq: 8

6-OCT-14

13:04

## Loyola Public Interest Law Reporter

21 *Quick Take: Who Benefits from the ACA Medicaid Expansion*, THE KAISER FAMILY FOUNDATION, (June 14, 2012), <http://kff.org/health-reform/fact-sheet/who-benefits-from-the-aca-medicaid-expansion>.

22 *Id.*

23 *Id.*

24 *Id.*

25 *Id.*

26 *Id.*

27 *Id.*

28 Anita Cardwell & Maeghan Gilmore, *County Jails and the Affordable Care Act: Enrolling Eligible Individuals in Health Coverage*, NAT'L ASS'N OF CNTYS. (2012).

29 Telephone Interview with John Maki, Exec. Dir., John Howard Ass'n of Ill. (Mar. 20, 2014).

30 Cardwell, *supra* note 28.

31 Maki, *supra* note 29.

32 CountyCare, *supra* note 2.

33 *Id.*

34 *Section 1115 Demonstrations*, MEDICAID, <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/Section-1115-Demonstrations.html> (last visited 4/21/2014)

35 Niquette, *supra* note 3.

36 Michael Sneed, *Sneed: Cook County jail inmates sign on to Obamacare*, THE SUN TIMES (Mar. 11, 2014), *available at*, <http://www.suntimes.com/news/sneed/26141859-452/sneed-cook-county-jail-inmates-sign-on-to-obamacare.html#.U068aihRafQ>.

37 Teitelbaum, *supra* note 13 at 1337.

38 Teitelbaum, *supra* note 13 at 1334.

39 Teitelbaum, *supra* note 13 at 1337.

40 Maki, *supra* note 29.

41 Teitelbaum, *supra* note 13 at 1337.

42 *Id.*

43 Niquette, *supra* note 3.

44 Olson, *supra* note 11.

45 Teitelbaum, *supra* note 12 at 1337.

46 *Id.*

47 *Id.*

48 *Id.*

49 Michael Ollove, *Ex-Felons Are About to Get Health Coverage*, THE PEW CHARITABLE TRUST, (April 5, 2014), <http://www.pewstates.org/projects/stateline/headlines/ex-felons-are-about-to-get-health-coverage-85899465889>.

50 Teitelbaum, *supra* note 12 at 1356.

51 Teitelbaum, *supra* note 12 at 1337.

52 Niholas Kristof, *Inside a Mental Hospital Called Jail*, THE N.Y. TIMES (Feb. 8, 2014), *available at*, [http://www.nytimes.com/2014/02/09/opinion/sunday/inside-a-mental-hospital-called-jail.html?\\_r=0](http://www.nytimes.com/2014/02/09/opinion/sunday/inside-a-mental-hospital-called-jail.html?_r=0).

53 *Id.*

54 *Id.*

55 *Id.*

56 Maki, *supra* note 29.

57 *Id.*

No. 2 • Spring 2014

- 58 Ollove, *supra* note 49.  
59 Cardwell, *supra* note 28.  
60 Teitelbaum, *supra* note 12 at 1337.  
61 Cardwell, *supra* note 28.  
62 Niquette, *supra* note 3.  
63 Cardwell, *supra* note 28.  
64 *Id.*  
65 Maki, *supra* note 29.  
66 *Id.*  
67 *Id.*  
68 *Id.*  
69 *Id.*  
70 *Id.*  
71 *Id.*  
72 Ollove, *supra* note 44.  
73 Maki, *supra* note 29.  
74 *Id.*