



CENTER *for* RURAL AFFAIRS



## LB 472 AND LEVERAGING FEDERAL DOLLARS TO REFORM CORRECTIONS

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### KEY FINDINGS

- A lack of mental health services and substance abuse treatment is a primary cause of reoffending and recidivism and a return to jail or prison.
- A redesigned Nebraska Medicaid program such as proposed in LB 472 would help keep nearly 400 people from returning to prison in one year.
- A redesigned Nebraska Medicaid program such as proposed in LB 472 would result in gross savings to the state's correctional budget of nearly \$11 million in one year.
- A redesigned Nebraska Medicaid program could save additional state and county dollars that have already been invested or will be invested in corrections reform.

### INTRODUCTION

Comprehensively reforming our corrections system will take a significant financial investment. There is broad agreement that a necessary component of corrections reform must include mental health and substance abuse treatment for those in probation and on parole. *But federal Medicaid dollars can be leveraged to pay for 90 percent or more of the cost of necessary mental and physical health treatments to prevent individuals from entering an institution and to help them re-enter their communities.* However, this can only occur if the Medicaid coverage gap is closed in Nebraska through legislation such as LB 472. Nebraska should capture federal dollars to close the coverage gap to reform important aspects of the corrections system, improve the health of ex-offenders and communities, and save state and county dollars.

At the same time, there are strategies Nebraska could employ to ensure more individuals are enrolled in Medicaid. Individuals entering

the correction's system could be automatically enrolled, then have their eligibility suspended, which is permitted under federal law. For example, a legislative vehicle the state could employ is LB 12 (2015) which would suspend eligibility.

## ISSUES FACING NEBRASKA CORRECTIONS

Nebraska is currently facing serious issues with its correctional policy and operations, chief among them overcrowding and the resulting cost of correctional operations. Nebraska correctional facilities are currently over 160 percent of capacity.<sup>1</sup> At an estimated cost of \$28,182 annually for each offender (Fiscal Year 2014 data)<sup>2</sup>, the increasing number of inmates in overcrowded facilities is becoming a strain on the state's and county budgets.

While there are many components to a comprehensive solution to this issue, there is one component that must be part of a serious solution: "Studies have shown that connecting low-income adults to the health care system when they leave jail or prison can help them adjust to life in the community and avoid returning to jail or prison."<sup>3</sup> Nebraska has already made an investment in mental health and substance abuse treatment, but currently is considering additional reform proposals which will likely require additional financial investments (LB 907, 2014; LB 605, 2015).

Importantly, Nebraska has the opportunity to leverage federal dollars to pay for a significant amount of the costs of corrections reform through LB 472, the Medicaid Redesign Act.<sup>4</sup> Making these connections between low-income adults who have spent time in jail or prison and the health care system through LB 472 has the potential to reduce recidivism, reduce prison overcrowding, and reduce state and county budget expenditures on corrections.

1 Nebraska Department of Correctional Services, Monthly Data Sheet, December 31, 2014.

2 *Id.*

3 Solomon, Judith. 2014. "The Truth About Health Reform's Medicaid Expansion and People Leaving Jail." Center on Budget and Policy Priorities.

4 *Id.*

## THE CORRECTIONS POPULATION AND HEALTH INSURANCE

It is estimated 90 percent of those spending time in jail or prison are uninsured.<sup>5</sup> A lack of health insurance has serious health consequences for those who spent time in jail or prison. Research shows that this population has:

- Disproportionately higher rates of physical and behavioral health problems.<sup>6</sup>
- Higher rates of numerous chronic diseases such as HIV/AIDS, hepatitis B and C, and arthritis.<sup>7</sup>
- Significantly higher rates of alcohol and illicit drug use. Alcohol plays a role in over half of all incarcerations, and illicit drugs are involved in over 75 percent of prison and jail stays.<sup>8</sup>

Prior to the Affordable Care Act, pathways for health insurance were limited for the vast majority of low-income adults who ended up in prison or jail. Traditional Medicaid was out of the question for most – available generally only for pregnant women, seniors, some very low-income parents, or people with disabilities. This means that traditional Medicaid does not cover adults without children or many low-income adults with children, no matter how poor they are. At the same time, nearly all of the jail or prison population is male (88 percent) and a large number (44 percent) are young (under the age of 25).<sup>9</sup> A redesigned Medicaid program as allowed by the Affordable Care Act is such a pathway to coverage for this population.

The Affordable Care Act also requires that insurance plans in which newly-eligible individ-

5 Somers, Stephen A., Nicolella, Elena, and others. "Medicaid Expansion: Considerations for States Regarding Newly Eligible Jail-Involved Individuals." *Health Affairs*, March 2014.

6 Solomon, 2014.

7 Regenstein, Marsha and Rosenbaum, Sara. "What the Affordable Care Act Means for People with Jail Stays." *Health Affairs*, March 2014.

8 Solomon, 2014.

9 Solomon, 2014; Somers, Stephen A., Nicolella, Elena, and others. "Medicaid Expansion: Considerations for States Regarding Newly Eligible Jail-Involved Individual." *Health Affairs*, March 2014.

uals enroll, including Medicaid, feature the Affordable Care Act's 10 Essential Health Benefits (EHBs). Among the EHBs is coverage for mental health and substance abuse disorders, which must be covered at parity with medical or surgical coverage. Therefore, in addition to providing a path to coverage for this adult population traditionally ineligible for Medicaid, the Affordable Care Act sets coverage standards that are particularly beneficial for the corrections-involved population.<sup>10</sup>

### THE PRISON AND JAIL POPULATION AND ENROLLMENT IN MEDICAID

Pursuant to Section 1905(a) of the Social Security Act, Medicaid cannot cover health care services for people who are "inmates of public institutions," including prisons and jails. How many released inmates from Nebraska correctional facilities would enroll in an expanded Medicaid program under the Affordable Care Act is dependent upon a host of factors, including income, need for health care services, family circumstances, and access to enrollment.

Estimates of the enrollment of released corrections population in redesigned state Medicaid programs have varied, but for purposes of this report we will employ the research figure of 17 percent for Nebraska's correction population and redesigned Medicaid program.<sup>11</sup>

### RECIDIVISM AND MEDICAID EXPANSION

An estimated 30 percent of former inmates re-offend in the first six months after reentry.<sup>12</sup> Numerous research studies have demonstrat-

ed that the return to the community after incarceration is a critical time for ex-offenders and has significant challenges including struggles to manage health issues at reentry and the connections between health issues and reentry challenges, including recidivism.<sup>13</sup> As discussed above, the vast majority of the jail and prison population are uninsured, and a large share of the jail and prison population are low-income and young. Despite those characteristics the traditional Medicaid program does not assist with the health issues connected to reentry challenges.

Traditional Medicaid only covers certain categories of people, like children, pregnant women, and individuals with disabilities. Traditional Medicaid does *not* cover adults without children or many low-income adults with children, no matter how poor they are. This means that many people exiting jail or prison are not eligible for traditional Medicaid, and cannot access needed health services.

The major health challenges facing the exiting jail and prison population are mental health and substance abuse issues. Focusing on the mental health and substance abuse challenges for those recently released from jails or prisons has the potential to reduce recidivism and reduce state costs for correction operations. The Ohio state Medicaid director, for example, recently stated that enrolling people released from jail or prison in an expanded Medicaid program "will allow for (ex-inmates) to have immediate access to much-needed mental health and substance-abuse treatment services upon release .... We hope that this approach will help to reduce the recidivism in our state and get these individuals back into the workforce."<sup>14</sup> The same is likely to happen in Nebraska.

Recent analysis of corrections issues in Nebraska agrees with the assessed need for enhanced mental health and substance abuse treatment, both for the good of the released offender and for public safety. In *Securing Nebraska: Correctional Policy Improvements in the Cornhusker State* it is stated: "... simply releasing offenders without even a modicum of treatment or super-

10 The Council of State Governments Justice Center. "Medicaid and Financing Health Care for Individuals Involved with the Criminal Justice System," December 2013.

11 Solomon, 2014, footnotes 5, 6, and 7. Estimates of enrollment in redesigned state Medicaid programs among the corrections population have ranged from 100 percent (unrealistic since no social welfare has ever received universal participation) to 35 percent (apparently the U.S. Department of Justice estimates, but a "statistically invalid comparison"), to a more accurate and conservative estimate of 17 percent of those with a jail or prison stay in the past year. For this report we use the 17 percent figure.

12 Miller, Debra. "The Role of Medicaid in Successful Reentry." The Council of State Governments Justice Center, October 15, 2014.

13 The Council of State Governments Justice Center, December 2013.

14 Candisky, Catherine, "State's inmates going on Medicaid," *The Columbus Dispatch*, April 20, 2014.

vision upon release fails to address the criminogenic risk factors that contributed to their initial offending, leaving the public having paid for confinement but with no greater safety after the offender is released.”<sup>15</sup>

Research reviews of numerous community-based projects has shown that linking people leaving jail or prison to projects with enhanced mental health and substance abuse treatment can be cost-effective, result in medical cost savings, and play a role in reducing recidivism.<sup>16</sup> An example we are using for purposes of this report is a Michigan program helping recently released prisoners obtain community-based health care and social services. This program was found to reduce recidivism by over half, from 46 percent to 21.8 percent (a 53 percent decrease).<sup>17</sup>

## WHAT THIS MEANS FOR NEBRASKA

Based on the data and assumptions outlined throughout herein, the table below contains estimates of how a redesigned Medicaid program in Nebraska would affect the state’s recently released from jail or prison population and what that means for recidivism and the state’s correctional budget.

Nebraska has already recognized the need for increased community programming aimed at more successful reentry and reduced recidivism. During the 2014 legislative session LB 907 was adopted. That bill featured reentry programming and included treatment for mental health issues and assistance in applying for health care coverage and reentry planning that considers medical and mental health needs. LB 907 also included a one-time \$5 million appropriation for substance abuse treatment

ITEM/MEASURE	NUMBER
A. Prison Population (NDCS, 12/31/14)	5,221
B. Minus Life Sentences (capital punishment, life without parole, NDCS, 12/31/14)	272
C. Potential released inmates (A minus B)	4,949
D. Probation/Parole Population (DOJ, 12/31/13)	14,800
E. Local Jail Population, DOJ, 12/31/13	3,179
F. Uninsured (90% C and E)	7,315
G. Potential enrollment in expanded Medicaid (17% of F)	1,244
H. Released 0-12 months (C times FY13 percentage – 47.6%)	2,355
I. 30% reoffend within 6 months after release (30% times H)	707
J. Reduction of recidivism through services allowed in expansion (53% of I)	375
K. Average cost of offender (NDCS, 12/3/14) per year	\$28,182
L. Gross state savings (J times K)	\$10,568,250

<sup>15</sup> Levin, Mark. 2015. *Securing Nebraska: Correctional Policy Improvements in the Cornhusker State*. Platte Institute for Economic Research.

<sup>16</sup> Patel, Kavita, Boutwell, Amy, and others. “Integrating Correctional and Community Health Care for Formerly Incarcerated People who are Eligible for Medicaid.” *Health Affairs*, March 2014.

<sup>17</sup> *Id.*

programming. However, without closing the coverage gap caused by failing to redesign its Medicaid program many reentering the community from the corrections system may lack a path to coverage promoted by LB 907, while the state and its taxpayers are picking up the cost of necessary mental health and substance abuse treatment. The state is essentially spending money through the criminal justice and corrections system, but not getting any return on the investment from a health or public safety perspective by risking future poor health outcomes and recidivism without a path toward necessary mental health and substance abuse treatment.<sup>18</sup>

The assumptions used herein built on research and examples from other states show that a redesigned **Medicaid program in Nebraska would help keep nearly 400 people from returning to prison resulting in gross savings to the state's correctional budget of nearly \$11 million in one year.**

Medicaid dollars can be leveraged for necessary mental health and substance abuse treatments to prevent recidivism, saving state and county dollars. To successfully remedy our corrections system, mental and physical health care must be provided to individuals at probation, at re-entry, or both. Through a redesigned Medicaid program proposed by LB 472 in the 2015 Nebraska Legislature, federal Medicaid dollars can be leveraged to pay for 90 percent or more of the cost of this care. In fact, under the Affordable Care Act, mental health and substance use disorder treatment must be covered at parity with medical and surgical benefits, including in the Medicaid program. Closing the coverage gap provides a significant opportunity to reform important aspects of the corrections system, improve the health of ex-offenders and communities, and save state and county dollars.

## CONCLUSION

Nebraska clearly has issues in its corrections programs that affect the state's taxpayers and public safety. Just as clear is the connection between mental health and substance abuse treatment and criminal offenses and recidi-

vism. Examples from initiatives in other states and long-term research show that this connection can be addressed through mental health and substance abuse treatment to low-income people where needed and to offenders released from the corrections population or on parole or probation.

Nebraska has recognized this connection by developing initiatives and providing funding for community-based initiatives, and considering other initiatives, that would provide the necessary treatments that reduce both initial criminal offenses and recidivism. Yet Nebraska has a large gap in this process. Nebraska has not provided a health insurance path for low-income people in the corrections population to obtain these necessary treatments. LB 472 provides a means to fill that gap.

Research clearly shows recidivism can come from a lack of health coverage. There is a consensus among national and Nebraska research and analysis that mental health and substance abuse treatment are what many in the corrections population need. Examples from national research and from other states clearly show linking people to coverage and necessary treatments work in reducing criminal offenses and recidivism. Since traditional Medicaid is unavailable to most of the correctional population and private health insurance is unavailable, Nebraska needs LB 472 to make these necessary connections. The Nebraska taxpayer and public safety, as well as those in the corrections population, will be the beneficiaries.

18 See also, Levin 2015.



### ABOUT THE CENTER FOR RURAL AFFAIRS

Established in 1973, the Center for Rural Affairs is a private, nonprofit organization with a mission to establish strong rural communities, social and economic justice, environmental stewardship, and genuine opportunity for all while engaging people in decisions that affect the quality of their lives and the future of their communities.

### ABOUT NEBRASKA APPLESEED

Since 1996, Nebraska Appleseed has fought for justice and opportunity for all Nebraskans. Appleseed takes a systemic approach to complex issues – such as poverty, child welfare, immigration policy, and affordable health care – wherever we believe we can do the most good, whether that’s in the courthouse, at the statehouse, or in the community.

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