

HEALTHCARE NOT HANDCUFFS

Putting the Affordable Care Act to Work
for Criminal Justice and Drug Policy Reform

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EXECUTIVE SUMMARY

The Affordable Care Act (ACA) sets the stage for a new health-oriented policy framework to address substance use and mental health disorders. By dramatically expanding and funding healthcare coverage to millions of currently uninsured people, the ACA represents a remarkable opportunity for criminal justice and drug policy reform advocates to advance efforts for policies promoting safe and healthy communities, without excessively reliance on the criminal justice solutions that have become so prevalent under the War on Drugs.

This paper is intended as a starting framework for criminal justice and drug policy advocates to navigate the ACA, and to take advantage of the conceptual and practical opportunities it offers for shifting the conversation and the landscape.

Part One of this paper describes some of the major provisions of the ACA relevant to our work: the health insurance requirement; the places many people will buy insurance, called health exchanges; Medicaid expansion; insurance coverage requirements for substance use and mental health disorders; and opportunities for improved models of coordinated care.

From a criminal justice and drug policy reform perspective, these provisions of the ACA stand to transform the political, social and policy landscape in three important ways, though advocates will need to drive this shift to win real reforms. First, at a conceptual level, the legislation represents an opportunity to recast substance use disorders and drug use as a matter for public health rather than criminal justice. Second, the dramatic expansion of healthcare coverage, enabling participation in community-based care and treatment, is likely to substantially improve the quality of life for millions of people, and particularly for low-income populations and communities of color, by expanding the social safety net through access to healthcare. In turn, this expansion may serve to reduce both criminal justice system involvement and the social exclusion so familiar under the structures that have developed through the far-reaching War on Drugs.

There is no better time than now to engage with healthcare providers and advocates to forge new partnerships and alliances that can serve broader reform objectives. The implementation of the ACA means the entire healthcare field is now embarking on a course of dramatic transition: implementing new models of coordinated care; expanding access; promoting retention in care and improving health outcomes; adjusting to new funding streams; and critically, incorporating substance use and mental health treatment into primary care practice.

Part Two of this paper outlines a series of practical recommendations, including program and policy examples and suggested action steps, across three broad categories:

1. Ensuring access to care for people most likely to be steered into the criminal justice system under the current framework:
 - I. **Support Expansion of Medicaid and Other Healthcare Coverage**
 - Highlight the particular impact of Medicaid expansion and other forms of healthcare coverage on access to care for people with substance use disorders, including the resulting cost savings to the state.
 - II. **Increase Insurance Enrollment of People in the Criminal Justice System**
 - Urge pretrial, probation, parole and department of corrections officials to implement policies requiring that people be assessed for eligibility and enrolled in coverage.
 - III. **Maintain Active Medicaid Enrollment During Periods of Incarceration**
 - Push for a change in rules stating that Medicaid coverage for people who are incarcerated and awaiting trial or sentenced to a jail or prison facility shall be suspended, not terminated, during the time of incarceration, and shall be automatically reinstated upon release.
 - Push state Medicaid programs and the Departments of Correction to ensure that currently incarcerated people who are eligible for Medicaid are signed up *before* release from prison, so that coverage begins on the day the person leaves the facility.
2. Leveraging the ACA to reduce incarceration and criminal justice involvement:
 - IV. **Expand Use of Alternatives to Incarceration**
 - Use the ACA to amplify the demand for reducing the use of incarceration, particularly by using probation as a viable, low-cost, and frequently more effective alternative to incarceration for certain defendants with substance use and/or mental health disorder diagnoses.
 - V. **Push for Use of Pre-Booking Diversion Programs (i.e. Front-End Diversion)**
 - Learn about and promote the adoption of pre-booking diversion programs, such as the LEAD program in Seattle, Washington, for local jurisdictions where this approach is viable.
3. Moving from a criminalization-based drug policy approach to one rooted in health:
 - VI. **Promote Changes in the Care Delivery System to Improve Outcomes for People Who Use Drugs**
 - Learn more about the local context of ACA implementation from local service providers – especially groups providing HIV/AIDS care, harm reduction services such as syringe access and naloxone distribution, and innovative, results-driven substance use disorder treatment – and work with them to identify and implement the coordinated healthcare models supported by the ACA.
 - Push for state Benchmark plans to include appropriate substance use disorder treatments.
 - Make sure that health plans do not exclude court-ordered treatment. If the exclusion persists, educate judges about the need to give the probation department discretion over treatment requirements, so that the resulting treatment is not “court-ordered.”
 - VII. **Advocate for the Decriminalization of Drug Possession and Drug Paraphernalia**
 - Maximize the unique opportunity created by the ACA for questioning the role and value of criminalization itself.