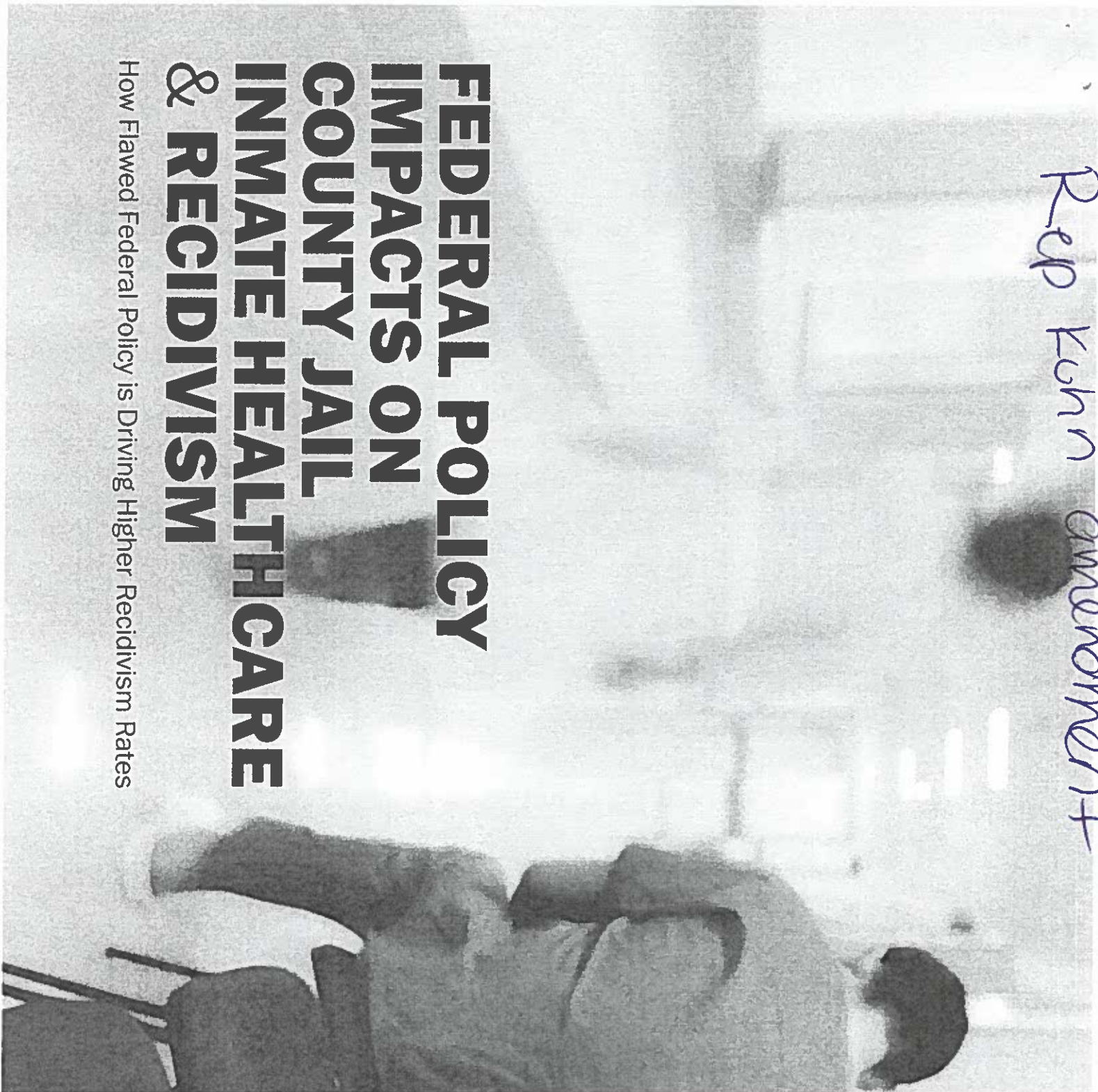


Rep Kohn amendment

FEDERAL POLICY IMPACTS ON COUNTY JAIL INMATE HEALTHCARE & RECIDIVISM

How Flawed Federal Policy is Driving Higher Recidivism Rates



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

UNDERSTANDING THE LOCAL JAIL LANDSCAPE

- The **Social Security Act, Sec. 1905(a)(A)** prohibits the use of federal funds and services, such as the **Health Insurance Program (CHIP), Medicare and Medicaid**, for medical care provided to “individuals in the custody 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 had 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 the criminal justice system. Historically, jails were designed for short-term stays mainly for those awaiting trial 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 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 not 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 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 resulted in the loss of federal benefits for millions of Americans.

UNDERSTANDING THE FEDERAL ME INMATE EXCLUSION

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

- Section 1905(a)(A) of the **Social Security Act** excludes **funding** (also known as Federal Financial Participant provided to “inmates of a public institution”
- Has been in place since Medicaid’s enactment in 1966
- 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 who are **convicted** of a crime (primarily housed in state and federal prisons)

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



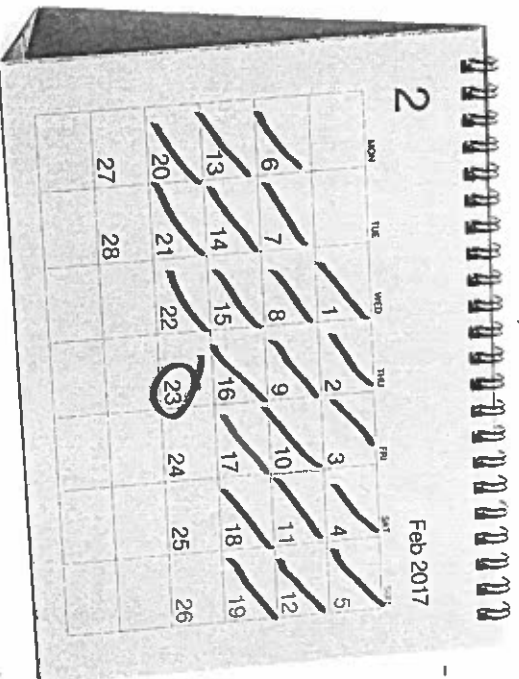
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COUNTY JAILS EXPLAINED

- 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

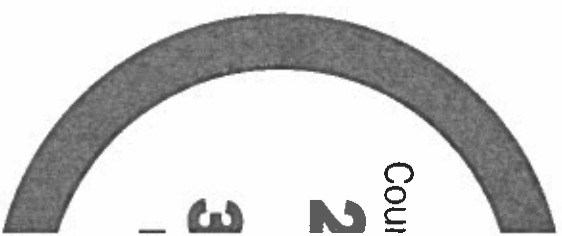
The average length of stay
in jail is

25 DAYS



In 2016, local jails admitted

10.6 MILLION
PEOPLE



JAILS

JAILS VS. PRISONS

PRISONS

LOCAL GOVERNMENTS, MAINLY COUNTIES

OPERATOR

STATES 0

3,163

NUMBER OF FACILITIES

1,821

10.6 MILLION

NUMBER OF ADMISSIONS (2016)

602,000

UNCONVICTED AND CONVICTED

LEGAL STATUS

CONVICTI

MISDEMEANOR

CONVICTION TYPE OF SENTENCED POPULATION

FELONY

364 DAYS

MAXIMUM SENTENCE LENGTH

LIFE

25 DAYS

**AVERAGE LENGTH OF STAY
IN GENERAL**

37.5 MO

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 the federal guidelines to seek waivers from the federal government for certain eligibility or available services

Some states **subcontract** Medicaid services to private **insurers**, while others pay health care costs through county-operated programs

States utilize **different Medicaid models** such as traditional fee-for-service, managed care, and capitated reimbursement. States also reimburse providers for each service and manage care systems and manage care systems setting monthly payments

Counties across the nation deliver Medicaid-eligible services and manage care systems and manage care systems setting monthly payments. Counties also help states finance and administer the program

Countries also serve as health providers and deliver Medicaid-eligible service

961

county-supported
hospitals.



824

county-owned and
supported long-term
care facilities

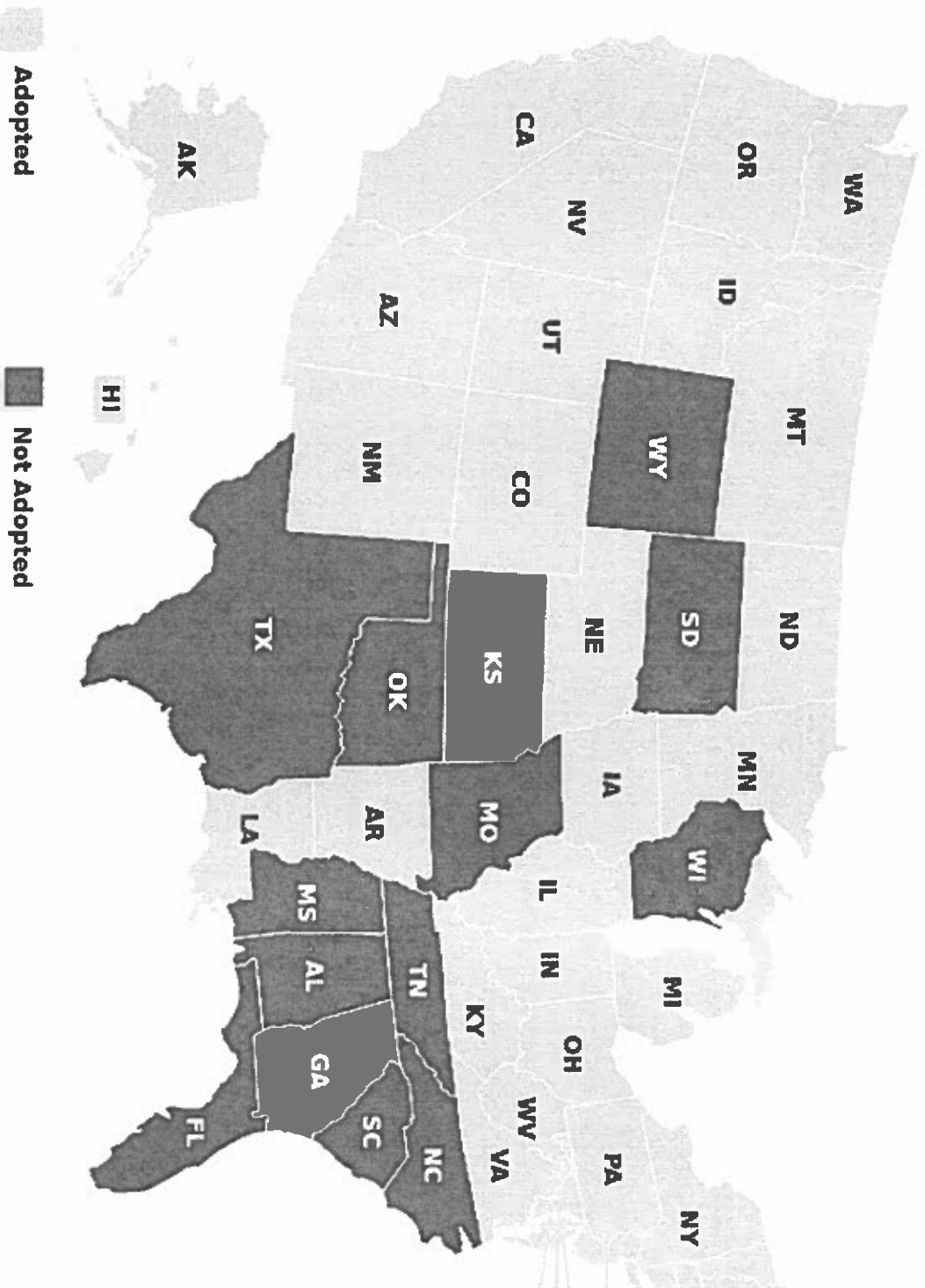


750

county behavioral
health authorities

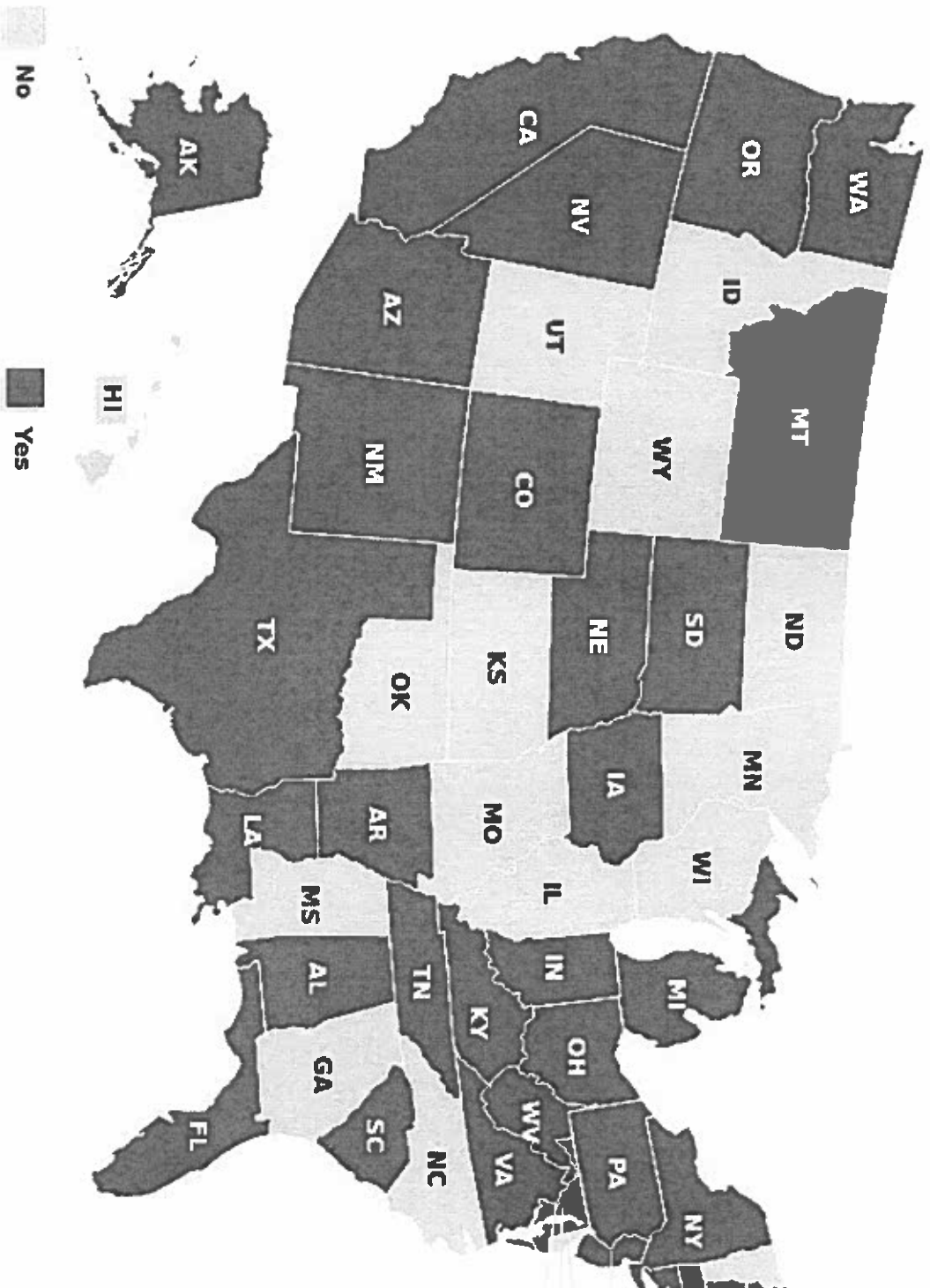


STATUS OF STATE ACTION ON THE MEDICAID EXPANSION DECISION: CUR OF MEDICAID EXPANSION DECISION, AS OF FEBRUARY 13, 2019



SOURCE: Kaiser Family Foundation's State Health Facts.

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

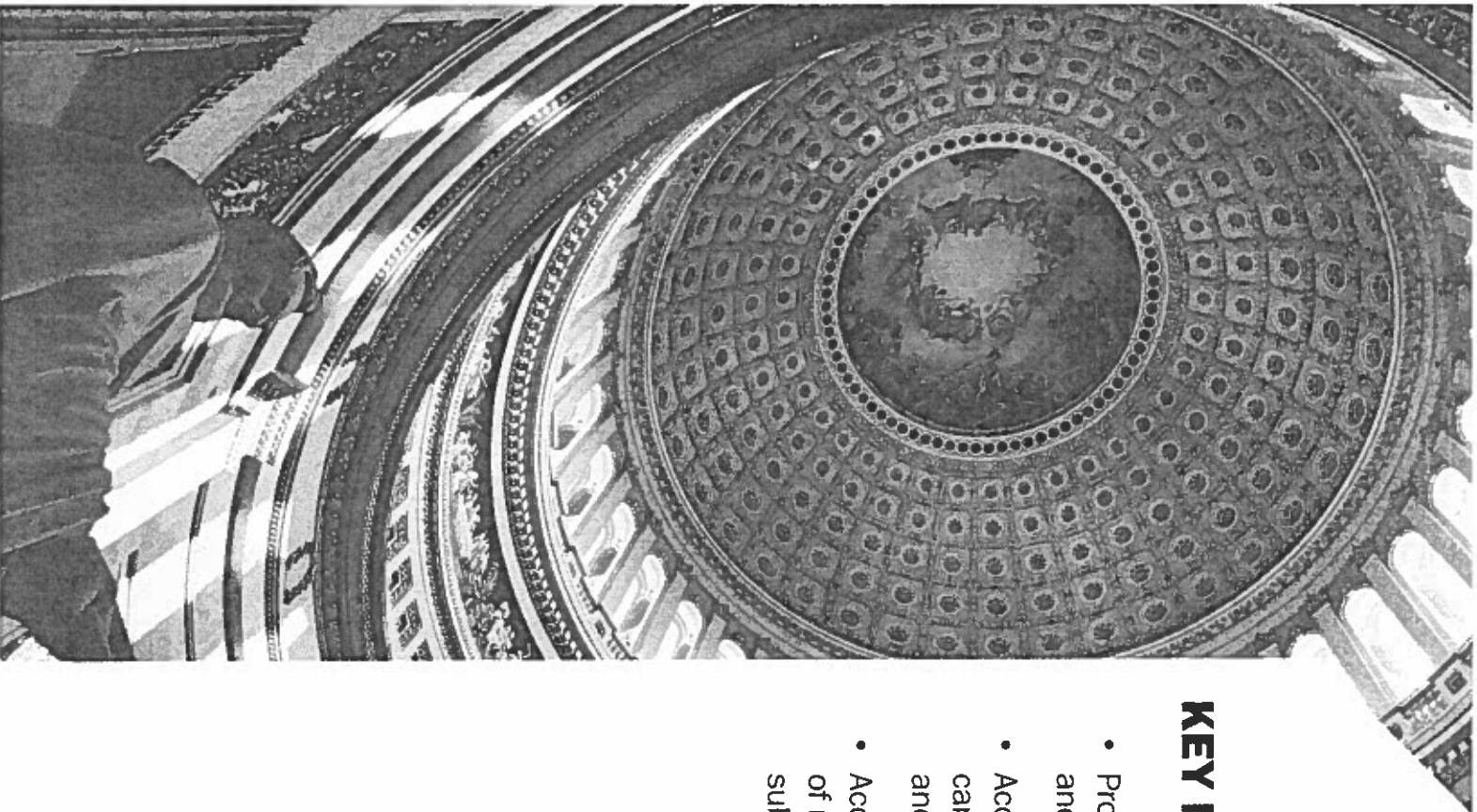


SOURCE: Kaiser Family Foundation's State Health Facts.

- H.R. 1925/S. 874, the At-Risk Youth Medicaid Protection Act, please starting and ending, "At... Act") sponsored by (D-Calif.) and Morgan Griffith (R-Va.) passed as part of the opioid package, the *SUPPORT for Patients and Communities Act* (SUPPORT Act) and **requires states to suspend, instead of terminate, Medicaid benefits for juvenile inmates**

LEGISLATIVE ACTIVITY

- H.R. 165, "Restoring the Partnership for County Health and Human Services Act of 2017," sponsored by Rep. Alcee Hastings (D-Fla.), **limitations on Medicaid and other federal benefits**
- Similar to the *At-Risk Youth Medicaid Protection Act*, *Act of 2017* passed as part of the comprehensive of directs the U.S. Department of Health and Human Services to best practices around providing health care for justice-involved individuals returning to their communities from county correctional facilities, which **would restore Medicaid benefits to individuals who are incarcerated for 30 days prior to their release**, was reintroduced in February 2018
- H.R. 982, "The Reforming and Expanding Access to Treatment Act," sponsored by Rep. Bill Huelskamp (R-Pa.), **would remove limitations for substance abuse services**
- H.R. 7079, the Corrections Public Health and Community Corrections Act, sponsored by Rep. Ann Kuster (D-N.H.), would and local governments seeking to expand medication-assisted treatment (MAT) for justice-involved individuals with opioid use disorder



KEY MESSAGES FOR ADVOCACY

- Providing access to federal health benefits for those and still presumed innocent is a U.S. constitutional
- Access to federal health benefits would allow for improved care while simultaneously decreasing short-term costs and long-term costs to the federal government
- Access to federal health benefits would help counteract the effects of recidivism caused or exacerbated by untreated mental health and substance abuse, thereby improving public safety



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