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Inside This Issue

Local Jurisdictions Struggle for Compensation for Federal Land Costs

Payments in Lieu of Taxes – PILT payments for short – are federal payments to local governments (usually rural localities) that help offset losses in property taxes due to non-taxable federal lands being located within their jurisdiction.

According to the Department of the Interior, PILT program eligibility is reserved for local governments that provide "significant support for national conservation and recreation areas throughout the year." The program is designed to compensate "local governments for their support of national parks, wildlife refuges and other public lands and waters as they forego property taxes due to non-taxable federal land in their jurisdictions." Despite this recognition, for many jurisdictions, the PILT payments do not fully cover the loss of property tax revenue that would have been recovered were the property in private hands.

Background

PILT payments help local governments provide for firefighting and police protection, construction of public schools and roads, and search-and-rescue operations, among other things. The payments are made annually for tax-exempt federal lands administered by the Bureau of Land Management, the National Park Service, the U.S. Fish and Wildlife Service, and the U.S. Forest Service, as well as for federal water projects and some military installations.

Interior administers the PILT program, and calculates payments based on federal land acreage and population, among other factors. The payments are adjusted for inflation and made annually. Importantly, not all federal lands are included in the PILT program: Lands administered by the National Aeronautics and Space Administration and the departments of Defense and Homeland Security are not included in PILT payment calculations.

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Note that PILT payments are issued in addition to other federal revenues (such as oil and gas leasing, livestock grazing, and timber harvesting) that the federal government transfers to the states. Interior collects more than $11 billion in revenue annually from commercial activities on public lands, such as oil and gas leasing, livestock grazing, and timber harvesting. A portion of these revenues is shared with states and local governments.

The balance is deposited in the U.S. Treasury, which in turn pays for a broad array of federal activities, including PILT funding to local governments. In 2016, 1,900 local governments received a total of $451.6 million under the PILT program. The Department of Interior website includes information detailing payment amounts by state going back to 2013:

Payments by State: **https://www.nbc.gov/pilt/states-payments.cfm**

Payments by County: **https://www.nbc.gov/pilt/counties.cfm**

Looking Forward

Congress's recent 2017 Omnibus Appropriations bill funds PILT for fiscal year 2017 at $465 million; the prior administration had proposed funding of $480 million. The 2017 bill recognizes that "[w]ithout this congressional action, many rural communities would face significant budget shortfalls."

President Donald Trump's proposed budget for fiscal year 2018 asks that PILT payments be reduced to an average of the past 10 years. This would likely mean at least a 10% to 15% reduction in PILT payments to local governments.

To protect PILT funding, it is critical for local governments to contact their congressional delegations to remind them of the important services provided by local governments receiving PILT payments, as well as the foregone revenue caused by removing federal lands from the property tax rolls.

Local government officials may also want to press Congress to consider whether additional federal lands should be eligible for PILT funding, and if the compensation formula should be revisited, especially for urban areas, so that PILT payments are more similar in amount to the foregone property taxes.

Why Local Prison Administrators Should Seek Medicaid Coverage for Inmate Health Care

As health care reform continues to wend its way through Congress, municipal governments have a critical stake in the conversation for many obvious reasons. One area of interest for local leaders is how to ensure jail inmates within their jurisdictions have access to Medicaid coverage.

Background

On May 4, 2017, the House of Representatives passed the American Health Care Act (AHCA). While under the Affordable Care Act, an additional 11 million people received Medicaid coverage than before the act became law, under the AHCA, should it become law, Medicaid expansion will be frozen at the end of 2019. According to political website FiveThirtyEight, seven states would automatically repeal their expansion of Medicaid coverage if the federal government decides to reduce the federal contribution for Medicaid reimbursement – which is what the AHCA would do. In other states, many people who currently benefit from Medicaid expansion would likely lose coverage during the next few years as reimbursement rates decline.

Local governments are constitutionally required to provide adequate health care for the more than 11.4 million individuals who are admitted to almost 3,000 municipal-operated jails every year.

The AHCA caps the amount of money that could be spent on Medicaid enrollees, likely reducing the number of people covered and the actual medical coverage received by those people. According to the Congressional Budget Office's analysis, 14 million fewer people would be on Medicaid by 2026 than in 2017. Some effects of the AHCA would be felt immediately, but many reductions would begin in 2020, when the AHCA would terminate enhanced federal matching for new enrollees and institute the per-capita cap on federal reimbursements.

The AHCA would reduce federal Medicaid spending by $880 billion over 10 years. President Donald Trump's proposed budget would further cut $600 billion from Medicaid over 10 years, resulting in proposed reductions of more than $1 trillion, if enacted. Those costs will have to be absorbed somewhere. Local government budgets would certainly be negatively affected by a reduction in Medicaid coverage and reimbursements. One particular sticking point would be Medicaid coverage for health care provided to inmates of local jails.

A Population at Risk

Local governments are constitutionally required to provide adequate health care for the more than 11.4 million individuals who are admitted to almost 3,000 municipal-operated jails every year. According to the National Association of Counties, jail populations are less healthy than the overall population and have the following characteristics:

- 90% have no health insurance.
- 60% are eligible for expanded Medicaid (prior to their involuntary incarceration).
- 64% have a mental illness.
- 68% have a history of substance abuse.
- 40% have a chronic health condition, of which 40% use a prescription medication.

Statutory Requirements

In general, "inmates" are not *covered* for Medicaid services, but may be *eligible for* and *enrolled in* Medicaid. The consequence of this is that generally, local jails cannot receive reimbursement from Medicaid for providing medical care to inmates within their facilities and must absorb those costs in their budgets.

An inmate is a person in the lawful, involuntary custody of a correctional facility of a locality. Pre-trial detainees housed in jails awaiting adjudication are considered inmates. However, probationers, parolees, and pre-trial detainees released into the community are not inmates.

To avoid violating the statutory inmate exclusion, states have typically terminated Medicaid enrollment when an inmate is booked into jail. Once an individual's enrollment is terminated, months can go by before the individual is reapproved for Medicaid upon release from a correctional institution. This gap in coverage prevents access to medical, mental health, and addiction treatment, and can lead to re-arrests and increased recidivism.

In addition to noting the difficulty and consequences of having to re-enroll former inmates in Medicaid, there is one exception to the inmate Medicaid coverage exclusion that local jails should note: Localities can receive reimbursement for an individual who receives care outside the institution of incarceration, such as at a hospital or nursing home, if the individual has been admitted for 24 hours or more.

In February 2017, the National Association of Counties urged Congress to ease the Medicaid coverage exclusion for inmates in correctional institutions and urged the CMS to use its statutory authority to provide additional flexibility to states with respect to inmate eligibility.

Under these circumstances, states and local governments can obtain federal reimbursement that covers at least 50% (and possibly up to 84%) of the inmate's off-site inpatient costs, if the inmate is eligible and enrolled in the program. This reimbursement can even be sought retroactively, provided that the inmate applies for Medicaid within three months of the qualifying event.

Medicaid Guidance

On April 28, 2016, the Centers for Medicare and Medicaid Services released a **guidance letter** explaining how local governments can ensure access to Medicaid coverage for individuals before, during, and after a jail stay.

CMS reiterated long-standing federal policy that incarceration does not categorically prevent eligibility for Medicaid, although CMS also noted that Medicaid coverage varies depending on whether a person involved with the criminal justice system meets the agency's definition of an "inmate." CMS actually noted that state Medicaid agencies must accept inmate applications for processing during the time of incarceration.

CMS continues to encourage states not to terminate coverage for enrolled inmates during their time in correctional facilities, but rather to suspend coverage until release or until enrollees receive off-site inpatient care. In addition to providing coverage in eligible circumstances while an individual is incarcerated, suspension allows coverage of all Medicaid services to resume seamlessly upon an inmate's re-entry to the community.

Action Steps

In February 2017, the National Association of Counties urged Congress to ease the Medicaid coverage exclusion for inmates in correctional institutions and urged the CMS to use its statutory authority to provide additional flexibility to states with respect to inmate eligibility. That position takes on more urgency as the Senate considers the AHCA, which would likely limit Medicaid coverage and possibly eligibility requirements for inmates.

Local governments responsible for inmate populations, as well as public health functions, can stress to their senators what the shifted costs of the AHCA would mean to their local taxpayers: increased costs for constitutionally mandated care in jails, increased recidivism for persons no longer covered or covered at a lower rate, and an inability to adequately address mental health and substance abuse issues.

It would be wise for jails to ensure that eligible inmates enroll in Medicaid, at least until expansion is frozen. Making sure they are enrolled allows localities to seek reimbursement in the event of 24-hour-plus treatment outside the correctional facility at least until 2020. It also speeds and eases access to health services upon the individual's reentry into mainstream society.

As an aside, some institutions have reported that inmates do not want to assist local jurisdictions in recouping medical costs and have refused to sign application forms. California dealt with this issue by passing a law to allow prison authorities to sign applications for Medicaid for the period an individual was incarcerated. For jails experiencing similar difficulties, it may be worthwhile to suggest to that institution's state legislature that a bill such as California's is needed in that state.

The last action step is to continue to monitor health care reform bills and the proposed budget at the federal level to see how Medicaid eligibility and coverage may constrict for those individuals who may find themselves incarcerated in local correctional facilities.

Grants are the largest form of aid to local governments, but significant indirect aid also derives from federal tax code provisions.

A Federal Funding Primer for Local Governments: What You Should Know

The federal government contributes to local governments' ability to provide services to their residents through grants, the tax system, and loans. Grants are the largest form of aid to local governments, but significant indirect aid also derives from federal tax code provisions. These make it less expensive for local governments to raise revenues through their own tax collections and borrow money by issuing bonds. In addition, loans are often used to fund state unemployment programs, community development projects, and disaster aid.

Below are highlights of Congress's recently passed appropriations bill, which includes funds to local governments for grants for fiscal year 2017, as well as a discussion of what's on the table for the fiscal year 2018 budget.

Aid to Local Governments for the Remainder of Fiscal Year 2017

On May 1, 2017, the House Appropriations Committee released the fiscal year 2017 Omnibus Appropriations bill, which will provide funding for the federal government for the remainder of the 2017 fiscal year (ending Sept. 30, 2017).

Portions of the funding legislation of interest to local governments include, but are not limited to:

- **Women, Infants, and Children (WIC)**: $6.35 billion for WIC, which is the same as the 2016- enacted level. However, the bill rescinds $850 million of "unobligated balances."

- **Child nutrition programs**: $22.8 billion in required mandatory funding for child nutrition programs, which is $644 million above the 2016 level and provides more than $627 million for the Summer Food Service Program to ensure low-income children continue to have access to nutritious meals when school is not in session.

- **Supplemental Nutrition Assistance Program (SNAP):** $78.5 billion, which is $2.4 billion below the prior fiscal year and reflects declining enrollment.

- **Federal Payments to Local Communities**: $465 million for the Payments in Lieu of Taxes (PILT) program, similar to the funding level for 2016.

- **Office of Surface Mining (OSM):** OSM is funded at $253 million, approximately the same as in 2016. This includes $105 million to continue a pilot program to accelerate the reclamation of abandoned mine lands, designed to help boost community redevelopment and economic growth.

- **Employment Training Administration (ETA):** $9.97 billion, which represents a decrease of $90 million from last year's funding. State and local workforce training and development programs are prioritized.

- **Administration for Community Living (ACL):** $1.9 billion, which is $1.2 million above the 2016 level, and includes $838 million – a $3 million increase – for programs supporting senior nutrition, such as Meals on Wheels.

On May 23, the White House released a proposed budget – "A New Foundation for American Greatness" – that calls for more than $1 trillion in cuts to social program spending over the next decade.

- **Transit:** $12.4 billion in total budgetary resources for the Federal Transit Administration, including transit formula grants of $9.7 billion to help local communities build, maintain, and ensure the safety of their mass transit systems. $408 million is included to fund all state and local Small Starts projects that begin in fiscal year 2017. These programs provide competitive grant funding for major transit capital investments – including rapid rail, light rail, bus rapid transit, and commuter rail – that are planned and operated by local communities. major transit capital investments – including rapid rail, light rail, bus rapid transit, and commuter rail – that are planned and operated by local communities.
- **Section 8 and Public Housing**: $27.5 billion is provided for Public and Indian Housing. This level will continue assistance to 2.2 million low-income households.
- **Office of Housing:** Project-Based Rental Assistance is funded at $10.8 billion, Housing for the Elderly is provided with $502 million, and Housing for Persons with Disabilities receives $146 million. The Department of Housing and Urban Development (HUD)'s administrative payments to Public Housing Agencies are trimmed by $427 million below the previous administration's request. This includes a provision prohibiting HUD from guaranteeing mortgages seized by eminent domain.
- **Community Planning and Development**: $6.8 billion for Community Planning and Development programs.

What's at Stake for Fiscal Year 2018?

On May 23, the White House released a proposed budget – "A New Foundation for American Greatness" – that calls for more than $1 trillion in cuts to social program spending over the next decade. Analyses of the proposed budget show that many programs important to local governments are at risk.

For instance, Community Development Block Grants (CDBG) and Payments in Lieu of Taxes (PILT) will be affected if Congress adopts President Donald Trump's budget priorities. The CDBG program, which would be completely eliminated, provides grants to approximately 1,200 metropolitan city and county governments. Approximately 70% of CDBG funding goes directly to "entitlement" cities and counties – those cities with populations greater than 50,000 and counties with populations above 200,000 (excluding entitlement cities within their borders). PILT would see a reduction of between 10% to 15% and is discussed in a separate article.

Significant cuts ($767 million) are also proposed for the Federal Emergency Management Agency. In addition, the president's budget proposal seeks a 25% cost match for certain FEMA grant programs: "Federal resources must be targeted to those activities that provide clear results and that do not supplant State and local responsibilities."

Also at risk of elimination or severe cuts are the Abandoned Mine Land Grants, the Essential Air Service Program, the Low Income Home Energy Assistance Program, the Appalachian Regional Commission, the Chesapeake Bay Restoration Program, and legal aid programs. This list is not exhaustive, but shows the breadth of programs being proposed for elimination or major reductions.

In early May 2017, a possible government shutdown (beginning October 1, 2017) was discussed by President Trump and others. In 2014, the Congressional Research Service (CRS) looked at the effects of a federal government shutdown on local governments.

Next Steps

It is unclear which of the president's funding priorities will be adopted by Congress. Additional information may become available as the summer and fall progress. As is often the case, protecting federal grants that provide vital support to community initiatives requires local residents and their elected officials to lobby their congressional delegations to help them understand how vital many of these programs are to their citizens. Letters from community members, press events, and providing details of the real-life benefits of these programs are vital to their continuation and can best be communicated by those who would be affected.

A Potential Federal Government Shutdown

In early May 2017, a possible government shutdown (beginning October 1, 2017) was discussed by President Trump and others. In 2014, the Congressional Research Service (CRS) looked at the effects of a federal government shutdown on local governments. The CRS reported to Congress that federal government shutdowns can negatively affect local governments, though whether the effects constitute a minor disruption or a complete cessation of various projects depends on a variety of factors including, but not limited to, the length of the shutdown, whether local officials decide to cover gaps in funding while uncertain of reimbursement, whether the local officials decide to operate programs at full capacity or reduce operations, and what other resources may be available to fill funding gaps.

A lapse in appropriations that results in a federal government shutdown can affect both mandatory and discretionary spending for programs at the local level. Due to the life cycle and timing of federal grants, some grant awards may be affected more than others. While reimbursement for expenditures made pursuant to existing grant agreements and grant awards is likely, local elected officials must decide whether to cover any gap in federal funding or suspend program activities during the lapse in appropriations.

Funding for program activities where the authorization to expend funds is not in place at the time of the lapse in appropriations is less certain. In cases where a grant agreement is not in place or where the mandatory budget authority for the grant program may have expired, there is limited authority for the federal agency to reimburse for expenses incurred outside of the grant award period. It may be necessary for Congress to enact specific provisions to reimburse states for covering expenses that occur before a grant agreement was officially in place if the delay in executing the grant agreement was attributed to a federal government shutdown.

In short, the effects of a government shutdown on federal grant payments are difficult to predict. As the early fall approaches, local officials would be wise to consider contingency plans in the event of a shutdown. In particular, lobbying for specific bills ensuring the retroactive payment of grant funds will be a good strategy if shutdown talk resurfaces in late August and September.

The federal government retains differing amounts of control over financial support depending on whether a subsidy is through application of the federal tax code or through more direct support such as grants and loans.

Federal Grants: Historic Information and Background

Federal grants to local governments support a variety of government operations, including the direct provision of services to the public. Examples include education, assistance to individuals and families with limited resources, transportation, and other infrastructure projects. Most often, grants are in the form of direct cash assistance, but federal grants also include grants-in-kind (non-monetary aid), such as commodities purchased for the National School Lunch Program. Grants are funded through annual appropriations, as well as the authorizing legislation of some mandatory programs.

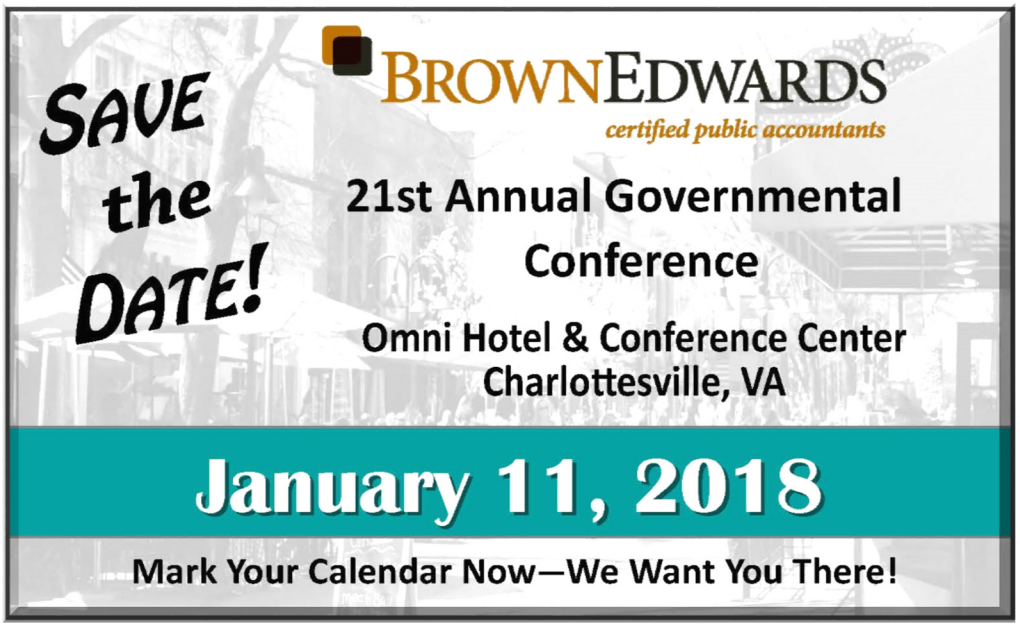
Congressional testimony established that federal grants to state and local governments totaled $607 billion in 2011, roughly 25% of all state and local government expenditures. Proposed budget documents from prior years show that in fiscal year 2014, federal funding of state and local governments had grown to 30.1% of state and local budgets. According to the Office of Management and Budget, federal grant spending for 2016 is estimated to be $666.7 billion. Health care programs accounted for approximately half of those grants in 2011, while the remaining grants went to fund programs in income security, education, training, employment, social services, and transportation. By 2016, Medicaid was expected to account for over 50 percent of total federal grant spending provided to state and local governments.

Grants Versus Tax Subsidies

The federal government retains differing levels of control over financial support, depending on whether a subsidy is through application of the federal tax code or through more direct support such as grants and loans. Subsidies provided through the federal tax system give the federal government no control over how local governments spend the funds, provided the subsidized funds (in the form of local tax revenues and bonds) are used for a governmental purpose. The effect of federal tax subsidies on local budgets depends on the mix of state and local policies, as well as the incomes of residents. With respect to grants, the federal government may specify the purpose for spending the funds, impose conditions on that spending, and require local governments to contribute their own funds.

Regardless of whether funds come directly from federal grants or more indirectly through federal tax policy, benefits of either type of subsidy may spill over and extend to all residents of the communities that received the federal subsidy. This spillover effect may result in different budget priorities and allocations for various local governments.

The number of grants funding local governments has grown incrementally over decades. As of 2016, 16 executive branch agencies and 14 independent agencies provided grants to state and local governments. In 2014, the Office of Management and Budget implemented new Uniform Guidance to streamline the financial management regulations for federal grants and other assistance, reducing the number of financial management regulations for federal grants and other assistance by 75 percent. The streamlined regulations can be found in Title 2 of the Code of Federal Regulations, Part 200.



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