



2008 DEC 8 PM 2 21

CENTERS for MEDICARE & MEDICAID SERVICES

Region VIII

RECEIVED

December 2, 2008

Joan Henneberry
Executive Director
Colorado Department of Health Care Policy and Financing
1570 Grant Street
Denver, CO 80203-1818

Re: Suspension of Medicaid Eligibility for Incarcerated Persons

This is in response to your letter dated July 31, 2008 requesting clarification on Federal Medicaid policy for Medicaid eligible individuals that become incarcerated. Please note that federal financial participation at the administrative match rate is available for States that want to implement suspension status for Medicaid eligible individuals that become incarcerated. We researched your questions and consulted with CMS Central Office to provide the following responses (in bold). The responses are based 42 CFR 435.110 and Health Care Financing Administration Letter dated December 12, 1997. Please note that this is the current policy and is subject to change based on appropriate regulatory processes by CMS.

1. Under the above (*inserted in State's letter*) definition of an inmate, would an individual be considered an inmate if they are in an inpatient hospital setting that is a locked acute forensic medicine inpatient care unit specifically designed for those incarcerated, awaiting criminal proceedings, or awaiting penal dispositions?

An individual would be considered an inmate if he or she is residing in this setting involuntary because the setting is acting on behalf of a law enforcement public institution for incarceration. Therefore there is no Federal Financial Participation (FFP) available.

An individual may be under arrest or even under investigation (not charged with any crime) by a local sheriff's department or that state patrol, but are confined involuntarily in the inpatient hospital setting. Would such an individual be considered an inmate even if they were not in a locked acute forensic medicine inpatient care unit specifically designed for those incarcerated but instead in an inpatient hospital room designed for normal, daily use?

If the individual is in a hospital that is separate from the prison system and the individual becomes an inpatient of that hospital, then the individual is not considered to be an inmate of a public institution.

If an individual is incarcerated in a state prison or county jail and then transferred to the inpatient hospital setting, is the individual still considered an inmate under 42 CFR § 435.1010 and ineligible for FFP?

If the setting is a hospital accredited as such and not created for the purposes of law enforcement and incarceration (which is separate from the law enforcement system), then the individual is not considered an inmate. FFP would be available.

If an individual is incarcerated in a state prison or county jail and then transferred to a nursing facility setting, is the individual considered an inmate under 42 CFR § 435.1010 and ineligible for FFP? Does the response change if the inmate is hospitalized or in the nursing facility for an indefinite amount of time? For example, the individual requires a ventilator and remaining in a state prison or county jail is no longer medically feasible.

If the inmate becomes an inpatient of a nursing facility or a hospital, FFP is available for that individual under the exception of the inmate provision. This continues as long as the individual is an inpatient of the medical facility. Federal policy and regulations do not place a time limit for FFP availability as long as individual continues to be eligible for Medicaid and residing as an inpatient in the medical facility.

2. Under the above definition of an inmate, would an individual required to reside in privately-owned center (such as a halfway house) that is not an organizational part of any governmental unit, nor does any such unit exercise final administrative control over the private facility, considered an inmate under 42 CFR § 435.1010 and ineligible for FFP? For example, the state's Community Corrections programs provide services for persons convicted of less severe felony offenses who are diverted from prison by the courts and services for persons who are being transitioned back to the community from prison. In addition, individuals in Community Corrections programs may have been released from a state prison or county jail, but have yet to be released on parole and are required to return to the privately-owned center nightly. We further note that the state does not exert any significant indicia of control over the Community Corrections facilities. Employees are private employees, each facility has a large degree of discretion in setting its own administrative and disciplinary policies and procedures, and the facilities retain the power to remand residents back to prison in a variety of situations.

If facilities under the State's Community Corrections programs are limiting the individual's ability to leave the facility on permanent basis, such as the requirement for the individual to return to the center at night, CMS interprets these facilities as institutions for incarceration. While the State provides information that the centers are separate from any governmental unit, we would like additional clarification for the facility's legal basis to restrict an individual's ability to leave the facility. From the information we have, we conclude that Colorado Community Corrections programs are an integral part of the State's criminal justice system and act on the behalf of an overburden traditional prison system.

If so, if the individual is transferred to the inpatient hospital setting during their stay in such a facility, is the individual still consider an inmate and should benefits remain to be suspended?

See response to question #1: if the individual becomes an inpatient of a hospital, then FFP is allowed as long as he or she is an inpatient of the hospital and eligible for Medicaid.

3. Under the above definition of an inmate, would an individual only needing temporary detoxification services be considered an inmate if they are held in a locked facility that provides non-medical, clinically managed detoxification from alcohol and drugs in a clean and safe environment? All individuals are provided sleeping accommodations and well-balanced meals during their stay. The individual is normally held in these facilities until their blood alcohol level is negligible. Even though these services are not normally billable to Medicaid, the Department requests clarification to understand if these individuals are inmates and would qualify to have their benefits suspended during their stay.

It depends on whether the facility is acting on behalf of a public institution for incarceration and it carries out law enforcement duties. Please provide additional information about these facilities: location, organizational structure, funding, etc. Please clarify whether individuals go to these facilities voluntarily or whether they are placed in these facilities by law enforcement personnel.

If so, if the individual is transferred to the inpatient hospital setting during their stay in such a non-medical, clinically managed facility, does the individual remain an inmate and should benefits remain suspended?

Depends on nature of facility. Please provide additional information per previous response.

Since many of the individuals covered under Medicaid, qualify due to their status of having children in the household, the Department has the following questions to operationalize the suspension of Medicaid eligibility.

4. If one member of the household becomes incarcerated, does that action alone trigger a “change in circumstance” under 42 CFR § 435.916?

Yes, this would be a change in circumstance that must be reported and for which eligibility must be re-determined pursuant to 42 CFR 435.916 (change in household composition and change in residency for member of the household).

a. If so, must the Department re-determine eligibility for the entire household and exclude the incarcerated individual from the household’s application? Such an action would likely render the incarcerated individual ineligible for Medicaid. Further, if the individual incarcerated is the only child in the household, the re-determination would likely also cause the parents or other adult members of the household to become ineligible.

Per previous response, State must re-determine eligibility and remove incarcerated individual from household application because individual is no longer living in the same household. This could have an impact on the eligibility of other household members.

b. If not, is it acceptable to suspend the Medicaid benefits of the incarcerated individual without changing the Medicaid eligibility status of the remaining members of the household?

No, per previous response.

c. Does the answer change if the member of the household that is incarcerated is considered head-of-household? Currently all Medicaid households must have a “head-of-household” that resides at the residence. All correspondence is mailed to the head-of-household.

Federal regulations do not establish that there must be a “head of household” in order for individuals to be eligible for Medicaid. Pursuant to 42 CFR 435.401, the State may not impose eligibility requirements that are more restrictive than the AFDC or SSI programs. Please clarify whether it is a requirement in Colorado Medicaid to have a “head-of household” for purposes of Medicaid eligibility.

d. Does the answer change if the member of the household that is incarcerated is earning income and that income is no longer available to the household?

Yes, this would change financial circumstances for the members remaining in the household and eligibility must be re-determined.

e. If the Medicaid eligibility of an inmate is suspended upon incarceration, should it be “unsuspended” as a procedural matter if the inmate is transferred to an inpatient hospital setting (as referred to in Question 1)?

This is a State decision as federal law and regulations do not specify provisions on the process used to suspend Medicaid eligibility. The fact that a Medicaid eligible client becomes incarcerated does not make them ineligible for Medicaid, but FFP is not available while they are incarcerated.

If the eligibility is “unsuspended,” will the inmate’s nominal household revert back to his or her household prior to incarceration?

No, because they are no longer living in the household.

If the nominal household does not revert back and the inmate previously was Medicaid-eligible as a result of residing in a household with qualifying children, how can the inmate retain eligibility?

If the only basis for eligibility for the inmate was being a caretaker relative under section 1931 of the Act, the individual would not be eligible for Medicaid.

5. For disabled adults receiving Social Security Income (SSI), the Department operates Medicaid under a Section 1634 agreement with the Social Security Administration (SSA). As such, individuals are automatically enrolled or disenrolled from Medicaid depending solely in the information received from the SSA.

The SSA has the ability to transmit to the Department when an individual’s SSI benefits are suspended. Currently, the Department terminates Medicaid eligibility for these individuals. Once SSA lifts the suspension of SSI, Medicaid is automatically reinstated. Would it be appropriate for the Department to suspend Medicaid eligibility in accordance with the SSI suspension instead of terminating Medicaid eligibility?

If the Department receives information that an SSI individual is incarcerated but their SSI benefits continue, would it be appropriate to suspend Medicaid eligibility?

Because Colorado only covers individuals receiving SSI payments pursuant to section 1634 of the Act and 42 CFR 435.120, but not the “eligible but not receiving” group in 42 CFR 435.210, if the individual stops receiving SSI payments when he or she becomes incarcerated, this individual can no longer be eligible for Colorado Medicaid.

If the Department has suspended Medicaid eligibility for an inmate on SSI, would it be appropriate for the Department to maintain the suspension of Medicaid eligibility after SSI benefits have been terminated? SSI benefits are normally terminated after an individual has been incarcerated for over a year.

Upon the conclusion of the incarceration, can the Department “un-suspend” (*i.e.*, reinstate) an individual’s Medicaid eligibility if that individual had his or her SSI benefits terminated or suspended by SSA solely due to incarceration without the reinstatement of SSI benefits by SSA?

If SSA terminates SSI benefits, Medicaid must do the same because the only reason for those individuals to be eligible for Medicaid was due to the receipt of SSI payments.

6. Depending on the facility, inmates may spend various lengths of time involuntarily confined. In state prisons the average stay is well over a year, while in county jails the stay may only be for a few days. Is there any specific length of time that Medicaid eligibility may be suspended for inmates?

Federal statute or regulations do not specify time limitations for suspending Medicaid eligibility.

a. If not, is it appropriate to indefinitely suspend Medicaid eligibility?

If so, and the individual is a member of a household, can the individual remain part of that household indefinitely during the incarceration period?

Per response to question #5, an incarcerated individual is no longer a member of a household because they are no longer living there.

If so, and an eligibility redetermination required upon the conclusion of the incarceration period? The Department is concerned about those individuals who are incarcerated for several years and may not return to the same household under which Medicaid eligibility was originally established.

b. Medicaid eligibility is re-determined annually. Can Medicaid eligibility be suspended beyond the individual’s re-determination date? Is an annual redetermination required if the individual is still an inmate?

If the individual continues to be eligible for Colorado Medicaid when they become incarcerated, the State must do annual re-determination of eligibility pursuant to 42 CFR 435.916.

c. Can the Medicaid agency specify a length of time beyond which Medicaid eligibility can be suspended? For example, Medicaid eligibility may be suspended while an individual is incarcerated up to one year but not beyond the individual's Medicaid re-determination date. **Federal statute or regulations do not specify time limitations for suspending Medicaid eligibility.**

7. Would it be appropriate to set a policy for the suspension of Medicaid eligibility that treated Medicaid individuals differently?

No, this would violate comparability requirements in section 1902(a)(10)(B) of the Act.

If so, could that policy be set to treat SSI-disabled individuals different from AFDC adults? For example, SSI-disabled individuals would not be eligible to have their Medicaid eligibility suspended, but AFDC adults could.

If so, could that policy be set to treat adult individuals differently from children? For example, adults would not be eligible to have their Medicaid eligibility suspended but children would be, and that policy would be enforced even when adults and children are in the same household (such as with AFDC households).

If so, could the policy be different based on the individual's status in the household? For example, anyone designated as head-of-household would not be eligible to have their Medicaid eligibility suspended, but other adults and children in the household would be.

Suspension of Medicaid Eligibility for Incarcerated Persons July 31, 2008 Page 5

No, this would violate comparability requirements in section 1902(a)(10)(B) of the Act.

8. What would be the process for suspending Medicaid eligibility for those individuals who have submitted a Medicaid application but have not received an eligibility determination prior to incarceration? Under this scenario, Medicaid eligibility could be backdated to the period prior to the incarceration, but then suspended once the incarceration began. Would such an action be acceptable?

If the individual meets eligibility criteria when the application is processed, they would be eligible for Medicaid even though he or she later becomes incarcerated. No FFP can be claimed as long as they are inmates of the public institution.

9. To implement a suspension of Medicaid eligibility would the Department need to modify the State Plan? Is there any notification to, or approval from, CMS that is needed prior to implementation?

The State would not have to amend its Medicaid State Plan in order to establish suspension of Medicaid eligibility for incarcerated individuals. This is not part of the State Plan. The State would not need CMS approval prior to implementation.

10. Does CMS have any information regarding other states that have successfully implemented a policy to suspend Medicaid eligibility that they could share with the Department? If so, the Department would appreciate any assistance CMS could provide in contracting those states.

New York and Pennsylvania have implemented suspension status for Medicaid eligible individuals that become incarcerated.

11. Does CMS have any additional guidance on the issue of inmate eligibility other than the December 12, 1997 letter that can be provided?

Not at this time.

12. Is it possible to apply the same suspension of eligibility to State Children's Health Insurance Program ("SCHIP") individuals? If so, would any of the above responses to Medicaid eligibility be significantly different?

Section 2110(b)(2) of the Social Security Act excludes children that are inmates of public institutions from the SCHIP program, therefore similar suspension policies would apply.

Please contact Diane Dunstan if you have questions regarding this letter. She can be reached at (303) 844-7040 or at Diane.Dunstan@cms.hhs.gov.

Sincerely,



Richard C. Allen
Associate Regional Administrator
Division of Medicaid & Children's Health Operations

Cc: Chris Underwood