



## COLORADO DEPARTMENT OF HEALTH CARE POLICY & FINANCING

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Bill Ritter, Jr., Governor • Joan Henneberry, Executive Director

July 31, 2008

Richard C. Allen  
Associate Regional Administrator  
Division of Medicaid & Children's Health Operations  
Centers for Medicare and Medicaid Services  
1600 Broadway, Suite 700  
Denver, Colorado 80202

Re: Suspension of Medicaid Eligibility for Incarcerated Persons

Dear Mr. Allen:

The Department is requesting clarification on federal Medicaid policy for those individuals who are Medicaid eligible and then become incarcerated. In the last legislative session, SB 08-006, authorized the Department to suspend Medicaid eligibility for those individuals who become an inmate of a public institution. The Department's current Medicaid regulations require that an individual's eligibility be terminated when they become an inmate of a public institution, which is allowable under federal regulation. In order to implement this legislation the Department would appreciate your office's assistance in addressing the questions below.

For clarification, the Department is using the federal regulations at 42 CFR § 435.1010 and the letter titled "Clarification of Medicaid Coverage Policy for Inmates of a Public Institution," (Health Care Financing Administration, Department of Health and Human Services, Dec. 12, 1997) to define inmates. Through this letter, we use the word 'inmate' and 'someone who is incarcerated' synonymously. Further, the phrase 'suspend Medicaid eligibility' implies that that any medical services provided (inpatient hospital, outpatient hospital, physician, lab and x-ray, etc.) would not be eligible for FFP, but the individual would not have their Medicaid eligibility terminated.

1. Under the above definition of an inmate,
  - a. 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?
  - b. 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?

- c. 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?
    - d. 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.
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.
  - a. 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?
3. Under the above definition of an inmate, would an individual only needing temporary detoxification services be considered an inmate if they are in 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.
  - a. 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?

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?
  - 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.
  - 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?
  - 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.
  - 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?
  - 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)?
    - i. If the eligibility is “unsuspended,” will the inmate’s nominal household revert back to his or her household prior to incarceration?
    - ii. 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?
  
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.
  - a. 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?
  - b. If the Department receives information that an SSI individual is incarcerated but their SSI benefits continue, would it be appropriate to suspend Medicaid eligibility?

- c. 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.
  - d. 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?
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?
- a. If not, is it appropriate to indefinitely suspend Medicaid eligibility?
    - i. If so, and the individual is a member of a household, can the individual remain part of that household indefinitely during the incarceration period?
    - ii. 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?
  - 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.
7. Would it be appropriate to set a policy for the suspension of Medicaid eligibility that treated Medicaid individuals differently?
- a. 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.
  - b. 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).
  - c. 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.

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

The Department understands that the responses to the questions above are complicated, and we appreciate your assistance in addressing our questions. If your office has any questions or would like to discuss the implementation SB 08-006, please contact Chris Underwood, Director of State Program and Federal Financing at 303-866-4766. Mr. Underwood has taken the lead on researching the suspension of Medicaid eligibility for incarcerated persons for the Department, and he is available to meet with your staff to help address our questions.

Sincerely,

/s/

Joan Henneberry  
Executive Director