



## COLORADO DEPARTMENT OF HEALTH CARE POLICY & FINANCING

1570 Grant Street, Denver, CO 80203-1818 • (303) 866-2993 • (303) 866-4411 Fax • (303) 866-3883 TTY

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

May 29, 2009

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 of Health Care Policy and Financing (Department) greatly appreciates the assistance provided by your office concerning our request for clarification on federal Medicaid policy for those individuals who are Medicaid-eligible and subsequently become incarcerated.

Senate Bill 08-006 authorized the Department to suspend Medicaid eligibility for those individuals who become inmates of a public institution. The Department's current Medicaid regulations require an individual's eligibility to be terminated when he or she becomes an inmate of a public institution. This termination is permitted by federal regulation. The Department has submitted a number of questions to your office in order to implement this legislation, and we received a response with additional guidance on December 2, 2008.

The Department has researched policies implemented in other states and by other federal agencies since that time, but was unable to locate a complete policy that could easily be duplicated. We actually found that several states had abandoned efforts to develop a comprehensive policy after encountering substantial difficulties. We have done our best to incorporate guidance provided by your office and other sources to develop a unique policy which we believe can be implemented by the Department's eligibility technicians and within the Colorado Benefits Management System.

The Department accordingly requests that your office review the enclosed proposed policy. Please note that we are requesting some amount of leniency when applying the federal regulations addressing a situation where an eligibility redetermination is required because of a "change in circumstance" for an inmate. Based on the December 2, 2008 response from your office, we fear that any period of incarceration (for instance, a single day or even an hour) by a Medicaid client could be interpreted to trigger an eligibility redetermination because of a change in circumstance. Such a strict reading could result in a mandatory policy that would be very difficult to formalize and implement, and it would virtually eliminate the ability to suspend

Medicaid benefits for any incarcerated client. As such, the Department has attempted to define the need for a redetermination for inmates based on the criteria set forth by the Social Security Administration for those receiving a Social Security Income benefit.

We further note that the December 2, 2008 response from your office states that Medicaid clients residing the State's Community Corrections program likely would be considered inmates of a public institution for the purposes of a Medicaid eligibility analysis. You also requested additional information. Our attached proposed policy does not address the Community Corrections program at this time. We are still researching this issue and will provide addition information and/or an explanation as to why Medicaid clients residing in the Community Corrections program should not be considered incarcerated in the immediate future. However, because there are many facets to this program, we do not wish to further complicate our proposed policy on inmates by incorporating that discussion into this letter.

Please note that the Department also is releasing this letter and attached proposed policy to client and provider stakeholders for comment. Once the Department has received comments and feedback from your office and these interested stakeholders, we intend to issue a formal policy and regulations to implement a change in policy.

The Department understands that the Medicaid guidelines concerning inmates are complicated, and we appreciate your assistance in reviewing our proposed policy. If your office has any questions or would like to discuss the implementation of Senate Bill 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 is available to meet with your staff to help address our questions.

Sincerely,

/s/

Joan Henneberry  
Executive Director

## **PROPOSED POLICY FOR REVIEW AND COMMENT NOT FOR IMPLEMENTATION**

### **How Incarceration Impacts Eligibility for Medicaid Benefits in Colorado**

#### **Definitions:**

Incarceration or Inmate status means the temporary or permanent placement of an individual or client confined involuntarily in a city, county, state or federal prison, jail, detention facility, or other penal facility. This includes individuals who are being involuntarily held in detention centers awaiting trial or involuntarily residing at a wilderness camp under any type of governmental control.

There is no specified time period for the placement, and, therefore, the client is considered incarcerated at the moment they are confined. Confinement does not include an individual in the custody of a sheriff or state patrol prior to being placed into the temporary or permanent placement of an individual or client in a place of confinement, such a city, county, state or federal prison, jail, detention facility, or other penal facility.

#### **Rules:**

1. A client's Medicaid eligibility is suspended effective on the first of the month for any month in which the client is incarcerated for the entire month.
2. A client's Medicaid eligibility will be terminated if the client is incarcerated for 12 consecutive calendar months unless he or she submits a Medicaid application and is re-determined eligible as a household size of one (*i.e.*, Medicaid eligibility must not be dependent upon having children in his or her household). If a client's annual redetermination occurs while the client is incarcerated but before he or she is incarcerated for 12 consecutive calendar months, the following conditions apply:
  - a. If the incarceration is expected to end prior to 12 consecutive calendar months of the original incarceration date, the inmate's Medicaid eligibility will remain suspended and he or she is considered part of the household for the redetermination.
  - b. If the incarceration is expected to exceed 12 consecutive calendar months of the original incarceration date, the inmate's Medicaid eligibility will be terminated unless he or she submits a Medicaid application and is re-determined eligible as a household size of one.
3. If the client is determined eligible for Medicaid following 12 continuous months of suspension, his or her eligibility status remains suspended until the incarceration period ends and no further Medicaid re-determinations are necessary.
4. When the incarceration period ends, Medicaid eligibility is restored for three full calendar months. On the 1<sup>st</sup> of the month following the three full calendar months, Medicaid eligibility is terminated unless the client submits a Medicaid application and is re-determined eligible.

5. While a client is incarcerated, the only Medicaid benefits available to him or her are those services provided in the inpatient hospital setting. A Medicaid benefit and provider payment are made for services provided in the inpatient hospital setting for individuals who are eligible or have a suspended status.

### **Examples:**

**Incarcerated less than one calendar month:** Inmate remains eligible for Medicaid and the incarceration is not a change in circumstance.

- For example, someone who enters jail on February 10 and is released before midnight March 31 should not lose Medicaid eligibility. In this example, the client was not incarcerated for the full month of March.
- There is no change to the client's eligibility record in CBMS. The client remains part of the original household prior to incarceration. There is no notice requirement applicable to the client.
- While the client is incarcerated, he or she is eligible only for limited Medicaid benefits. A guarantee of eligibility for Medicaid benefits issued to providers (received through the Web Portal or other Medicaid eligibility verification system) will not be honored for any services except those provided while in the inpatient hospital setting. No other Medicaid benefits are available.

**Incarcerated throughout a calendar month:** Inmate's Medicaid eligibility is suspended but not terminated, and the incarceration is not a change in circumstance (aligned with the SSI regulation at 20 C.F.R. § 416.211).

- For example, a client who enters jail on February 10 and is not released until April 1 will be Medicaid eligible in February (because he or she is not in jail for the whole month), but he or she will have his or her eligibility suspended during March.
- A change to the client's eligibility record in CBMS is required. The client remains part of the original household prior to incarceration. He or she will be given notice that his or her eligibility status has been changed to "suspended".
- The client's eligibility status is suspended while he or she is incarcerated, and the client is only eligible for limited Medicaid benefits. A guarantee of eligibility for Medicaid benefits issued to providers (received through the Web Portal or other Medicaid eligibility verification system) will not be honored for any services except for services provided while in the inpatient hospital setting. No other Medicaid benefits are available.

**Incarcerated at least one month and then released after the first of another month:** Inmate's Medicaid eligibility is restored for part of the month in which he or she is released and the incarceration is not a change in circumstance (aligned with the SSI regulation at 20 C.F.R. § 416.421).

- For example, someone who enters jail on February 10 and is released on May 15 the same year will be Medicaid eligible in February, but will have Medicaid eligibility

suspended in March and April. The client will be eligible upon release in May. His or her eligibility is not changed to suspended status until March 15. This status ends on May 15, and the eligibility status in CBMS is changed to “eligible”.

- While Medicaid eligibility will be restored eventually or retroactively (in the above example back to May 15), there could be a delay if the Social Security Administration (the “SSA”) for SSI clients, or if the county department of human/social services for all non-SSI clients, are not informed promptly of the individual’s release.
- While the client is incarcerated and his or her eligibility status is suspended, he or she only will be eligible for limited Medicaid benefits. A guarantee of eligibility for Medicaid benefits issued to providers (received through the Web Portal or other Medicaid eligibility verification system) will not be honored for any services except for those provided while in the inpatient hospital setting. No other Medicaid benefits are available.

**In jail for 12 consecutive calendar months and the client is SSI eligible:** Inmate's eligibility is terminated (aligned with the SSI regulation at 20 C.F.R. § 416.1335). Termination technically occurs after 12 continuous months of suspension, and only full months count towards this requirement. The incarceration is considered a change in circumstance after 12 continuous months of suspension.

- For example, someone who enters jail on February 1st of one year and is released on February 10th the following year will have Medicaid eligibility terminated because eligibility was suspended for 12 continuous months.
- However, someone who enters jail on February 10th of one year and is released on February 10th a year later has benefits suspended for March through January and restored on February 10th of the second year. This individual's eligibility will not be terminated because his or her benefits were not suspended for 12 continuous months.
- The client must file a new application and resubmit evidence of disability to SSA upon release. Medicaid eligibility cannot be reinstated unless and until SSI benefits are issued by SSA. Colorado SSI recipients automatically have Medicaid coverage, and for most adults under the age of 65 with no dependent children living in the household, SSI eligibility must be established prior to Medicaid eligibility.
- A client is only eligible for limited Medicaid benefits while he or she is incarcerated and his or her eligibility status is suspended. A guarantee of eligibility for Medicaid benefits issued to providers (received through the Web Portal or other Medicaid eligibility verification system) will not be honored for any services except those provided in the inpatient hospital setting. No other Medicaid benefits are available.

**In jail for 12 consecutive calendar months and the client is not SSI eligible:** Inmate's eligibility for Medicaid is terminated unless he or she submits a Medicaid application or is re-determined eligible as a household size of one (*i.e.*, Medicaid eligibility must not be dependent upon having children in his or her household) (aligned with the SSI regulation at 20 C.F.R. § 416.1335). Termination or eligibility re-determination technically must occur after 12 continuous months of suspension, and only full months will count in making this determination.

The incarceration is considered a change in circumstance for the client and his or her household after 12 continuous months of suspension. If the client is determined eligible for Medicaid following 12 continuous months of suspension, his or her eligibility status remains suspended until the incarceration period ends and Medicaid eligibility is restored following release for 3 months.

- For example, an individual who enters jail on February 1st of one year and is released on February 10th the following year will have Medicaid eligibility terminated because eligibility was suspended for 12 continuous months.
  - However, if the client enters jail on February 1st of one year and is released on February 10th the following year, he or she may have Medicaid eligibility re-determined because his or her eligibility was suspended for 12 continuous months.
  - If the individual is determined to be eligible for Medicaid following the 12 continuous months, his or her eligibility status remains suspended until the incarceration period ends on February 10<sup>th</sup> of the following year.
- In another example, an individual who enters jail on February 1st of one year and is released on April 1st five years later will have Medicaid eligibility suspended from February 1 to January 31st. On February 1st, the individual will either have Medicaid eligibility terminated because eligibility was suspended for 12 continuous months, or he or she may have Medicaid eligibility re-determined.
  - If the individual is found Medicaid eligible after a redetermination of his or her eligibility, this Medicaid eligibility will be suspended automatically (*i.e.*, the suspended status technically will continue) beginning on February 1 of the second year of incarceration until the individual is released March 31 three years later, since there will be no change in income or household size during the remainder of the incarceration.
  - An individual's eligibility is restored upon his or her release on April 1. He or she must have Medicaid eligibility re-determined within 3 months following this April 1 release, or the previously suspended eligibility will be terminated. When the individual is released from his or her incarceration, a change in circumstance will have occurred and he or she must have Medicaid eligibility re-determined or face termination on June 30<sup>th</sup>.
- However, an individual who enters jail on February 10th of one year and is released on February 15th a year later has his or her Medicaid benefits suspended from March through January, and then reinstated on February 15th of the second year. This individual's eligibility will not be terminated, and a re-determination will not be necessary, because benefits were not suspended for 12 continuous months.
- In yet another example, an individual who (a) enters jail on February 1st of one year and (b) is expect to be released on April 1st five years later with an annual redeterminaton date on November 1 will have his or her Medicaid eligibility suspended from February 1 to October 31<sup>st</sup> and then terminated on November 1. Alternatively, he or she may have Medicaid eligibility redetermined outside the original household application. This eliminates the need for the family on the original application to have two

redeterminations in a year (at the November 1 annual re-determination date and then following the 12 months of continuous suspended eligibility for the inmate). It also forces the inmate to apply as a single person prior to the 12 months of continuous incarceration, since the original incarceration period is expected to last beyond 12 consecutive calendar months.

- An individual is only eligible for limited Medicaid benefits while he or she is incarcerated and his or her eligibility status is suspended. A guarantee of eligibility for Medicaid benefits issued to providers (received through the Web Portal or other Medicaid eligibility verification system) will not be honored for any services except for those provided in the inpatient hospital setting. No other Medicaid benefits are available.

### **Medicaid Provider Payments Rules:**

1. If an individual is transferred from the city, county, state or federal prison, jail, detention facility, or other penal facility setting to the outpatient hospital setting or to any other clinical setting, neither Medicaid benefit nor payment to providers will be available. This is true even if the client is has a Medicaid “eligible” status in the MMIS and Web Portal or other Medicaid eligibility verification system.
2. If an individual is transferred from the city, county, state or federal prison, jail, detention facility, or other penal facility setting to the inpatient hospital setting, a Medicaid benefit and provider payment will be available for individuals in a Medicaid “eligible” or “suspended” status in the MMIS and Web Portal or other Medicaid eligibility verification system.
3. If an individual is brought to the Outpatient or Inpatient Hospital setting prior to incarceration in a city, county, state or federal prison, jail, detention facility, or other penal facility setting then a full Medicaid benefit and provider payment will be available, provided that he or she is shown to be eligible. An individual in the custody of a sheriff or state patrol is still eligible for Medicaid benefits and provider payment will be available until the individual ultimately is incarcerated in a city, county, state or federal prison, jail, detention facility, or other penal facility.