Medicaid Eligibility for Incarcerated Individuals

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Since Medicaid's inception, federal law has prohibited federal payments for health care services provided to adults and youth who are incarcerated.[1] This federal law is also known as the "*inmate exclusion*." The inmate exclusion prohibiting a state from collecting federal Medicaid funds should not be confused with Medicaid eligibility itself. To comply with the inmate exclusion, states had the option to implement a policy that would either terminate or suspend an adult incarcerated individual's Medicaid eligibility. Suspension of coverage is the preferred policy because it provides a seamless transition to reactivate an incarcerated person's Medicaid coverage upon their release. Conversely, a state terminating an incarcerated person's Medicaid upon entry into the carceral facility can cause an abrupt discontinuation of Medicaid coverage and delay access to life-saving health care services upon their release. Although most states maintained an adult incarcerated individual's Medicaid eligibility status by suspending coverage, there were still several states that implemented termination.

In 2018, Congress passed the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (the SUPPORT Act) that prohibited states from terminating Medicaid eligibility of incarcerated youth.[2] However, this law did not extend to adults. Effective January 1, 2026, the Consolidated Appropriations Act of 2024 mandates that all states are prohibited from terminating an individual's Medicaid eligibility upon becoming "an inmate of a public institution."[3] On December 23, 2025, the Centers for Medicaid and the Children's Health Insurance Program (CHIP) Services (CMCS) released a CMCS Informational Bulletin (CIB) on this new legislative mandate and the different suspension approaches states can adopt to comply with it.[4] This factsheet will explain the new suspension policy mandate; and additional federal Medicaid eligibility and coverage rules that affect adults and youth who are incarcerated.

Background on the Medicaid "Inmate Exclusion"

Medicaid prohibits states from receiving federal Medicaid funding, also known as federal financial participation (FFP), for health care expenditures for an "inmate of a public institution."[5] To determine whether FFP is prohibited, it must be determined that (1) the individual is an "inmate" and (2) whether the individual resides in a "public institution."[6]

"Inmate" is defined as a person who is living in a public institution.[7] An individual is not considered an inmate if the person is in a public educational or vocational training institution.[8] In addition, an inmate is not a person who is in a public institution for a temporary period pending other arrangements appropriate to their needs.[9] A "public institution" is defined as an institution controlled by a governmental agency or over which a governmental unit exercises administrative authority, which includes correctional institutions.[10] An individual of any age can be incarcerated if the individual is in custody and held involuntarily through operation of law enforcement authorities.[11] Medical institutions (like a hospital) are excluded from the definition of a public institution, and thus the exclusion does not apply to individuals receiving inpatient treatment in a medical facility.[12]

The exclusion **applies** to individuals:

- in correctional institutions, such any federal, state, local, or tribal institutions;[13]
- in a residential treatment facility for mental health or substance use disorder (if the individual is residing there involuntarily through operation of law enforcement);[14] or
- in Bureau of Prisons federal "Residential Reentry Centers";[15]

The exclusion also applies to circumstances where an incarcerated individual is transported out of the correctional facility to receive outpatient services, but is not admitted to the other facility.[16] Outpatient services include, but are not limited to, services provided in a local hospital emergency department, an urgent care center, a clinic, or a Federally Qualified Health Center or Rural Health Clinic.[17] If an incarcerated individual receives health services in those facilities, then FFP will not be available and the correctional facility will be required to cover any additional costs.[18]

The exclusion **does not apply** to individuals:[19]

- in a medical institution receiving inpatient services;[20]
- in an intermediate care facility;[21]
- in a publicly operated community residence;
- in a child-care institution;
- on parole or probation;
- on home confinement; or
- voluntarily and temporarily residing in a public institution.

In addition, effective January 1, 2025, the Consolidated Appropriations Act of 2023 gives states the option to claim FFP and provide Medicaid coverage to eligible juveniles who are "inmates of a public institution" during the period pending disposition of charges.[22] Following adjudication, the state is mandated to provide the juvenile screenings and diagnostic services

30 days prior to their release; and targeted case management services 30 days prior to their release and for at least 30 days following their release.[23] In both of these circumstances, the exclusion would not be applicable since states are required to provide a targeted set of Medicaid services during a youth's incarceration period; and, if a state elects the state option, it can claim FFP of Medicaid services pending disposition of charges.

CMS recognizes that depending on the federal, state, or local authority, there may be various custody arrangements, such as referring to individuals by different names or subjecting them to different conditions and requirements.[24] Because this variance can cause uncertainty about whether an individual can receive Medicaid-covered services, the best indication of determining whether an individual is incarcerated is their legal ability to exercise personal freedom.[25] For example, individuals residing in halfway houses can receive Medicaid-covered services unless they do not have freedom of movement and association while residing at the facility. For FFP to be available for covered services for Medicaid-eligible individuals living in a halfway house, the facility would need to be operated in a way that ensures residents have the freedom to move, such as permitting residents to work outside of the facility or seek health care treatment outside of the facility to the same or similar extent as other Medicaid enrollees in the state.[26] If such freedoms are not granted, then the residents would be considered an inmate of a public institution and the inmate exclusion would apply. Although, in certain circumstances, the inmate exclusion prohibits a state from claiming FFP for Medicaid covered services for incarcerated individuals, such prohibition does not impact an incarcerated individual's Medicaid eligibility, nor terminate a person's Medicaid eligibility.

Medicaid Eligibility & Enrollment

A person's custody status does not impact their Medicaid eligibility. As described in detail above, the statutory inmate exclusion is a payment exclusion only, which means incarcerated individuals who are eligible for or are enrolled in Medicaid do not lose their eligibility due to their incarcerated status alone.[27] In circumstances where a person is admitted into a public institution and is not enrolled in Medicaid, the state Medicaid agency must accept their application.[28] Although incarceration does not determine a person's Medicaid eligibility, it may affect other factors that determine Medicaid eligibility, such as household income determinations and state residency determinations.[29] If it is determined that the individual meets all applicable Medicaid eligibility requirements, the state must enroll the individual in the program and eligibility will become effective immediately at any point during their incarceration.[30] CMS encourages state Medicaid agencies, in collaboration with correctional facilities, to prepare and assist individuals with the application process prior to release.[31] Once an incarcerated individual is determined to be eligible for Medicaid and enrolled, states must implement a Medicaid suspension policy.[32] The type of suspension policy a state decides to

implement will determine how the state will conduct renewals or redeterminations of an incarcerated individual's Medicaid eligibility.

If an incarcerated individual is determined to be Medicaid eligible, states must implement a Medicaid suspension policy—states are prohibited from terminating an incarcerated person's Medicaid eligibility.

Medicaid Suspension Policies for Incarcerated Adults and Youth

As of January 1, 2026, all states are required to suspend Medicaid coverage during the duration of an adult's incarceration under the Consolidated Appropriations Act of 2024 (CAA 2024).[33] For youth who are incarcerated, this legal requirement for states to suspend Medicaid coverage was already enforced under the 2018 Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (the SUPPORT Act)—amended section 1902(a) of the Social Security Act.[34] Prior to the enactment of CAA 2024, states could implement a few different types of policies for non-juveniles to comply with the Medicaid inmate exclusion: *Medicaid suspension of eligibility or benefits*, or *Medicaid eligibility termination*. With the enactment of CAA 2024, states no longer have the option to terminate an adult's Medicaid coverage. To effectuate the requirements of CAA 2024, states must adopt either one of two approaches: (1) suspend an adult's Medicaid eligibility or (2) suspend an adult's Medicaid benefits.[35]

Medicaid Eligibility Suspension Policy

A Medicaid eligibility suspension policy effectively pauses an individual's Medicaid eligibility.[36] It does not terminate it. The individual cannot receive Medicaid coverage for services, and FFP is not available, except in the following circumstances:

(1) The individual is receiving inpatient hospital services or inpatient services from another medical institution;[37]
(2) A Medicaid-enrolled juvenile is eligible to receive mandatory pre-release services 30 days prior to their release;[38] or
(3) The state elected the option to lift the Medicaid inmate exclusion and cover Medicaid services for eligible juveniles pending disposition of charges.[39]

Under eligibility suspension, the state is not required to conduct regular renewals or redeterminations but may retain the option to do so.[40] In the event a state wants to claim FFP for inpatient services, pre-release services, or services covered pending disposition of charges, the state must lift the eligibility suspension and reinstate it for the duration of which services

are provided.[41] Before lifting the suspension, the state must ensure the individual's eligibility has been determined or redetermined within the applicable eligibility period.[42]

Medicaid Benefits Suspension Policy

A Medicaid benefits suspension policy effectively pauses an individual's Medicaid benefits.[43] The individual is still enrolled in Medicaid, but Medicaid coverage of benefits is limited to services that the inmate payment exclusion does not apply to, such as inpatient hospital services or inpatient services from other medical institutions and pre-release services.[44] During a benefits suspension, the state must still conduct regular renewals and redeterminations for the duration of the individual's incarceration.[45]

States are required to provide a Medicaid-enrolled incarcerated individual with a timely and adequate written notice explaining that they are being placed into either an eligibility or benefits suspension status. This notice must be provided at least 10 days before the date of the action.[46]

Additional State Requirements

States that already enforce either suspension policy will need to review their policies and procedures to ensure they are aligned with CAA 2024 requirements and must amend them to comply with these requirements.[47] Additionally, states should document their suspension policy in an appropriate and publicly accessible location, even if they are not required to submit a State Plan Amendment or notify CMS of its chosen suspension policy.[48]

Conclusion

No Medicaid-eligible individual who is incarcerated, regardless of age, should have their Medicaid eligibility terminated because of their incarceration status. All states are required to implement either a Medicaid eligibility suspension policy or Medicaid benefits suspension policy. As states refresh or implement Medicaid suspension policies for its incarceration population, advocates should check to ensure their policies and practices comply with the requirements of CAA 2024, as well as the SUPPORT Act.

ENDNOTES

[1] 42 U.S.C § 1396d(a)(32)(A); 42 C.F.R. §§ 441.13(a)(1), 435.1009(a)(1), 435.1010. *See* CMS, Dear State Health Official Letter (Apr. 28, 2016) (SHO #16-007), https://www.medicaid.gov/federal-policy-guidance/downloads/sho16007.pdf [*hereinafter*, CMS SHO #16-007].
[2] 42 U.S.C. § 1396a(a)(84)(A).
[3] Consolidated Appropriations Act (CAA) of 2024 § 205(a), Pub. L. No. 118-42 (Mar. 9, 2024) (CAA 2024 Section 205(a) amended 42 U.S.C. 1396a(a)(84)(A) to require states to suspend Medicaid covered services for adults residing in correctional facilities, instead of terminating eligibility, effective January 1, 2026) [*hereinafter*, CAA 2024 § 205(a)].
[4] See CMCS, CMCS Informational Bulletin (Dec. 23, 2025), https://www.medicaid.gov/federal-policy-guidance/downloads/cib122325.pdf [*hereinafter*, CMCS CIB 2025].
[5] 42 U.S.C § 1396d(a)(32)(A); 42 C.F.R. §§ 441.13(a)(1), 435.1009(a)(1), 435.1010.
[6] *Id*.
[7] 42 U.S.C § 1396d(a)(32)(A); 42 C.F.R § 435.1010.
[8] *Id*.
[9] *Id*.
[10] *Id*.
[11] CMS SHO #16-007, *supra* note 1 at 3 (this excludes a child care institution, publicly operated community residence that services no more than 16 residents, or a publicly educational or vocational training institution for purposes of securing educational or vocational training).
[12] 42 C.F.R. §§ 435.1009 (FFP is available for individuals under 21 receiving services in a psychiatric hospital, a psychiatric unit of a general hospital, or a psychiatric residential treatment facility); 435.1010 (definition of "medical institution" and "inpatient"). *See* also CMS SHO #16-007, *supra* note 1 at 13 (qualifying inpatient stays include hospitals, nursing homes, psychiatric residential treatment facilities, or other medical institutions for an expected duration of 24 hours or more, in which there is an admission of the individual to the facility as an inpatient).
[13] 42 C.F.R § 435.1010. *See* CMS SHO #16-007, *supra* note 1 at 3 (includes detention facilities and other penal settings).
[14] *See* CMS SHO #16-007, *supra* note 1 at 5-6. A residential treatment facility can be operated by law enforcement authorities or can be operated by a contractual private entity. In addition, a residential treatment facility may be an Institution for Mental Diseases (IMD), which would require a separate analysis. A residential treatment facility and IMD are not mutually exclusive categories. An IMD is "a hospital, nursing facility, or other institution of more than sixteen beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services." *See* 42 U.S.C. § 1396d(i).

[15] CMS SHO #16-007, *supra* note 1 at 4–5. The Department of Justice's Bureau of Prisons is responsible for payment of health care services rendered to individuals in Residential Re-Reentry Centers. For residents previously enrolled in their state Medicaid program, their Medicaid benefits will be suspended. For residents not enrolled in their state Medicaid program, they can apply for eligibility determination while incarcerated and if qualified, their benefits will be suspended.
[16] *Id*. at 12.
[17] *Id*.
[18] CMS SHO #16-007, *supra* note 1 at 12. State governments are traditionally responsible for the medical care of individuals who are incarcerated. *See Estelle v. Gamble*, 429 U.S. 97, 103 (1976); *see* also *Brown v. Plata*, 563 U.S. 493, 510–11 (2011).
[19] CMS SHO #16-007, *supra* note 1 at 3–5.
[20] 42 U.S.C. § 1396d(a)(32)(A); 42 C.F.R. § 441.13(b). *See* CMS SHO #16-007, *supra* note 1 at 11. Inpatient services that are coverable when they are covered under the state's Medicaid Plan, delivered in a prescribed setting (consistent with the Plan's terms), and provided by a certified or enrolled provider.
[21] CMS SHO #16-007, *supra* note 1 at 13.
[22] Consolidated Appropriations Act (CAA) of 2023 § 5121, Pub. L. No. 117-328 (Dec. 29, 2022); *see also* CMS, Dear State Health Official Letter (Jul. 23, 2024) (SHO #24-004), https://www.medicaid.gov/federal-policy-guidance/downloads/sho24004.pdf [*hereinafter*, CMS SHO #24-004]. 42 U.S.C § 1396a(nn) (juveniles are defined as youth under the age of 21 or former foster youth up to the age of 26 while incarcerated).
[23] Consolidated Appropriations Act (CAA) of 2023 § 5122, Pub. L. No. 117-328 (Dec. 29, 2022); *see also* CMS SHO # 24-004, *supra* note 26.
[24] CMS SHO #16-007, *supra* note 1 at 3.
[25] *Id*.
[26] *Id*. at 4.
[27] 42 U.S.C. § 1396d(a)(32)(A); 42 C.F.R. §§ 441.13(a)(1), 435.1009(a)(1), 435.1010. *See* CMS SHO #16-007, *supra* note 1 at 6–7.
[28] 42 C.F.R. § 435.907(a)-(b).
[29] 42 C.F.R. § 435.403 (defines regulations for determining residency, including those residing in a public institution); 435.911 (defines regulations for determining household income).
[30] 42 C.F.R. § 435.911(c); 435.912; 435.915(a)-(c). *See* CMS SHO #16-007, *supra* note 1 at 6.
[31] CMS SHO #16-007, *supra* note 1 at 7.
[32] CAA 2024 § 205(a), *supra* note 2; *see generally* CMCS CIB 2025, supra note 3.
[33] *Id*.
[34] 42 U.S.C. § 1396a(a)(84)(A).
[35] CMCS CIB 2025, *supra* note 3 at 4.
[36] CMCS CIB 2025, *supra* note 3 at 4-5.
[37] *Id*. at 4-5.

[38] CMCS CIB 2025, *supra* note 3 at 4-5. *See* 42 U.S.C § 1396a(nn), *supra* note 25 (defining "juvenile").
[39] *Id*. at 4-5. *See* Consolidated Appropriations Act of 2023 § 5121, 5122, Pub. L. No. 117-328 (Dec. 29, 2022) [made improvements to the continuity of coverage and services for incarcerated youth, by requiring states to provide certain services and screenings to youth 30 days prior to the release, and by creating a state option to allow states to provide Medicaid-funded services to juveniles pre-trial]; *see also* CMCS CIB 2025, *supra* note 3 at 4-5.
[40] CMCS CIB 2025, *supra* note 3 at 4-5.
[41] *Id*.
[42] *Id*.
[43] *Id*. at 5.
[44] *Id*.
[45] *Id*.
[46] 42 C.F.R. §§ 431.201, 211-214; 435.917. *See* CMCS CIB 2025, *supra* note 3 at 5-6.
[47] CMCS CIB 2025, *supra* note 3 at 4.
[48] 42 C.F.R. § 431.18. *See* CMCS CIB 2025, *supra* note 3 at 6.