

An Explanation of Federal Medicaid and Disability Program Rules¹

INCOME-SUPPORT BENEFITS

People with disabilities, including those disabled by a severe mental illness, are entitled to monthly income-support payments through two different federal programs: SSI for those with low incomes and SSDI for people who have worked and paid Social Security taxes. Many people whose SSDI benefit is too low because they worked only a short time can qualify for both SSDI and SSI.²

These federal disability benefits are linked with health care coverage:

- In most states, SSI recipients automatically have Medicaid coverage. Where they do not, a separate application will enable most to secure Medicaid.³
- All SSDI recipients qualify for Medicare after a 24-month wait. People who have been getting SSI or SSDI payments when arrested cannot receive benefits while in jail. But whether and how they remain eligible when released varies.

When Inmates Lose SSI

Generally, the length of time a person is in jail determines whether, or when, federal SSI benefits will be affected. The monthly payments are nearly always interrupted while someone is in jail, but benefits are payable up until the time of incarceration and sometimes a little longer, and can resume shortly thereafter, as long as the person has been in jail less than a year (see below).

When incarceration is for less than 12 consecutive months, the federal Social Security Administration (SSA) considers this a “suspension” and payments should resume soon after the person leaves jail—as long as SSA is informed of the release and the person submits a simple form with evidence showing that he or she again meets the financial requirements.⁴ SSA presumes that these individuals remain disabled under federal rules.

To complete this reapplication process, the Social Security office must be able to verify that the person has been released. Families, community mental health workers or jail administrators can assist people in this situation by making sure SSA is alerted to the need to resume benefits and told where to send the checks.

1. The information in this appendix is reprinted with the permission of the Bazelon Center for Mental Health Law from their policy brief, *For people with serious mental illnesses: Finding the Key to successful transition from jail to community*, March 2001. *Finding the Key* is available online at: www.bazelon.org/findingthekey.html or can be ordered at: <http://store.bazelon.org>.

2. SSDI benefit amounts depend on wages and length of time employed. For more

information on the complex eligibility rules for SSI and SSDI, contact a local Social Security Office or call 1-800-772-1213.

3. The following states do not automatically grant Medicaid coverage to those on SSI: Connecticut, Hawaii, Illinois, Indiana, Minnesota, Missouri, New Hampshire, North Dakota, Ohio, Oklahoma and Virginia

4. 20 C.F.R. § 416.1321(b).

People who have been incarcerated for a year or more and have had their benefits suspended for at least 12 months must file a completely new application for SSI upon their release. They will have to show that they are still disabled under the eligibility standards (see below).

When Inmates Lose SSDI

People who qualify for SSDI remain eligible as long as they meet the federal definition of disability. SSDI benefits are suspended following a conviction and confinement in jail for 30 days or longer. But SSDI benefits are not terminated, no matter how long the term. However, Social Security must verify that the person is no longer in a correctional facility before payments can resume. Specifically:

- SSDI benefits are suspended if someone has been convicted and confined in jail longer than 30 days, whether or not it is a full calendar month.⁵
- SSDI benefits are suspended for any 30-day period during which an individual is confined in a jail or prison in connection with a verdict of not guilty by reason of insanity or guilty but insane, or a finding of incompetence to stand trial.⁶
- SSDI benefits that were already paid are recovered. For example, someone arrested on the fifth of the month who has already cashed that month's check will have future checks reduced until the benefits paid for that month are recovered.

Federal rules on payment of SSDI benefits to inmates were different for people incarcerated before April 1, 2000.⁷ The above description applies to everyone incarcerated since that date. A worker's dependents, such as a spouse or child, sometimes receive SSDI.

These payments are not suspended or terminated when the worker is in jail; they continue even when the worker loses benefits.⁸

How Time in Jail Affects Eligibility for SSI Benefits

In jail less than one calendar month: Inmate remains eligible for SSI and should receive the full cash benefit.

For example, someone who enters jail on February 10 and is released before midnight March 31 should lose no cash payments.

In jail throughout a calendar month: Inmate will have SSI payments suspended but not terminated.⁹ This means that an inmate who is in jail on the first of the month and stays the whole month is not eligible for a cash payment for that month.

For example, someone who enters jail on February 10 and is not released until April 1 will not lose February's payment (not being in jail for the whole month) but will lose the March payment.

In jail at least one month and then released after the first of another month: Inmate can receive an SSI cash payment for part of the month in which he or she is released.¹⁰

For example, someone who enters jail on February 10 and is released May 15 the same year will not lose the February payment, but will lose March and April benefits. In May, the person will be eligible for half of the monthly benefit. While this will be paid eventually, it could be delayed if the Social Security Administration (SSA) is not informed promptly that the individual has been released.

In jail for 12 consecutive calendar months: Inmate's eligibility is terminated.¹¹ Technically, termination occurs after 12 continuous months of suspension. Only full months count.

For example, someone who enters jail on February 1st of one year and is released on February 10th the following year will have SSI eligibility terminated because benefits were suspended for 12 continuous months. This person will have to file a new application and resubmit evidence of disability.

But someone who enters jail on February 10th of one year and is released on February 10 a year later has benefits suspended for March through January and prorated for February of the second year. This person's eligibility will not be terminated because benefits were not suspended for 12 continuous months.

Qualifying for SSI or SSDI on Release

Inmates not receiving benefits when sent to jail can apply for SSI or SSDI while incarcerated, in anticipation of their release. They usually need assistance, however, to obtain the appropriate forms and gather the necessary evidence.

5. 42 U.S.C. § 402(x)(1)(A)(i), as amended by Public Law 106-170.

6. 42 U.S.C. § 402(x)(1)(A)(ii) as amended by Public Law 106-170.

7. The old rules will continue to apply to individuals whose jail or prison confinement began before April 1, 2000. Although it is not described here, the Bazelon Center has a memorandum that lays out those rules. If you would like a copy, send a request with a stamped (\$.34) self-addressed envelope to: Bazelon Center Publica-

tions Desk, 1101 15th Street N.W., Suite 1212, Washington D.C. 20005

8. 20 C.F.R. § 404.468(a).

9. 20 C.F.R. § 416.211

10. 20 C.F.R. § 416.421

11. 20 C.F.R. § 416.1335

Normally, review of an application takes about three months, so an inmate should apply as long as possible before the release date.

SSA will assess eligibility based on the application. If it is approved before the inmate's release, payments will begin as of the first day of the calendar month following release.¹² If the application is approved after the inmate is released, benefits are payable at that time, and SSI (but not SSDI) benefits are backdated to the first day of the month following release.

An individual with a severe mental illness may also qualify for advance emergency payments. To be eligible, people must demonstrate:

- a financial emergency;
- that they are likely to qualify for assistance; and
- that they have not already received assistance for that benefit period.

Why Benefits Are Lost and What Can Be Done About It

Jails have an incentive to inform SSA that a person is confined; they receive federal payments when they supply information resulting in suspension or termination of SSI or SSDI benefits. But they have no such incentive to advise SSA when someone is released so that benefits can be restored.

Jails and prisons can enter into agreements with SSA to provide monthly reports of inmates' names, Social Security numbers, dates of birth, confinement dates and other information. The institution receives \$400 when this information is sent within 30 days of the inmate's arrival and \$200 if it is sent within 90 days.¹³ This information should-but does not always-include an estimated release date.

Jails, prisons and hospitals can also enter into pre-release agreements with the local Social Security office, which will help their staff learn the rules for pre-release processing of applications and reapplications for SSI.¹⁴ When such an agreement exists, SSA processes claims more quickly, inmates have assistance in gathering the information needed to support their application, and benefits are often payable immediately upon release or shortly thereafter.

Health Care Coverage

Medicare and Medicaid are two sources of health coverage. People eligible for SSDI (and those over age 65) are covered by Medicare, after a 24-month wait. Low-income individuals qualify for Medicaid in various ways; in most states anyone who qualifies for SSI is covered. Medicaid provides better mental health care coverage than Medicare.

Medicaid

Medicaid is a joint federal-state program. To qualify, a person must fall into one of several eligibility categories. Once eligible, the individual is covered by a package of services defined by the state under broad federal requirements. Federal law requires some services to be available, such as physician services and general hospital care. Others are offered at state option-among them, various community-based mental health clinic and rehabilitative services. As a result, Medicaid coverage varies from state to state. However, all states cover a significant array of mental health services for people with severe mental illnesses.

Most jail inmates with severe mental illnesses have incomes below the Medicaid limit and may therefore be eligible for coverage. Usually their eligibility for SSI is what qualifies them for Medicaid. In 32 states, SSI eligibility results in automatic Medicaid coverage. In seven other states, SSI recipients are automatically eligible for Medicaid but must submit a separate application for Medicaid. In the 11 states that use different rules,¹⁵ people who receive SSI nearly always qualify for Medicaid, although they must go through a separate application process.

Some low-income individuals do not receive SSI or SSDI disability benefits, either because their disability is not severe enough to meet strict federal standards or because they have not applied. But they may still be eligible for Medicaid.

Currently, 39 states cover people who become "medically needy" when their income is reduced by high health care expenses.¹⁶ States can extend Medicaid coverage to people in other categories, such as low-income families or individuals who, without access to community-based services, would be forced to live in a health care institution. Also, a number of states use waivers of federal rules to cover other groups of uninsured low-income people through Medicaid.

12. 20 C.F.R. § 416.211

13. 42 U.S.C. § 1382(e)(1)(I) as amended by Public Law 104-193, the Personal Responsibility & Work Opportunities Reconciliation Act of 1996 (SSI-incentive effective for reporting individuals whose confinement began after March 1, 1997); 42 U.S.C. § 402(x) as amended by Public Law 106-170, the Ticket to Work & Work Incentives Improvement Act of 1999 (SSDI-incentive effective for reporting individuals whose confinement began after April 1, 2000).

14. Pre-Release Procedure for the Institutionalized, authorized under Section

1631(m) of the Social Security Act, 42 U.S.C. § 1383(m). See POMS SI 00520.900-930 (Eligibility).

15. See note 2.

16. 42 C.F.R. § 435.300. States that do not cover the medically needy population under Medicaid are: Alabama, Arkansas, Arizona, Colorado, Delaware, Indiana, Mississippi, Missouri, Nevada, New Mexico, Ohio, South Carolina, South Dakota and Wyoming.

17. Social Security Act § 1905(a)(A) and 42 U.S.C. § 1396(d)(a)(27)(A).

Information about eligibility rules can be obtained from the state Medicaid agency.

Medicaid Rules on Jail Inmates

Under Medicaid law, states do not receive federal matching funds for services provided to individuals in jail.¹⁷ However, federal law does not require states to terminate inmates' eligibility, and inmates may remain on the Medicaid rolls even though services received while in jail are not covered.¹⁸ Accordingly, someone who had a Medicaid card when jailed may be able to use it again immediately after release to obtain needed services and medication.

However, the situation for inmates who qualify for Medicaid through their eligibility for SSI can be complicated. Everyone whose SSI eligibility is terminated will lose Medicaid. When SSI benefits are suspended due to incarceration, states have the option to—and generally do—terminate an inmate's Medicaid eligibility.

When an inmate's Medicaid eligibility is not tied to SSI, the state has the flexibility under federal law to suspend the eligibility status during incarceration. But the federal Medicaid rules establish only minimum requirements, while states are permitted to impose more restrictive policies.¹⁹ Unfortunately, most states have procedures that terminate Medicaid eligibility automatically any time someone is in jail.²⁰

Under federal rules, eligibility should be reinstated upon release unless the person is no longer eligible (see below). Before ending someone's Medicaid eligibility, states must make a redetermination of the person's potential for qualifying under all the state's eligibility categories.²¹ This redetermination need not be conducted until release is imminent, but if the released inmate still meets the state's eligibility standards for Medicaid, eligibility should not be ended. Regrettably, this redetermination often does not occur.

Even inmates who keep their Medicaid eligibility may lose Medicaid coverage unnecessarily because of procedures in correctional facilities. Something as simple as the loss of a Medicaid card following arrest can make it impossible to obtain mental health services from Medicaid providers upon release. This often happens because jails take possession of all personal property when booking a person. In many jurisdictions, this property is destroyed if it is not claimed within a certain time. Inmates cannot claim the property themselves

and if they have no one to do it for them, their Medicaid card is destroyed.

There is one exception to the rule that no Medicaid reimbursement is available for jail inmates. When someone is transferred from a jail to a hospital for acute health services (for example, an appendectomy), the hospital can claim federal Medicaid reimbursement for this service. Also, if a person is in an institution temporarily pending "other arrangements appropriate to his needs," services may remain Medicaid-reimbursable.²²

Generally, however, mental health services furnished to inmates must be funded by correctional systems or state or local mental health systems, not by Medicaid.

FEDERAL RULES ON MEDICAID REINSTATEMENT

- Jail inmates can have their Medicaid suspended.
- Upon release, federal policy requires that their benefits resume.
- Many individuals will be incarcerated for so long that their Medicaid benefits will have been suspended for longer than the state's customary period of time after which a redetermination of eligibility is conducted (time varies by state). The state will reassess whether these inmates remain eligible for Medicaid. However, this assessment should be conducted prior to release because, under federal policy, a state may not drop someone from Medicaid without determining whether or not the person can qualify under any of the state's eligibility categories.²³
- States are permitted to use simplified procedures for redetermining the eligibility of individuals who have been incarcerated, according to federal HCFA officials:²⁴ Regardless of the simplified procedures used, unless a state has determined that an individual is no longer eligible for Medicaid, States must ensure that incarcerated individuals are returned to the rolls immediately upon release. Thus, allowing individuals to go directly to a Medicaid provider and demonstrate his/her Medicaid eligibility.²⁵

18. Social Security Act § 1905(a)(A).

19. National Gains Center for People with Co-Occurring Disorders in the Justice System, *Maintaining Medicaid Benefits for Jail Detainees with Co-Occurring Mental Health and Substance Use Disorders* (1999); Tim Westmoreland, *Medicaid & HIV/AIDS Policy* 15-17 (1999).

20. *Ibid.*

21. 42 C.F.R. § 435.916.

22. 42 C.F.R. § 435.1009(b).

23. 42 C.F.R. § 435.916.

24. Letter from HHS Secretary Donna Shalala to Congressman Charles Rangel, April 6, 2000.

25. Letter from Sue Kelly, Associate Regional Administration, Division of Medicaid and State Operations, HCFA Region II, to New York Medicaid Director, September 14, 2000.

Coverage After Release

When Medicaid eligibility is linked to SSI, a person may have to jump through many administrative hoops before Medicaid benefits resume, depending on state policy and administrative procedures. For example, a former inmate may have to visit the local SSA and state Medicaid offices to confirm that he or she has been released and complete other administrative paperwork. As a result, people on SSI may have no health care coverage during the time between their release from jail and reinstatement of their SSI payments—normally at least one or two weeks.

One way services can be covered immediately after someone is released from jail is for the state to continue the person's Medicaid eligibility pending reinstatement on SSI, which will in turn restore federal Medicaid eligibility. Once the individual's SSI is reinstated, the federal government will provide retroactive reimbursement for Medicaid-covered services furnished for up to three months after the person left jail. This means that even though federal dollars may not be available immediately for services provided after release to former inmates whose Medicaid eligibility is tied to SSI, nearly all of these individuals will eventually be covered. Providers can be paid by the state and the state will eventually receive federal funds. The state will remain fully liable only for services to the very few individuals who are not found re-eligible for SSI and Medicaid.

Medicare

Medicare coverage is also suspended when someone is incarcerated. It will not resume until the person's SSDI payments resume. For more information on Medicare, call 1-800-MEDICARE (1-800-633-4227).

CONCLUSION

Federal rules on how and when inmates receive benefits are complex, but they do provide opportunities for inmates to obtain federal entitlements upon release. Instead of fostering recidivism, states and localities should support access to the benefits needed by people with severe mental illnesses who are released from jail.

