

Medicaid and CHIP Mental Health Provisions

Section 5121: Medicaid and CHIP Requirements for Health Screenings, Referrals, and Case Management Services for Eligible Juveniles in Public Institutions

Background

Medicaid

Individuals who are held involuntarily in a public institution may be eligible for and enrolled in Medicaid. However, the federal Medicaid statute generally prohibits the use of federal Medicaid funds to pay for the health care of an “inmate of a public institution,” except when the individual is a “patient in a medical institution” that is organized for the primary purpose of providing medical care (hereinafter referred to as the *inmate payment exclusion*). CMS guidance permits states to suspend, rather than terminate, Medicaid eligibility for individuals who are incarcerated, thereby maintaining enrollment for Medicaid-eligible individuals while still complying with Medicaid’s inmate payment exclusion.

Enacted October 24, 2018, the Substance Use-Disorder Prevention That Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act; P.L. 115-271) added a new requirement at SSA Section 1902(a)(84) (42 U.S.C. §1396a) that prohibits states from terminating Medicaid eligibility for “eligible juveniles”; instead, the law allows states to suspend Medicaid. *Eligible juveniles* are defined as individuals under 21 years of age and former foster youth up to the age of 26 who become incarcerated while enrolled in Medicaid or are determined eligible for Medicaid while incarcerated. The SUPPORT Act also required states to redetermine the eligibility of eligible juveniles whose Medicaid is suspended, or to accept and make timely eligibility determinations on new Medicaid applications for eligible juveniles, to enable full coverage upon release. The SUPPORT Act did not change the inmate payment exclusion; Medicaid coverage for eligible juveniles is still limited to inpatient services. The law generally applies to eligible juveniles who become inmates of public institutions on or after October 24, 2019.

CHIP

SSA Section 2110(b)(2) (42 U.S.C. §1397bb) explicitly excluded children who are inmates of a public institution or patients in an institution for mental disease from being eligible to enroll in child health coverage under CHIP.

Provision

Medicaid

Section 5121(a) of the CAA 2023 amends the SUPPORT Act requirements at SSA Section 1902(a)(84) (42 U.S.C. §1396a) to direct states to establish a plan within 30 days of the date that an eligible juvenile is scheduled to be released. Such plans must provide for the following:

- Medical, dental, and behavioral health screenings or diagnostic services (as determined by the state or indicated as medically necessary under early and periodic screening, diagnostic, and treatment [EPSDT] services). Such screenings and diagnostic services must occur in coordination with the public institution

during the period that is 30 days prior to the eligible juvenile's release (or no later than one week, or as soon as practicable, after release).

- Targeted case management services during the 30 days prior to and for at least 30 days after release, including referrals to the appropriate care and services available within the geographic region of the eligible juvenile's home or residence (where possible).

Section 5121(b) amends SSA Section 1905(a) (42 U.S.C. §1396d(a)), Subdivision A, following paragraph (31), to clarify that services provided under such plans are not subject to Medicaid's inmate payment exclusion.

CHIP

Section 5121(c) of the CAA 2023 aligns CHIP with existing Medicaid rules for eligible juveniles regarding suspension of coverage while a child is an inmate of a public institution; redeterminations of coverage upon release; and coverage of certain screening, diagnostic, and case management services prior to release.

Specifically, the provision amends SSA Section 2102 (U.S.C. §1397bb) to prohibit states from terminating eligibility for CHIP enrollees who are inmates of a public institution; instead, the CAA 2023 allows states to suspend coverage during the enrollee's incarceration. The law requires states to redetermine eligibility prior to release for CHIP enrollees whose coverage is suspended. If the child continues to be eligible, the provision requires states to restore coverage upon release. States are required to accept and make timely eligibility determinations on new CHIP applications submitted by or on behalf of an incarcerated child to enable coverage upon release.

The CAA 2023 also directs states to establish a plan within 30 days of the date on which the enrollee is scheduled to be released following adjudication. Such plans must provide for screenings, diagnostic services, referrals, and case management services, as permitted under CHIP. In addition, the provision amends SSA Section 2110(b) (42 U.S.C. §1397jj(b)) to clarify that services provided under such plans during the 30 days prior to the enrollee's release are not subject to CHIP's inmate payment exclusion.

Effective Date

The Medicaid and CHIP changes under this provision are effective beginning January 1, 2025.²⁷

Section 5122: Removal of Limitations on Federal Financial Participation for Inmates Who Are Eligible Juveniles Pending Disposition of Charges

Background

As noted above, the federal Medicaid statute at SSA Section 1905(a) (42 U.S.C. §1396d(a)), Subdivision A, following paragraph (31) includes an inmate payment exclusion which generally prohibits the use of federal Medicaid funds to pay for the health care of an inmate of a public institution. CMS released sub-regulatory guidance clarifying Medicaid's definition of an *inmate of a public institution*, stating, "CMS considers an individual of any age to be an inmate if the individual is in custody and held involuntarily through operation of law enforcement authorities

²⁷ The effective date for the Medicaid and CHIP changes under this provision is the first day of the first calendar quarter beginning 24 months after the date of enactment (i.e., beginning January 1, 2025).