

Scott Walker
Governor



DIVISION OF HEALTH CARE ACCESS AND ACCOUNTABILITY

1 WEST WILSON STREET
PO BOX 309
MADISON WI 53701-0309

Linda Seemeyer
Secretary

State of Wisconsin
Department of Health Services

Telephone: 608-266-8922
Fax: 608-266-1096
TTY: 711

November 30, 2016

Senator Alberta Darling
Chair, Legislative Council Study Committee on Reducing Recidivism and Removing
Impediments to Ex-Offender Employment
Room 317 East, State Capitol

Representative Rob Hutton
Vice Chair, Legislative Council Study Committee on Reducing Recidivism and Removing
Impediments to Ex-Offender Employment
Room 220 North, State Capitol

Dear Chairwoman Darling, Vice Chair Hutton, and other Members of the Legislative Council
Study Committee on Reducing Recidivism and Removing Impediments to Ex-Offender
Employment:

Thank you for the opportunity to provide feedback on initiatives in the Wisconsin Medicaid
program that may have an impact on reducing recidivism.

It is my understanding that the Committee has been looking into two areas where the Medicaid
program may be able to provide some helpful feedback.

1. Increasing the medication supply from 2 weeks to 4 weeks for Corrections inmates
leaving prison.
2. Establishing Medicaid eligibility for people leaving jails and prisons.

Increasing Medication Supply from 2 to 4 Weeks

The Wisconsin Department of Corrections (DOC) and Wisconsin Department of Health Services (DHS) have been discussing how to allow Medicaid to cover the cost of prescription drugs for Corrections inmates who become eligible for Medicaid upon release. As you are no doubt aware, the State of Wisconsin receives federal matching dollars to cover prescription medication costs under Medicaid. This could potentially allow the state to provide a 4 week supply of certain Medicaid covered Medications, instead of a 2 week supply, with potentially a similar cost to the State (DOC currently pays for 2 week supplies with only GPR and receives no federal match).

Based on our discussions thus far, we are cautiously optimistic that this objective can be achieved. Current Medicaid policy requires Medicaid to provide coverage to anyone who is

eligible for and enrolled in Medicaid. In many cases, Medicaid also pays back claims for persons who bore healthcare costs and were Medicaid eligible, but had not yet enrolled or did not yet have their eligibility verified. The main factor is ensuring that appropriate Medicaid billing policies are followed after someone has received their eligibility. We are working with DOC to ensure such criteria are met.

In 2014, the DOC and DHS initiated a streamlined eligibility process for inmates due for release. This allows DOC to work with inmates to initiate a telephonic interview and establish eligibility in advance of their release. In many cases, we are able to use our data exchanges to verify eligibility in real time. Utilizing this process also allows DHS time to verify eligibility and make appropriate follow-ups for inmates who may need additional documentation to provide eligibility verification. DHS and DOC are currently working on a data match to determine the utility of this process in establishing eligibility for Medicaid upon release. We expect to have this data in the coming months.

While this is a complex process with many moving parts, we are committed to providing DOC with the technical information they need to make this policy change in dispensing medications. We certainly recognize the challenges people face in trying to successfully reintegrate back into the community and enter employment, and further recognize prescription medications have an important role in keeping people healthy so they can do just that.

Medicaid Eligibility for Persons Leaving Jails and Prisons

As you may know, Federal Medicaid policy prohibits Medicaid from covering persons who are incarcerated. The Wisconsin Medicaid program has a monthly data match with the Social Security Administration that provides information on incarceration status for Wisconsin Medicaid recipients. However, when an inmate needs an inpatient hospital stay, the DOC submits online applications to determine Medicaid eligibility for these patients. Approximately 95% become MA eligible once they leave DOC custody and are admitted into a hospital. They then have their MA eligibility terminated again once they return to prison.

Earlier this year, DHS received a letter from Mike Bare of Community Advocates Public Policy Institute (as well as other advocates) requesting DHS look into changing our policy from terminating benefits to suspending benefits. I have attached that letter as well as the response from the previous Medicaid Director. To summarize the letter, there is no benefit to suspending persons' Medicaid benefits versus terminating them. Because federal Medicaid policy requires us to re-verify someone's eligibility even under a scenario where we would only be suspending benefits, the process for reinstating an individual's benefit is essentially the same as under current policy. Additionally, with the real-time eligibility verification system we have implemented, most applicants in Wisconsin do not face the same wait times they would face in states that use suspension instead of termination. Depending on what the process for suspension would require in Wisconsin, the State could bear significant IT and implementation costs that would simply change the accounting of beneficiaries, but is unlikely to change the speed or ease of someone signing up for Medicaid compared to the current process.

However, we are certainly open to learning more about concerns people have with this policy, particularly for people who lose eligibility when they are admitted to a county jail. DHS has been working with fellow members of the Wisconsin Criminal Justice Coordinating Council to explore this issue. We recognize that county jails may not all have the same resources or expertise that Corrections facilities have and are committed to working with all interested parties to improve the eligibility process both within the Corrections setting and for people being released from county jails. Please note that under current policy, people who are admitted to a county jail for less than 30 days (and in some cases less than 60 days) are unlikely to have their benefits terminated.

Thank you again for the opportunity to provide feedback to this committee. I would be happy to respond to any further inquiries.

Sincerely,

A handwritten signature in cursive script that reads "Michael G. Heifetz".

Michael Heifetz
Medicaid Director

Scott Walker
Governor



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1 WEST WILSON STREET
P O BOX 309
MADISON WI 53701-0309

Telephone: 608-266-8922
FAX: 608-266-1096
TTY: 711 or 800-947-3529

Kitty Rhoades
Secretary

State of Wisconsin
Department of Health Services

dhs.wisconsin.gov

March 4, 2016

Mr. Mike Bare
Research and Program Coordinator
Community Advocates Public Policy Institute
738 N. James Lovell Street
Milwaukee, WI 53233

Dear Mr. Bare and colleagues:

Thank you for your recent letter regarding Medicaid coverage for individuals who are incarcerated.

The Department of Health Services (DHS) strongly supports ensuring that re-entering offenders have access to the health services for which they are eligible, and we agree that this is especially important for individuals with a history of substance abuse and/or mental illness. As evidenced by our recent partnership with Department of Corrections to establish a special pre-release application process for offenders, we see great value in streamlining the eligibility process and removing barriers for offenders, and we believe we have made great strides in doing so.

We do not agree, however, that a policy of suspending Medicaid benefits upon incarceration provides better or faster access to care. Federal law requires that we base our eligibility decisions on up-to-date information about a given individual, including a current address, current household composition, and current information about income and/or assets. This information is essential to ensure that our eligibility determination is correct for any applicant in Wisconsin, including individuals leaving prison or jail.

Suspension of benefits does not circumvent – in any way – the need for the agency to base its current eligibility determination on current information, and we cannot deem someone eligible for Medicaid today simply because they were eligible prior to incarceration. As a result, we see little substantive difference between asking a re-entering offender to submit a new request for assistance and asking the offender to provide the updated information that is required to reinstate suspended benefits. We must receive the same information in both cases and cannot grant eligibility without receiving it from the offender.

In the May 25, 2004 letter you have cited, states are encouraged to suspend benefits, but CMS is clear that benefits should continue only if the person continues to meet eligibility requirements. Again, in order to ensure that someone meets those eligibility requirements, we must have updated information about their household composition and income and/or assets upon release.

In accordance with the letter you have enclosed from then-Secretary of Health and Human Services Tommy Thompson, Wisconsin does re-determine eligibility for inmates prior to termination, including an ex-parte review of other potential eligibility. Given the federal requirement at 42 CFR 435.1009 that states not use federal Medicaid funding to cover services to inmates of public institutions, other eligibility options are limited. If the inmate is pregnant, we would enroll her in the BadgerCare Plus Prenatal

Program rather than terminating her eligibility. In all other cases, in the absence of federal funding to cover inmates of public institutions, we terminate eligibility.

The intent of suspension, as we see it, is to ensure that there is no gap between when the person is released and when he or she is able to obtain Medicaid services. Under Wisconsin pre-release application process, which allows offenders to provide updated information and receive same-day application processing well in advance of the release date, we have been able to achieve this goal. In many cases, as long as the application is filed within 10 days prior to release, the offender has a notice of decision and a ForwardHealth card in hand when they leave. Among other things, this allows them to obtain prescriptions or begin treatment regimens immediately upon release, and ensures that they have coverage when seeking placement in a long-term care facility.

In addition, although limited federal incentives are available for prisons and other institutions with "suspended" Medicaid recipients, we do not feel that these incentives justify the substantial costs associated with building system functionality to support suspension of benefits.

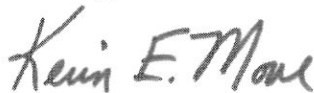
You have also raised a concern about termination of coverage for children of incarcerated individuals.

Please note that we do not terminate children of incarcerated individuals as a matter of course. The incarcerated parent has left the home, which may impact eligibility for other people in the household, as it would with any household member who is no longer present. In many cases, the change will have no effect on the children's eligibility. In some cases, it will result in greater eligibility (such as lower premiums) for the children, while in others, it will result in loss of eligibility because the children are no longer below the BadgerCare Plus income limit. If the children do lose eligibility, we transfer their case automatically to the Federally Facilitated Marketplace (FFM) to be considered for a subsidized Marketplace health insurance plan.

If the incarcerated parent was the only parent or caretaker in the home, then it is possible that the children could lose eligibility because the person who applied is no longer part of the household. In this case, the children will almost certainly continue to be eligible for BadgerCare Plus, but another adult does need to sign and file an application on the children's behalf. Again, this is not a policy specific to incarceration; it is true for any child whose only parent or caretaker is no longer in the home.

We do share your concern about children in this vulnerable situation, and we are open to considering specific process changes, as permitted by federal and state law, that would limit disruption in their coverage.

Sincerely,



Kevin E. Moore
Medicaid Director

Dear Secretary Rhoades:

We write as advocates for people who are incarcerated and have had their Medicaid benefits terminated. There are a number of reasons why termination is an unwise and damaging policy. We respectfully request that the Department of Health Services instead suspend those benefits.

While we are grateful that the Department of Health Services worked with the Department of Corrections to establish a process for prisons and jails to implement health coverage enrollment assistance programs upon release, the state's termination policy puts the onus on the individual to voluntarily redo the eligibility determination process upon reentering the community or before leaving incarceration if the jail/prison has adopted a program to do so.

The eligibility determination process for an individual who has been terminated can be complicated. For example, an individual who is leaving incarceration for a long-term care setting in the community that won't accept a new patient without that potential new patient already having coverage may be forced to spend more time behind bars at additional cost to the state or county because there is nowhere to go.

Termination states like Wisconsin are not eligible for some federal funding opportunities that are available to states that suspend Medicaid benefits.

Terminating an individual who is incarcerated on a pre-trial basis who has not yet been convicted runs counter to the constitutional presumption of innocence.

Termination makes it more difficult for individuals to experience a true continuation of needed medical care after incarceration. One specific example is opioid treatment regimens that require an individual to have Medicaid benefits immediately upon release to cover the cost of successive treatments.

A significant percentage of the prison and jail population have a history of mental illness and/or substance use. To support successful re-entry, it is essential that individuals with a mental health or substance use diagnosis have immediate access to behavioral health services and medication. Suspension will help these individuals more easily and quickly access care.

Kids and dependents who are on the incarcerated individual's Medicaid case file are also being terminated. This forces those kids/dependents to find a new coverage source. We request that this issue be resolved for those children in as simple a way as possible regardless of the status of the state's decision on whether to continue terminating coverage for the adults.

To the best of our understanding, Wisconsin is violating federal guidelines. In 2001, then-Secretary of Health and Human Services Tommy Thompson sent a letter to Representative Charles Rangel that stated "[...] states may not terminate incarcerated individuals from Medicaid until a redetermination has been conducted, including an ex-parte review," and "In addition, unless a state determines that an individual is no longer eligible for Medicaid, states must ensure that incarcerated individuals are returned to the Medicaid eligibility rolls immediately upon release..."¹

On May 25, 2004, CMS sent a letter "encouraging states [...] to 'suspend' and not 'terminate' Medicaid benefits while a person is in a public institution or Institute for Mental Disease (IMD)." It guided states to "not terminate eligibility for individuals who are inmates of public institutions or residents of IMDs based

¹ <http://lac.org/toolkits/medicaid/Tommy%20Thompson%20letter.pdf>

solely on their status as inmates or residents. Instead, states should establish a process under which an eligible inmate or resident is placed in a suspended state so that the state does not claim FFP for services the individual receives, but the person remains on the state's rolls as being eligible for Medicaid (assuming the person continues to meet all applicable eligibility requirements). Once discharge from the facility is anticipated, the state should take whatever steps are necessary to ensure that an individual is placed in payment status so that he or she can begin receiving Medicaid-covered services immediately upon leaving the facility."

We respectfully request that DHS alter its policy from termination of Medicaid benefits for those who are incarcerated to suspension of benefits. The savings to taxpayers of suspension far outweigh the costs to taxpayers of implementing suspension.

Sincerely,

Community Advocates Public Policy Institute
Mental Health America of Wisconsin
WISDOM
Disability Rights Wisconsin
Planned Parenthood Advocates of Wisconsin
Wisconsin Faith Voices for Justice
Citizen Action of Wisconsin
Wisconsin Alliance for Women's Health
Lutheran Office for Public Policy in Wisconsin
Wisconsin Council on Children and Families
WISCAP
Wisconsin Council of Churches
Wisconsin Primary Health Care Association

Cc: Medicaid Administrator Kevin Moore; Members of the State Senate and Assembly Health Committees