

## **Medicaid Access**

### **Report to the Committee Studying Treatment Options for Offenders with Mental Illness or Substance Abuse Disorders (SJR 97/HJR 142, 2002)**

**October 18, 2002**

**Written public comments may be submitted to Nancy Roberts by November 8, 2002, at the following address: Division of Legislative Services, General Assembly Building, 910 Capitol Street, Richmond, Virginia, 23219 (e-mail [nroberts@leg.state.va.us](mailto:nroberts@leg.state.va.us) or fax 804-371-0169). Comments will be compiled by staff and presented to the Committee at its meeting on November 25. If you have questions, please call Nancy Roberts at (804) 786-3591.**



# COMMONWEALTH of VIRGINIA

## *Department of Medical Assistance Services*

PATRICK W. FINNERTY  
DIRECTOR

September 30, 2002

SUITE 1300  
600 EAST BROAD STREET  
RICHMOND, VA 23219  
804/786-7933  
800/343-0634 (TDD)

The Honorable Stephen H. Martin  
Member, Senate of Virginia  
P.O. Box 700  
Chesterfield, Virginia 23832

Nancy Roberts  
Division of Legislative Services  
General Assembly Building  
910 Capitol Street, 2<sup>nd</sup> Floor  
Richmond, Virginia 23219

Dear Senator Martin and Ms. Roberts:

Attached is the Department of Medical Assistance Services (DMAS) report on improving access to Medicaid for offenders with mental health needs. The report is pursuant to SJR97/HJR 142, the study of the Treatment of Offenders with Mental Illness or Substance Abuse and is submitted to the committee to assist in their work.

The report highlights procedures currently in effect to assist offenders with Medicaid enrollment after release from the correctional system. Additionally, areas to improve the process are recommended. Please contact me if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Finnerty", written over a circular stamp or mark.

Patrick W. Finnerty

PWF:ckh

**REPORT ON ACCESS TO MEDICAID FOR RELEASED OFFENDERS**

**SJR 97/HJR 142**



**Virginia Department of Medical Assistance Services**

**September 2002**

## **EXECUTIVE SUMMARY**

Pursuant to Senate Joint Resolution No. 97 and House Joint Resolution 142, from the 2002 Session of the General Assembly, this Department of Medical Assistance Services report responds to the work group studying the Treatment Needs of Offenders with Mental Illness and Substance Abuse Disorders. The report specifically addresses specific questions of interest to the workgroup. The questions are:

1. What happens to Medicaid eligibility when a person is incarcerated?
2. What are the Medicaid system constraints about suspending eligibility?
3. Is someone currently monitoring the Medicaid status for an inmate leaving the correctional system?
4. Does retroactive eligibility apply?
5. What are the current procedures for facilitating access to Medicaid when a person is released from a correctional facility?
6. If there are barriers to access to Medicaid, what can be done to address them (statutory changes, Memorandum of Understanding, etc.)?

There are procedures currently in place to facilitate enrollment in Medicaid for offenders being released from correctional facilities and the report lists the procedures. One recommendation is to increase awareness of the procedures and the availability of regional Medicaid specialists to assist with the application process. An additional recommendation is to develop informational materials on Medicaid for correctional staff.

## INTRODUCTION

Senate Joint Resolution No. 97 and House Joint Resolution 142, from the 2002 Session of the General Assembly, continued the study of the Treatment Needs of Offenders with Mental Illness and Substance Abuse Disorders by the Joint Commission on Behavioral Health Care. The Joint Commission on Behavioral Health Care is to work in conjunction with the Virginia State Crime Commission and the Virginia Commission on Youth. The resolution authorized the continuation of the special study committee and the establishment of an interagency work group to develop a screening-assessment-treatment model for offender groups with mental health needs.

The interagency workgroup established pursuant to SJR 99/HJR 142 requests information relating to facilitating access to Medicaid for persons being released from correctional facilities. The resolution requested that the Department of Medical Assistance Services (DMAS), in conjunction with the Department of Corrections (DOC) and the Department of Juvenile Justice (DJJ) examine ways to provide immediate access to Medicaid benefits for eligible offenders when they are released from prisons, jails, juvenile correctional centers, or detention homes.

This report on access to Medicaid is part of the work group's larger focus on improving mental health services for offenders. According to legislative staff, DMAS is to respond to the specific questions that follow.

1. What happens to Medicaid eligibility when a person is incarcerated?
2. What are the Medicaid system constraints about suspending eligibility?
3. Is someone currently monitoring the Medicaid status for an inmate leaving the correctional system?
4. Does retroactive eligibility apply?
5. What are the current procedures for facilitating access to Medicaid when a person is released from a correctional facility?
6. If there are barriers to access to Medicaid, what can be done to address them (statutory changes, Memorandum of Understanding, etc.)?

### **Sources of Information for This Report**

To prepare this report, information was gathered from staff at Department of Medical Assistance Services, Department of Corrections, and Department of Social Services. Other resources were the Code of Federal Regulations, the Department of Social Services Medicaid Eligibility Manual and a Department of Social Services Information Bulletin.

## **FINDINGS AND RECOMMENDATIONS**

### **Virginia Medicaid Policies for Inmates of Correctional Facilities**

The Code of Federal Regulations (42 CFR 435.1008) provides that federal financial participation is not available for expenditures for services provided to individuals who are inmates of public institutions. Therefore, mental health services are not reimbursable by Medicaid while an individual is an inmate. The definitions for institutional status are found at 42 CFR 435.1009. (The cited federal regulations are found in Appendix B.) A public institution is defined as an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. Correctional facilities fall within the definition of a public institution. Since federal financial participation is not available for care provided to individuals who are inmates in a public institution, states may elect to pay for medical services provided to such individuals with state-only dollars. Virginia has not elected to pay for medical costs for inmates with state-only funds; therefore, incarcerated individuals are not eligible for Medicaid payment for their medical services. When a person becomes an inmate of a public institution, i.e., incarcerated, Medicaid eligibility is terminated.

The Department of Social Services Eligibility Manual addresses issues related to juveniles in detention. Juveniles in detention due to criminal activity are considered inmates of a public institution and not eligible for Medicaid. The length of the detention does not affect the determination of ineligibility. A juvenile who has criminal charges pending (no court disposition), who is ordered by the judge to go to a treatment facility, then come back to court for disposition when the treatment is completed, is also considered an inmate of a public institution and not eligible for Medicaid.

Juveniles who are in detention due to the need for care, protection or when in the best interest of the child are not considered inmates of a public institution. Therefore, they may be eligible for Medicaid. (Please see Appendix D.)

Virginia's Medicaid policy requires termination of Medicaid when an individual enters a correctional facility. Virginia does not temporarily suspend benefits while an individual is incarcerated. In addition, factors that effect the eligibility for Medicaid may change during incarceration, therefore, a new Medicaid application must be filed at the time plans are made for the individual's release from the facility. Submission of a new application allows the determination of eligibility to be based upon current information.

Medicaid recipients are required to report status changes to the local Department of Social Services. Incarceration is an example of a status change. If incarceration is for a short time, notification of the change may not occur and Medicaid coverage may not be terminated. If no status changes are reported, Medicaid recipients are required to have a re-determination of Medicaid eligibility annually.

## **Procedure for Application for Inmates Pending Release**

Current Medicaid policy allows for inmates to apply for Medicaid as a part of pre-release planning. Since 1995, local Departments of Social Services have been directed to accept applications even though an individual may be an inmate of a public institution at the time of application. The purpose of the application is to determine eligibility for the individual at the time of release from prison. Local Departments of Social Services have been directed not to refuse to accept applications based on the fact that the person is ineligible because of his/her living arrangement. Applications for these individuals are to be processed as any other Medicaid application. The parole officer completes the Medicaid application on behalf of the individual and, if needed, any medical information needed for a disability determination. The parole officers have been instructed to file the applications in the locality where the individual resided prior to entering the correctional facility. A determination of eligibility must be made within 45 days of application or, if a disability determination is required, 90 days is allowed (42 CFR 435.911, please see Appendix C).

If an individual is found eligible for Medicaid, enrollment in the program must occur after release. Medicaid may provide for retroactive coverage for up to three months prior to the month of application, however, Medicaid may not pay for any services rendered while the individual was incarcerated.

In 1995, DMAS and the Department of Corrections agreed to the following procedures. The procedures were distributed to all local Departments of Social Services throughout the State.

- The Medicaid application is to be filed in the locality of residence. (The locality where the inmate was living prior to incarceration. The application may be mailed and a face-to-face interview is not required. The Regional Medicaid Specialist is to be notified by the parole officer at the time the application is made.
- The parole officer is to complete the Medicaid application and, if needed, the Medical History and Disability Report Form and mail them to the local Department of Social Services. If the applicant alleges a mental disability, the Psychological and Psychiatric Supplement must also be completed. Additional medical release forms are to be sent with the Medical History and Disability Report Form.
- If the individual is 65 or older, or a current recipient of Supplemental Security Income (SSI) or Social Security Disability Income (SSDI) due to disability, a Medical History is not to be completed. (These individuals meet a covered Medicaid group.) If the applicant receives Veteran's benefits, due to disability, a Medical History form must be completed.
- If the individual is under 65 and not receiving SSI or SSDI, a Medical History and Disability Report form is to be completed and mailed to the locality of residence along with the Medicaid application to determine if the individual meets a covered Medicaid group. When the application is mailed to the local Department of Social Services, the parole officer is to notify the supervisor of the Disability Determination Unit at the Department of Rehabilitative Services of the application filing date and the name of the applicant. If nursing facility care is needed upon discharge from the

correctional facility, correctional facility staff are to request a pre-admission screening for nursing home care. Department of Corrections staff have been trained and authorized to conduct the screenings. This screening should be done simultaneously with the determination of disability and determination of Medicaid eligibility. Correctional facility staff are to begin locating a bed in a nursing home as soon as the need is identified and at least as soon as the Medicaid application is filed.

There are five regional Medicaid specialists available to assist with issues concerning the application for Medicaid. This is a resource that can be tapped to assist in the transition from correctional facilities to the community. The specialists serve as a contact point for Department of Corrections parole officers who assist prisoners with pre-release activities and who need a Medicaid eligibility determination.

The regional specialists are located in:

- Virginia Beach (Eastern Region) 757-491-3980
- Abingdon (Western Region) 276-676-5639
- Roanoke (Piedmont Region) 540-857-7972
- Richmond (Central Region) 804-662-9779
- Warrenton (Northern Region) 540-347-6326

Specific pre-release procedures performed by correctional staff are not included in this report. Department of Corrections are preparing a report that outlines the activities performed prior to release.

### **Conclusions and Recommendations**

Policy and procedures regarding Medicaid applications filed by prison inmates were issued to local Departments of Social Services in April 1995 in an Information Bulletin and an abbreviated version of the material contained in the Information Bulletin has been incorporated into the Medicaid Eligibility Manual used by local eligibility workers. While current policy allows the submission of Medicaid applications prior to release, Medicaid eligibility workers may need refresher training in the procedures to be followed when applications are filed on behalf of individuals pending release from correctional facilities.

**Recommendation 1:** The Department of Medical Assistance Services, in conjunction with the Department of Social Services, should ensure that Medicaid eligibility workers in the local Departments of Social Services are aware of these procedures through memorandums and training.

**Recommendation 2:** The Department of Medical Assistance Services, in conjunction with the Department of Social Services, should develop a fact sheet for correctional facilities concerning Medicaid eligibility of inmates and those pending release.

## **APPENDIX A**