

Resolution 08-13-2009

Medi-Cal Eligibility: Suspension of Benefits for Incarcerated Adult Enrollees

RESOLVED, that the Conference of Delegates of California Bar Associations recommend that legislation be sponsored to add Section 14011.11 to the Welfare and Institutions Code, to read as follows:

- 1 § 14011.11.
2 (a) Benefits provided under this chapter to an individual 21 years of age or older who
3 is an inmate of a public institution shall be suspended in accordance with Section
4 1396d(a)(28)(A) of Title 42 of the United States Code as provided in subdivision (c).
5 (b) County welfare departments shall be required to notify the department within 10
6 days of receiving information that an individual 21 years of age or older on Medi-Cal in the
7 county is or will be an inmate of a public institution.
8 (c) If an individual 21 years of age or older who is a Medi-Cal beneficiary on the date
9 he or she becomes an inmate of a public institution, his or her benefits under this chapter and
10 under Chapter 8 (commencing with Section 14200) shall be suspended effective the date he
11 or she becomes an inmate of a public institution. The suspension will end on the date he or
12 she is no longer an inmate of a public institution.
13 (d) Nothing in this section shall create a state-funded benefit or program. Health care
14 services under this chapter and Chapter 8 (commencing with Section 14200) shall not be
15 available to inmates of public institutions whose Medi-Cal benefits have been suspended
16 under this section.
17 (e) This section shall be implemented only if and to the extent allowed by federal law.
18 This section shall be implemented only to the extent that any necessary federal approval of
19 state plan amendments or other federal approvals are obtained.
20 (f) If any part of this section is in conflict with or does not comply with federal law,
21 this entire section shall be inoperable.
22 (g) This section shall be implemented on January 1, 2011, or the date when all
23 necessary federal approvals are obtained, whichever is later.
24 (h) By January 1, 2011, or the date when all necessary federal approvals are obtained,
25 whichever is later, the department, in consultation with the Chief Probation Officers of
26 California and the County Welfare Directors Association, shall establish the protocols and
27 procedures necessary to implement this section.
28 (i) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of
29 Division 3 of Title 2 of the Government Code, the department shall implement this section by
30 means of all-county letters or similar instructions without taking regulatory action.
31 Thereafter, the department shall adopt regulations in accordance with the requirements of
32 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the
33 Government Code.
34 (j) If the Commission on State Mandates determines that this act contains costs
35 mandated by the state, reimbursement to local agencies and school districts for those costs
36 shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2
37 of the Government Code.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: National Lawyers Guild, San Francisco Bay Area Chapter

STATEMENT OF REASONS:

Existing Law: Welfare & Institutions Code section 14011.10 requires that Medi-Cal benefits provided to a person who is under age 21 be suspended, rather than terminated, while that person is incarcerated in a public institution. Upon the inmate's release, the Medi-Cal benefits will be automatically reinstated, without the need to re-apply.

This Resolution: This Resolution would extend that suspension status to incarcerated Medi-Cal enrollees who are over age 21.

The Problem: California releases a large number of prisoners back into the community each year (130,000 in 2007) with a parolee recidivism rate of 70%. Corrections officials, health providers and community advocates are increasingly focused on promoting policies that support the successful re-entry of these released prisoners. One simple way is to ensure that incarcerated Medi-Cal patients with chronic illnesses, mental illnesses and substance abuse problems are linked with services *before* they are released, to provide a continuum of care. Currently, this population has to re-apply for benefits, a process which can take months.

Most chronically ill prisoners are released with a very short supply of prescriptions. Without access to Medi-Cal, they are more likely to deteriorate. Lack of insurance forces people to seek expensive emergency services. Interruptions in coverage increase the risk of avoidable hospitalization for conditions such as heart failure, diabetes and chronic obstructive pulmonary disease. (Bindman et al., *Annals of Internal Medicine*, 2008.)

Those enrolled in Medicaid upon release are more likely "to receive services more quickly, and to receive more days of service than those without Medicaid in the 90 days after their release from jail." Former prisoners with mental illness who are enrolled in Medicaid when released have fewer detentions in the following year than those without Medicaid enrollment. (Morrissey et al., *Psychiatric Services*, 2007.) Newly released prisoners with health insurance have lower arrest rates. Conversely, those with unmet health needs have increased odds of being rearrested. (Freudenberg et al., *American Journal of Public Health* 2005). A continuum of care reduces the risk of hospitalizations, relapse, and recidivism.

Additionally, continuity of care for this at-risk population reduces unnecessary emergency room use and saves the administrative costs associated with processing new Medi-Cal applications.

Suspending, rather than terminating, Medi-Cal benefits of inmates over age 21 has widespread national support. Federal policy encourages states to suspend rather than terminate SSI and Medicaid benefits during incarceration. In a 2001 memo, then Secretary of U.S. Department of Health and Human Services Tommy Thompson wrote "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." States that

have adopted a policy of suspension rather than termination include Colorado, New York, Oregon, and Washington.

In 2007, the American Bar Association endorsed a resolution urging federal, state, local and territorial governments to adopt the Medicaid eligibility protocols supported here. For a copy of the recommendation and report visit:

www.abanet.org/leadership/2007/annual/docs/hundredtwentytwo.doc

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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