

MEDICAID FOR YOUTH IN THE JUVENILE JUSTICE SYSTEM

What is Medicaid?

Medicaid is a medical assistance program for low income people. The federal government pays a share of the health care costs for eligible individuals. This federal share, called federal financial participation (FFP), ranges from 50% in most states to 83% in the poorest states.¹ FFP is also available for 50% of most of the state's administrative costs.²

An important component of Medicaid is Early and Periodic Screening Diagnosis and Treatment (EPSDT), a comprehensive child health program that covers health screening, diagnosis, preventive care, and medically necessary treatment, including mental health services. States that participate in the Medicaid program must provide EPSDT services.³

Who is eligible for Medicaid?

Medicaid eligibility can be complicated, but generally children and youth are eligible for Medicaid if:

- (1) They receive certain benefits such as Supplemental Security Income (SSI) or Title IV-E foster care or adoption assistance,⁴
- (2) They are poor,⁵
- (3) They are in a group the state has chosen to cover. For instance, states can cover children receiving state adoption assistance benefits and youth who have aged out of foster care.⁶

Some states provide medical assistance with 100% state funds to individuals who do not meet the federal eligibility criteria. These individuals may have a Medicaid card from their state, but the state does not get FFP for the services provided to them.

¹ 42 U.S.C § 1396d(b)(1). Medicaid FFA rates are published in the *Federal Register*. For rates effective October 1, 2017 to September 30, 2018, see 81 Fed. Reg. 220 (November 15, 2016). Links to current and past rates are available at: <http://aspe.hhs.gov/health/fmap.htm>.

² 42 U.S.C. § 1396b(a)(7). A higher percentage is available for certain specified administrative costs. 42 U.S.C. § 1396b(a)(2)-(6).

³ 42 U.S.C. § 1396a(a) (43).

⁴ 42 U.S.C. § 1396a(a) (10) (A)(i).

⁵ *Id.* All children under age 6 at or below 138% of the federal poverty level (FPL) and children ages 6-19 up to 100% of the FPL are eligible. For a simple description of Medicaid eligibility, see eHealth, *Medicaid or Chip Coverage*, <https://www.ehealthinsurance.com/medicaid>.

⁶ 42 U.S.C. § 1396a(a)(10) (A)(ii).

Are youth in the juvenile justice system eligible for Medicaid?

Youth in the juvenile justice system are eligible for Medicaid if they meet all of the eligibility criteria. However, FFP is not available for services provided to an individual when he or she is an “inmate of a public institution.”⁷ This federal restriction is often referred to as the “inmate payment exception.”

Who is an inmate of a public institution?

Federal regulations define “inmate of a public institution” as a person who is living in a public institution. An individual is **not** considered an inmate if he or she is in a

- (a) Public educational or vocational training institution for purposes of securing education or vocational training; or
- (b) Public institution for a temporary period pending other arrangements appropriate to his needs.⁸

Federal regulations define “public institution” as an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. The term “public institution” does **not** include

- (a) A medical institution as defined in the regulations;
- (b) An intermediate care facility (ICF);
- (c) A publicly operated community residence that serves no more than 16 residents, as defined in this section; or
- (d) A child-care institution housing children receiving Title IV-E foster care benefits.⁹

Does this mean that youth in detention lose their Medicaid eligibility?

No. The Health Care Financing Administration (HFCA) and the Centers for Medicare and Medicaid Services (CMS) have repeatedly emphasized that the inmate payment exception does not affect an individual’s **eligibility** for Medicaid; it only affects whether **FFP** is available. This means that Medicaid coverage may be suspended but eligibility should not be terminated upon incarceration; Medicaid coverage must be immediately restored upon release unless the youth is no longer eligible.¹⁰ This may include youth who are living in a detention center but waiting to move to another placement, such as a group home.

⁷ 42 U.S.C. § 1396d (a) (29) (A); 42 C.F.R. § 435.1009(a)(1).

⁸ 42 C.F.R. § 435.1010.

⁹ *Id.*

¹⁰ See S. Burrell and A. Bussiere, *The Inmate Exception and Its Impact on Health Care Services for Children in Out-of-Home Care in California*, Youth Law Center (November 2002). Available at: <https://ylc.org/wp-content/uploads/2018/11/The-Inmate-Exception-November-2002.pdf>.

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In 2016, CMS said:

While the Medicaid statute limits payment for services for individuals while residing in correctional institutions, **Medicaid coverage can be crucial to ensuring a successful transition following incarceration.** Facilitating enrollment in Medicaid and supporting access to services following incarceration has the potential to make a significant difference in the health of this population and in eligible individuals' ability to obtain health services that can promote their well-being.

Inmates of a public institution who are held involuntarily may be enrolled in Medicaid, but may not receive Medicaid covered services. However, **incarceration does not preclude an inmate from being determined Medicaid-eligible.** Individuals who are on parole, probation, or have been released to the community pending trial (including those under pre-trial supervision) are not considered inmates, and thus are not subject to the prohibition on providing Medicaid covered services to inmates.

We strongly encourage correctional institutions and other state, local, or tribal agencies to take an active role in preparing inmates for release by assisting or facilitating the application process prior to release. Suspension of eligibility or claims processing edits allow for individuals to retain eligibility for Medicaid-covered inpatient services provide in a medical institution while incarcerated. **Once the inmate is released, the suspension must be promptly lifted.** States and local jurisdictions, or their contractors, need to be proactive in notifying the state Medicaid agency of an inmate's release, to ensure timely removal of suspension or claims processing edits.¹¹ (Emphasis added.)

Does the inmate payment exception apply to all services provided to detained youth?

No. "Inmate of a public institution" is specifically defined by federal law. Services provided to youth who do not meet this definition may be covered. For example, youth taken to the hospital after arrest but before they are booked into detention, youth in a detention center awaiting placement in a foster home or group home, youth transferred to a hospital for in-patient treatment, and youth who are furloughed or on home release may not meet the definition.¹² This means FFP is available for health care services they receive.

¹¹ Centers for Medicare and Medicaid Services, State Health Official and Medicaid Directors Letter Re: To Facilitate Successful Re-entry for Individuals Transitioning from Incarceration to their Communities (April 28, 2016.) Available at: <https://www.medicaid.gov/federal-policy-guidance/downloads/sho16007.pdf>.

¹² See, S. Burrell and A. Bussiere, *supra*.

What can states do to maximize FFP?

By maximizing FFP, states can significantly increase treatment resources and support evidenced-based practices and services. States can:

- Make sure that they are not denying Medicaid coverage to youth who are eligible. As noted above, states must ensure that youth have Medicaid coverage as soon as they lose inmate status.
- Help youth establish Medicaid coverage if they are not already covered. Eligible youth should leave secure confinement with evidence of Medicaid coverage. This will not only ensure continuity of care and support rehabilitation, but also save money for the local jurisdiction that would otherwise have to cover the full cost of care.
- Evaluate whether they are using available FFP for the services they provide. For example, evaluation and treatment provided while a youth is awaiting placement in a non-secure setting can be covered. States can draw down FFP for the cost of these services and for some of the administrative work involved in serving youth and managing their care. In addition, these health care services can be important in making detention decisions, identifying alternatives to detention, and doing transition planning.
- Make better use of services in the community. The inmate payment exception does not apply to youth living at home or in community placements. Medicaid can help pay for evidenced-based practices such as Multi-Systemic Therapy, Multi-Dimensional Treatment Foster Care, Functional Family Therapy, and Wrap Around services. These services can help states reduce unnecessary detention. Immediate access to Medicaid can also support continuity of care for youth leaving secure confinement by providing immediate access to health care, including medication, ongoing therapy, or mental health services.

Should the inmate payment exception be eliminated?

Elimination of the inmate payment exception is a matter of debate in the juvenile justice and mental health communities. Although additional federal funds may improve health care services to incarcerated youth, they could also create an incentive to rely on institution-based treatment and result in the increased use of correctional settings to provide treatment services rather than community-based alternatives.