COLLATERAL CONSEQUENCES OF COMMON CRIMES: FEDERAL LAW & REGULATION

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Chapter III: The Inmate Exception to Federal Benefits

3.1 *Introduction*

In a decisive majority of states persons may lose Medicaid benefits within 30 days of arrest, regardless of conviction. The only conditions precedent are that such person is: (1) a recipient of Medicaid; (2) arrested for any state or local crime, felony or misdemeanor—no conviction necessary; (3) remain incarcerated in any jail or or qualifying facility, generally for at least 30 days ; and (4) the state or political subdivision, in which she is arrested, is a "termination" rather than "suspension" jurisdiction, explained below. Known as the "inmate exception" to Medicaid coverage, it like other collateral consequences affecting those receiving federal benefits, assymetrically impacts those most likely to be arrested for common low level crimes: the poor and the mentally ill.

Moreover, this disenrollment system is driven by a federal bounty program, incentivizing local jails, paying them by the head, cash awards, to timely identify and report those benefits recipients recently incarcerated and ripe for disenrollment. As a practical effect, such local reporting is now largely automatic, if flawed.

3.2 *Statutory Source*

Federal law, under the Social Security Act, prohibits Federal Financial Participation (FFP) for services while a person is an "inmate"

of a public institution; this has become known as the "Inmate exception."[1] The effect of the Inmate Exception is that upon booking into an overnight correctional facility, including almost all county jails, even on minor charges, an inmate's SSA's benefits (SSI, SSDI, Medicare) may be suspended and his or her Medicaid will either be suspended or terminated, depending on the state. Thus, a mere arrest, for low level charges, coupled with an extended overnight stay in jail albeit *without conviction* may by itself trigger the loss of health care and supplemental income.

3.3 *Broad Definition of "Inmate" for SSA Purposes*

This surprising result is a product of the broad regulatory definition the term "inmate of public institution," where the Inmate Exception is triggered not on conviction of crime but where a person resides. The Center of Medicare and Medicaid Services (CMS), in a non-binding policy letter, averred that an individual is an inmate "when serving time for a criminal offense or confined involuntarily in State or Federal prisons, jails, detention facilities or other penal facilities."[2] This

[1] 42 C.F.R. § 435.1009(a)(1) ("FFP is not available in expenditures for services provided to—Individuals who are inmates of public institutions as defined in § 435.1010."). *See also* 42 U.S.C.A. § 1396d(a)(A) (West) (excluding from medical assistance, "any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution)"); 42 U.S.C.A. § 1382(e)(1)(A) (West) (excluding Supplemental Security Income (SSI): "no person shall be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if throughout such month he is an inmate of a public institution.").

[2] Letter from Robert A Striemer, *Clarification of Medicaid Coverage Policy for Inmates of a Public Institution* (Dec. 12, 1997), *reprinted in* SONYA SCHWARTZ & MELANIE GLASCOCK, IMPROVING ACCESS TO HEALTH COVERAGE FOR TRANSITIONAL YOUTH (July, 2008), app. A, at 30 http://www.modelsforchange.net/publications/159/Improving_Access_to_Health_Coverage_for_Transitional_Youth.pdf

includes individuals being held in involuntarily in detention centers awaiting trial and inmates involuntarily residing in halfway houses under governmental control.[3]

Recently, CMS provided the factors for determining public institution under the Inmate Exception:

> If facilities under the State's Community Corrections programs are limiting the individual's ability to leave the facility on [a] permanent basis, such as the requirement for the individual to return to the center at night, CMS interprets these facilities as institutions for incarceration.[4]

3.4 Inpatient Hospitals Remain Exempt

However, true inpatient hospital services remain exempt from the prohibition on the use of federal funds under the Inmate Exception.[5] If an inmate requires medical care that necessitates inpatient hospital treatment for more than 24 hours, the bar on federal dollars is excepted. This exception provides one of the rationales for suspension (as discussed below). However, even some states that terminate have created procedures to utilize the exception and avail themselves of the federal funds (also discussed below).

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[3] *Id.* at 32.

[4] Letter from Joan Henneberry, *Suspension of Medicaid Eligibility for Incarcerated Persons* (Dec. 2008), *reprinted in* JUSTICE CENTER, THE COUNCIL OF STATE GOVERNMENTS, MEDICAID AND FINANCING HEALTH CARE FOR INDIVIDUALS INVOLVED WITH THE CRIMINAL JUSTICE SYSTEM (Dec. 2013), app. 4 at 22, https://csgjusticecenter.org/wp-content/uploads/2013/12/ACA-Medicaid-Expansion-Policy-Brief.pdf.

[5] 42 U.S.C.A. § 1396d(a)(A) (West) ("except as a patient in a medical institution").

3.5 The SSA's Government "Bounty Program"

Before the passage of ACA, the Social Security Administration (SSA) was directly responsible for regulating the lion's share of FFP, through SSI and Medicare (as Medicaid was limited in scope). However, in order for the SSA to suspend federal benefits under the Inmate Exception, the SSA needed booking and discharge information from both State and Federal incarceration facilities. To help the SSA manage this information exchange, Congress, as part of the 1996 welfare reforms,[6] created what has become officially known as a government "bounty program" to incentivize the reporting of newly admitted inmates to the SSA.[7] The bounty provision in the Social Security Act provides *$400 dollar payment* to public institutions, for the reporting of suspension eligible inmates within 30 days of incarceration, and $200 dollars within 90 days of incarceration.[8]

In 1999, the General Accounting Office ("GAO"), in measuring the effect of the bounty program, found that the SSA was able to identify $32.1 in recoverable overpayments and prevented $37.6 million in future erroneous payments.[9] However, the GAO also notes that of 3,115

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[6] Personal Responsibility and Work Opportunity Reconciliation Act Of 1996, PL 104–193, August 22, 1996, 110 Stat 2105.

[7] HOUSE REPORT 104-651 - WELFARE AND MEDICAID REFORM ACT OF 1996, 104TH CONGRESS (1995-1996), https://www.congress.gov/congressional-report/104th-congress/house-report/651/1 ("This provision provides new financial incentives for State and local institutions to report information on inmates to the Social Security Administration so SSI and Social Security retirement and disability benefits fraudulently received by prisoners can be stopped.")

[8] 42 U.S.C.A. § 1382(e)(1)(I) (West); see also SOCIAL SECURITY ADMINISTRATION, INCENTIVE PAYMENTS FOR STATE AND LOCAL INSTITUTIONS (Oct. 2003), https://www.ssa.gov/pubs/EN-05-10088.pdf

[9] UNITED STATES GENERAL ACCOUNTING OFFICE, REPORT TO CONGRESSIONAL COMMITTEES, SUPPLEMENTAL SECURITY INCOME INCENTIVE PAYMENTS HAVE REDUCED OVERPAYMENTS TO PRISONERS, GAO/HEHS-00-2 at 2 (Nov. 22, 1999),

correctional facilities that had agreed to supply the SSA with prisoner information, only 210 facilities agreed after passage of the incentive program legislation.[10] The savings from those facilities totaled just $6.9 million,[11] a figure that falls short of the $10 million paid out to incarcerating facilities as a part of the bounty program.[12]

However, the SSA has taken steps to ensure that the bounty program is as straightforward and effortless as possible. For instance, the SSA explains the bounty program in a user-friendly brochure targeting correctional facilities.[13] Additionally, the SSA has automated the payment of bounty incentives through their "Bounty Update Control System,"[14] where no agency personal is necessary to enable correctional

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http://www.gao.gov/assets/230/228409.pdf (hereinafter "GAO REPORT") ("By suspending benefits, SSA identified $32.1 million of potentially recoverable SSI overpayments that it had already made and prevented approximately $37.6 million in future erroneous SSI payments")

[10] GAO REPORT *supra* note 4 at 2-3 ("Our analysis showed that 210 of the 3,115 incentive agreements were new commitments; that is, 210 facilities had not agreed to provide inmate data to SSA before the incentive agreement legislation.")

[11] GAO REPORT *supra* note 4 at 3 ("At the facilities that made new commitments, SSA made 4,597 suspensions, identified about $3.3 million in overpayments that it had made to inmates, and prevented future overpayments of about $3.6 million.")

[12] GAO REPORT *supra* note 4 at 2 ("SSA made incentive payments of almost $10 million to facilities, as required by the incentive agreements.")

[13] SSA, PUB. NO. 05-10088, INCENTIVE PAYMENTS FOR STATE AND LOCAL INSTITUTIONS (Oct. 2003), https://www.ssa.gov/pubs/EN-05-10088.pdf

[14] SSA, GN 02607.800 SSA'S TITLE II AND TITLE XVI INCENTIVE PAYMENT PROGRAMS (Nov. 2014), https://secure.ssa.gov/poms.nsf/lnx/0202607800 ("On the first business day of each month, the Bounty Update Control System (BUCS) performs a sweep operation by searching the entire PUPS system for records where it posted an IP to the INCENTIVE DATA field and the date entry for the INCENTIVE DATE field is blank. Once BUCS locates all unpaid IP records, it passes the records to the Office of Finance for payment via electronic fund transfer (EFT) to the bank account indicated on the facility's Incentive Payment Identification (IPID) Screen. We pay all IPs via EFT during the first business week of each month. The EFTs generally

facilities to receive their incentive payments. In fact, the SSA has overpaid correctional facilities throughout the bounty program. From March 1997 to August 2003, for example, the Office of the Inspector General (OIG) estimated that $18.97 million had been incorrectly disseminated.[15] Likewise, from September 2003 to March 2008, the OIG estimated that $30.3 million had been erroneously paid,[16] and from June 2008 to February 2014, the OIG estimated that $35.3 million had been overpaid to correctional facilities.[17] Moreover, such overpayments are

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transfer to the facility's (i.e., reporter's) bank account within four business days after BUCS performs the sweep.")

[15] Office of the Inspector General, A-01-04-24067, The Social Security Administration's Prisoner Incentive Payment Program (July 2004), http://oig.ssa.gov/sites/default/files/audit/full/html/A-01-04-24067.html ("SSA's procedures do not ensure that incentive payments to institutions that provide inmate information are being made in accordance with the provisions in the Social Security Act. Based on our review of 250 sample cases, we estimate that 86,131 incentive payments were issued incorrectly, resulting in approximately $18.97 million in OASDI and SSI program funds that should not have been paid.")

[16] OFFICE OF THE INSPECTOR GENERAL, A-01-09-19029, FOLLOW-UP ON THE SOCIAL SECURITY ADMINISTRATION'S PRISONER INCENTIVE PAYMENT PROGRAM (Aug. 2009), http://oig.ssa.gov/sites/default/files/audit/full/html/A-01-09-19029_7.html ("Based on our review of 275 sample cases, we estimate about 119,862 incentive payments were issued incorrectly, resulting in approximately $30.3 million in OASDI and SSI program funds that should not have been paid. Specifically, our review of 275 sample cases found that.")

[17] OFFICE OF THE INSPECTOR GENERAL, A-01-14-24100, THE SOCIAL SECURITY ADMINISTRATION'S PRISONER INCENTIVE PAYMENT PROGRAM (Dec. 2014) at 8, http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-01-14-24100.pdf (hereinafter "OIG REPORT 2014") ("Based on our current review of 275 sample cases, we estimated that SSA incorrectly issued about 128,500 incentive payments totaling approximately $35.3 million.")

unrecoverable if the inmate was ineligible for benefits suspension[18] or occurred as a result of SSA error.[19]

Although the bounty overpayments combined with the GAO's findings that very few facilities enlisted in inmate/detainee information sharing as a result of the bounty program, suggest a pursuit of the suspension of federal benefits for inmates and pretrial detainees, even at an economic loss.

However, the SSA is working to close the gap in the number of correctional facilities that now report,[20] thus improving the economic benefit of the program. Whether or not the bounty program is economically viable on the whole, such incentives, coupled with the SSA's computerized reporting systems (discussed below), make the

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[18] OIG REPORT 2014 *supra* note 12 at 6-7 ("SSA's policies and procedures state that if the Agency releases an incentive payment, but should not have suspended benefits because of incarceration, the payment cannot be recovered.")

[19] OIG REPORT 2014 *supra* note 12 at 7 ("If SSA inadvertently pays a facility because of an SSA error (for example, SSA keyed incorrect incarceration data into the computer system), SSA will not litigate to recoup the erroneous payment. The Agency will ask the correctional facility to return the payment.")

[20] In 1999, the GAO found that only 60% of the country's 5500 incarcerating facilities reported prisoner information to the SSA. *See* GAO Report *supra* note 4 at 5. Although the current number of reporting facilities is unavailable, given the incentives of the bounty program and the automation of the SSA's modern PUPS and Incarceration Reporting and Control System (IRCS), many more correctional facilities likely report than in 1999. *See* SSA, *Privacy Act of 1974; As Amended; Report of New System of Records and Routine Uses*, 64 F.R. 44 (Mar. 1999) at 11076-79, https://www.gpo.gov/fdsys/pkg/FR-1999-03-08/pdf/99-5587.pdf; SSA, GN 02607.420, INCARCERATION REPORTING AND CONTROL SYSTEM (IRCS), PROGRAM OPERATIONS MANUAL SYSTEM (Jun. 13, 2014), https://secure.ssa.gov/poms.nsf/lnx/0202607420.

suspension of federal benefits (at least those controlled by the SSA) for an incarcerated person very likely, if not automatic.

3.6 SSA's Four automated information systems

The SSA's Bounty program supplies the incentive for incarceration facilities to participate in the SSA's automated systems, which are designed to "receive, process, control, and monitor inmate information and to suspend benefits through an automated matching operation."[21] The SSA's has built four unique systems to manage inmate information and enable automatic suspension of benefits.

First, the Incarceration Reports Control System (IRCS) is "a series of automated screens and queries that record and display information about all federal, State, and local correctional and mental institutions."[22] IRCS manages information about the correctional facilities themselves, including the facility's name, contact information, details of reports received, reporting agreements, incentive payment agreements, and the incentive payments.[23]

Second, the Prisoner Update Processing System (PUPS) maintains information about the inmates themselves, suspends SSDI and SSI where applicable, calculates the incentive payments, and records benefit and recipient reinstatement.[24]

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[21] SOCIAL SECURITY ADMINISTRATION, GN 02607.410, SSA'S PRISONER SYSTEMS AND MATCHING OPERATION (June 19, 2015), https://secure.ssa.gov/apps10/poms.nsf/lnx/0202607410 [hereinafter "SSA PRISON SYSTEMS"].

[22] *Id.* Also of note is that institutions listed "include both participating and non-participating inmate reporting institutions." *Id.*

[23] *Id. See also* SOCIAL SECURITY ADMINISTRATION, GN 02607.420 INCARCERATION REPORTING AND CONTROL SYSTEM (IRCS) (June 13, 2014), https://secure.ssa.gov/apps10/poms.nsf/lnx/0202607420.

[24] SSA PRISON SYSTEMS, *supra* note 17.

Third, the Prisoner Tracking Management Information System (PTMI) allows for SSA personnel[25] to monitor and manage the information collected through PUPS should they find need.[26]

Finally, Unverified Prisoner System (UPS) manages the verification of those inmates who are not automatically verified.[27]

These four SSA systems reinforce both the thoroughness and automation of information gathering for purposes of precluding funds under the Inmate Exception. Moreover these systems further emphasize that *no actual person* need be part of the process for an inmate's federal benefits to be suspended. Thus, a detainee's benefits may be suspended automatically, efficiently, and quickly upon arrest.

3.7 State Medicaid Agencies and Inmate Reporting

However, because Medicaid is a federal benefit administered by the States, local Medicaid agencies need discharge and release information from incarceration facilities in order to suspend or terminate an inmate's benefits. There are two fairly efficient paths by which State Medicaid agencies receive such information. First, the agency can receive the information from the Center for Medicare and Medicaid

[25] "Management personnel, service representatives, claims representatives, and Program Service Center personnel." *Id.*
[26] *Id.*
[27] *Id.* ("UPS facilitates Social Security Number (SSN) verification of reported inmates who fail to verify through the automated Enumeration Verification System (EVS). When EVS cannot match an inmate's identity, it sends the unverified SSN to the Office of Central Operations (OCO) for manual verification. When locating a correct SSN, the OCO technician adds the SSN to UPS, which reenters the SSN into the matching operation. UPS also stores the SSN for possible future use. If the inmate later submits the same name and incorrect SSN to the authorities, UPS will automatically notify EVS of the correct name and SSN.")

Services (CMS). Second, the agency can directly contract with the correctional facilities themselves.

CMS has an agreement with the SSA in which the SSA will transfer the data collected through the PUPS system to CMS once every thirty days.[28] CMS then informs State Medicaid programs of an incarcerated person's ineligibility status,[29] and once confirmed, that person is disenrolled on the first day of *the following month*.[30]

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[28] Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Medicare Program; Contract Year 2015 Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs*, 79 F.R. 100 (May 23, 2014) at 29914, https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/MedicareProviderSupEnroll/Downloads/CMS-4159.pdf ("[the] exclusion process includes the receipt of incarceration status for individuals via regular data transfers from the SSA to CMS. Once we receive the data, the incarceration status is noted on the individual's record and is retained in the FFS claims processing systems […] CMS receives the data from SSA once a month, and only after the correctional facility provides it to SSA") [hereinafter CMS FINAL RULE].

[29] MEDICARE-MEDICAID PLAN ENROLLMENT AND DISENROLLMENT GUIDANCE (Jun. 14, 2013), at 43, https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Downloads/MMPFinalEnrollGuidance.pdf ("In the case of incarcerated individuals, States may receive notification of the individual's out-of-area status via a DTRR (CMS' Daily Transaction Reply Report)") [hereinafter CMS ELIGIBILITY GUIDELINES]

[30] *Id.* ("disenrollment is effective the first of the month following the organization's confirmation of a current incarceration"). *See also Id.* ("If the State confirms an individual's current incarceration status but does not obtain the start date of the current incarceration, the State must disenroll the individual prospectively for the first of the month following the date on which the current incarceration was confirmed. If the State confirms an individual's current incarceration status as well as the start date of the current incarceration, the State must disenroll the individual for the first of the month following the start date of the incarceration.")

However, if an inmate or detainee is *incarcerated less than thirty days*, that person might benefit from the thirty-day gap in the data CMS receives,[31] and that person may not be disenrolled.[32] On the other hand, because the processes are cumbersome and operated by various agencies, CMS has discovered errors in the eligibility status of incarcerated individuals that resulted in overpayments to beneficiaries.[33] As a result, CMS has initiated the recovery process for some of those overpayments[34] but not all.[35]

3.8 Termination vs. Suspension

As of mid-2016, *thirty-two states terminate* Medicaid benefits of incarcerated individuals, only five of which provide limited exceptions for suspension. Once terminated, an individual must formally reapply and reestablish eligibility upon release from jail, a fairly onerous process

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[31] *See* CMS FINAL RULE, *supra* note 2 at 29914 ("CMS receives the data from SSA once a month, and only after the correctional facility provides it to SSA")

[32] *See* CMS ELIGIBILITY GUIDELINES, *supra* note 3 at 43 ("When a State is notified of a current member's past period of incarceration and has confirmed that this member's period of incarceration has ended (i.e. individual is no longer incarcerated), the State must continue the individual's enrollment, unless otherwise directed by CMS")

[33] CENTER FOR MEDICARE AND MEDICAID SERVICES, INCARCERATED BENEFICIARY CLAIM DENIAL FREQUENTLY ASKED QUESTIONS (Nov. 27, 2013), at 1 https://www.cms.gov/Medicare/Medicare-Contracting/FFSProvCustSvcGen/Downloads/Incarcerated-Bene-FAQs.pdf ("CMS identified previously paid claims that contained a date of service that partially or fully overlaps a period when a beneficiary was apparently incarcerated based on information from the Social Security Administration (SSA). As a result, a number of overpayments were identified.")

[34] *Id.* ("In some cases demand letters were released with appeals instructions, and, in many cases, automatic collections of overpayments were made.")

[35] *Id.* ("CMS has since learned that the information was, in some cases, incomplete for purposes of collection.")

that can take 90 days or more. [36] This creates a coverage gap for terminated releasees, which can be problematic, particularly for the chronically mentally ill.[37]

However federal law does not *explicitly* require termination of eligibility.[38] Rather, federal law merely prohibits *State use of federal funds* for incarcerated individuals.[39] Accordingly, eighteen states so far have affirmatively opted to "suspend" rather than terminate detainee/inmate benefits, leaving detainees technically still "on the rolls" of Medicaid during their stays.[40] Of the eighteen states that suspend benefits, ten have passed legislation within the past two years (AK, IL, MA, MI, NE, NM, OR, RI, TN, VT). Suspension, in intent if not operation, allows for quicker simpler resumption, largely avoiding the gap in benefits.[41]

3.9 Suspension: Underlying Policy & Law

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[36] *See* 42 C.F.R. § 435.912.
[37] *See* Bazelon Center for Mental Health Law, *surpa* note 1. ("Part B [Medicaid for outpatient mental health services] can be reinstated, but reinstatement is dependent upon payment of the premium and if the premium has not been paid during incarceration the individual must reenroll, which can take many months. There are also financial penalties."); *see also* NATIONAL ASSOCIATION OF COUNTIES, *supra* note 1 ("More than 76 percent of those with a mental illness also suffer from substance abuse issues, as does 53 percent of the general jail population."
[38] *Id.*; 42 U.S.C. §1396d (a)(29)(A)
[39] *See* 42 U.S.C. §1396d (a)(29)(A); Federal law does make an exception for the use of funds for offsite, inpatient hospital serves. *Id.*
[40] *See* KAISER COMMISSION ON MEDICAID AND THE UNINSURED, STATE MEDICAID ELIGIBILITY POLICIES FOR INDIVIDUALS MOVING INTO AND OUT OF INCARCERATION (August 2015), https://www.statereforum.org/sites/default/files/issue-brief-state-medicaid-eligibility-policies-for-individuals-moving-into-and-out-of-incarceration.pdf [hereinafter KAISER]; *See also* NATIONAL ASSOCIATION OF COUNTIES, *supra* note 1.
[41] *See generally* KAISER *supra* note 40.

There are three apparent reasons why states choose to suspend, rather than terminate, benefits. First, states which suspend eligibility, rather than terminate, can more seamlessly avail themselves of the inpatient hospital services exception (explained in § 3.4 *supra).* Second, and more importantly, in certain states custodial agencies can more quickly shift the cost of post-discharge medical discharge services back to Medicaid funding. Indeed, a number of states have policies, which obligate incarceration facilities to provide medical services for recently released inmates to help ensure that their coverage does not lapse – this is largely for those releasees who take medication to treat mental illness. Other states are bound by precedent.

The 9th circuit in *Wakefield v. Thompson* held:

> [T]he state must provide an outgoing prisoner who is receiving and continues to require medication with a supply sufficient to ensure that he has that medication available during the period of time reasonably necessary to permit him to consult a doctor and obtain a new supply. A state's failure to provide medication sufficient to cover this transitional period amounts to an abdication of its responsibility to provide medical care to those, who by reason of incarceration, are unable to provide for their own medical needs.[42]

Thus, many Western states, including Washington, Oregon, California, Arizona, Nevada, Alaska and Hawaii, are obligated under *Wakefield* to pay for such medication even if their own legislatures have not obligated them to do so.

[42] 177 F.3d 1160, 1164 (9th Cir. 1999)

Finally, beyond cost-saving motivations, suspension allows for quicker and simpler resumption, largely avoiding gaps in benefits, thus potentially curbing health-related recidivism.[43]

3.10 *Suspension in Operation*

States need to act affirmatively to opt for suspension through either legislation (statute) or agency action (regulation). In those state's where the legislature has taken no action, state Medicaid agencies can either promulgate regulations that suspend rather than terminate Medicaid eligibility or contract themselves with correctional facilities through intergovernmental agreements to accomplish suspension of Medicaid eligibility.

In New York, the State Department of Health enabled the suspension of eligibility.[44] Although reinstatement or eligibility should be automatic,[45] there have been problems through the reinstatement process, the Department of Health has been reportedly working to the fix them.[46] Even when the legislature has enacted a suspension policy,

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[43] *See generally* KAISER *supra* note 40.

[44] New York State Department of Health, The Medicaid Reference Guide, Other Eligibility Requirements, 545 (2012), https://www.health.ny.gov/health_care/medicaid/reference/mrg/other-eligibility-requirements.pdf ("An inmate of a State Department of Correctional Services or local correctional facility that was in receipt of Medicaid immediately prior to incarceration shall have eligibility maintained during incarceration. In addition, Medicaid coverage must be reinstated upon release from the correctional facility.")

[45] *Id.* at 547 ("Upon notification from DOCS or a Local Correctional Facility that an individual whose Medicaid or FHPlus authorization had been placed in suspend status, and is being released to Parole or has completed his/her sentence without community supervision, Medicaid coverage must be re-instated in the district where the releasee had coverage immediately prior to incarceration.")

[46] Minutes of Criminal Justice and Health Homes Committee (Apr. 28, 2015), https://www.health.ny.gov/health_care/medicaid/program/medicaid_health_homes/

administrative problems prevent state agencies from realizing the legislature's will. As is the case with Florida[47] and Colorado,[48] where despite the legislative will, administrative problems delay any suspension Medicaid eligibility, essentially leaving in place a termination policy. For those states which have enacted suspension policy within the last year, such administrative problems might also arise

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docs/4_28_15_minutes.pdf ("There have been some problems with suspension and reinstatement through the Exchange: Certain individuals were not appearing on the suspension file SDOH sends to DOCCS; Releasees not having coverage reinstated thru WMS; DOCCS sending info but Exchange not processing properly; DOH is working on a fix to reinstatement through the exchange. Process should go live on May 7; interim solution in place until fix")

[47] Fla. Stat. Ann. § 409.9025(2) (West); FLA. AGENCY FOR HEALTH CARE ADMIN., 2012-2015 HEALTH PLAN MODEL CONTRACT ATTACHMENT II – CORE CONTRACT PROVISIONS 118, http://www.fdhc.state.fl.us/medicaid/Policy_and_Quality/Policy/Managed_Care_contracting/MHMO/docs/contract/1215_Contract/2012-2015/Jan2013/2012-15_HP-ContractAtt-II_GEN-AMEND1-JAN-2013-CLEAN.pdf ("The Health Plan or its designee shall document efforts to develop a cooperative agreement with justice facilities to enable the Health Plan to anticipate enrollees who were Health Plan enrollees prior to incarceration who will be released from these institutions. The cooperative agreement must address arrangement for persons who are to be released, but for whom re-enrollment may not take effect immediately.").

[48] COLORADO DEPARTMENT OF HEALTH CARE POLICY & FINANCING, MEDICAID AND CRIMINAL JUSTICE INVOLVED POPULATIONS, https://www.colorado.gov/pacific/hcpf/medicaid-and-criminal-justice-involved-populations ("In 2008, the Colorado state legislature passed SB 08-006, requiring the Department to suspend eligibility for any Medicaid client who becomes incarcerated. […] The Department is actively working to fully implement this law."); *see also* Letter from Colorado Department of Health Care Policy & Financing to Client Services, Eligibility Enrollment, (Mar. 25, 2014), https://www.colorado.gov/pacific/sites/default/files/2014%20Agency%20Letters%20Number%2014-006.pdf; DEPARTMENT OF HEALTH CARE POLICY & FINANCING TO CLIENT SERVICES, BEST PRACTICES FOR COUNTIES: MEDICAID AND CRIMINAL JUSTICE POPULATIONS, https://www.colorado.gov/pacific/sites/default/files/Best%20Practices%20for%20Counties-Medicaid%20and%20Criminal%20Justice%20Populations.pdf

as those state agencies begin implementing the new policies. In this sense a state's newly legislated suspension policy does not ensure that an inmate's Medicaid eligibility will not be terminated. That said, state Medicaid agencies will eventually be able to overcome such administrative problems (should they occur) and satisfy the legislative will to suspend at some point in the near future.

3.11 Termination: The Majority Position

There are two overriding reasons why the decisive majority of states continue to terminate benefits. First, the state has not adopted the ACA's Medicaid expansion; thus, such states have a relatively small number Medicaid-eligible inmates and whatever cost-saving could be obtained may not outweigh implementation of a suspension program. Second, some state Medicaid agency's processes and/or software do not allow for eligibility to be suspended (i.e. the cost of implementing a system which could enable the suspension of Medicaid eligibility outweighs any savings that could be recouped with federal dollars). In states such as Kentucky[49] and Nevada,[50] state Medicaid agencies are

[49] MAGI-BASED ELIGIBILITY VERIFICATION, PLAN MEDICAID & CHIP, KENTUCKY at 3, https://www.medicaid.gov/medicaid-chip-program-information/program-information/eligibility-verification-policies/downloads/kentucky-verification-plan-template-final.pdf
("Current contract with MCO providers does not allow for Medicaid for incarcerated individuals. Interface to be run at regular intervals to check for change in status. New system will allow the ability to place the benefits on hold. Kentucky anticipates new system to be in place 10/1, however, the enhancement to place benefits on hold will not be available at that time. The enchancement [sic] requirements have not been determined at this time, therefore, there is no available timeframe.").

[50] Joel A. Dvoskin, December 2014 Report to Governor Sandoval, STATE OF NEVADA GOVERNOR'S ADVISORY COUNCIL ON BEHAVIORAL HEALTH AND WELLNESS, 8 (Feb. 24, 2015)

attempting to work through such administrative problems, although their stated policy remains termination.

Of the states that terminate, at least eight take advantage of the exception for in-patient hospital care; although without a suspension policy, the process to take advantage of the inpatient exception is rather cumbersome, requiring correctional facility staff to reapply for Medicaid on the inmate's behalf. After discharge from the hospital and reentry into incarceration, the inmate's eligibility would again be terminated; any further inpatient hospital services needed by the inmate would require reapplication to Medicaid.

Five termination states will delay termination under certain conditions. Iowa, New Jersey, Texas and Washington will suspend eligibility for inmates if they are incarcerated for less than 30 days, thus enabling automatic retention of Medicaid benefits for those inmates who are released with less than 30 days of incarceration. In Arizona, if an inmate is incarcerated in an Arizona Department of Corrections facility (a state prison), termination is delayed by 30 days.[51] Uniquely,

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http://dpbh.nv.gov/uploadedFiles/A%202014-12_CouncilRptAndRecommendationsToGovernorSandoval.pdf ("DHHS has begun the process of changing its system to allow suspension (as opposed to termination) of Medicaid eligibility; however, this project requires system changes both at Division of Welfare and Supportive Services (DWSS) and DHCFP and will require significant information technology resources. The system changes are slated to begin in the spring of 2015, but until a suspension tool is in place, the key is effective case management coordinated with DWSS. A streamlined process has been put in place with a centralized unit within DWSS who works with DOC staff on eligibility issues.")

[51] HEALTH-E-ARIZONA PLUS, ARIZONA'S ELIGIBILITY POLICY MANUAL FOR MEDICAL, NUTRITION, AND CASH ASSISTANCE, MA1502V (Dec. 11, 2015), https://www.healthearizonaplus.gov/PolicyManual/eligibilitypolicymanual/index.html#page/MA/MA1500/MA1502.V_Incarcerated.html ("Inmates in an AZ

Arizona's Medicaid agency (AHCCCS) also individually contracted with some counties to ensure suspension for inmates regardless of their length of incarceration[52]; however, because AHCCCS does not have contracts with all of Arizona's counties, inmates in such counties will have their Medicaid eligibility terminated upon incarceration.

Below is a state-by-state summary chart limning Termination and Suspension of benefits upon incarceration:

Termination vs. Suspension of Medicaid: A State-by State Chart

	Program	**Medicaid Eligibility**	**Exceptions**	**Restatement and Discharge Services**
Alabama	Alabama Medicaid	No stated public policy. Assume Terminated as default.	n/a	n/a
Alabama Medicaid Agency website: http://www.medicaid.alabama.gov/ (Alabama has not adopted ACA's Medicaid expansion).				
Alaska	Alaska DHSS	Terminated (However, DHSS is working to implement suspension program.[53])	n/a	Discharge Services?* *Wakefield*?
Alaska Medicaid enrollment website: http://dhss.alaska.gov/HealthyAlaska/Pages/enrollment.aspx				

Department of Corrections (ADC) prison or in certain county jails may have their benefits suspended rather than stopped.").

[52] *Id.* ("AHCCCS has Intergovernmental Agreements (IGA)'s with Cochise, Coconino, Maricopa, Mohave, Navajo, Pima, Pinal, Yavapai, and Yuma Counties to suspend enrollment.")

[53] ALASKA DEPARTMENT OF CORRECTIONS, MEDICAID EXPANSION AND THE ALASKA DEPARTMENT OF CORRECTIONS (Apr. 3, 2015) at 5, http://gov.alaska.gov/Walker_media/documents/medicaid-expansion/20150403_DOC-white-paper.pdf ("DHSS is working on changing internal policies so Medicaid-approved individuals who are incarcerated will have their benefits suspended rather than terminated.")

Arizona	AHCCCS	Terminated (with exceptions)[54]	Suspended if incarcerated for not more than one month, or in a county jail where the county has contracted suspension with AHCCCS	County officials produce release list and AHCCCS officers reinstate upon match within their database
AHCCCS reapplication websites: https://www.azdes.gov/main.aspx?menu=357&id=5262; https://www.azdes.gov/main.aspx?menu=357&id=5262				
Arkansas	ARMedicaid	Suspended[55]	n/a	Inmates will have up to 45 days prior to release to submit applications; correctional facilities are obligated to supply application.
No online application. An ARMedicaid application is available at: http://humanservices.arkansas.gov/dco/dco_docs/DCO-0152.pdf				
California	Medi-Cal	Suspended	n/a	Automatic if inmates retain eligibility through MCIEP
Medi-Cal reapplication website: http://www.coveredca.com/medi-cal/renewing-medi-cal-coverage/				
Colorado	Colorado Medicaid	Suspended	n/a	Procedures not yet in place.
Colorado Medicaid website: https://www.colorado.gov/pacific/hcpf/colorado-medicaid				
Connecticut	Husky Health	Terminated	n/a	DSS employs two dedicated individuals charged with processing inmates' Medicaid applications upon release.[56]

[54] *See* Health-e-Arizona Plus *supra* note 10; *See* IGA Yavapai *supra* note 13.

[55] Mark Whitmore, Association of Arkansas Counties, *Management of Jail and Prison Overcrowding, Public Safety and Criminal Justice and Parole Reform* (July 2015), http://www.arcounties.org/news/164/management-of-jail-and-prison-overcrowding-public-safety-and-criminal-justice-and-parole-reform ("the Department of Human Services (DHS) shall allow an inmate to apply for Medicaid online 45 days before being released; incarceration will result in suspension from Medicaid/private option (previously incarceration resulted in revocation of Medicaid)"); *see also* SB472, State of Arkansas, 90th General Assembly, Regular Session (Feb. 19, 2015), https://legiscan.com/AR/text/SB472/id/1194910/Arkansas-2015-SB472-Chaptered.pdf

[56] Cohen, R., OLR Research Report, The Affordable Care Act and Prisoners (Aug. 13, 2013), http://www.cga.ct.gov/2013/rpt/2013-R-0288.htm ("In addition, DOC and DSS have partnered for some time to ensure that inmates who are to be discharged from a DOC facility continue to receive necessary health care upon reentry through the Medicaid program. Under a separate MOU between the two agencies, DSS has provided two

Husky Health enrollment website: https://www.connect.ct.gov/access/jsp/access/Home.jsp				
Delaware	Health Delaware	Terminated	Inpatient hospital care*	Continuity of Care Transition Plan.[57]
Health Delaware enrollment website: http://www.choosehealthde.com/				
Florida	Florida Medicaid	Suspended	n/a	Procedure not yet in place.
Florida Medicaid website: http://www.fdhc.state.fl.us/ (Florida has not adopted ACA's Medicaid expansion).				
Georgia	Georgia Medicaid	No stated public policy. Assume Terminated as default.	n/a	n/a
Georgia's enrollment website: https://compass.ga.gov/selfservice/ (Georgia has not adopted ACA's Medicaid expansion).				
Hawaii	Hawaii QUEST	Conflicting sources.[58] No stated public policy.	n/a	n/a
Hawaii's Medicaid enrollment website: https://medical.mybenefits.hawaii.gov/web/kolea/home-page				
Idaho	Idaho Medicaid	No stated policy. Assume Terminated as default.	n/a	n/a
Idaho's Medicaid website:				

eligibility workers dedicated solely to processing Medicaid applications for those inmates determined to be potentially eligible for assistance and DOC reimburses DSS for the employees' costs.")

[57] Department of Delaware Insurance, Delaware State-Specific Qualified Health Plan (QHP) Standards for Plan Year 2015 (May 2014), http://www.delawareinsurance.gov/health-reform/DE-QHP-Standards-PY2015-May2014-v1.pdf
("A QHP issuer must have a transition plan for continuity of care for those individuals who become eligible or lose eligibility for public health programs. The Continuity of Care Transition Plan must include a transition period for prescriptions, including how the plan specifically addresses mental health pharmacy."); *see also* The Supreme Court of Delaware, Delaware Supreme Court Task Force on Criminal Justice and Mental Health (June 2009) at A10, http://courts.delaware.gov/aoc/MHTF/InterimReport.pdf ("In Delaware, the Department of Correction tries to help set up benefits prior to release and James Lafferty said that the Mental Health Association had worked on this issue. Judge Jurden reported that this has been a topic of discussion in her subcommittee and that they anticipate drafting legislation similar to what has been passed in other states.")

[58] A verification plan from medicaid.gov suggests that Hawaii merely suspends eligibility for incarcerated persons. MEDICAID.GOV, MAGI-BASED ELIGIBILITY VERIFICATION PLAN MEDICAID & CHIP, HAWAII at 2, https://www.medicaid.gov/medicaid-chip-program-information/program-information/eligibility-verification-policies/downloads/hawaii-verification-plan-template-final.pdf ("If HI verifies that the individual is incarcerated, the individual would be suspended from Medicaid.") However, other sources counts Hawaii as a termination state. *See e.g.*, NATIONAL ASSOCIATION OF COUNTIES, HEALTH COVERAGE AND COUNTY JAILS: SUSPENSION VS. TERMINATION, (2015) http://www.naco.org/sites/default/files/documents/Suspension-termination_2015.pdf.

http://www.healthandwelfare.idaho.gov/Medical/Medicaid/tabid/123/Default.aspx (Idaho has not adopted ACA's Medicaid expansion).				
Illinois	Illinois Medicaid	Suspended.[59]	n/a	In Cook County, arrestees are encouraged to apply for Medicaid upon custodial intake.[60]
Illinois Medicaid website: http://www.illinois.gov/hfs/Pages/default.aspx				
Indiana	Indiana Medicaid	Terminated	Suspended if incarcerated for less than 12 months.[61]	Reinstated automatically if incarcerated less than 12 months.[62]
Indiana's Medicaid eligibility website: https://www.ifcem.com/CitizenPortal/application.do				
Iowa	Iowa Medicaid	Terminated	Suspended if incarcerated for less than 30 days.[63]	Currently instituting programs to enroll inmates in Medicaid prior to release.[64]

[59] Effective as of August 20, 2015, Illinois will no longer cancel eligibility for medical assistance programs. 305 Ill. Comp. Stat. Ann. § 5/1-8.5(a) "To the extent permitted by federal law and notwithstanding any other provision of this Code, the Department of Healthcare and Family Services shall not cancel a person's eligibility for medical assistance, nor shall the Department deny a person's application for medical assistance, solely because that person has become or is an inmate of a public institution, including, but not limited to, a county jail, juvenile detention center, or State correctional facility. The person may be and remain enrolled for medical assistance as long as all other eligibility criteria are met."

[60] Anita Cardwell, Opportunities for Enrolling Justice-Involved Individuals in Medicaid, STATEREFORUM.ORG (January 2, 2015), https://www.statereforum.org/weekly-insight/enrolling-justice-involved-individuals-in-medicaid ("Cook County, IL has moved forward with enrolling offenders at intake, and as of January 2014 over 12,000 applications had been initiated at the county's jail.") See also National Association of Pretrial Services Agencies, Enrolling Offenders in Medicaid at Pretrial Jail Intake: A Case Study of Cook County, Il, Appendix A, The Patient Protection And Affordable Care Act and the Pretrial System: a "Front Door" to Health and Safety (2014), http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/ACA%20and%20the%20Pretrial%20System%20%28Appendix%20A-%20Cook%20County%29%20-%20NAPSA%202014%20%281%29.pdf

[61] ICE 2237.05.00 SUSPENSION INCARCERATION/PSYCHIATRIC ADMISSION, INDIANA HEALTH COVERAGE PROGRAM POLICY MANUAL, http://www.in.gov/fssa/files/Medicaid_PM_2200.pdf ("When a recipient becomes incarcerated or is admitted to a psychiatric facility that results in ineligibility, the individual's health coverage is to be suspended, not discontinued."); see also Ind. Code Ann. § 12-15-1-20.4 (West).

[62] ICE 2237.10.00 REINSTATEMENT OF BENEFITS FOR SUSPENDED INDIVIDUALS, INDIANA HEALTH COVERAGE PROGRAM POLICY MANUAL, http://www.in.gov/fssa/files/Medicaid_PM_2200.pdf ("Benefits for individuals who are in suspend status in accordance with Section 2237.05.00, are to be reinstated without a reapplication if the individual returns to an eligible living arrangement before the 12 month suspension period has expired, and the requirements of this Section are met.")

[63] *See* IOWA DEPARTMENT OF HUMAN SERVICES, SUSPENDING MEDICAID TO LIMITED BENEFITS FOR INCARCERATED INDIVIDUALS PROCEDURE GUIDE, RC-0128, http://dhs.iowa.gov/sites/default/files/RC-0128.pdf

[64] Iowa Department of Human Services, Innovation Plan (Dec. 2013) at 75-76. https://dhs.iowa.gov/sites/default/files/IA%20SHIP%20Final.pdf ("The IME has already begun to do more outreach to enrolled eligible individuals in Medicaid, Iowa SHIP December 23, 2013 especially with the implementation of the Iowa Health and Wellness Plan in January 2014. As part of the SIM work, the IME is forming work groups with Department of Corrections to identify ways to bring community-based corrections groups into the process to help proactively educate and enroll incarcerated individuals, and those on parole or probation.")

Iowa Medicaid application website: https://dhsservices.iowa.gov/apspssp/ssp.portal				
Kansas	KanCare	Terminated[65]	n/a	n/a
Kansas Medicaid eligibility website: https://cssp.kees.ks.gov/apspssp/ (Kansas has not adopted the ACA's Medicaid expansion)				
Kentucky	Kentucky Medicaid	Terminated (New administrative system will allow for suspension in the future.[66])	n/a	n/a
Kentucky's Healthcare connection website: https://kynect.ky.gov/ (Kentucky will implement a new Medicaid portal in the third quarter of 2016.[67])				
Louisiana	Louisiana Medicaid	Terminated[68]	n/a	n/a
Louisiana Medicaid website: http://dhh.louisiana.gov/index.cfm/subhome/1/n/331 (Louisiana has not yet but will adopt the ACA's Medicaid expansion in the near future.[69])				
Maine	MaineCare	Terminated	Mental health patients.[70]	Maine does offer discharge services for mentally ill persons.[71]
MaineCare website: http://www.maine.gov/dhhs/mainecare.shtml (Maine has not adopted the ACA's Medicaid expansion).				

[65] Association of Community Mental Health Centers of Kansas, Inc., 2015 Behavioral Health Public Policy Agenda (2015), http://www.acmhck.org/wp-content/uploads/2015/03/2015-Public-Policy-Priorities.pdf ("At this time, Kansas law does not allow for suspension of Medicaid eligibility to be reinstated upon release from prison.")

[66] MAGI-BASED ELIGIBILITY VERIFICATION, PLAN MEDICAID & CHIP, KENTUCKY at 3, https://www.medicaid.gov/medicaid-chip-program-information/program-information/eligibility-verification-policies/downloads/kentucky-verification-plan-template-final.pdf
("Current contract with MCO providers does not allow for Medicaid for incarcerated individuals. Interface to be run at regular intervals to check for change in status. New system will allow the ability to place the benefits on hold. Kentucky anticipates new system to be in place 10/1, however, the enhancement to place benefits on hold will not be available at that time. The enchancement requirements have not been determined at this time, therefore, there is no available timeframe.") [sic]

[67] Kentucky Cabinet for Health and Family Services, Kentucky Medicaid Partner Portal Application Information (Nov. 25, 2015), http://www.chfs.ky.gov/dms/mppa.htm

[68] LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS, APPENDIX U, GUIDELINES FOR MEMBER DISENROLLMENT, http://new.dhh.louisiana.gov/assets/docs/Making_Medicaid_Better/RequestsforProposals/CCNPAppendices/AppendixUGuidelinesforMemberDisenrollment.pdf

[69] *See* Marsha Shuler, *Gov.-elect John Bel Edwards' Medicaid Expansion Timeline Hits Bump In Road; Here's What's Next*, THE ADVOCATE (Nov. 26, 2015), http://theadvocate.com/news/14098281-31/john-bel-edwards-medicaid-expansion

[70] Human Rights Watch, XIV. Failure to Provide Discharge Services, U.S. Prisons and Offenders with Mental Illness (2003), https://www.hrw.org/reports/2003/usa1003/24.htm ("In Maine, the Department of Corrections (DOC) tries to maintain eligibility for prisoners while they are incarcerated. They are not covered while in prison, but do not need to reapply and are automatically eligible upon release. This is a new program; for many years, there was a gap in services during incarceration and prisoners had to reapply upon discharge. A recent change in the law allowed the DOC to do this. The Maine DOC is still "working out the bugs" in this system.")

[71] *See* Programs and Services, State of Maine Department of Corrections (2013), http://www.maine.gov/corrections/facilities/msp/MSPProgramsandServices.htm.

Maryland	Maryland Health Connection	Suspended[72]	n/a	Maryland offers expedited enrollment for those incarcerated beyond their Medicaid determination period.[73]
Maryland Health Connection eligibility website: https://www.marylandhealthconnection.gov/medicaid-basics-benefits/				
Massachusetts	MassHealth	Suspended[74]		Benefits reactivated on release.[75]
MassHealth application website: http://www.mass.gov/eohhs/consumer/insurance/apply-for-masshealth.html				
Michigan	Michigan Medicaid	Suspended[76]		Benefits reinstated upon notification of release.[77]
MI Bridges, Michigan Medicaid application website: https://www.mibridges.michigan.gov/access/				
Minnesota	Medical	Suspended if		Reinstated upon release

[72] Md. Code Ann., Health-Gen. § 15-109.2(1) (West) ("Shall suspend Program benefits for that individual while the individual is incarcerated or is in the institution"); *see also, ACA and the Criminal Justice System*, THE MARYLAND ADDICTIONS DIRECTORS COUNCIL (2014), http://madc.homestead.com/ACA_and_Criminal_justice_-_2014.pdf ("To achieve suspension, DHMH must temporarily unenroll the person in HealthChoice and put them into the fee for service system while incarcerated. While in jail the fee for service system is not billed. When they are released they will still be insured and will just need to be moved the MCO system.").

[73] *ACA and the Criminal Justice System*, THE MARYLAND ADDICTIONS DIRECTORS COUNCIL (2014), http://madc.homestead.com/ACA_and_Criminal_justice_-_2014.pdf ("For those individuals, the goal is expediting benefits upon release. DHMH and the Department of Public Safety and Correction Services (DPSCS) have developed an expedited eligibility process for the Primary Adult Care (PAC) program that facilitates the prompt enrollment in the PAC program upon release to facilitate continuity of care. This process provides next day access to pharmacy benefits while the client completes the process of enrolling in a Manage Care Plan, which can take from 10 to 28 days. This expedited process is for emergency cases only. All other cases can take up to 45 days to process. Unfortunately, a limited number of individual have had benefits granted at the time of release.")

[74] An Act Making Appropriations For The Fiscal Year 2015 For The Maintenance Of The Departments, Boards, Commissions, Institutions And Certain Activities Of The Commonwealth, For Interest, Sinking Fund And Serial Bond Requirements And For Certain Permanent Improvements, Ch. 165, 2014 Mass. Laws, Sec. 227(a), https://malegislature.gov/Laws/SessionLaws/Acts/2014/Chapter165 ("the office of Medicaid shall suspend MassHealth benefits for inmates of penal institutions, including those awaiting trial and during incarceration.")

[75] *Id.* ("An inmate's MassHealth benefits shall be immediately reactivated upon release from incarceration."); *see also* Edward T. Jennings, *The Use of Medicaid to Address Health Care Needs of Individuals Involved with the Criminal Justice System*, COMMONWEALTH COUNCIL ON DEVELOPMENTAL DISABILITIES (Nov. 12, 2014), http://www.kypa.net/uploads/Use_of_Medicaid_for_Individuals_in_Criminal_Justice_System.pdf ("Massachusetts' (MA) electronic "virtual gateway" application made a significant improvement in the rates of MA inmates leaving with Medicaid coverage. Since the MA system began with a manual application, it has seen its rates climb from 40 percent to 90 percent of offenders leaving incarceration with Medicaid coverage in place.").

[76] Mich. Comp. Laws Ann. § 400.106b(1) (West) ("The state medicaid plan shall require the department of community health to suspend rather than terminate an individual's medical assistance when either of the following applies: (a) The individual becomes an inmate residing in a public institution but otherwise remains eligible for medical assistance. (b) An inmate was not eligible for medical assistance when he or she entered the public institution but is subsequently determined to be eligible for medical assistance while in the public institution.")

[77] Mich. Comp. Laws Ann. § 400.106b(3) (West) ("Upon notification that an individual described in subsection (1) is no longer an inmate residing in a public institution, the department of community health shall reinstate the individual's medical assistance if the individual is otherwise eligible for medical assistance.")

	Assistance	incarcerated less than 12 months[78]; otherwise terminated.		through a specific process.[7980]
Minnesota's Medical Assistance application website: https://www.mnsure.org/				
Mississippi	Mississippi Medicare	Terminated[81]	Inpatient hospital care.[82]	n/a
Mississippi Medicare website: http://www.medicaid.ms.gov/ (Mississippi has not adopted the ACA's Medicaid expansion.)				
Missouri	MO HealthNet	Terminated[83]	Inpatient hospital care.[84]	n/a
MO HealthNet website: http://dss.mo.gov/fsd/health-care/ (Missouri has not adopted the ACA's Medicaid expansion.)				
Montana	Montana Medicaid	Terminated[85]	Inpatient hospital care.[86]	Montana offers continuing mental services for qualified outgoing prisoners.[87]
Montana Medicaid application website: https://apply.mt.gov/				

[78] Minn. Stat. Ann. § 256B.055(14)(b) (West) ("An individual who is enrolled in medical assistance, and who is charged with a crime and incarcerated for less than 12 months shall be suspended from eligibility at the time of incarceration until the individual is released.")
[79] *Id.* ("Upon release, medical assistance eligibility is reinstated without reapplication using a reinstatement process and form, if the individual is otherwise eligible.")
[80] Laura Tobler, *Providing Health Care Coverage for Former Inmates*, 22 NATIONAL CONFERENCE OF STATE LEGISLATURES 15 (Apr. 2014), http://www.ncsl.org/documents/health/lb_2215.pdf ("Minnesota, for example, screens new inmates for mental health disorders and flags inmates who are eligible for Medicaid.")
[81] *See* MISSISSIPPI DIVISION OF MEDICAID, CH. 102 – NON-FINANCIAL REQUIREMENTS, ELIGIBILITY POLICY AND PROCEDURES MANUAL (May 2009), https://www.medicaid.ms.gov/wp-content/uploads/2014/04/Chapter102Page1477-1480.pdf
[82] *Id.* at 1479 ("Inmates who become inpatients at a medical facility, i.e., acute care hospital, nursing facility, juvenile psychiatric facility or intermediate care facility. The individuals may be approved for the period of their inpatient care, if otherwise eligible.")
[83] STATE OF MISSOURI, 1.5L, MO HEALTHNET GENERAL MANUAL 34 (Oct. 23, 2013), http://207.15.48.5/collections/collection_gen/Print.pdf ("Eligibility for MO HealthNet coverage does not exist when the individual is an inmate and when the facility in which the individual is residing is a public institution.")
[84] *Id.* at 33 ("Changes to eligibility requirements may allow incarcerated individuals (both juveniles and adults), who leave the public institution to enter a medical institution or individuals who are under house arrest, to be determined eligible for temporary MO HealthNet coverage [….] MO HealthNet eligibility is limited to the days in which the individual was an inpatient in the medical institution.")
[85] Mont. Admin. R. 37.82.1321(1)(a) ("Medicaid will not be provided to: an individual who is an inmate of a public institution.")
[86] DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, MA 901-2, MEDICAL ASSISTANCE MANUAL (Jan. 1, 2006), https://dphhs.mt.gov/Portals/85/hcsd/documents/mamanual/ma901-2(01012006).pdf ("[T]he inmate may be Medicaid eligible if s/he is: 1. Admitted as an inpatient in a hospital, nursing facility, institution for mental disease, or intermediate care facility; and 2. Expected to remain in the facility for a period of 24 hours or longer.")
[87] MONTANA DEPARTMENT OF CORRECTIONS, 2015 BIENNIAL REPORT H-5 (2015), https://cor.mt.gov/Portals/104/Resources/Reports/2015BiennialReport.pdf ("The department [of Corrections] provides mental health services and medications to offenders in prerelease centers or on probation or parole who are ineligible for traditional, publicly funded mental health programs.")

Nebraska	Access Nebraska	Suspended[88]	n/a	DOC is required to notify DHHS within 45 days of eligible person's release.[89]
Access Nebraska application website: https://dhhs-access-neb-menu.ne.gov/start/?tl=en (Nebraska has not adopted the ACA's Medicaid expansion.)				
Nevada	Access Nevada	Terminated,[90] however DHHS is changing its system to allow suspension.[91]	Inpatient hospital care[92]	Nevada does offer discharge services for mental health disorders and substance abuse.[93]

[88] Neb. Rev. Stat. Ann. § 47-706(2)(a) (West) ("Medical assistance under the medical assistance program shall be suspended, rather than canceled or terminated, for a person who is an inmate of a public institution if: (i) The Department of Health and Human Services is notified of the person's entry into the public institution; (ii) On the date of entry, the person was enrolled in the medical assistance program; and (iii) The person is eligible for the medical assistance program except for institutional status.")

[89] Neb. Rev. Stat. Ann. § 47-706(2)(c)-(3)(a) (West) ("Upon release from incarceration, such person shall continue to be eligible for receipt of medical assistance until such time as the person is otherwise determined to no longer be eligible for the medical assistance program.
[…] The Department of Correctional Services shall notify the Department of Health and Human Services: […] within forty-five days prior to the release of a person who qualified for suspension.")

[90] DIVISION OF WELFARE AND SUPPORTIVE SERVICES, C-800, MEDICAL ASSISTANCE MANUAL (July 15, 2001), https://dwss.nv.gov/pdf/Manuals/Medical/c100.pdf [hereinafter NEVADA MANUAL] ("An inmate of a public institution is ineligible for the Medicare Beneficiary program [….] An inmate of a penal institution is never eligible for Medicaid or the Medicare Beneficiary Program while in the custody of law enforcement officials [….]")

[91] Joel A. Dvoskin, *December 2014 Report to Governor Sandoval*, STATE OF NEVADA GOVERNOR'S ADVISORY COUNCIL ON BEHAVIORAL HEALTH AND WELLNESS, 8 (Feb. 24, 2015) http://dpbh.nv.gov/uploadedFiles/A%202014-12_CouncilRptAndRecommendationsToGovernorSandoval.pdf ("DHHS has begun the process of changing its system to allow suspension (as opposed to termination) of Medicaid eligibility; however, this project requires system changes both at Division of Welfare and Supportive Services (DWSS) and DHCFP and will require significant information technology resources. The system changes are slated to begin in the spring of 2015, but until a suspension tool is in place, the key is effective case management coordinated with DWSS. A streamlined process has been put in place with a centralized unit within DWSS who works with DOC staff on eligibility issues.")

[92] *See* NEVADA MANUAL *supra* note 38 ("An inmate of a penal institution is never eligible for Medicaid or the Medicare Beneficiary Program while in the custody of law enforcement officials, unless admitted as an inpatient to a hospital, nursing facility, juvenile psychiatric facility, or intermediate care facility.")

[93] Lisa Watson, *Gaps Analysis of Behavioral Health Services – Update*, NEVADA DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF PUBLIC AND BEHAVIORAL HEALTH, 110 (2013), http://www.leg.state.nv.us/interim/77th2013/Committee/StatCom/HealthCare/Other/5-February-2014/Agenda5.pdf ("A Statewide Prisoner Reentry Coalition exists in Nevada to identify challenges for inmates who are released from prison with substance abuse and mental health disorders, which may have gone undiagnosed or untreated."); *see also* Howard Skolnik, *Re-Entry Services*, (NEVADA DEPARTMENT OF CORRECTIONS), Oct. 1, 2010, http://doc.nv.gov/uploadedFiles/docnvgov/content/Inmates/Re-Entry_Program/Reentry_newsletter_10_1_2010_2.PDF ("Nevada Department of Corrections (NDOC) has been working with the Department of Employment, Training & Rehabilitation (DETR) and the Department of Public Safety Probation and Parole (DPS-P&P) in a program called P.R.I.D.E (Purpose, Respect, Integrity, Determination, and Excellence). The P.R.I.D.E. program will provide pre-release and postrelease assistance to inmates and felons through a holistic program that incorporates intensive case management, transitional housing, employment training

Access Nevada website: https://dwss.nv.gov/?AccessNevada.html				
New Hampshire	NH Medicaid	Terminated	Inpatient hospital care[94]	Discharge services include applying for Medicaid prior to release.[95]
NH Medicaid application website: https://nheasy.nh.gov/				
New Jersey	NJ Medicaid	Terminated[9697]	If incarcerated for less than 30 days, no action taken.[98]	NJ is currently developing procedures to ensure released inmates receive the benefits to which they are entitled upon release.[99]
NJ Medicaid application available at: https://oneapp.dhs.state.nj.us/				

and placement, life skills training, mental health services, substance and drug abuse counseling, mentoring, and other comprehensive transitional services.")

[94] N.H. DEP'T OF HEALTH & HUMAN SERVS., MEDICAL ASSISTANCE MANUAL § 175.03 (2014), available at http://www.dhhs.nh.gov/MAM_HTM/newmam.htm ("[I]nmates of NH Department of Corrections (DOC) Correctional Facilities are retroactively eligible for *New Hampshire Health Protection Program (NHHPP/NHHPP-M) medical assistance during any period of time the inmate was incarcerated and became an inpatient of a medical facility")

[95] N.H. Dep't of Health & Human Servs., Medical Assistance Manual § 175.01 (2014), available at http://www.dhhs.nh.gov/MAM_HTM/newmam.htm. ("Inmates of NH Department of Corrections (DOC) Correctional Facilities and inmates of county jails with an approaching release date may apply for New Hampshire Health Protection Program (NHHPP/NHHPP-M)* medical assistance while still incarcerated. DOC or county jail staff initiate the application process using the automated process in NH EASY or by completing all necessary forms.")

[96] N.J. Admin. Code § 10:72-3.9 ("(a) Any person who is an inmate of a public institution is ineligible for the Medicaid program.(b) Any person who is incarcerated in a Federal, State, or local correction facility (prison, jail, detention center, reformatory, etc.) is not eligible for the Medicaid program.")

[97] In 2014, NJ Legislature introduced a bill to create a process for suspension and in-patient hospital care; as of June, 15, 2015 the bill in the 2nd reading in the NJ Assembly, after passing the Senate. *See* S2379, 216th Leg., (NJ 2014-2015) http://www.njleg.state.nj.us/2014/Bills/S2500/2379_I1.HTM ("the Commissioner of Human Services shall administer a pilot program to screen and enroll qualified individuals in Medicaid at the time they become incarcerated in a county correctional facility following arrest or indictment and are awaiting a court hearing on bail. With respect to coverage for any qualified individuals enrolled by the pilot program, this coverage, to the extent permitted by 42 U.S.C. s.1396d(a)(29)(A) and any other applicable federal law, shall be suspended during the remaining period of incarceration and begin upon release from incarceration.")

[98] Letter from Dept. of Human Health Servs. Division of Medical Assistance and Health Servs. To County Welfare Agency Directors (Dec. 18, 2013), http://www.state.nj.us/humanservices/dmahs/info/resources/medicaid/2013/13-12_Termination_of_Medicaid_Benefits_for_Inmates_of_Public_Institutions.pdf ("Any person who is incarcerated in a Federal, State, or local correctional facility for more than thirty (30) days is not eligible for Medicaid benefits.")

[99] Letter from Dept. of Human Health Servs. Division of Medical Assistance and Health Servs. To County Welfare Agency Directors (Dec. 9, 2014), http://www.state.nj.us/humanservices/dmahs/info/resources/medicaid/2014/14-13_Inmate_Med_Comm.pdf "The county correctional facility was requested to work directly with their local CWA (County Welfare Agency) to alert them when an inmate not currently enrolled in Medicaid is up for release. It is important to be sure that an inmate eligible for benefits has ful eligibility established upon discharge so that they can access the health care services they are entitled to. The CWA should work with their partnering correctional facility on who at the facility will be notifying the CWA of the inmate's release."

New Mexico	New Mexico Medicaid	Suspended[100]	n/a	Inmates can apply for Medicaid while incarcerated.[101]
New Mexico Medicaid application available at: https://www.yes.state.nm.us/yesnm/home/index				
New York	New York Medicaid	Suspended	n/a	Should be automatic, but procedures have had reported trouble.
New York Medicaid website: http://www.healthbenefitexchange.ny.gov/				
North Carolina	North Carolina Medicaid	Suspended[102]	n/a	Automatically reinstated.[103]
North Carolina Medicaid application website: https://dma.ncdhhs.gov/medicaid/get-started (North Carolina has not adopted the ACA's Medicaid expansion.)				
North Dakota	North Dakota Medicaid	Terminated[104]	Inmates remain eligible if over 65 and a mental health patient or under 21.[105] Inpatient hospital care.[106]	Discharge planning does include medication for released inmates, as well as other services.[107]
North Dakota Medicaid application website: http://www.nd.gov/dhs/services/medicalserv/medicaid/apply.html				

[100] N.M. Stat. Ann. § 27-2-12.22(A)-(B) (West) ("Incarceration shall not be a basis to deny or terminate eligibility for medicaid. Upon release from incarceration, a formerly incarcerated individual shall remain eligible for medicaid until the individual is determined to be ineligible for medicaid on grounds other than incarceration.")

[101] N.M. Stat. Ann. § 27-2-12.22(C) ("An incarcerated individual who was not enrolled in medicaid upon the date that the individual became incarcerated shall be permitted to submit an application for medicaid during the incarcerated individual's period of incarceration.")

[102] N.C. Dept. of Health and Human Servs., MA-3360, Family and Children's Medicaid Manual, 3 (Aug. 1, 2013), http://info.dhhs.state.nc.us/olm/manuals/dma/fcm/man/MA3360.pdf ("DOP (Division of Prisons) shares information on newly incarcerated individuals with DMA (Division of Medical Assistance). DMA compares the inmate information with that of current Medicaid beneficiaries, including caseheads. The individuals identified from this match have their eligibility automatically placed in suspension by EIS (Eligibility Information Services).")

[103] *Id.* at 14 ("DIRM (Division of Information Resource Management) received a daily file of individuals newly released individuals from DOC custody from the DOP. When an individual appears on this file with a release date, Medicaid automatically reinstates Medicaid benefits using adequate change code 9U. Medicaid is effective the first day of the month of the release date.")

[104] N.D. Admin. Code 75-02-02.1-19

[105] *Id.* ("An inmate of a public institution is not eligible for medicaid unless the individual is over age sixty-five and a patient in an institution for mental diseases or is under age twenty-one.")

[106] Letter from N.D. Dept. of Human Servs. to N.D. Indian Affairs Comm'n (Sept. 18, 2015), http://www.nd.gov/dhs/services/medicalserv/medicaid/docs/tribal-consult-15-16-medicaid-state-plan-changes.pdf ("Inpatient services provided to individuals who are incarcerated and otherwise eligible for Medicaid (Traditional Medicaid and Medicaid Expansion) will be claimed for Medicaid reimbursement. The Department intends to submit a State Plan Amendment to exempt individuals eligible for this coverage from the seventy-five dollar copayment for inpatient hospital stays.")

[107] N.D. DEPT. OF CORRECTIONS AND REHABILITATION, DISCHARGE PLANNING (2008), http://www.nd.gov/docr/adult/transfacs/trccdischarge.html

Ohio	Ohio Medicaid	Suspended[108]		Reinstated automatically.[109] Discharge planning includes Medicaid enrollment 90 days before release.[110]
Ohio Medicaid's application website: https://benefits.ohio.gov/				
Oklahoma	SoonerCare	Terminated.[111]		Discharge planning ensures that eligible inmates are enrolled in Medicaid prior to release.[112]
SoonerCare application website: https://www.apply.okhca.org/Site/Rights.aspx (Oklahoma has not adopted the Medicaid expansion at this time).				
Oregon	Oregon Health Care Plan	Suspended.[113]		Discharge planning includes enrolling eligible inmates upon their release.[114]
Oregon Health Care Plan application website: http://www.oregonhealthcare.gov/apply-for-medicaid-now.html				

[108] Ohio Rev. Code Ann. § 5163.45(B) (West)
("If a person who is confined in a state or local correctional facility was a medicaid recipient immediately prior to being confined in the facility, all of the following apply: (1) The person's eligibility for medicaid while so confined shall be suspended due to the confinement.(2) No medicaid payment shall be made for any care, services, or supplies provided to the person during the suspension described in division (B)(1) of this section.(3) The suspension described in division (B)(1) of this section shall end upon the release of the person from the confinement.")

[109] *See* OHIO MENTAL HEALTH & ADDITION SERVICES, REINSTATEMENT OF MEDICAID FOR PUBLIC INSTITUTION RECIPIENTS (ROMPIR)-PROGRAM TO IMPROVE SERVICE ACCESS FOR MEDICAID RECIPIENTS RELEASED FROM INSTITUTIONS (2016), http://mha.ohio.gov/Default.aspx?tabid=224; *see also* STATE OF OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, REINSTATEMENT OF MEDICAID FOR PUBLIC INSTITUTION RECIPIENTS, 07-ORD-14 4-5 (Nov. 10, 2009), http://drc.ohio.gov/web/drc_policies/documents/07-ORD-14.pdf

[110] THE OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, ANNUAL REPORT 4-5 (2015), http://www.drc.ohio.gov/web/Reports/Annual/Annual%20Report%202015.pdf ("In a continuous effort to ease the transition from prisons and the community, in September 2014 DRC partnered with the Ohio Department of Medicaid (ODM) for the exclusive purpose of enrolling inmates into Medicaid and allowing them to select a managed care plan 90 days prior to their release.")

[111] Okla. Admin. Code 317:25-7-28(a)(2) ("The OHCA may disenroll a member from SoonerCare […] if the member has been incarcerated")

[112] U.S. DEPT. OF HEALTH AND HUMAN SERVS., SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., CENTER FOR MENTAL HEALTH, ESTABLISHING AND MAINTAINING MEDICAID ELIGIBILITY UPON RELEASE FROM PUBLIC INSTITUTIONS, 1 (2010) ("Under contract with the Substance Abuse and Mental Health Services Administration (SAMHSA), Mathematica Policy Research, Inc., (MPR) worked with Oklahoma to develop, implement, and evaluate a model program to ensure that eligible individuals with mental illness were enrolled in Medicaid at discharge from state institutions.")

[113] Or. Rev. Stat. Ann. § 411.447(2) (West) ("The Department of Human Services or the Oregon Health Authority shall suspend, instead of terminate, the medical assistance of a person who is residing in a correctional facility.")

[114] *See* Letter from Don Ross to County Jail Commanders and Sheriffs, *New Medicaid Eligibility Process for County Jail Inmates* (June 17, 2014), http://www.oregon.gov/oha/healthplan/Announcements/New%20Medicaid%20eligibility%20process%20for%20county%20jail%20inmates.pdf

Pennsylvania	Medical Assistance	Terminated.[115]		Currently developing discharge planning to enroll eligible inmates upon release.[116]
Medical Assistance application website: https://www.compass.state.pa.us/Compass.Web/public/cmphome				
Rhode Island	RIte Care	Suspended[117]		Benefits should be "promptly reinstated."[118] Rhode Island also is working to enroll inmates in Medicaid prior to release.[119]
RIte Care application website: https://healthyrhode.ri.gov/HIXWebI3/DisplayHomePage				
South	South	Terminated[120]	In-patient	Medicaid workers will

[115] Kevin Barnhardt, *Testimony on Inmates with Mental Illness and Substance Abuse Issues Presented to the Senate Public Health and Welfare Committee*, COUNTY COMM'NS ASS. OF PENN. (June 23, 2015), http://publichealth.pasenategop.com/files/2015/06/InmateMentalHealthBarnhardtTestimony20150623.pdf ("In Pennsylvania, immediately upon incarceration individuals receiving medical assistance have their benefits terminated.")

[116] *See e.g.* PENN. DEPT. OF DRUGS AND ALCOHOL, JOB POSTING (June 8, 2015), www.portal.state.pa.us/portal/portal/server.pt/gateway/PTARGS_0_2_36290_612_434929_43/http%253B/pubcontent.state.pa.us/publishedcontent/publish/cop_general_government_operations/oa/oa_portal/hr/executive_offices___office_of_human_resources/vacancies/postings/ddap_d_a_prgm_anl_50477407_5.docx+&cd=1&hl=en&ct=clnk&gl=us ("Develops protocols, policies, and metrics for identifying inmates serving time for non-violent drug and alcohol related crimes, tracking ability to get Medical Assistance turned on immediately upon release, and measuring effectiveness based on a variety of demographics.")

[117] R.I. Code R. 39-12:1301.03.01(05) ("Incarcerated Beneficiaries. Federal law and regulations prohibit the use of federal matching funds for health care provided on the premises of correctional facilities to otherwise Medicaid-eligible persons while incarcerated. Accordingly, full Medicaid health coverage of such persons is suspended during periods of incarceration.")

[118] R.I. Code R. 39-12:1301.03.01(05) ("Medicaid health coverage that has been suspended due to incarceration must be reinstated promptly by the Medicaid agency upon the person's release from a correctional facility.")

[119] *See* Laura Tobler, *Providing Health Care Coverage for Former Inmates*, LEGISBRIEF 22:15 (April 2014), http://www.ncsl.org/documents/health/lb_2215.pdf ("Rhode Island is developing a program to enroll parolees in coverage with a goal of ending the cycle of incarceration for inmates with unmet behavioral health needs.")

[120] SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, MEDICAID POLICY AND PROCEDURES MANUAL, SC MPPM § 102.09.01 at 59-60 (Jan. 2014), http://www1.scdhhs.gov/mppm/SCMPPM/Chapter_102.docx [hereinafter "SC MPPM"]("Upon verification of the incarceration, the local or central eligibility non-inmate worker is responsible for terminating eligibility."); *see also* CONTRACT BETWEEN UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES CENTERS FOR MEDICARE & MEDICAID SERVICES IN PARTNERSHIP WITH THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES AND <ENTITY> at 45 (Sep. 5, 2014), https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/FinancialAlignmentInitiative/Downloads/SouthCarolinaContract.pdf ("2.3.5.3.1. SCDHHS and CMS shall terminate an Enrollee's coverage upon the occurrence of any of the conditions enumerated in Section 40.2 of the 2013 Medicare-Medicaid Plan Enrollment and Disenrollment Guidance or upon the occurrence of any of the conditions described in this section."); *see also* CENTER FOR MEDICARE AND MEDICAID SERVICE, MEDICARE-MEDICAID PLAN ENROLLMENT AND DISENROLLMENT GUIDANCE at 42 (June 14, 2013) https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-

Carolina	Carolina Medicaid		hospital care.[121]	follow up on some Medicaid related issues[122]
South Carolina Medicaid application website: https://apply.scdhhs.gov/CitizenPortal/application.do (South Carolina has not adopted the Medicaid Expansion at this time.)				
South Dakota	South Dakota Medicaid	Terminated[123]		Discharge planning does check Medicaid eligibility, but no overt process for enrollment.[124]
Sound Dakota Medicaid application website: https://apps.sd.gov/SS36SNAP/Web/Pages/Common/GeneralInformation.aspx (South Dakota has not adopted Medicaid Expansion at this time.)				
Tennessee	TennCare	Suspended[125]		Reinstatement is at the public institution's discretion.[126]
TennCare application website: http://www.tn.gov/tenncare/topic/how-to-apply (Tennessee has not adopted Medicaid Expansion at this time.)				
Texas	Texas Medicaid	Terminated[127] (possible pending legislation[128]).	No action if incarcerated for less than 30 days.[129]	Discharge planning for inmates with mental or medical impairments which include Medicaid eligibility screening.[130]

Coordination-Office/Downloads/MMPFinalEnrollGuidance.pdf ("40.2.1.1 - General Rule. The State must disenroll a member if: […] 2. The member's temporary absence from the service area exceeds 6 consecutive months.")

[121] SC MPPM, *supra* note 68 at 57 ("While an Inmate of a correctional facility, an individual is only eligible for inpatient services. An inmate is an individual who lives in a correctional facility.")

[122] *See generally* SC MPPM, *supra* note 68 at 61-62.

[123] *See* SOUTH DAKOTA MEDICAID, CLAIMS TRAINING (March 17, 2015) at 9, http://dss.sd.gov/docs/behavioralhealth/community/cmhc-training.pdf

[124] SOUTH DAKOTA DEPARTMENT OF CORRECTIONS, 1.4.G.1, INMATE RELEASE PLANS AND TRANSITION PROGRAMMING (July 8, 2015) at 16, https://doc.sd.gov/documents/about/policies/Inmate%20Release%20Plan%20and%20Transition%20Programming.pdf

[125] Tenn. Code Ann. § 71-5-106(r)(1) (West) ("An individual who is an inmate of a public institution shall have eligibility for medical assistance suspended but not terminated during periods of actual incarceration."); *see also* TENNESSEE DIV. OF HEALTH CARE FIN. & ADMIN, TENNCARE, TMA WORKSHOPS, (Oct. 2015) at 27-28, https://www.tn.gov/assets/entities/tenncare/attachments/2015TMAInsuranceWorkshopPresentation.pdf

[126] Tenn. Code Ann. § 71-5-106(r)(3) ("A public institution may make efforts to establish eligibility for or renew assistance for such individuals prior to their release from the public institution.")

[127] Amy Killelea et. al., *An Analysis of the Successes, Challenges, and Opportunities for Improving Healthcare Access With a Focus on the Texas Medicaid Program, State Healthcare Access Research Project*, TEXAS STATE REPORT, http://www.taepusa.org/Portals/0/Documents/SHARP%20Texas%20Report_compressed%20file.pdf ("Medicaid benefits if enrollees are incarcerated for longer than 30 days.")

[128] H.B. 2523, 84th Leg., 2015, http://www.legis.state.tx.us/tlodocs/84R/billtext/html/HB02523I.htm.

[129] Killelea, *supra* note 75.

[130] TEXAS DEPT. OF CRIMINAL JUSTICE, TEXAS CORRECTIONAL OFFICE ON OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS, PGP 01.07, PROGRAM GUIDELINES AND PROCEDURES FOR ADULT TRANSITIONAL CASE

Texas Medicaid website: https://www.yourtexasbenefits.com/ssp/SSPHome/ssphome.jsp				
Utah	Utah Medicaid	Terminated[131]		
Utah Medicaid application website: https://medicaid.utah.gov/apply-medicaid (Utah has not adopted Medicaid Expansion at this time.)				
Vermont	Vermont Medicaid	Suspended[132]		Discharge planning provides 30 day notice to state health care agencies, allowing for coverage upon release.[133]
Vermont Medicaid application website: https://portal.healthconnect.vermont.gov/VTHBELand/welcome.action				
Virginia	Virginia Medicaid	Terminated[134]	In-patient hospital services[135]	Discharge services include continuing medical care.[136] Inmates may apply for Medicaid as part of prerelease planning.[137]

MANAGEMENT (Sept. 1, 2013) at 2, https://www.tdcj.state.tx.us/documents/rid/TCOOMMI_PGP_0107_Adult_Transitional_Case_Management.pdf

[131] Wendy Leonard, *Jailed Utahns Need More Seamless Health Care Options; Healthy Utah Plan May Be Key*, DESERET NEWS (Dec. 3 2014), http://www.deseretnews.com/article/865616938/Jailed-Utahns-need-more-seamless-health-care-options-Healthy-Utah-plan-may-be-key.html?pg=all ("Utah's jailed population is not eligible for Medicaid, as current policy terminates a person's benefits upon incarceration.")

[132] 12-3 Vt. Code R. § 224:20.02(d) ("Once determined Medicaid eligible, an individual who is incarcerated retains eligibility. However, their case is placed in suspended status during the period of incarceration.")

[133] OFFICE OF VERMONT HEALTH ACCESS, MEDICAID TECHNICAL ASSISTANCE RFP SUBMITTED WRITTEN QUESTIONS AND ANSWERS (Dec. 4, 2007), at 4, http://dvha.vermont.gov/budget-legislative/q_a_medicaid_technical_assistance_reponses_12_14_07_final.pdf/view?searchterm=inmate%20AND%20medicaid ("DOC uses a discharge planning process for inmates scheduled to be permanently released in the near future. DOC provides a 30 day discharge notice to the Health Access Eligibility Unit (HAEU) a division within the Department for Children and Families (DCF). The 30 day notice allows HAEU to process an application for the soon to be released inmate for health care.").

[134] VIRGINIA DEPT. OF SOCIAL SERVICES, MEDICAID MANUAL, NONFINANCIAL ELIGIBILITY REQUIREMENTS, M0280.300(C) (May 2015) at 110, https://www.dss.virginia.gov/files/division/bp/medical_assistance/manual_transmittals/manual/m02.pdf ("Individuals are not eligible for full benefit Medicaid coverage while they are living in a correctional facility, regional or local jail or juvenile facility.").

[135] *Id.* ("Incarcerated individuals can be eligible for Medicaid payment limited to services received during an inpatient hospitalization of 24 hours or longer.").

[136] 12 Va. Admin. Code 35-105-1150(E) ("Aftercare planning for individuals nearing the end of incarceration shall include a provision for continuing medication and follow-up services with area community services to facilitate successful reintegration into the community including specific appointment provided to the inmate no later than the day of release.").

[137] VIRGINIA DEPT. OF SOCIAL SERVICES, MEDICAID MANUAL, NONFINANCIAL ELIGIBILITY REQUIREMENTS, M0280.500(C) (May 2015) at 114, https://www.dss.virginia.gov/files/division/bp/medical_assistance/manual_transmittals/manual/m02.pdf ("Although a person may not be eligible for Medicaid while living in a specified public institution or part thereof, he may apply for such assistance as a part of prerelease planning.").

Virginia Medicaid application website: https://commonhelp.virginia.gov/access/ (Virginia has not adopted Medicaid expansion at this time.)				
Washington	Washington Apple Health	Terminated[138]	Suspended if incarcerated for less than 30 days.[139] In-patient hospital services.[140]	May apply for Apple Health prior to release; expedited process for inmates with mental health.[141]

3.12 Conclusion

Both the disparity in state-to-state policy and the complexity of implementing that policy act as informational bars for cleanly determining how a person's Medicaid eligibility will be affected by a custodial arrest. Even where state legislatures have mandated suspension policies, in lieu of termination, administrative problems may still cause the termination of Medicaid eligibility, particularly in those states which have recently passed legislation.

Moreover, as a practical matter, in light of the SSA automated systems and bounty program, even if state Medicaid agencies don't directly get information from correctional facilities, the fact that Medicaid-eligible person is incarcerated is very likely to be transmitted to the state Medicaid agency, sometimes within weeks of arrest.

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[138] WASHINGTON STATE HEALTH CARE AUTHORITY, APPLE HEALTH (MEDICAID) MANUAL, INCARCERATION – OVERVIEW (Nov. 10, 2014), at 90-110, http://www.hca.wa.gov/medicaid/manual/Pages/90-110.aspx ("If an individual's release date is unknown or anticipated to be more than 30 days the agency should close the Apple Health case.").

[139] *Id.* ("Our policy in Washington is that someone can retain their Apple Health eligibility if their length of stay is anticipated to be less than 30 days.").

[140] *Id.* ("Inmates of public institutions, such as prison or jail, may be Apple Health eligible if they are admitted to a medical institution (inpatient) and are categorically relatable to an Apple Health program.")

[141] *Id.* ("Expedited medical assistance for people with mental disorders before release from public institutions. The enactment of House Bill 1290 in 2005 requires the department to perform expedited eligibility determinations and provide timely access to medical assistance by persons with mental disorders being released from confinement. The goal is to provide eligible people with a medical assistance identification card on the date they are released, whenever possible.")

For those disenrolled, and subject to a gap in coverage, the Medicaid re-application process can be onerous and slow. For the chonronically mentally ill particularly, the gap, a *minimum* of 90 days, but in effect often substantially longer, may lead to poor medical outcomes, and an increase in illness-related recidivism, including possessory drug offenses.

Thus, as a collateral consequence triggered upon arrest, the Inmate Exception to the Social Security Act, effectuated in part through Bounty Program paid incentives to jails, may be an important , often overlooked, consequence, particularly to the poor and mentally ill.