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 example 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.

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[1] 42 U.S.C § 1396d(b)(1). Medicaid FFP rates are published in the *Federal Register*. For FFP rates effective October 1, 2005 to September 30, 2006, *see* 69 Fed. Reg. 68370 (November 24, 2004) and for rates effective October 1, 2006 to September 30, 2007, *see* 70 Fed. Reg. 71856 (November 30, 2005). 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 133% of the federal poverty level (FPL) and children ages 6-19 up to 100% of the FPL are eligible. For a consumer friendly description of Medicaid eligibility, *see,* Centers for Medicare & Medicaid Services, *Medicaid at a Glance 2005: A Medicaid Information Source*. http://www.cms.hhs.gov/MedicaidEligibility/downloads/MedGlance05.pdf

[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.[10] This means that states must provide Medicaid coverage for eligible youth immediately when they are no longer considered inmates. This may include youth who are living in a detention center but waiting to move to another placement, such as a group home.

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[7] 42 U.S.C. § 1396d (a)(28)(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: http://www.ylc.org/publication_info?id=jj_bb2002

In 2004, CMS said:

> As a reminder, the payment exclusion under Medicaid that relates to individuals residing in a public institution or an IMD[11] ***does not affect the eligibility*** of an individual for the Medicaid program. Individuals who meet the requirements for eligibility for Medicaid may be enrolled in the program before, during, and after the time in which they are held involuntarily in secure custody of a public institution or as a resident of an IMD. The statutory federal financial participation (FFP) exclusion applying to inmates of public institutions and residents of IMDs affect only the availability of federal funds under Medicaid for health services provided to that individual while he or she is an inmate of a public institution or a resident of an IMD.
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> Thus ***states should not terminate eligibility for individuals who are inmates of public institutions or residents of IMDs based solely on their status as inmates or residents*****.** Instead, states should establish a process under which an eligible inmate or resident is placed in suspended status so that the state does not claim FFP for services the individual receives, but the person remains on the state's rolls as being eligible for Medicaid (assuming the person continued to meet all applicable eligibility requirements). ***Once discharge from the facility is anticipated, the state should take whatever steps are necessary to ensure that an eligible individual is placed in payment status so that he or she can begin receiving Medicaid-covered services immediately upon leaving the facility.*** If an individual is not already eligible for Medicaid prior to discharge from the facility, but has filed an application for Medicaid, the state should take whatever steps are necessary to ensure that the application is processed in a timely manner so that the individual can receive Medicaid-covered services upon discharge from the facility.[12] (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.[13] This means FFP is available for the health care services provided to them.

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[11] Institution for Mental Disease. This applies only to adults.
[12] Centers for Medicare and Medicaid Services, State Medicaid Directors Letter Re: Ending Chronic Homelessness (May 25, 2004.) Available at: http://www.cms.hhs.gov/HomelessnessInitiative/Downloads/SMDLetter.pdf
[13] *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 leave 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, health screening and treatment provided before a youth is booked into detention and 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 could be used to improve health care services to incarcerated youth, it could also create an incentive to rely on institution-based treatment rather than community-based alternatives.