

Date of Hearing: May 18, 2020

ASSEMBLY COMMITTEE ON HEALTH

Jim Wood, Chair

AB 1994 (Holden) – As Amended March 16, 2020

**SUBJECT:** Eligibility.

**SUMMARY:** Extends the duration during which Medi-Cal benefits are suspended when an individual is an inmate of a public institution for three years or until the individual is no longer an inmate or is no longer eligible, whichever occurs sooner, instead of the shorter time-limited suspension of benefits under existing law. Permits the county welfare department to suspend Medi-Cal benefits to an eligible juvenile, defined as an individual under age 21 years of age and a former foster youth under age 26 years of age. Prohibits, during the period that the eligible juvenile is an inmate of a public institution, their Medi-Cal eligibility from being terminated. Specifically, **this bill**:

- 1) Extends the duration during which Medi-Cal benefits are suspended when an individual is an inmate of a public institution for three years or until the individual is no longer an inmate or is no longer eligible, whichever occurs sooner, instead of the existing time-limited suspension of benefits under existing law of one year from the date the person became an inmate or one year or until the individual is no longer eligible, whichever occurs sooner.
- 2) Permits the county welfare department to suspend Medi-Cal benefits to an “eligible juvenile.” Prohibits, during the period that the eligible juvenile is an inmate of a public institution, their Medi-Cal eligibility from being terminated.
- 3) Defines an “eligible juvenile” to mean an individual who is either of the following:
  - a) Under 21 years of age; and,
  - b) Under 26 years of age, formerly in foster care, and who otherwise meets the description set forth in federal Medicaid law.
- 4) Requires the county welfare department to conduct a redetermination of eligibility for the Medi-Cal program for that individual without requiring a new application from the eligible juvenile prior to the release of an eligible juvenile from a public institution, pursuant to the federal “Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act,” (HR 6 (2018) (Public Law 115-271).
- 5) Requires, if the county welfare department determines, pursuant to the redetermination, that the eligible juvenile meets eligibility requirements for the Medi-Cal program, Medi-Cal eligibility to be restored upon the eligible juvenile’s release from the public institution.
- 6) Requires the county welfare department, if the individual is an eligible juvenile as described above, to process any Medi-Cal application submitted by, or on behalf of, the individual for the purpose of making a determination of Medi-Cal eligibility for that individual to receive medical assistance under the Medi-Cal program upon the release of that individual from the public institution.

**EXISTING LAW:**

- 1) Requires Medi-Cal benefits provided to an individual who is an inmate of a public institution to be suspended in accordance with a specified provisions of federal Medicaid law.
- 2) Requires, if an individual is a Medi-Cal beneficiary on the date they become an inmate of a public institution, their Medi-Cal benefits to be suspended effective the date they become an inmate of a public institution.
- 3) Requires the suspension to end on the date they are no longer an inmate of a public institution or one year from the date they become an inmate of a public institution.
- 4) Requires county welfare departments to notify the Department of Health Care Services (DHCS) within 10 days of receiving information that an individual on Medi-Cal in the county is or will be an inmate of a public institution.
- 5) Require counties to perform redeterminations of eligibility for Medi-Cal beneficiaries every 12 months, and to promptly redetermine eligibility whenever the county receives information about changes in a beneficiary's circumstances that may affect eligibility for Medi-Cal benefits.
- 6) Prohibits, under federal Medicaid law, a state from terminating eligibility for Medicaid for an individual who is an eligible juvenile because the juvenile is an inmate of a public institution but permits states to suspend coverage during the period the juvenile is such an inmate. Defines an "eligible juvenile" as individuals under 21 years of age and former foster youth up to age 26 years.

**FISCAL EFFECT:** This bill has not yet been analyzed by a fiscal committee.

**COMMENTS:**

- 1) **PURPOSE OF THIS BILL.** According to the author, continuity of care is vital in reducing recidivism, promoting positive health outcomes, and ensuring the successful reintegration of young people into their communities. Suspending Medi-Cal benefits instead of terminating them will ensure that once someone is released from prison they have access to life saving medications, treatments, and will support a healthy life. Additionally, increased access to preventative care will help reduce costlier forms of health care later down the road.
- 2) **BACKGROUND.** Existing federal law prevents Medicaid benefits from being paid for incarcerated individuals except when the inmate is a patient in a medical institution. While incarceration generally excludes inmates from Medicaid payments (except for inpatient services provided outside the prison), federal law does not make them ineligible for Medicaid. The Centers for Medicare and Medicaid Services (CMS) published a letter of guidance in 2016 stating that incarceration does not preclude an inmate from being determined Medicaid eligible. In addition, to promote continuity of care, CMS encouraged states to place the inmate in suspended eligibility status during the period of incarceration, or to implement a claims processing provision to ensure that services are limited to only inpatient services.

- 3) **HR 6 AND MEDI-CAL FOR INCARCERATED PERSONS.** Under current state law, Medi-Cal beneficiaries who become incarcerated have their benefits suspended for one year or until they are released, whichever comes first. For those incarcerated for less than one year, coverage is reinstated by DHCS upon release. Anyone over the age of 18 years who is incarcerated for longer than one year has their Medi-Cal coverage terminated. Due to recent changes in federal law made in 2018 by HR 6 (Public Law 115-271), known as the “SUPPORT for Patients and Communities Act,” juveniles who are inmates of public institutions can no longer have Medicaid eligibility terminated. HR 6 defined “juveniles” as individuals under to age 21 years and former foster youth up to age 26 years. This federal change means the one year state law limit for Medi-Cal benefit suspension must be conformed to federal law for this population. This change is effective November 2020 and the Administration has proposed trailer bill language to implement the changes required by HR 6.
- 4) **REDETERMINATION “PAUSE.”** Medi-Cal eligibility under federal and state law has to be “redetermined” annually, meaning a person must continue to show they are income eligible for the program. Governor Newsom’s issued Executive Order N-29-20 on March 17, 2020 to suspend redeterminations in Medi-Cal and several social service programs (CalWORKS, CalFresh, the Cash Assistance Program for Immigrants, the California Food Assistance Program and IHSS) for 90 days. This ensures people who are already enrolled can continue their coverage and counties can focus on new applications.

In addition to the EO, on March 18<sup>th</sup>, President Trump signed HR 6201, the Families First Coronavirus Response Act (FFCRA). Among other provisions, the FFCRA temporarily increases the Federal Medical Assistance Percentage (FMAP) for Medi-Cal by 6.2% points during the public health emergency. For most Medi-Cal beneficiaries and services, the federal government pays 50% of Medi-Cal costs. Under the FFCRA, beginning January 1, 2020 and ending the first quarter in which the COVID-19 public health emergency is not in effect, the federal share of cost for those Medi-Cal beneficiaries and services will increase from 50% to 56.2%. The LAO estimates the savings to the state of \$1.8 billion in 2019-20, \$4 billion in 2020-21, and \$2.1 billion in 2021-22. The LAO estimate assumes the enhanced FMAP will continue through calendar year 2021, which is based on the duration of the declared emergency period during the H1N1 pandemic.

FFCRA places a set of conditions on states in order for them to receive the enhanced federal funding. To qualify for the funding enhancement, states cannot:

- a) Make changes to Medi-Cal eligibility rules and procedures that are more restrictive than those in place as of January 1, 2020;
- b) Charge higher premiums than were in place as of January 1, 2020;
- c) Impose cost-sharing for COVID-19 testing, services, and treatments;
- d) Terminate coverage for Medi-Cal members who were enrolled in the program on or after March 18, 2020 unless the member (1) moves out of state, (2) voluntarily disenrolls, or (3) is deceased; or
- e) Increase local governments’ share of cost—in percentage terms—for Medi-Cal expenditures.

CMS issued a Frequently Asked Questions (FAQ) on FFCRA and the federal CARES Act on April 18, 2020. In the FAQ, CMS states that in order to receive the temporary FMAP increase provided under FFCRA, states must provide continuous coverage through the end of

the month in which the emergency period ends to Medicaid beneficiaries who were enrolled in Medicaid on or after March 18, 2020, if they become incarcerated.

#### 5) CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

**PROCESS.** Individuals who lose coverage due to longer-term incarceration need to reapply for coverage. Some jails, and all state prisons, provide varying degrees of assistance to help individuals apply for Medi-Cal prior to release.

The California Department of Corrections and Rehabilitation (CDCR) assists individuals with Medi-Cal applications prior to release. CDCR's Division of Adult Parole Operations has a contract with the University of California San Diego to provide Transitional Case Management Program (TCMP) benefits assistance to inmates who will be released to parole or post-release community supervision (PRCS).

TCMP provides inmates with pre-release Medi-Cal, Social Security Administration (SSA)/ Supplemental Security Income, and Veterans Administration (VA) benefit application assistance. TCMP also provides community referral to long term community case manager/health care providers for inmates diagnosed with HIV/AIDS. CDCR has an agreement with the SSA, DHCS, and the VA to provide pre-release benefit assistance to all eligible inmates releasing to PRCS. The chart below for the 2017-18 and 2018-19 fiscal years shows total inmate releases and how many and what percentage of those individuals were enrolled in Medi-Cal pre-release and after release.

California Rehabilitation Oversight Board (C-ROB) September 13, 2019 C-ROB Report:

	<i>2017-18</i>		<i>2018-19</i>	
<i>Total Inmate Releases</i>	38,027		38,467	
<i>Total Medi-Cal Submissions</i>	29,975		31,127	
	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>
<i>Medi-Cal Pending</i>	3,796	12.7	4,161	13.4
<i>Medi-Cal Approval</i>	26,107	87.1	26,869	86.3
<i>Medi-Cal Denied</i>	72	0.2	97	0.3

- 6) **COVID-19 IN CORRECTIONAL FACILITIES.** As of May 11, 2020, there were 432 confirmed active COVID-19 cases of inmates in CDCR facilities, 6 individuals had been released with the virus, 87 were resolved and there had been 4 deaths. Of the 432 confirmed cases, 414 or 95.8% are in two CDCR facilities (California Institution for Men and California State Prison, LA County). CDCR indicates 2,449 individuals have been tested (there were 120,414 individuals in CDCR facilities in April 2020). CDCR reports 174 correctional staff members have contracted of COVID-19, of whom 84 have returned to work. On March 24, 2020, Governor Gavin Newsom signed Executive Order N-36-20 halting the intake and transfer of inmates and youth into California's 35 state prisons and four youth correctional facilities. During a press briefing, Governor Newsom said the executive order was issued to protect the health and safety of state inmates, youth, and staff.

An April 24, 2020 California HealthCare Foundation blog entitled “COVID-19 Risks Prompt Some California Counties to Ease Jail Populations” stated that many county correctional facilities throughout California are reducing their teeming populations to prevent large-scale COVID-19 outbreaks, stating that San Francisco has reduced its jail census by close to 40% this year, and that at least 12 other counties, including Los Angeles, Monterey, Santa Clara, and Tulare, have slashed their jailhouse populations by at least 20%, and Marin County reportedly cut its census by almost half, citing data from the nonprofit Vera Institute of Justice, which tracks county jail populations nationwide. The CHCF blog noted that unlike the state correctional system, no single California entity tracks coronavirus or COVID-19 across all 58 county jail systems.

- 7) **SUSPENSION VERSUS TERMINATION.** Suspension of Medi-Cal coverage is effective the date an individual becomes an inmate of a public institution, allowing an inmate to retain eligibility status for Medi-Cal but prohibiting receipt of benefits during incarceration. Termination removes an individual from the state’s Medi-Cal database and requires submission of a new application after release from jail or prison. According to the National Association of Counties, terminating benefits prior to release, rather than leaving individuals in a suspended status, increases the gap in health care services, which are critical in the first weeks and months post-incarceration. The Kaiser Family Foundation released a report stating that improved access to services and better management of health conditions immediately after release from jail or prison has shown to reduce rates of recidivism, particularly among individuals with mental health and substance abuse disorders. Studies published by the American Psychiatric Association show that inmates who were enrolled in Medicaid at the time of release had 16% fewer incidents of recidivism compared to those not enrolled at the time of release.
- 8) **OTHER STATES.** According to FamiliesUSA, as of June 2016, 17 states including Washington, D.C. suspend Medicaid for the entire duration of incarceration; 15 states suspend Medicaid for a specific amount of time, ranging from 30 days to one year; and, 19 states terminate Medicaid coverage as soon as a person enters a public institution. Most recently, Hawaii and Washington have passed legislation to move from termination or limited suspension to extended suspension until release.
- 9) **SUPPORT.** The California State Association of Counties (CSAC), the County Behavioral Health Directors Association (CBHDA) and the County Welfare Directors Association (CWDA) write in support that this bill would allow county welfare departments to continue to suspend eligibility for Medi-Cal for incarcerated individuals past the one year timeline to avoid unnecessary workload and ensure that individuals are eligible for critical health and behavioral health services upon release. CWDA, CBHDA, and CSAC write that current law requires counties to suspend Medi-Cal eligibility for individuals who become incarcerated for up to one year from the date of incarceration, or upon release, whichever comes sooner. This current limitation makes it more difficult for individuals who are incarcerated for longer periods of time to obtain Medi-Cal benefits prior to their release from jail or prison. Individuals who become incarcerated and have their Medi-Cal benefits suspended, then subsequently terminated based on the one year limit, are required to re-apply for benefits in order to restore their Medi-Cal eligibility. Per federal guidance, this one year time limit is not mandated and states are directed to leave individuals in a suspension status until they are no longer eligible for benefits, or upon release, whichever occurs first.

CSAC, CBHDA, and CWDA write that this bill ensures that incarcerated individuals have immediate access to coverage and reduce the risks of recidivism as individuals are able to access Medi-Cal services upon release. This provides continuity in mental health care, physical treatment and prescription medication between the period of incarceration and reintegration into their community. CWDA, CBHDA, and CSAC write that their organizations will continue to support efforts to not only suspend eligibility beyond one year but to ensure all incarcerated persons return home without gaps in health care, thus leaving to improved community safety, protecting the public health and reducing the likelihood of recidivism.

## **10) PREVIOUS LEGISLATION.**

- a) AB 914 (Holden) of 2019 would have, commencing October 1, 2020, required an indefinite suspension of Medi-Cal benefits for incarcerated individuals under 26 years of age to either end on the date of release from incarceration or when the individuals are no longer otherwise eligible for Medi-Cal benefits, whichever is sooner. Governor Newsom vetoed AB 914. In his veto message, the Governor stated AB 914 “has different age thresholds for indefinite suspension of benefits from those in federal law, resulting in violation of federal comparability requirements that would result in significant General Fund costs.”
- b) SB 222 (Hernandez) of 2017 would have required the suspension of Medi-Cal benefits to end on the date he or she is no longer an inmate of a public institution or is no longer otherwise eligible for benefits under the Medi-Cal program, instead of existing law, which requires the suspension to end on the date that the individual is no longer an inmate of a public institution or one year from the date he or she becomes an inmate of a public institution, whichever is sooner. SB 222 was held on the Senate Appropriations Committee suspense file.
- c) SB 1147 (Calderon), Chapter 546, Statutes of 2008, requires DHCS to develop procedures to ensure that the Medi-Cal eligibility of minors is not terminated when they are incarcerated. Requires Medi-Cal benefits provided to an individual under 21 years of age who is an inmate of a public institution (a state or federal prison, correctional facility, county/city jail, or detention center) to be suspended in accordance with provisions of federal law.
- d) AB 720 (Skinner), Chapter 646, Statutes of 2013, requires the board of supervisors in each county to designate an entity to assist certain jail inmates to apply for a health insurance affordability program, as defined. Prohibits county jail inmates who are currently enrolled in the Medi-Cal from being terminated from the program due to their detention, unless required by federal law or they become otherwise ineligible, as specified. Deletes the age restriction relating to Medi-Cal benefits provided to inmates of the public institution.
- e) SB 480 (Yee) of 2014, would have required DHCS to suspend Medi-Cal benefits for inmates over the age of 21 years for the duration of his or her stay in a public institution or one year, whichever is less. SB 480 died in Senate Committee on Human Services.

**11) POLICY ISSUE.** Due to the change in federal law made by HR 6, the time-limited suspension of Medi-Cal eligibility for juveniles in state law needs to be changed and the

federal Administration has proposed this change as part of its trailer bill language. For adults, there is a contention among some advocates that any time-limited suspension of eligibility is illegal under federal Medicaid law.

CDCR currently assists people in applying for enrollment in Medi-Cal upon release. In 2017-18 and 2018-19, this resulted in 78% and 81% respectively of individuals applying for Medi-Cal. Of the individuals who applied, 87.1% and 86.3% were approved, and 12.7% and 13.4% were pending enrollment. If the state suspends Medi-Cal for three years during the duration of an adult's prison or jail sentence, this will impose administrative costs on county welfare departments to perform annual redeterminations but would ensure inmates in county jails and state prisons who incarcerated for more than one year are automatically enrolled upon release. Because the state pays counties to administer eligibility determinations for Medi-Cal, those costs would ultimately be borne by the state and federal government under Medi-Cal.

CDCR currently assists incarcerated individuals leaving its facilities with enrolling in benefits programs, including Medi-Cal. CDCR data indicates nearly 78% to 81% of inmates apply for Medi-Cal now, and 86.3% to 87.1% of those applying are successfully enrolled upon release or immediately after release. At least one county has expressed interest in a longer suspension of Medi-Cal as it has inmates who are in its county jail for more than one year. The fiscal and policy issue posed by a three-year suspension for adults is whether the cost of requiring counties to perform annual redeterminations is worth incurring versus the cost to CDCR of assisting with the completion of a new Medi-Cal application as part of a larger effort to enroll individuals into benefits and CDCR's current Medi-Cal enrollment outcomes.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Behavioral Health Planning Council  
California Council of Community Behavioral Health Agencies  
California State Association of Counties  
California State Sheriffs' Association  
County Behavioral Health Directors Association  
County Welfare Directors Association of California  
Disability Rights California  
National Association of Social Workers, California Chapter  
Western Center on Law & Poverty, Inc

### **Opposition**

None on file.

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