

Medicare and People Leaving Incarceration: A Primer for California Advocates During the Pandemic

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Obtaining appropriate health care coverage is one of the many challenges facing individuals who have been incarcerated and are returning to their communities. For formerly incarcerated individuals who are 65 or older or have disabilities, this can mean connecting or reconnecting with their Medicare benefits.

In response to COVID-19, California has begun early release of some individuals from custody in state facilities. As a result of this action, health care advocates may encounter additional requests for assistance from Medicare-eligible individuals leaving custody.

This primer looks at policies of the Centers for Medicare and Medicaid Services (CMS) and the Social Security Administration (SSA) that particularly impact Medicare eligibility, enrollment, and premiums for people leaving custody. It also discusses how Medi-Cal programs can help formerly incarcerated low-income individuals afford their Medicare benefits, including policies related to the COVID-19 emergency.

Background: How the Medicare Program Functions for People in Custody

When an individual is in custody, the responsible penal authorities have the duty to provide all necessary medical care. All Medicare benefits are suspended throughout the period of incarceration.¹ Through data exchange, penal authorities (the Federal Bureau of Prisons, state, county or city departments of corrections) notify the Social Security Administration (SSA) when a Medicare beneficiary is incarcerated. Supplemental Security Insurance (SSI) payments, Social Security retirement payments and Social Security Disability Insurance (SSDI) payments also stop during incarceration, so most people in custody have little or no income. All financial assistance for Medicare premiums through Medi-Cal, including Medicare Savings Programs, also ceases.²

Though access to Medicare benefits is suspended during incarceration, Medicare enrollment rules remain in place. This affects both individuals who turn 65 while in custody and those who were enrolled in Medicare before incarceration.

Those who turn 65 while in custody have the usual Initial Enrollment Period (IEP) for the seven months around their 65th birthday. If they fail to enroll during this period, they are subject to late enrollment penalties if they

enroll after release. There is no Special Enrollment Period (SEP) upon release, so unless they qualify for a Medi-Cal program, they can only enroll in Medicare Part B during the annual General Enrollment Period (GEP) (January 1-March 31), and their enrollment will not be effective until the following July 1. For Part A, those who qualify for premium-free coverage can contact SSA to turn on their Part A benefit. Those who must pay a premium for Part A may only enroll during the GEP and also may be subject to Part A late enrollment penalties if they failed to enroll during their IEP.

People already enrolled in Medicare are required to continue to pay their premiums even though they do not have access to any of their Medicare benefits and have been cut off from Social Security payments, SSI and Medi-Cal premium assistance.³ If they do not pay—and most cannot afford the premiums—they will be disenrolled and subject to late enrollment penalties when they re-enroll. As with new enrollees, they do not have a Special Enrollment Period when they leave custody and can only enroll during the General Enrollment Period (January 1-March 31). Further, unless Medi-Cal had paid their premium or they affirmatively disenroll while in custody, SSA will give them the standard three-month grace period before disenrolling them for failure to pay premiums.⁴ If, upon release, they are entitled to Social Security benefits (retirement or disability), SSA will deduct from their first benefit payment the premiums owed for the grace period, in addition to the premium for their first month of coverage.⁵

Tips: How to Help Your Clients Access Their Medicare Benefits

Individuals who qualify for Medi-Cal upon release are shielded from many of the negative consequences of Medicare rules. Options become more complex for those with incomes or assets above Medi-Cal limits. This section looks at different categories of individuals and provides guidance and examples of how to assist them. These tips focus on Medicare issues. Information on how to start or restart Social Security or SSI payments is available from SSA.⁶

1. Individuals who qualify for full-scope Medi-Cal

Most Medicare-eligible individuals leaving incarceration qualify for Medi-Cal coverage. The Medi-Cal program will enroll them in Part B upon release and start paying their Part B premiums. Their Part B late enrollment penalties will be erased.

Fred: Fred entered custody at age 55 and is being released at age 70. Fred never enrolled in Medicare. He will be getting SSI after release and has no other income. He does not have the work history to qualify for free Part A. Before his release, Fred is enrolled in Aged, Blind and Disabled (ABD) Medi-Cal.⁷ Medi-Cal will enroll him in Medicare Part B and pay his premiums. He will have no Part B late enrollment penalties and he will automatically get the Medicare Part D Low-Income Subsidy (LIS) and be auto-enrolled in a benchmark Part D plan.⁸ Fred does not have Part A coverage but Medi-Cal will cover his hospital expenses.

Assistance for Fred: Fred could benefit from counseling on his Medicare options, including a review of his prescription drug needs. The local HICAP program can provide free individualized assistance.⁹ During the next GEP, Fred can also apply for conditional Part A and enroll in the Qualified Medicare Beneficiary (QMB) program.¹⁰

Mary: Mary entered custody at age 66 and is being released at age 72. Prior to entering custody, Mary had

been receiving a small Social Security benefit and was enrolled in Medicare, with Medi-Cal paying her Part B premium. While in custody, her Social Security payment stopped and Medi-Cal stopped paying her Part B premiums so SSA disenrolled her from Part B, but not from Part A. Upon release she can use her Part A and enroll in Medi-Cal, which again starts paying her Part B premium. She automatically receives LIS. Because Mary's income is below 100% of the Federal Poverty Level, Medi-Cal also enrolls her as a Qualified Medicare Beneficiary (QMB) so she is a QMB-plus.

Assistance for Mary: As with Fred, Mary could benefit from counseling on her Medicare options, including a review of her prescription drug needs.

2. Individuals with free Part A and income above Medi-Cal limits

Elena: Elena entered custody at age 66 and is being released at age 69. Elena had Medicare coverage prior to incarceration and premiums had been deducted from her monthly Social Security benefit. She did not continue paying Part B premiums once her Social Security payments stopped. Elena can start her Social Security benefits upon release, but her Social Security income will be too high for ABD Medi-Cal or Medicare Savings Programs.¹¹ Her free Medicare Part A enrollment continued during her incarceration though she could receive no benefits. Without Medi-Cal, however, she will be unable to enroll in Part B until the next GEP and will face late enrollment penalties. She also will see three months of grace period premiums, as well as her first month's Part B premium, deducted from her first Social Security benefit.¹²

Assistance for Elena: Even though, once Elena's Social Security starts up, her income will be above Medi-Cal limits, she may have a window when her income is low enough to qualify for Medi-Cal coverage. It is important to help Elena to apply for Medi-Cal during that period. For example, Elena learns in July that she will be released in August. She applies to restart her Social Security benefit starting September 1. Depending on SSA payment schedules, her first benefit payment may not arrive until October. Elena applies for Medi-Cal to start immediately upon release and she is enrolled because she had no income in August and September. As soon as she receives her Social Security benefit in October, she promptly reports it to Medi-Cal. Because of Maintenance of Effort requirements for state Medicaid programs during the COVID-19 emergency, Elena is not dropped from the Medi-Cal rolls.¹³ Though the period when her income was below Medi-Cal cut-offs was short, Elena benefitted greatly because the state enrolled her in Part B so she did not have to wait until the next GEP. Also, her Medi-Cal enrollment wiped out her Part B late enrollment penalties. Further, because she had a Medi-Cal enrollment in July or a later month, she was enrolled in the Part D LIS for all of the current year and through the following year. Finally, because of the COVID-19 emergency, she will be able to remain on Medi-Cal longer than she would have been able to prior to the emergency.

Planning Ahead

Medicare-eligible individuals beginning a period of incarceration and those becoming eligible while incarcerated have options that, depending on their financial circumstances and the anticipated length of their incarceration, could provide some relief from the issues they would otherwise face upon release.¹⁴ Advocates working with these individuals should review these options with them.

3. Individuals with premium Part A and income above Medi-Cal limits

Hector: Hector entered custody at age 60 and is being released at age 70. He has pension income from work overseas but does not have work credits that qualify him for free Medicare Part A. His pension income, though modest, is above Medi-Cal limits. Hector cannot enroll in either Medicare Part A or Part B until the GEP. If he does enroll, the combined cost of Part A and Part B premiums and late enrollment penalties will be more than he can afford.

Assistance for Hector: Covered California with subsidies may be an option for Hector. Hector can enroll in Covered California because release from a correctional institution is a “qualifying life event.”¹⁵ To demonstrate his eligibility, Hector will need either documentation showing his name and the date he was released or is scheduled to be released or a signed written statement under penalty of perjury stating his name and the date he was released or that he is not currently incarcerated.¹⁶ Hector has 60 days from release to enroll. Because Hector does not have free Part A, he does not have minimum essential coverage, so he may also qualify for premium assistance and cost-sharing reductions, depending on his income.

Conclusion

Some Medicare beneficiaries leaving incarceration may face challenges in accessing their benefits and need assistance from advocates. Justice in Aging does not assist individual clients but can offer assistance to advocates working to obtain health care coverage for individuals leaving custody. Requests for assistance should be addressed to info@justiceinaging.org.

Endnotes

- 1 42 U.S.C. § 1395y(a)(2) and (3).
- 2 For more details on the process, see CMS, Medicare Learning Network “Beneficiaries in Custody Under a Penal Authority,” (March 2018), available at www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/Items-Services-Furnished-to-Beneficiaries-in-Custody-Under-Penal-Authority-Fact-Sheet-ICN908084.pdf. Note also that Medi-Cal “buys in” Part B premiums for all ABD Medi-Cal beneficiaries, including those not also enrolled in Medicare Savings Programs.
- 3 SSA POMS HI 01001.045, available at secure.ssa.gov/apps10/poms.nsf/lnx/0601001045.
- 4 SSA POMS HI 01001.095 (for Part B), available at secure.ssa.gov/apps10/poms.nsf/lnx/0601001095; POMS HI 01005.804 (for Part A), available at secure.ssa.gov/apps10/poms.nsf/lnx/0601005804. Individuals whose premiums were paid by Medi-Cal are disenrolled from Medicare without a grace period so will not have accrued premium payment responsibilities upon release. See SSA POMS HI 00815.021, available at secure.ssa.gov/poms.nsf/lnx/0600815021.
- 5 SSA POMS HI 01001.335, available at secure.ssa.gov/apps10/poms.nsf/lnx/0601001335#b.
- 6 See SSA, “What Prisoners Need to Know,” (December 2018), available at www.ssa.gov/pubs/EN-05-10133.pdf; see also SSA, “Entering the Community After Incarceration—How We Can Help,” (August 2018), available at www.ssa.gov/pubs/EN-05-10504.pdf.
- 7 In most cases, penal authorities assist individuals in applying for Medi-Cal. For a general guide to Medi-Cal application procedures, see DHCS, “Ways to Apply for Medi-Cal,” available at www.dhcs.ca.gov/services/medi-cal/pages/applyformedi-cal.aspx.
- 8 For information on the Low-Income Subsidy (LIS) program see, e.g., NCOA, “Medicare Low Income Subsidy: Get Extra Help Paying for Part D,” available at www.ncoa.org/economic-security/benefits/prescriptions/lis-extrahelp/. For the basics of the autoenrollment process, see Medicare Interactive, “Part D when you have Medicare and Extra Help,” available at www.medicareinteractive.org/get-answers/cost-saving-programs-for-people-with-medicare/the-extra-help-low-income-subsidy-lis-program/part-d-when-you-have-medicare-and-extra-help.
- 9 For HICAP offices by county, go to California Health Advocates, “HICAP-Medicare Counseling,” available at cahealthadvocates.org/hicap/.
- 10 Enrolling in the QMB program will give Fred access to Medicare providers who do not accept Medi-Cal and give him federal protections against billing by Medicare providers. For the steps Fred must take to enroll, see Justice in Aging, “SSA Clarifies Handling of Medicare Part A Conditional Applications,” available at www.justiceinaging.org/wp-content/uploads/2018/08/SSA-Clarifies-Handling-of-Medicare-Part-A-Conditional-Applications.pdf.
- 11 For a general description of Medi-Cal programs for people with Medicare and eligibility criteria, see CANHR, “Aged & Disabled Medi-Cal Program,” available at [www.canhr.org/factsheets/medi-cal fs/PDFs/FS_Aged_and_Disabled_Medi-Cal_Program.pdf](http://www.canhr.org/factsheets/medi-cal/fs/PDFs/FS_Aged_and_Disabled_Medi-Cal_Program.pdf). The application and a brief description of Medicare Savings Programs, which are a sub-set within Medi-Cal, are found at www.dhcs.ca.gov/formsandpubs/forms/Forms/MCED/MC_Forms/MC14A_ENG.pdf.
- 12 SSA POMS HI 01001.040, available at secure.ssa.gov/apps10/poms.nsf/lnx/0601001040.
- 13 Medi-Cal Eligibility Division Information Letter No. 1 20-11 (April 23, 2020), available at www.dhcs.ca.gov/services/medi-cal/eligibility/letters/Documents/I20-11.pdf.
- 14 See Medicare Interactive, “Medicare Coverage During Incarceration,” available at www.medicareinteractive.org/get-answers/medicare-health-coverage-options/medicare-and-incarceration/medicare-coverage-during-incarceration; and Medicare Interactive, “Becoming Medicare Eligible during Incarceration,” available at www.medicareinteractive.org/get-answers/medicare-health-coverage-options/medicare-and-incarceration/medicare-coverage-during-incarceration.
- 15 Covered California, “Qualifying Life Events for Special Enrollment,” available at www.coveredca.com/individuals-and-families/getting-covered/special-enrollment/qualifying-life-events/.
- 16 Covered California, “Documents to Confirm Eligibility,” available at www.coveredca.com/documents-to-confirm-eligibility/.