

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON HEALTH

Jim Wood, Chair

AB 1214 (Waldron) – As Amended March 25, 2021

**SUBJECT:** Medi-Cal eligibility.

**SUMMARY:** Requires an individual who is incarcerated in a state prison or county jail (correctional facility) to be eligible for the Medi-Cal program for 30 days prior to the date they are released from a correctional facility if they have a chronic physical or behavioral health condition, a mental illness, or a substance use disorder (SUD), including an opioid or alcohol use disorder. Specifically, **this bill:**

- 1) Requires an individual who is incarcerated in a correctional facility to be eligible for the Medi-Cal program for 30 days prior to the date they are released from a correctional facility who has any of the following conditions:
  - a) A chronic physical or behavioral health condition;
  - b) A mental illness; or,
  - c) A SUD, including an opioid or alcohol use disorder.
- 2) Requires the Department of Health Care Services (DHCS) to seek any federal waivers or State Plan Amendments (SPA) necessary to implement this bill, and to implement this bill to the degree that those waivers or SPAs are obtained.
- 3) Requires DHCS, if the waiver or SPA are approved, while the waiver or SPA is in effect, to annually send a report to the Legislature on November 30th each year on all of the following:
  - a) The number of inmates served under the program;
  - b) The cost of the program; and,
  - c) The effectiveness of the program, including any of the following:
    - i) Any reduction in the number of emergency room visits or hospitalizations by inmates after release from a correctional facility;
    - ii) Any reduction in the number of inmates undergoing inpatient treatment after release from a correctional facility;
    - iii) Any reduction in overdose rates and deaths of inmates after release from a correctional facility; and,
    - iv) Any other costs or benefits as a result of the program.
- 4) Defines a “mental illness” to mean a psychiatric disorder that substantially impairs an individual’s mental, emotional, behavioral, or related functioning, or the same meaning as defined in either the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or the International Statistical Classification of Diseases and Related Health Problems.

**EXISTING LAW:**

- 1) 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.

- 2) Requires the suspension of Medi-Cal to end according to the following:
  - a) For an individual who is not defined as a juvenile under federal law, the suspension is required to end on the date the individual is no longer an inmate of a public institution or one year from the date the individual becomes an inmate of a public institution, whichever is sooner; or,
  - b) For an individual who is defined as a juvenile under federal law, the suspension to end in accordance with federal law (which extends benefits to age 26) or one year from the date the individual became an inmate of a public institution, whichever is later.

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

**COMMENTS:**

- 1) **PURPOSE OF THIS BILL.** According to the author, national data has shown that the justice-involved population contains a disproportionate number of persons with behavioral health conditions and other chronic diseases. Nationally, an estimated 80% of individuals released from prison in the United States each year have a SUD or chronic medical or psychiatric condition. Individuals who are struggling with SUDs are at high risk of fatal drug overdoses in the period after release from custody (a three to eightfold increased risk of drug related deaths within the first two weeks of release from prison). By providing Medi-Cal in the 30-day period immediately prior to release of an incarcerated individual from a correctional facility, this bill will provide uninterrupted health coverage to ensure the high-risk, high-need justice involved population will receive much needed care as they transition back to their communities.
- 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 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 under age 26 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 the DHCS upon release. Anyone over the age of 26 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 “Substance Use–Disorder Prevention that Promotes Opioid Recovery (SUPPORT) and Treatment for Patients and Communities Act,” juveniles who are inmates of public institutions can no longer have a time-limited suspension of Medicaid as their Medicaid eligibility is prohibited from being terminated. HR 6 defined “juveniles” as individuals under age 21 and former foster youth up to age 26. This federal changes meant the one year state law limit for Medi-Cal benefit suspension had to be conformed to federal law. The federal

change was effective November 2020, and the health budget trailer bill of last year, AB 75 (Committee on Budget), Chapter 9, Statutes of 2020, made the conforming change to state law.

- 4) **SUPPORT ACT.** In addition to the above described suspension change, the SUPPORT Act required, not later than six months after the date of the enactment of this Act, the Secretary of Health and Human Services (HHS) is required to convene a stakeholder group of representatives of managed care organizations, Medicaid beneficiaries, health care providers, the National Association of Medicaid Directors, and other relevant representatives from local, state, and federal jail and prison systems to develop best practices (and submit to the HHS Secretary and Congress a report on such best practices) for states:
- a) To ease the health care-related transition of an individual who is an inmate of a public institution from the public institution to the community, including best practices for ensuring continuity of health insurance coverage or coverage under Medicaid, as applicable, and relevant social services; and,
  - b) To carry out, with respect to such an individual, such health care-related transition not later than 30 days after such individual is released from the public institution.

The Secretary of HHS is required to work with states on innovative strategies to help individuals who are inmates of public institutions and otherwise eligible for Medicaid, with respect to enrollment for medical assistance under such program, transition seamlessly to the community.

Not later than one year after the date of the enactment of this Act, the Secretary of HHS, through the Administrator of CMS, is required to issue a State Medicaid Director letter, based on best practices developed regarding opportunities to design demonstration projects under federal waiver authority to improve care transitions for certain individuals who are soon-to-be former inmates of a public institution and who are otherwise Medicaid eligible. This includes systems for individuals immediately (for a period not to exceed 30 days) prior to the day on which such individuals are expected to be released from such institution for:

- a) Providing assistance and education for Medicaid enrollment for such individuals during such 30 day period; and,
- b) Providing health care services for such individuals during such period.

Appointments to the stakeholder group were made later than required (October 2020), and the required report has yet to be issued.

In Congress this year, HR 955, the Medicaid Reentry Act of 2021 and a companion measure in the Senate (S. 285), authorizes Medicaid reimbursement for services furnished to an incarcerated individual during the 30-day period prior to the individual's release.

- 5) **CALIFORNIA ADVANCING AND INNOVATING MEDI-CAL PROPOSAL.** DHCS' California Advancing and Innovating Medi-Cal (CalAIM) proposal contained multiple components. One of the provisions requires each county board of supervisors, notwithstanding any other law, commencing January 1, 2023, to designate an entity or entities to assist county jail inmates and juvenile inmates in county juvenile facilities with submitting an application for, or otherwise facilitating their enrollment in, a health insurance affordability program (such as Medi-Cal and Covered California) consistent with federal requirements. Current law authorizes such counties to perform this activity. The DHCS

CalAIM proposal is proposed as trailer bill language. This provision of CalAIM is included AB 875 (Wood) which is pending in the Assembly Health Committee.

**6) 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) within 120 days. TCMP provides inmates with pre-release Medi-Cal, Social Security Administration (SSA), and Veterans Administration 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. According to the CDCR, it screened nearly 100% of incarcerated persons for benefit eligibility. In 2019-20, 24,030 applications for Medi-Cal were approved (80.5% upon release), 19.2% were pending, and 90 (0.3% were denied).

**7) SUPPORT.** The Depression and Bipolar Support Alliance (DBSA), which describes itself as the leading peer-directed national organization focusing on the two most prevalent mental health conditions, depression, and bipolar disorder, writes that this bill would make an individual incarcerated in the state prison or a county jail eligible for the Medi-Cal program for 30 days prior to the date they are released from that correctional facility if they have a chronic physical or behavioral health condition, a mental illness, or SUD. DBSA writes that individuals being released from prison or jail are not just at risk for recidivism, but also are extremely vulnerable to health issues, especially mental health. In some cases, behavioral health was a factor in their behavior which ultimately resulted in their imprisonment. DBSA concludes this bill will hopefully ensure a continuum of care much more than the simple intent of a "warm hand-off".

**8) RELATED LEGISLATION.** AB 112 (Holden) extends the duration during which Medi-Cal benefits are suspended when an individual is an inmate of a public institution to three years or until the individual is no longer an inmate, whichever occurs sooner, instead of the shorter time-limited suspension of one year or until the individual is no longer an inmate. AB 112 is currently in the Assembly Appropriations Committee.

**9) PREVIOUS LEGISLATION.**

**a)** AB 1994 (Holden) of 2020 would have extended the suspension of Medi-Cal benefits to incarcerated eligible individuals from one year to three years and for eligible juveniles the three years begins on the day they age out. AB 1994 was never heard in Senate Health Committee.

**b)** 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.”

- c) SB 222 (Hernandez) of 2017 would have required the suspension of Medi-Cal benefits to end on the date a person 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.
- d) 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.
- e) 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.
- f) SB 480 (Yee) of 2014, would have required DHCS to suspend Medi-Cal benefits for inmates over the age of twenty one 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.

## 10) POLICY ISSUES:

- a) **Eligible population.** CDCR currently assists people in applying for enrollment in Medi-Cal upon release, irrespective of the patient’s health condition. This bill applies only to individuals with a chronic condition or a SUD or behavioral health condition. Should the provisions of this bill apply to all individuals in a correctional facility, instead of being limited to the conditions listed in this bill?
- b) **Premature change?** While the SUPPORT Act required the establishment of a workgroup to examine issues involving establishing Medicaid eligibility prior to release, and there are at least two Congressional bills to authorize Medicaid matching funds for such a policy change, this change has not been made federally. The advantage of securing Medicaid funding is the state and counties could draw down federal Medicaid matching funds (and thereby not use the same amount of state funds or any county funds) to furnish medications upon release and to provide care for the person in the last 30 days of the individual’s incarceration (depending upon the details of the policy). Individuals released

from correctional facilities could also be provided medications upon release (CDCR currently provides a 30 day supply using state General Funds), and Medi-Cal enrollment would facilitate post-release care planning and coverage arrangements.

**REGISTERED SUPPORT / OPPOSITION:****Support**

Depression and Bipolar Support Alliance  
Alkermes, Inc.  
Anti-Recidivism Coalition  
California Chronic Care Coalition

**Opposition**

None on file.

**Analysis Prepared by:** Scott Bain / HEALTH / (916) 319-2097