

# Incarcerated and Recently Released Consumers

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## Incarceration and Health Coverage Overview<sup>1</sup>

The Affordable Care Act (ACA) expands access to coverage and services that consumers released from incarceration may need. This fact sheet will help you assist incarcerated or recently released consumers and their families.

The rules related to coverage of incarcerated consumers through a Marketplace<sup>1</sup> are different from the rules that apply to Medicaid or Medicare, and it is important that assisters<sup>2</sup> understand those differences. The same rules apply to incarcerated juveniles; however, juveniles cannot be determined eligible for the Children’s Health Insurance Program (CHIP) while incarcerated.

## Marketplace Coverage

The type of contact consumers have with the criminal justice system determines the type of health coverage consumers are eligible to receive. The Affordable Care Act states that consumers are not eligible to enroll in a Qualified Health Plan (QHP) through the Health Insurance Marketplaces if they are incarcerated, unless they are pending the disposition of

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<sup>1</sup> This term refers to the Federally-facilitated Marketplace (including State Partnership Marketplaces), and to State-based Marketplaces that rely on the federal eligibility and enrollment platform. State-based Marketplaces that do not rely on the federal eligibility and enrollment platform may use the interpretations and policies in this document, or other reasonable ones, consistent with applicable law.

<sup>2</sup> “In this fact sheet, “assisters” refers to certified application counselors (CACs), Navigators, and non-Navigator assistance personnel who help consumers in the Federally-facilitated Marketplaces. The term “you” is also often used to refer to FFM assisters.

charges. For the purpose of determining eligibility, it is important to note the definition of incarceration used by the Marketplaces. In the following three situations, consumers are **not** considered incarcerated and are still eligible to enroll or continue existing enrollment in Marketplace coverage:

## **Marketplace Considers Not Incarcerated**

### ▪ **Pre-conviction**

This includes consumers who are arrested but not convicted of a crime and consumers who are convicted of a crime *pending disposition of charges* (i.e. awaiting sentencing), whether confined to a correctional institution, or released on bail, bond, or other conditional release.

Consumers pending disposition of charges can enroll in or continue existing enrollment in a QHP through a Marketplace. However, once convicted, consumers are no longer eligible for Marketplace coverage if they are incarcerated and should end their existing coverage through a Marketplace.

### ▪ **Probation or Parole**

Consumers who are on probation or parole are not considered incarcerated and may be eligible to enroll or continue existing enrollment in a QHP through a Marketplace. If consumers' probation or parole is revoked, they are no longer eligible to enroll in a QHP through a Marketplace, and if already enrolled, they should end their existing coverage through a Marketplace.

### ▪ **Post-conviction—Under Limited Supervision or Confinement**

Consumers who have been convicted of a crime and are sentenced to a partial, limited, or alternative form of confinement are not considered incarcerated and may be eligible to enroll in a QHP through a Marketplace if no government entity is required to provide the individual with medical care. Below are examples of what the Marketplaces consider limited supervision or confinement:

- Serving a sentence but allowed work release
- Under house arrest or home confinement
- Residing in a halfway house or other similar type of residential community supervision as a result of a conviction

## Marketplace Considers Incarcerated

- Post-conviction—Serving Sentence in Jail or Prison

For purposes of Marketplace eligibility determination, consumers are considered incarcerated once they are in the custody of a penal authority and confined to a correctional facility, such as a jail, prison, or a mental health institution as a result of a conviction of criminal offense. **Incarcerated consumers are not eligible to enroll or continue enrollment through a Marketplace.** If the incarcerated consumer is already enrolled, they should end their existing Marketplace coverage. Instructions for ending Marketplace coverage are available at [www.healthcare.gov/reporting-changes/cancel-plan/](http://www.healthcare.gov/reporting-changes/cancel-plan/).

Incarcerated consumers are exempt from paying the individual shared responsibility payment while serving a sentence. If an incarcerated consumer does not expect to be included in their household's tax return and their income is below the tax filing threshold, the incarcerated consumer will automatically be exempt from the individual shared responsibility provision for that year and does not need to take any further action to secure an exemption. If the incarcerated consumer is included in the tax household, the tax filer must claim the exemption for the incarcerated consumer when they submit their federal income tax return to avoid having to pay the individual responsibility payment for the incarcerated household member.

After they are released, formerly incarcerated consumers must have minimum essential health care coverage, pay the individual shared responsibility payment, or qualify for another exemption. Consumers released from incarceration have up to 60 days from the date of their release to qualify for a special enrollment period (SEP) and enroll in coverage. After incarcerated consumers are released, their household should report a change in incarceration status, income, or other changes as soon as possible, within 30 days.

Consumers can find more information about their qualification for an SEP following release from incarceration by visiting [www.healthcare.gov/screener](http://www.healthcare.gov/screener) or calling the Marketplace Call Center at 1-800-318-2596 (TTY: 1-855-889-4325). Consumers can start a new Marketplace application or update an existing application if they had a Marketplace plan earlier in the year or want to be added to a Marketplace application for other family members already enrolled in Marketplace coverage.

Assisters can help consumers released from incarceration update an application in the following two ways; however, if they are joining their family's plan, they may need authorization from the family member who opened the Marketplace account to make changes.

1. Online: consumers can log in to their Marketplace account, select an existing application, choose “Report a life change” from the menu on the left, and then click on the “Report a life change” button.
2. By phone: consumers can contact the Marketplace Call Center at 1-800-318-2596 (TTY: 1-855-889-4325).

Detailed instructions on reporting a change are available at [www.healthcare.gov/reporting-changes/how-to-report-changes/](http://www.healthcare.gov/reporting-changes/how-to-report-changes/).

## Marketplace Coverage and Household Members of Incarcerated Consumers

Incarcerated consumers are exempt from the individual shared responsibility payment.

However, consumers who have an incarcerated individual in their household must determine whether to include the incarcerated individual on Marketplace applications as a non-applicant.

*Should household members include an incarcerated consumer on a Marketplace application?*<sup>3</sup>

| Yes, as a non-applicant   | No  |
|---|---|
| <p>If an incarcerated consumer expects to be included in a household’s tax return for the year the household is applying for coverage, include them as a non-applicant (e.g., if they are sentenced to six months in prison or jail and expect to return to work after release).</p> <p><i>The incarcerated consumer will be denied Marketplace coverage. The rest of the family can continue to enroll in coverage, if eligible.</i></p> | <p>If an incarcerated consumer does not expect to be included in a household’s tax return for the year the household is applying for coverage, do not include them. (e.g., if they are sentenced to several years in prison).</p> |

Table 1: Should household members include an incarcerated consumer on a Marketplace application?

After becoming incarcerated, a member of the incarcerated person’s household should terminate any existing Marketplace coverage for that individual as soon as possible, within 30<sup>4</sup> days unless they are pending disposition of charges<sup>5</sup> (pre-conviction). A Marketplace does not terminate coverage for incarcerated consumers automatically, so they are responsible for monthly premiums until their Marketplace coverage is terminated.

<sup>3</sup> For more information on whom consumers should include in their household on a Marketplace application, visit <https://www.healthcare.gov/income-and-household-information/household-size/>.

<sup>4</sup> The change should still be reported even if more than 30 days has passed.

<sup>5</sup> The household does not need to report when a member is incarcerated pending disposition of charges because that household member remains eligible for Marketplace coverage.

If the incarcerated consumer has difficulty contacting the Marketplace Call Center or visiting HealthCare.gov, changes can also be reported through the Marketplace Call Center by:

- An adult age 18 or over who is on the application and applied for Marketplace coverage; and
- An adult age 18 or over listed as a tax filer on the incarcerated consumer's application for Marketplace coverage, even if the tax filer didn't apply for coverage.

If neither the incarcerated individual nor any adult on the application is able to contact a Marketplace to report a change and end enrollment through the Marketplace, then an individual authorized to contact the Marketplace on the incarcerated individual's behalf can call the Marketplace Call Center. Additionally, individuals can seek help with the process of reporting a change in eligibility from a Navigator, a certified application counselor (CAC), a non-Navigator assistance personnel, an agent or broker registered with a Marketplace, or a correctional facility representative.

Incarcerated consumers may continue their enrollment in private health insurance coverage outside the Marketplaces through the individual, or non-group, market.

## Medicaid Coverage

Medicaid covers services for eligible consumers who are awaiting sentencing in their community or who are on probation or parole, and consumers living in state or local-corrections supervised community residential facilities (e.g., a halfway house), if they have freedom of movement and association while residing at the facility.<sup>6</sup> Consumers who are in the lawful custody of a state or locality and held involuntarily in a public institution are considered incarcerated for purposes of Medicaid eligibility and may be enrolled in Medicaid, but may not receive Medicaid covered services.

### Using Medicaid While Incarcerated

States may not provide Medicaid coverage for health care services delivered to incarcerated consumers, with one exception: for care delivered outside the institution, such as at a hospital or nursing home, when the person has been admitted for 24 hours or more. Incarcerated consumers who are eligible but aren't enrolled in Medicaid can secure retroactive Medicaid coverage under this exception as long as they apply within three months of receiving treatment. The same limitation applies to consumers who are being held before or after their sentencing in jail or prison, or a halfway home.

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<sup>6</sup> For guidance on facilitating access to covered Medicaid services for eligible individuals prior to and after a stay in a correctional institution, see <https://www.medicaid.gov/federal-policy-guidance/downloads/sho16007.pdf>

## Applying for Medicaid While Incarcerated

Eligible consumers who apply for Medicaid during incarceration can get needed medical care more quickly upon release. Consumers' eligibility depends on the state in which they live and the individual circumstances of the household. Consumers may apply for Medicaid coverage at any time before, during, or after incarceration in the following two ways:

1. Through HealthCare.gov or their state's Marketplace
  - Online, by phone (e.g., using the Marketplace Call Center-1-800-318-2596 ) or by mailing a paper application (e.g., <https://marketplace.cms.gov/applications-and-forms/marketplace-application-for-family.pdf>)
2. In person or over the phone with the State Medicaid agency
  - Contact information for State Medicaid agencies available here: <https://www.healthcare.gov/medicaid-chip/getting-medicaid-chip/>

Some states automatically facilitate this process for incarcerated consumers prior to release and other states have a policy to suspend—rather than terminate—a person's Medicaid coverage while he or she is incarcerated. Check the rules in your state.

### *Incarceration and Household Size for Medicaid and CHIP*

If a household with an incarcerated consumer is seeking Medicaid or CHIP coverage, eligibility rules vary by state and by the individual circumstances of the household. There are no special rules or exceptions to the Modified Adjusted Gross Income (MAGI) methodology for incarcerated consumers or for their household members. However, changes in household size due to incarceration may also affect Medicaid or CHIP eligibility.

## Medicaid Eligibility and Incarceration in Another State

If a consumer is incarcerated in an out-of-state facility, the consumer's home state remains their state of residence for purposes of Medicaid eligibility. If an incarcerated consumer intends to reside in a different state after their release, the consumer can use an address from that state when applying for Medicaid. Medicaid does not require incarcerated consumers to have a fixed or home address; however, they must list an address through which they can be contacted after release. Consumers applying for Medicaid before, during, or after incarceration may use the address of a probation or parole office or community residential facility for this purpose.

## Medicare Coverage

Medicare generally does not cover services for incarcerated beneficiaries. Incarcerated consumers under Medicare include, but are not limited to, individuals who are:

- Under arrest
- Incarcerated
- Imprisoned
- Escaped from confinement
- Under supervised release
- On medical furlough
- Required to reside in mental health facilities
- Required to reside in halfway houses
- Required to live under home detention
- Confined completely or partially in any way under a penal statute or rule

## Maintaining Medicare While Incarcerated

Although Medicare will generally not pay for their health care costs while in jail, incarcerated consumers who have Original Medicare should consider maintaining their Part A and Part B coverage to ensure that the coverage will be effective upon their release. For most consumers, Part A (hospital) coverage is free and they do not have to pay a monthly premium to maintain coverage. To maintain Part B (outpatient) coverage, consumers will have to pay the monthly Part B premium. If they do not pay the monthly premium, they will be unenrolled and lose Part B coverage.

If consumers lose their Part B coverage, they have to wait until the General Enrollment Period (January 1-March 31) to re-enroll and wait until July 1st for Part B coverage to start again. Consumers released from incarceration may face a coverage gap if they are released after the General Enrollment Period. They can also face premium penalties for late or delayed enrollment in Part B while they are eligible, which can make their Medicare coverage more expensive in future years.

For more information on Medicare coverage of items and services furnished to beneficiaries in custody under a penal authority, visit <https://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>.

## Applying for Medicare While Incarcerated

Consumers who become eligible for Medicare while incarcerated should actively enroll in Original Medicare Part A and Part B coverage to ensure that Medicare will pay for health care

services upon their release. All consumers have a seven month initial enrollment period (IEP) that consists of the 3 months prior to turning 65, the month of their birthday, and the 3 months after turning 65.

Consumers who become eligible for Medicare while incarcerated: Incarcerated consumers who anticipate being released from incarceration should actively enroll in Medicare, since they will not be automatically enrolled in coverage. If eligible, they should enroll in Part A and Part B coverage while in prison to ensure that Medicare will pay for health care services upon their release from prison. If consumers do not enroll in Medicare during their IEP, they may have to pay a late enrollment penalty when they sign-up.

## Aiding the Transition of Recently Incarcerated Consumers

Consumers who receive health coverage after being released from incarceration may need additional information about how health coverage works and how to navigate the health care delivery system. Assisters can aid in the transition of recently released consumers by doing the following:

- Explaining the basics of health insurance, including the costs associated with health care services under different plans (i.e. premiums, out-of-pocket costs, deductibles, and coinsurance).
- Helping consumers learn about community health centers or other health care providers that might have experience caring for recently released consumers.
- Advising consumers to obtain coverage and schedule an appointment with a physician as soon as possible following their release.
- Referring consumers to other organizations in the community that can help them find housing, employment, legal services, and other supportive services.

## Scenario

Samantha is 26 years old and is seeking advice on obtaining Medicaid coverage for her mother, Jean, who is currently incarcerated but scheduled to be released in four months. Samantha is aware that her mother will be required to have health coverage to avoid paying the penalty once she is released from jail. Samantha is uncertain whether her mother may submit an application and start receiving coverage while still incarcerated.

*What advice would you give Samantha to help Jean apply for Medicaid and start using her coverage?*

- Inform Samantha that her mother can apply for Medicaid while she is incarcerated. The Marketplace and/or her state of residence will determine whether Jean is eligible for

Medicaid based on her household size, income, and other eligibility criteria. Federal Medicaid payment will be limited to certain inpatient services in a medical institution while she is incarcerated. However, if Jean submits an application while incarcerated and is found eligible, she may have timely access to the full array of Medicaid-covered services upon release. If Jane is found not to be eligible for Medicaid, she will have a 60-day SEP to enroll in Marketplace coverage, if otherwise eligible.

*How would you explain to Jean or Jean's household how to claim the exemption from the individual shared responsibility payment for incarcerated consumers?*

- Because Jean is currently incarcerated, Jean or a tax filer in her household on her behalf can claim an exemption from the individual shared responsibility payment for each month in which she is incarcerated for at least one day. She can claim this exemption when she files her federal income taxes<sup>7</sup>. Once Jean is released, she must have minimum essential coverage, be eligible for another exemption, or be subject to the individual shared responsibility payment.

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<sup>i</sup> The information provided in this document is intended only to be a general informal summary of technical legal standards. It is not intended to take the place of the statutes, regulations, or formal policy guidance that it is based upon. This document summarizes current policy and operations as of the date it was presented. We encourage readers to refer to the applicable statutes, regulations, and other interpretive materials for complete and current information.

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<sup>7</sup> For more information on how to claim an exemption due to incarceration, go to <https://www.healthcare.gov/exemptions-tool/#/results/2016/details/incarceration>.

