

# Incarcerated and Recently Released Consumers

This fact sheet provides information and guidance that Navigators and certified application counselors (collectively, assisters) need to know in order to help consumers who are incarcerated or recently released understand their health coverage options.

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The rules related to coverage of incarcerated consumers through a Marketplace are different from the rules that apply to Medicaid, CHIP or Medicare.

## Marketplace Coverage

### Incarcerated Consumers

The Affordable Care Act (ACA) states that consumers are not eligible to enroll or continue enrollment in a qualified health plan (QHP) through the Health Insurance Marketplaces if they are incarcerated, unless they are incarcerated pending disposition of charges. The following table lists consumers who the Marketplace does and doesn't consider incarcerated for the purposes of Marketplace eligibility.

March 2022. This information is intended only for the use of entities and individuals certified to serve as Navigators or certified application counselors in a Federally-facilitated Marketplace. The terms "Federally-facilitated Marketplace" and "FFM," as used in this document, include FFM's where the state performs plan management functions. Some information in this manual may also be of interest to individuals helping consumers in State-based Marketplaces and State-based Marketplaces using the Federal Platform. This document is intended only as a summary of legal requirements and to provide operational information and does not itself create any legal rights or obligations. All legal requirements are fully stated in the applicable statutes and regulations. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law. This material was printed, published, or produced and disseminated at U.S. taxpayer expense.

Status	Definitions
<b>Incarcerated Consumers</b>	<ul style="list-style-type: none"> <li>• Have been convicted of a crime and are sentenced to confinement in an institution such as a correctional facility or inpatient mental health facility</li> <li>• These consumers have 30 days to report their incarceration status to the Marketplace and terminate their existing Marketplace coverage.</li> </ul>
<b>Consumers NOT Incarcerated</b>	<ul style="list-style-type: none"> <li>• Have not been convicted of a crime.</li> <li>• Pending disposition of charges. This means the individual has been charged with a crime but is waiting for the outcome of the charges to be determined. This includes situations in which an individual is arrested but not convicted of a crime and convicted of a crime but awaiting sentencing, whether confined to a correctional institution or released on bail, bond, or other conditional release.</li> <li>• Consumers pending disposition of charges can enroll or continue existing enrollment in a QHP through a Marketplace, if otherwise eligible. <ul style="list-style-type: none"> <li>• However, if convicted, consumers are no longer eligible for Marketplace coverage if they are incarcerated and should end their existing coverage through a Marketplace.</li> </ul> </li> <li>• Have been convicted of a crime and are sentenced to a partial, limited, or alternative form of confinement. This includes consumers who are on probation or parole; living in the community after a sentence has been served; allowed work release; under home confinement; or residing in a halfway house or other type of residential community supervision as a result of a conviction. <ul style="list-style-type: none"> <li>• These consumers may be eligible to enroll or continue existing enrollment in a QHP through a Marketplace, if otherwise eligible.</li> <li>• 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.</li> </ul> </li> </ul>

Marketplace coverage can be terminated by:

- The enrollee by contacting the Marketplace Call Center at 1-800-318-2596 (TTY: 1-855-889-4325) or by visiting [HealthCare.gov](http://HealthCare.gov).
- The application filer by contacting the Marketplace Call Center or by visiting [HealthCare.gov](http://HealthCare.gov).
- Any adult age 18 or over who is on the application and applied for Marketplace coverage by contacting the Marketplace Call Center.
- 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, by contacting the Marketplace Call Center.

- An individual authorized on the incarcerated consumer's behalf, if neither the incarcerated consumer nor any adult on the application is able to contact a Marketplace to report a change and end enrollment through the Marketplace, by contacting 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), or an agent or broker registered with a Marketplace. Visit [Find Local Help](#) to locate an agent, broker, or assister. **Incarcerated consumers may also seek the help of** a correctional facility representative.

The Marketplace does not terminate coverage for incarcerated consumers automatically, so the consumer is responsible for monthly premiums until their Marketplace coverage is terminated. Incarcerated consumers may continue their enrollment in private health insurance coverage outside the Marketplaces through the individual, or non-group, market.

Instructions on reporting a change and ending Marketplace coverage using HealthCare.gov are available at [HealthCare.gov/reporting-changes/cancel-plan](https://www.healthcare.gov/reporting-changes/cancel-plan). For more information on helping consumers terminate coverage, refer to [SOP 13 – Update a Marketplace Account](#).

## Household Members of an Incarcerated Consumer

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

- Consumers **must** include an incarcerated consumer as a non-applicant if the incarcerated consumer is expected to be included in a household's tax return for the year a member of the the household is applying for coverage. The rest of the family can continue to enroll in coverage through the Marketplace, if eligible.
- Consumers **must not** include an incarcerated consumer as a non-applicant if the incarcerated consumer is not expected to be included in a household's tax return for the year a member of the household is applying for coverage through the Marketplace.

## After Release from Incarceration

After incarcerated consumers are released, they or their household should report a change in incarceration status as well as any income or other changes, as soon as possible, within 30 days.

- When consumers apply for health coverage after being released from incarceration, they may qualify for lower costs on monthly premiums and out-of-pocket costs, if otherwise eligible. This will depend in part on their household size and income during the year they're seeking coverage.

- After they're released, consumers have a 60-day Special Enrollment Period (SEP) to sign up for Marketplace coverage, if otherwise eligible. During this time, they can enroll in private health insurance through the Marketplace even if it's outside the Open Enrollment Period (OEP). After this 60-day SEP, they generally won't be able to buy private health insurance until the next OEP, unless they qualify for another SEP.

Consumers can find more information about their qualification for an SEP following release from incarceration by visiting [HealthCare.gov/coverage-outside-open-enrollment/special-enrollment-period](https://www.healthcare.gov/coverage-outside-open-enrollment/special-enrollment-period) or by calling the Marketplace Call Center.

Recently released consumers can visit [HealthCare.gov](https://www.healthcare.gov) to start a new Marketplace application or update an existing application by reporting a life change 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. If they are joining their family's plan, they may need authorization from the family member who opened the Marketplace account to make changes. Consumers can also call the Marketplace Call Center or find free in-person help in their community by visiting [Localhelp.HealthCare.gov](https://www.localhelp.healthcare.gov).

## Tips for Assisters

Consumers who receive health coverage after being released from incarceration may need help understanding their health coverage options. Assisters can aid in the transition of recently released consumers by:

- 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 consumers recently released from incarceration.
- Advising consumers to obtain coverage and schedule an appointment with a physician as soon as possible following their release from incarceration.

## Medicaid/CHIP Coverage and Eligibility

Individuals who are incarcerated may be enrolled in Medicaid, if otherwise eligible, but may only receive Medicaid-covered services under limited circumstances. For purposes of Medicaid and CHIP, an "inmate" is an individual of any age who is in custody and held involuntarily through operation of law enforcement authorities in a public institution, other than a child care institution, publicly operated community residence that serves no more than 16 residents, or a public educational or vocational training institution for purposes of securing educational or vocational training.

A public institution can include a correctional institution operated by, or under contract with, the United States, a state, a territory, political subdivision of a state or territory, or an Indian tribe for the confinement or rehabilitation of persons charged with or convicted of a criminal offense.

The “inmate payment exclusion” is a coverage and reimbursement exclusion, meaning that federal financial participation (FFP) is not available for Medicaid services provided to the individual who is incarcerated, unless the individual is admitted to a medical institution as an inpatient. This is called the “exception” to the inmate payment exclusion. A qualified “medical institution” includes only a hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities, or a psychiatric residential treatment facility (for individuals under age 21) that meets applicable federal regulations and conditions of participation. (For guidance on the Medicaid inmate payment exclusion policy, see [Medicaid.gov/federal-policy-guidance/downloads/sho16007.pdf](https://www.medicaid.gov/federal-policy-guidance/downloads/sho16007.pdf)).

In addition to the inmate exclusion, Medicaid also includes a coverage exclusion related to services for patients in institutions for mental diseases (IMDs), which include residential treatment facilities of over 16 beds that are primarily engaged in the diagnosis, treatment, or care of persons with mental diseases.

Individuals are no longer considered “inmates of a public institution” when they are on parole, probation, have been released to the community pending trial, are on home confinement, are voluntarily residing in a correctional institution for a temporary period of time after their case is adjudicated while arrangements are being made for transfer to a community residence, or are residing in a supervised “halfway house” if they have freedom of movement and association, including the ability to work outside the facility, use community resources, and seek health care in the community to the same or similar extent as other Medicaid beneficiaries.

Inmates of a public institution are not eligible for the Children’s Health Insurance Program (CHIP).

## **Using Medicaid While Incarcerated**

As noted above, FFP is not available for Medicaid services provided to inmates of a public institution unless the exception to the payment exclusion for beneficiaries receiving inpatient care applies. Retroactive Medicaid coverage generally is available for services received in a medical institution in the three-month period prior to application, if the individual would have been Medicaid-eligible.

## **Applying for Medicaid or CHIP While Incarcerated or When Recently Released**

Individuals can apply for Medicaid at any time before, during, or after incarceration (NOTE: a positive eligibility determination for CHIP can only be made after release, since inmates of a public institution are ineligible for CHIP). Those who apply and are found eligible for Medicaid

during incarceration may be able to get needed medical care more quickly after they're released. Medicaid and CHIP eligibility rules vary by state and by the circumstances of the individual and the individual's household. There are no special rules or exceptions to the modified adjusted gross income (MAGI) calculations for incarcerated individuals or for their household members. However, the incarceration of one household member may affect the Medicaid or CHIP eligibility of other household members. Individuals may apply for Medicaid or CHIP through:

- [The Health Insurance Marketplace](#).<sup>®1</sup>
- In-person, online, by mailing a paper application, or over the phone with the State Medicaid or CHIP agency. Individuals can find their state Medicaid agencies at [HealthCare.gov/medicaid-chip/getting-medicaid-chip](https://www.healthcare.gov/medicaid-chip/getting-medicaid-chip).

Some states facilitate the Medicaid application process for incarcerated individuals prior to release. Other states facilitate enrollment at entry as an inmate of a public institution and then suspend an individual's Medicaid coverage while they are incarcerated. States must suspend – they may not terminate – the Medicaid coverage of certain youth who become incarcerated. Consumers should check the rules in their state.

## Medicaid Eligibility and Incarceration in Another State

If an individual is incarcerated by their home state but sent to an out-of-state facility, the individual's home state remains their state of residence for purposes of Medicaid eligibility. If an incarcerated individual intends to reside in a different state after their release, the individual can use an address from that state when applying for Medicaid. Medicaid does not require incarcerated individuals to have a fixed or home address; however, they must list an address through which they can be contacted after release. Individuals 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. For purposes of Medicare eligibility, incarcerated consumers include, but are not limited to, individuals who are:

- Under arrest
- Escaped from confinement
- Incarcerated
- Under supervised release
- Imprisoned
- On medical furlough

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<sup>1</sup> Health Insurance Marketplace<sup>®</sup> is a registered service mark of the U.S. Department of Health & Human Services.

- 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 (GEP) from January 1-March 31 to re-enroll and wait until July 1 for Part B coverage to start again.
- Consumers released from incarceration may face a coverage gap if they are released after the GEP.
- Consumers 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 [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](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 or When Recently Released**

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 includes the three months prior to turning 65, the month of their birthday, and the three months after turning 65.

Incarcerated consumers who anticipate being released from incarceration should actively 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. They will not be automatically enrolled in coverage. If consumers do not enroll in Medicare during their IEP, they may have to pay a late enrollment penalty when they sign up.

Recently released consumers may qualify for a Medicare SEP to enroll in a Medicare Advantage Plan or Medicare Prescription Drug Plan within two full months after the month they're released from jail.

## 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 wants to know whether her mother may submit an application and start receiving coverage while still incarcerated.

To help Samantha, you should inform her that:

- Jean can apply for Medicaid while she is incarcerated. The Marketplace or her state of residence will determine whether Jean is eligible for Medicaid based on her household size, income, and other eligibility criteria.
- 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, since enrollment has been activated before her release.
- If Jean is found not to be eligible for Medicaid, she will have a 60-day SEP, active upon her release, to enroll in Marketplace coverage, if otherwise eligible.
- Federal Medicaid payment will be limited to certain inpatient services in a medical institution while Jean is incarcerated, if Jean applies while still incarcerated and is found eligible.

## Additional Resources

- [Assisting Incarcerated and Recently Released Consumers](#)
- Understanding the Health Insurance Marketplace® If You're Incarcerated
  - English: [Marketplace.CMS.gov/outreach-and-education/understanding-the-marketplace-if-incarcerated.pdf](https://www.Marketplace.CMS.gov/outreach-and-education/understanding-the-marketplace-if-incarcerated.pdf)
  - Spanish: [Marketplace.cms.gov/outreach-and-education/understanding-the-marketplace-if-incarcerated-spanish.pdf](https://www.Marketplace.cms.gov/outreach-and-education/understanding-the-marketplace-if-incarcerated-spanish.pdf)
- Health coverage for incarcerated people: [HealthCare.gov/incarcerated-people](https://www.HealthCare.gov/incarcerated-people)
- Medicaid Eligibility and Enrollment for Justice-involved Populations: [Medicaid.gov/state-resource-center/mac-learning-collaboratives/downloads/justice-involved-populations.pdf](https://www.Medicaid.gov/state-resource-center/mac-learning-collaboratives/downloads/justice-involved-populations.pdf)

