



For people with serious mental illnesses:

FINDING THE KEY

to successful transition from jail or prison to the community

An explanation of federal Medicaid and disability program rules

**by the
Bazelon Center for Mental Health Law
Washington DC
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Foreword

The number of people with serious mental illnesses who are incarcerated in jails and prisons is on the rise. They are often arrested as a result of behavior stemming from their illness and most would be more effectively and appropriately helped by receiving mental health services in the community. Nonetheless, many will serve a sentence and, upon release, will have no access to the services and support critical to breaking the cycle of recidivism.

Clearly, without income (to pay for housing, food and other necessities) and without health care coverage (to ensure access to health and mental health treatment and medications), most of these men and women will not be able to re-enter the community successfully. We can change this picture. There is an opportunity, prior to their release, to connect inmates to the federal entitlement programs that are specifically designed to provide the supports they need: federal disability payment programs and health coverage through Medicaid and Medicare.

Rodney Shaw's success story is an example. From a bright future as a Miami radio broadcaster, he fell into severe mental illness and addiction and ultimately became homeless. He was arrested after throwing a rock at a police car, convicted of battery and sentenced to 18 months in jail. Fortunately, the corrections system linked Rodney to a local mental health program so that, after his release, he continued with daily therapy and Narcotics Anonymous meetings. He began training as a peer specialist, and in April 2009, was hired by Miami-Dade County's Felony Jail Diversion Program, which works to provide treatment alternatives to jail and prison.

What made Rodney Shaw's life turn around so dramatically was his access to federal benefits and the collaboration between the corrections and mental health system to help him use these benefits. *Finding the Key* describes the federal benefit programs' complex and interrelated rules and some options for state and local officials to use them more effectively.

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The Bazelon Center for Mental Health law is a national nonprofit public-interest organization formed in 1972 to advance the legal rights of people with mental disabilities and ensure their equal access to the services and supports they need for participation in community life. We invite your participation toward this goal through the actions outlined here.

For people with serious mental illnesses:

FINDING THE KEY

to successful transition from jail or prison to the community

An Explanation of Federal Medicaid and Disability Program Rules

Growing numbers of men and women with severe mental illnesses are in jail or prison. Many cycle through corrections facilities repeatedly, costing criminal justice systems and communities significant resources and causing great pain to themselves and their families. This paper examines a major cause of such recidivism and outlines some ways for administrators and policymakers to address it.

In a recent study, 16.9 percent of individuals entering jail were found to have a severe mental illness such as schizophrenia or manic depression.¹ Two million bookings each year are of individuals with serious mental illnesses. Often the event precipitating arrest is directly linked to both lack of income and unmet need for services, such as mental health and addiction treatment, and supports, such as housing and employment.

For people with serious mental illnesses, access to mental health and addiction services and to the income support that can pay for housing is generally through federal entitlement programs. Yet, whether because relevant federal rules are not well understood or because state implementation of them is problematic, many unnecessarily lose their federal entitlements while in jail or prison.

Others who could qualify do not apply because they lack timely assistance from corrections staff or community mental health providers to file an application. Very few states and localities have adopted policies and procedures for assisting inmates with severe mental illnesses in claiming or maintaining federal benefits upon their release.

The resulting poverty and lack of access to health care can lead to incidents that greatly increase the likelihood that these individuals will have further contact with law enforcement. Without income support or health coverage, many people with severe mental illnesses become caught in a cycle of recidivism.

This paper describes the federal entitlements — income support through the Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) programs, and health coverage under Medicaid and Medicare, which together can enable someone with a severe mental illness to transition successfully from jail or prison to

Too Late

- ✘ During an eight-month sentence for purse-snatching in New York City's jail at Rikers Island, B.H. received treatment for schizophrenia and addiction. He was stabilized on medication, but when released, he had no way to get the medication, clinic services and substance-abuse treatment he needed and wanted. He applied for Medicaid, but had to wait 45 to 90 days for approval of his eligibility. Until then, he kept going to the hospital emergency room—often waiting all day—for five-day supplies of medication. This became so stressful that he attempted suicide. Within a few weeks he succeeded.
- ✘ The notice that B.H.'s Medicaid application was approved came five days after his funeral.

How Time Incarcerated Affects Eligibility for SSI Benefits

Incarcerated less than one full calendar month: Remains eligible for SSI and should continue to receive the full cash benefit.

✘ For example, someone who enters jail on February 10 and is released before midnight March 31 should lose no cash payments because he or she was not incarcerated for a full calendar month.

Incarcerated throughout a calendar month: Will have SSI payments suspended but not terminated.⁵ This means that an inmate who is in jail on the first of the month and stays the whole month is not eligible for a cash payment for that month.

✘ For example, someone incarcerated on February 10 and not released until April 1 will not lose February's payment (not being incarcerated for the whole month) but will lose the March payment.

Incarcerated at least one month and then released after the first of another month: Can receive an SSI cash payment for part of the month in which released.⁶

✘ For example, someone incarcerated on February 10 and released May 15 the same year will lose March and April benefits. In May, the person will be eligible for half the monthly benefit. Reinstatement should be processed quickly, but may be delayed if SSA is not informed promptly that the individual has been released.

Incarcerated for 12 consecutive calendar months: Eligibility is terminated.⁷ Technically, termination occurs after 12 continuous months of suspension. Only full months count.

✘ For example, someone incarcerated on January 31st of one year and released on February 10th the following year will have SSI eligibility terminated because benefits were suspended for 12 continuous months. This person will have to file a new application and resubmit evidence of disability.

✘ But someone who is incarcerated on February 10th of one year and is released on February 10th a year later has benefits suspended for March through January and prorated for February of the second year. This person's eligibility will not be terminated if the benefits were not suspended for 12 continuous months.

community life. In it we also suggest ways for states, localities and advocates to improve the situation.

Income-Support Benefits

People with disabilities, including those disabled by a severe mental illness, are entitled to monthly income-support payments through two different federal programs: SSI for those with low incomes and SSDI for people who have worked and paid Social Security taxes. Many people whose SSDI benefit is too low because they worked for only a short time can qualify for both SSDI and SSI.²

These federal disability benefits are linked with health care coverage:

- ✘ In most states, SSI recipients automatically have Medicaid coverage. Where they do not, a separate application will enable most to secure Medicaid.³
- ✘ All SSDI recipients qualify for Medicare after a 24-month wait.

People who have been getting SSI or SSDI payments when arrested often lose their benefits. Cash payments end after a certain period (see box) but can be restored upon release.

When Inmates Lose SSI

Generally, the length of time a person is incarcerated determines whether, or when, federal SSI benefits will be affected. The monthly payments are nearly always interrupted while someone is in jail, but benefits are payable up until the time of incarceration and sometimes a little longer, and can resume shortly thereafter, as long as the person has been incarcerated less than a year (see box).

When incarceration is for less than 12 consecutive months, the federal Social Security Administration (SSA) considers this a "suspension" and SSI payments should resume soon after the person leaves jail — as long as SSA is informed of the release and the person submits proof of the release and establishes with SSA that he or she again meets the financial and other non-disability requirements.⁴ SSA presumes that these individuals remain disabled under federal rules.

To complete this reinstatement process, the Social Security office requires verification that the person has been released. Families, community mental health workers or jail administrators can assist people in this situation by making sure SSA is alerted to the need to resume benefits and told where to send the checks. If the individual had a Representative Payee to handle their benefit check prior to incarceration, a Representative Payee must also be available

following release (the Payee need not be the same person as prior to the arrest). For these individuals, it is important that a payee is identified at the time of release to ensure benefit payments are not delayed.

People who have been incarcerated for a year or more and have had their benefits suspended for at least 12 months must file a completely new application for SSI. They will have to show that they are still disabled under the eligibility standards (see box).

When Inmates Lose SSDI

People who qualify for SSDI remain entitled as long as they meet the federal definition of disability. SSDI benefits are suspended following a conviction and incarceration for more than 30 continuous days. But SSDI benefits are not terminated due to incarceration, no matter how long the prison term. However, Social Security must verify that the person is no longer in a correctional facility before payments can resume. Specifically:

- ✘ SSDI benefits are suspended if someone has been convicted and confined in jail longer than 30 continuous days, whether or not it is a full calendar month.⁸
- ✘ SSDI benefits are suspended for any period of more than 30 continuous-days during which an individual is confined in a jail or prison in connection with a verdict of not guilty by reason of insanity or guilty but insane, or a finding of incompetence to stand trial or other similar mental defect.⁹
- ✘ SSDI benefits that were already paid may need to be recovered. For example, if someone is arrested and incarcerated starting on the fifth of the month, the following month's check, if cashed, would be an overpayment. The best way to handle this is for the check to be returned to SSA. If it is cashed, the overpayment will be withheld from future SSDI benefit checks once the prisoner is released and benefits are reinstated.
- ✘ A worker's dependents, such as a spouse or child, sometimes receive SSDI. These payments are not suspended or terminated when the worker is incarcerated; they continue even when the worker loses benefits.¹⁰

Federal rules on payment of SSDI benefits to inmates were different for people incarcerated before April 1, 2000 (see box).¹¹ These rules were then amended, effective April 2000, to the rule described above. The above description applies to everyone incarcerated since that date.

Exceptions for People Incarcerated Before April 2000

- ✘ For individuals incarcerated between February 1, 1995 and March 31, 2000, benefits are not payable for any month in which the individual was incarcerated (for all or part of the month) following conviction of a crime punishable by more than a one-year statutory sentence—regardless of the actual sentence imposed by the court.
- ✘ There is no prohibition on benefits for individuals confined in connection with a verdict of not guilty by reason of insanity or guilty but insane, or a finding of incompetence to stand trial.
- ✘ For individuals incarcerated before February 1, 1995, benefits were suspended only in the case of a felony conviction.

Qualifying for SSI or SSDI on Release

Inmates who were not receiving benefits at the time of incarceration can file an application under SSA's prerelease procedure for SSI and SSDI while in jail or prison, in anticipation of their release. They usually need assistance, however, to obtain the appropriate forms and gather the necessary evidence. Normally, review of an application takes about three months, so an inmate should apply as long as possible before the release date.

SSA will assess eligibility based on the application. If it is approved before the inmate's release, SSI payments begin as of the first day of the calendar month following release.¹² If the application is approved after the inmate is released, benefits are payable at that time, and SSI (but not SSDI) benefits may be retroactive to the first day of the month following release.

In cases of suspended benefits (or if the new application has been approved prior to release), and if the individual is in "dire need" of cash, the SSA field office can cut the check on the day the individual comes to the office to fill out the required paperwork (assuming the individual meets all requirements). An individual with a severe mental illness may also qualify for one of these special payments. To be eligible, people must demonstrate:

- ✘ a financial emergency;
- ✘ that they qualify for benefits; and
- ✘ that they have not already received benefits for that benefit period.

Pre-Release Agreements

Pre-release agreements are formal written agreements or informal verbal agreements between penal institutions and local Social Security offices.

Correctional facilities agree to:

- ✘ notify SSA of inmates likely to meet SSI criteria who will be released within the next 30 days;
- ✘ provide to SSA current medical evidence and nonmedical information that may support the inmate's claim;
- ✘ provide to SSA the anticipated release date and notify SSA if that changes; and
- ✘ notify SSA when the inmate is actually released.

SSA will:

- ✘ train corrections staff about SSI rules and work with them to ensure that the application procedures work smoothly;
- ✘ provide a contact person at Social Security to assist corrections staff with the pre-release procedure;
- ✘ process reinstatements and new applications as quickly as possible; and
- ✘ promptly notify the correctional facility of the decision on the released inmate's eligibility.

Why Benefits Are Lost and What Can Be Done About It

Correctional facilities have an incentive to inform SSA that a person is confined; they receive federal payments when they supply information resulting in suspension or termination of SSI or SSDI benefits. But they have no such incentive to advise SSA when someone is released so that benefits can be restored.

Jails and prisons can enter into agreements with SSA to provide monthly reports of inmates' names, Social Security numbers, dates of birth, confinement dates and other information. The institution receives \$400 when this information is sent within 30 days of an inmate's confinement and \$200 if it is sent within 90 days.¹³ This information should—but rarely—include an estimated release date.

Jails and prisons can also enter into pre-release agreements with the local Social Security office, which will help their staff learn the rules for pre-release processing of applications and reinstatements for SSI and SSDI.¹⁴ When such an agreement exists, SSA processes claims more quickly, inmates have assistance in gathering the information needed to support their application, and benefits are

often payable immediately upon release or shortly thereafter. (See box on the previous page.)

Health Care Coverage

Medicare and Medicaid are two sources of health coverage. People entitled to SSDI are covered by Medicare after a 24-month wait. Low-income individuals qualify for Medicaid in various ways; in most states anyone who qualifies for SSI is covered. Medicaid provides better mental health care coverage than Medicare.

Medicaid

Medicaid is a joint federal-state program. To qualify, a person must fall into one of several eligibility categories. Once eligible, the individual is covered for a package of services defined by the state under broad federal requirements. Federal law requires some services to be available, such as physician services and general hospital care. Others are offered at state option—among them, various community-based mental health clinic and rehabilitative services. As a result, Medicaid coverage varies from state to state. However, all states cover a significant array of mental health services for people with severe mental illnesses.

Most inmates with severe mental illnesses have incomes below the Medicaid limit and may therefore be eligible for coverage. Usually their eligibility for SSI is what qualifies them for Medicaid. In 32 states and the District of Columbia, SSI eligibility results in automatic Medicaid coverage. In seven other states, SSI recipients may be eligible for Medicaid but must submit a separate application for Medicaid. In the 11 states that use different rules,¹⁵ people who receive SSI nearly always qualify for Medicaid, although they must go through a separate application process.

Some low-income individuals do not receive SSI or SSDI disability benefits, either because their disability is not severe enough to meet strict federal standards or because they have not applied. But they may still be eligible for Medicaid.

Currently, 33 states and the District of Columbia cover people who become “medically needy” when their income is reduced by high health care expenses.¹⁶ States can extend Medicaid coverage to people in other categories, such as low-income families or individuals who, without access to community-based services, would be forced to live in a health care institution. Also, a number of states use waivers of federal rules to cover other groups of uninsured low-income people through Medicaid.

Suspended, not Terminated

States that have adopted policies to suspend, rather than terminate, Medicaid eligibility for those who are incarcerated include: Colorado, Florida, Ohio, Maryland, Maine, Michigan, North Carolina, New York and Oregon.

Federal Rules on Medicaid Reinstatement

✘ Many individuals will be incarcerated for so long that their Medicaid benefits will have been suspended for longer than the state's customary period of time after which a redetermination of eligibility is conducted (time varies by state). The state will reassess whether these inmates remain eligible for Medicaid. However, this assessment should be conducted prior to release because, under federal policy, a state may not drop someone from Medicaid without determining whether or not the person can qualify under any of the state's eligibility categories.²²

✘ States are permitted to use simplified procedures for redetermining the eligibility of individuals who have been incarcerated, according to federal Medicaid officials.²³

"Regardless of the simplified procedures used, unless a state has determined that an individual is no longer eligible for Medicaid, States must ensure that incarcerated individuals are returned to the rolls immediately upon release. Thus, allowing individuals to go directly to a Medicaid provider and demonstrate his/her Medicaid eligibility..."²⁴

Information about eligibility rules can be obtained from the state Medicaid agency.

Medicaid Rules on Inmates of Correctional Facilities

Under Medicaid law, states do not receive federal matching funds for services provided to individuals in jail or prison.¹⁷ However, federal law does not require states to terminate inmates' eligibility, and inmates may remain on the Medicaid rolls even though services received while in jail or prison are not covered.¹⁸ Accordingly, someone who had a Medicaid card when incarcerated may be able to use it again immediately after release to obtain needed services and medication.

The state has the flexibility under federal law to suspend the eligibility status during incarceration. But the federal Medicaid rules establish only minimum requirements, while states are permitted to impose more restrictive policies.¹⁹ Unfortunately, most states have procedures that terminate Medicaid eligibility automatically any time someone is incarcerated.²⁰

The situation for inmates who qualify for Medicaid through their eligibility for SSI can be complicated. Everyone whose SSI eligibility is terminated will lose Medicaid. When SSI benefits are suspended due to incarceration, states have the option to—and generally do—terminate an inmate's Medicaid eligibility.

Under federal rules, eligibility should be reinstated upon release unless the person is no longer eligible (see box). Before ending someone's Medicaid eligibility, states must make a redetermination of the person's potential for qualifying under all the state's eligibility categories.²¹ This redetermination need not be conducted until release is imminent, but if the released inmate still meets the state's eligibility standards for Medicaid, eligibility can be suspended instead of terminated. Regrettably, this redetermination often does not occur.

Even inmates who keep their Medicaid eligibility may lose Medicaid coverage unnecessarily because of procedures in correctional facilities. Something as simple as the loss of a Medicaid card following arrest can make it impossible to obtain mental health services from Medicaid providers upon release. This often happens because jails take possession of all personal property when booking a person. In many jurisdictions, this property is destroyed if it is not claimed within a certain time. Inmates cannot claim the property themselves and if they have no one to do it for them, their Medicaid card is destroyed.

There is one exception to the rule that no Medicaid reimbursement is available for inmates. When someone is

transferred from a jail or prison to a hospital for acute health services (for example, an appendectomy), the hospital can claim federal Medicaid reimbursement for this service. Also, if a person is in an institution temporarily pending “other arrangements appropriate to his needs,” services may remain Medicaid-reimbursable.²⁵

Generally, however, mental health services furnished to inmates must be funded by correctional systems or state or local mental health systems, not by Medicaid.

Coverage After Release

When Medicaid eligibility is linked to SSI, a person may have to jump through many administrative hoops before Medicaid benefits resume, depending on state policy and administrative procedures. For example, a former inmate may have to visit the local SSA and state Medicaid offices to confirm that he or she has been released and complete other administrative paperwork. As a result, people on SSI may have no health care coverage during the time between their release from incarceration and reinstatement of their SSI payments — normally at least one or two weeks.

One way services can be covered immediately after someone is released is for the state to continue the person’s Medicaid eligibility pending reinstatement on SSI, which will in turn restore federal Medicaid eligibility. Once the individual’s SSI is reinstated, the federal government will provide up to three months of retroactive reimbursement for Medicaid-covered services (but not for services during the time the individual was incarcerated). This means that even though federal dollars may not be available immediately for services provided after release to former inmates whose Medicaid eligibility is tied to SSI, nearly all of these individuals will eventually be covered. Providers can be paid by the state and the state will eventually receive federal funds. The state will remain fully liable only for services to the very few individuals who are not found re-eligible for SSI and Medicaid.

Medicare

Medicare will not pay for services while the individual is incarcerated. For those on SSDI, Medicare will not resume until the person’s SSDI payments resume. Reinstatement is also not simple. Medicare has four parts. Part A covers inpatient hospital care or skilled nursing facility care. Part B covers outpatient services, including mental health services and other medical services and supplies that are not covered by hospital insurance. Part C authorizes Medicare recipients to sign up for Medicare managed care plans (Medicare Advantage). Part D covers prescription drugs

through private plans. Parts B and D are optional and require premium payments. Part C is optional and may require a monthly premium payment.

While all Medicare benefits are suspended during incarceration, rules for reinstating those benefits vary.

- ✘ Part A is automatically reinstated after release.
- ✘ Part B can be reinstated, but reinstatement is dependent upon payment of the premium and if the premium has not been paid during incarceration the individual must re-enroll, which can take many months. There are also financial penalties.
- ✘ Part D can be reinstated if the individual applies to a Medicare prescription drug plan upon release. This can take a few weeks.

Individuals on SSDI pay their Part B premiums through deduction from their monthly SSDI check. Once cash benefits stop, the individuals themselves become responsible for payment of the premium. They can terminate Part B coverage at this time, if they wish. If they do not notify SSA that they are terminating the benefit and if they also make no payment for three months, SSA terminates the coverage. However, they remain responsible for back payments of premiums for those three months. If an individual is later reinstated on SSDI, these back payments will be deducted from the monthly check.

Whether an inmate should continue to pay the Part B premium during incarceration depends on several factors, including how long the incarceration is expected to last. An inmate who pays the premium during incarceration will get no benefit from that payment. But if the inmate does not pay the premium, the Part B coverage will terminate (see above). If the individual then wishes to re-enroll in Part B, the premium amount may be higher because Part B premiums are increased by 10 percent for each 12-month period a person could have been, but was not, enrolled in Part B. Also, the individual will have to re-enroll during the General Enrollment Period (January-March) with entitlement beginning July 1 of the year that enrollment takes place. Depending on the date of release, this can create a significant gap in coverage.

Part D coverage will be terminated by the Part D drug plan when the person is incarcerated. However, there are no back premiums or penalties to pay for re-instating Part D coverage. Enrollment cannot occur in anticipation of release, but only when the person is back in the community.

States have a way to protect individuals from the Part B penalties (see box).

SSI and Medicare Part B

- ✘ Individuals who have been on SSDI and Medicare prior to incarceration, and whose income level enables them to qualify for SSI upon release, can apply for SSI while incarcerated. SSI benefits then begin upon release (see SSI rules above). Most individuals who were on SSDI at the time of arrest will qualify under SSI income and resource rules upon release.
- ✘ Once the person qualifies for SSI following release, the state can pay the Medicare Part B premium for this person if the state has a Medicare buy-in option under its Medicaid plan. Under federal rules, this eliminates all Part B premium penalties and also negates the need to wait for the General Enrollment Period.
- ✘ Since SSDI benefits are reinstated one month later than SSI benefits, the person will be on SSI (and therefore Medicaid) for only one month. However, this is long enough to avoid the Medicare penalties.
- ✘ This system can also work for individuals who are dually eligible for both SSI and SSDI.

Conclusion

Federal rules on how and when inmates receive benefits are complex, but they do provide opportunities for inmates to obtain federal entitlements upon release. Instead of fostering recidivism, states and localities should support access to the benefits needed by people with severe mental illnesses who are released from jail or prison.

FORGING THE KEY

Recommendations for state and local policies to ensure successful transition from jail or prison to the community for people with severe mental illnesses

This section offers information and suggestions for advocates, state and local policymakers and other interested parties on how policies and procedures at the state and local level can facilitate access to federal benefits needed by people with mental illnesses who have served time in jail or prison. Federal rules give states and localities considerable flexibility, and some quite simple changes can make federal benefits more readily available to inmates leaving jail or prison. The improved access to benefits resulting from these changes will significantly affect inmates' ability to make a successful transition to the community, thus reducing the likelihood of recidivism.

Equally needed are programs that can help avoid the incarceration of people with serious mental illnesses by affording them access to services and supports in the community.

State and local policies should ensure:

- ✘ prompt reinstatement of federal Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) disability benefits after release;
- ✘ immediate access to Medicaid upon release;
- ✘ assistance to individuals in correctional facilities so they can apply for SSI, SSDI and Medicaid benefits prior to release;
- ✘ continuity of care for those arrested; and
- ✘ diversion of individuals from criminal justice when mental health services and supports would be more appropriate.

Vermont's Offender Reintegration Initiative

In 2006, Vermont launched the Offender Reintegration Initiative to ensure that individuals being released from prison have their benefits at the time of release. All Vermont prisons participate in the program.

✘ Eligibility specialists from the Economic Services Division work to help prisoners sign up for their benefits. Many individuals with disabilities now are able to receive their Social Security disability benefits immediately upon release.

✘ In addition to benefit applications, inmates are also assisted in having photo identification as they leave the institution—this facilitates access to services and to day-to-day needs, such as cashing a benefit check at a bank.

States Can Use State-Only Medicaid Programs to Pay When the Federal Government Does Not

Two states have policies for using state funds to provide Medicaid coverage.

- ✘ In New York, state funds pay for psychiatric medications for people leaving jail or prison, provided the individual applies for Medicaid, and for transition managers to assist former inmates in filing benefit claims.
- ✘ In Lane County, Oregon, jail inmates' state Medicaid payments continue for 14 days after arrest. After that, benefits are suspended, not terminated, so they can be reinstated immediately upon release.

What States Should Do

To accomplish these goals, states should put in place the following policies and procedures:

Toward Reinstating SSI/SSDI

- ✘ To take advantage of federal policies that enable inmates to apply for benefits prior to release, federal and state entitlement policies must be clearly explained to all local jail administrators, mental health forensic facility and prison administrators, and community mental health providers.
- ✘ State prisons should be required to have pre-release agreements with SSA to assist inmates in applying or reapplying for SSI benefits.
- ✘ States should encourage jails to enter into pre-release agreements with their local Social Security office and provide information about how to enter into such agreements.
- ✘ Prisons and jails should be given resources to pay staff to assist inmates in applying or reapplying for benefits.
- ✘ States should provide sufficient resources to local community mental health programs for case managers to assist inmates in applying for SSI before release and help them obtain needed services, housing and other supports after release.

Toward Ensuring Medicaid Eligibility

- ✘ State procedures must ensure that inmates are not removed from Medicaid when SSA notifies the state that their cash benefits are suspended due to incarceration.²⁶ State Medicaid agency procedures must ensure that this notification results only in suspension, not termination, of the inmate's Medicaid coverage.
- ✘ State Medicaid procedures should ensure that inmates who are about to be released are reinstated on Medicaid and that providers are paid, even while redeterminations of eligibility required under federal law are being conducted.
- ✘ State policy should authorize Medicaid coverage for all individuals with serious mental illnesses who are released from jail or prison and who have applied or reapplied for Medicaid or SSI benefits. Pending federal approval of the application, the state should pay 100% of the individual's service costs. It can claim retroactive reimbursement from the federal government for the service costs of the great majority who eventually receive Medicaid.
- ✘ State policy should explicitly ensure that inmates who

remain eligible for Medicaid have a Medicaid card in hand when they are released so they can access needed services immediately.

Toward Continuity of Care

Individuals with mental illnesses who are arrested should continue to have access at least to basic mental health services (particularly counseling and appropriate medications) while in jail as well as without interruption after release.

Although federal Medicaid will not pay for services in jail, people who are held temporarily pending trial or other disposition of their case still need the medications that have proven effective for them and must stay connected to mental health system services. Policies to accomplish this include:

- ✘ authorizing the use of state mental health funds for services to individuals who have just been arrested but have not yet been adjudicated; and
- ✘ ensuring that either the correctional system or the mental health system provides appropriate mental health services following adjudication.

The need for continuity of care upon release from incarceration has been addressed to date by at least one federal circuit court (see box).

At least one state court has gone even further. Rikers Island jail in New York was releasing inmates who have mental illnesses in the middle of the night with just \$1.50 and two subway tokens. Relying on state law, the court ordered the city to provide “adequate discharge planning,” the absence of which risks “a return to the cycle of likely harm to themselves and/or others” and their resulting re-arrest.²⁷

Toward Avoiding Jail

State mental health, corrections and housing policies should proactively facilitate diversion of people with serious mental illnesses from jail.

- ✘ The state must encourage and fund jails, law enforcement agencies, housing agencies and local mental health programs to collaborate in diverting people with mental illnesses from jail.

What Localities Should Do

The goals of the state policies described above should also be reflected at the local level. Local jurisdictions can take a number of steps to ensure this.

Court Rules for Continuity of Care

- ✘ According to the appeals court for the Ninth Circuit, the Eighth Amendment requires states to ensure that a released inmate who has been receiving medication while incarcerated leaves the facility with “a supply sufficient to ensure that he has that medication available during the period of time reasonably necessary to permit him to consult a doctor and obtain a new supply.”²⁸
- ✘ This decision is now law in California, Nevada, Arizona, Oregon, Washington, Montana, Idaho, Alaska and Hawaii.

Six Keys to Success

The National GAINS Center has identified six key features for creating a successful jail diversion program:

(1) Interagency collaboration:

Service integration at the community level, including involvement of social services, housing, mental health, health, local corrections (institutional and community), criminal justice and substance abuse agencies.

(2) Active involvement: Regular meetings for service coordination and information sharing and the establishment of written Memoranda of Understanding (MOUs).

(3) “Boundary-spanner”: Staff who bridge the mental health, criminal justice, and substance abuse systems and manage cross-system staff interactions.

(4) Leadership: A strong leader to network and coordinate.

(5) Early identification: Individuals should be screened, at the earliest point possible, for mental health treatment needs and to determine whether they meet the criteria for diversion.

(6) Cross-trained case managers: Case managers should have adequate knowledge and experience with mental health and criminal justice systems.

http://gainscenter.samhsa.gov/html/jail_diversion/what_is_jd.asp. For more information on effective diversion action, see Practical Advice on Jail Diversion: Ten Years of Learning from the CMHS National GAINS Center (2007), http://www.gainscenter.samhsa.gov/pdfs/jail_diversion/PracticalAdviceOnJailDiversion.pdf.

- ✘ Jail personnel should be trained in federal and state rules for SSI, SSDI, Medicaid and Medicare so they can assist inmates in accessing their benefits.
- ✘ Jails should enter into pre-release agreements with SSA and collaborate with their local Social Security offices to help inmates obtain SSI and SSDI benefits as soon as possible after release.
- ✘ Jails should have staff (or should contract with community mental health providers) to assist people who do not already have these benefits in applying for them and to assist those who had benefits when arrested in applying for reinstatement as they are released.
- ✘ Jails can ensure that everyone entering jail with a Medicaid card gets the card back when released or has the card given to someone designated by the inmate.
- ✘ Jails can collaborate with community mental health providers to ensure that inmates have access to appropriate services and supports as soon as they are released and to improve continuity of care for inmates.
- ✘ Local mental health authorities should develop collaborative relationships with law enforcement agencies and jails, so that people who would be better served with mental health services and supports are not arrested or are diverted to the community mental health service system soon after their arrest. Programs may include specialized crisis-response teams or pre-booking or post-booking programs.

The Role of Local Community Mental Health Providers

Community mental health agencies need to focus more attention on this population. They should:

- ✘ have programs and policies to serve those most in need, particularly people with mental illnesses who are at risk of arrest, those arrested but diverted into treatment, and those released from jail or prison;
- ✘ ensure that their services are accessible for those most in need 24 hours a day, seven days a week; and
- ✘ ensure that case managers assist people who are arrested in maintaining or securing their entitlements.

What Advocates Can Do

Families and other advocates for people with mental illnesses can facilitate the adoption of appropriate policies, such as those outlined in this paper. For example, they might:

- ✘ seek review of all state policies on Medicaid benefits for

people who are arrested and suggest improvements in the policies to ensure access to benefits upon release;

- ✘ work for adoption of policies to ensure access to state Medicaid immediately upon release, such as state funding of services pending a released inmate's reinstatement on SSI or approval of initial federal Medicaid eligibility;
- ✘ collaborate with jail administrators and community mental health programs to ensure that all parties have the training to correctly understand federal and state policies on entitlements for jail inmates with mental illnesses;
- ✘ develop and promote a system to encourage families and others to give jails information on the benefit status of people with mental illnesses who are arrested;
- ✘ encourage jails to enter into pre-release agreements with SSA and encourage community mental health agency staff to assist inmates in applying or reapplying for benefits prior to release;
- ✘ support the development of diversion programs for people with mental illnesses and of programs that ensure smooth transitions for inmates with mental illnesses leaving jail or prison; and
- ✘ lobby the state legislature and pressure state mental health authorities to address the needs of people with mental illnesses who are most in need and at risk of arrest by creating more effective community mental health systems.

For more information, see *Lifelines*, a Bazelon Center publication in three volumes, on how states, localities and jails and prisons can adopt policies and practices that ensure access to benefits upon release (available via www.bazelon.org/publications; see box on the next page).

Call for Action

Jail and prison inmates who have a severe mental illness have difficulty transitioning back into the community unless they have both adequate resources and access to mental health services. It is sound public policy—from a public-safety and economic viewpoint as well as from a humane perspective—to ensure released inmates' access to the benefits that can enable them to live with dignity and freedom in the community.

Until state and local government policies and procedures change, inmates with serious mental illnesses will remain without access to essential income support and health and mental health services upon their release. The inevitable result is that many will soon be arrested again.

Collaboration Across Systems in Maryland

In Maryland, the mental health and criminal justice partnership (MHCJP) was created by legislation in 2005. MHCJP is a partnership between the Division of Corrections, Mental Hygiene Administration, Department of Human Resources Alcohol & Drug Abuse Administration, Maryland judiciary, Office of the Public Defender, mental health advocacy and consumer groups and other interested parties.

Since its inception, the MHCJP has been meeting monthly to improve services for individuals with mental illnesses who become involved with the criminal justice system.

Results include: suspension of eligibility for Medicaid and expediting of new applications, securing initial appointments with outpatient mental health providers within 2-4 weeks of release, issuance of state ID cards to inmates prior to release, provision of a 30-day supply of psychiatric medication upon release and training correctional officers, police, parole and probation officers on mental health issues.

Bazelon Center Publications Spell Out Steps for Benefit Access upon Release

Finding the Key is available both online and in print from the Bazelon Center. The Center has also published a blueprint to aid state and local governments and jail and prison administrators in adopting relevant policies and procedures to ensure successful re-entry by helping inmates with benefit issues.

✘ **LIFELINES: Linking to Federal Benefits for People Exiting Corrections** offer a series of easy-to-follow steps for planning and implementing a benefits initiative as part of efforts to expand re-entry programs.

Other Publications from the Bazelon Center

✘ **Creating New Options:** Training manual and PowerPoint for corrections administrators and staff on access to federal benefits for people with mental illnesses leaving jail or prison (2008)

✘ **Arrested? What Happens to Your Benefits if You Go to Jail or Prison?** A pocket-size booklet for inmates, family members and advocates. (2004)

All are available for purchase or download at www.bazelon.org/issues/criminalization, or contact the publications desk via pubs@bazelon.org or 202-467-5730 ext 140

Notes

- 1 Steadman, H., Osher F., et al. Prevalence of serious mental illness among jail inmates. *Psychiatric Services* 2009 60: 761-765. Accessed 7/21/09 at <http://psychservices.psychiatryonline.org/cgi/reprint/60/6/761>.
- 2 SSDI benefit amounts depend on wages and length of time employed. For more information on the complex eligibility rules for SSI and SSDI, contact a local Social Security Office or call 1-800-772-1213.
- 3 The following states do not automatically grant Medicaid coverage to those on SSI: Connecticut, Hawaii, Illinois, Indiana, Minnesota, Missouri, New Hampshire, North Dakota, Ohio, Oklahoma and Virginia.
- 4 20 C.F.R. § 416.1321(b).
- 5 20 C.F.R. § 416.211.
- 6 20 C.F.R. § 416.421.
- 7 20 C.F.R. § 416.1335.
- 8 42 U.S.C. § 402(x)(1)(A)(i), as amended by Public Law 106-170.
- 9 42 U.S.C. § 402(x)(1)(A)(ii) as amended by Public Law 106-170
- 10 20 C.F.R. § 404.468(a).
- 11 The old rules will continue to apply to individuals whose jail or prison confinement began before April 1, 2000.
- 12 20 C.F.R. § 416.211.
- 13 42 U.S.C. § 1382(e)(1)(I) as amended by Public Law 104-193, the Personal Responsibility & Work Opportunities Reconciliation Act of 1996 (SSI-incentive effective for reporting individuals whose confinement began after March 1, 1997); 42 U.S.C. § 402(x) as amended by Public Law 106-170, the Ticket to Work & Work Incentives Improvement Act of 1999 (SSDI-incentive effective for reporting individuals whose confinement began after April 1, 2000).
- 14 Pre-Release Procedure for the Institutionalized, authorized under Section 1631(m) of the Social Security Act, 42 U.S.C. § 1383(m). See POMS SI 00520.900-930 (Eligibility).
- 15 See note 3.
- 16 42 C.F.R. § 435.300. States that do not cover the medically needy population under Medicaid are: Alabama, Alaska, Arizona, Colorado, Delaware, Idaho, Indiana, Mississippi, Missouri, Nevada, New Mexico, Ohio, Oklahoma, Oregon, South Carolina, South Dakota and Wyoming.
- 17 Social Security Act § 1905(a)(A) and 42 U.S.C. § 1396(d)(a)(27)(A).
- 18 Social Security Act § 1905(a)(A).
- 19 National Gains Center for People with Co-Occurring Disorders in the Justice System, *Maintaining Medicaid Benefits for Jail Detainees with Co-Occurring Mental Health and Substance Use Disorders* (1999); Tim Westmoreland, *Medicaid & HIV/AIDS Policy* 15-17 (1999).
- 20 *Ibid.*
- 21 42 C.F.R. § 435.916.

- 22 42 C.F.R. § 435.100.
- 23 Letter from HHS Secretary Donna Shalala to Congressman Charles Rangel, April 6, 2000.
- 24 Letter from Sue Kelly, Associate Regional Administration, Division of Medicaid and State Operations, HCFA Region II, to New York Medicaid Director, September 14, 2000.
- 25 42 C.F.R. § 435.1009(b).
- 26 The Social Security Administration sends state Medicaid agencies a notification that the person's status is now N-22, indicating confinement in jail or prison.
- 27 *Brad H. v. City of New York*, 185 Misc.2d 420, 431 (N.Y. Sup. Ct. 2000), *aff'd*, 276 A.D.2d 440 (N.Y. App. Div. 2000).
- 28 *Wakefield v. Thompson*, 177 F.3d 1160, 1164 (9th Cir. 1999).

For More Information

**✘ National GAINS Center
Policy Research Inc.**

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1/800/311-4246

<http://www.prainc.com/>

✘ Bazelon Center for Mental Health Law

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**✘ Council of State Governments
Justice Center, Justice and Mental
Health Collaboration**

<http://www.consensusproject.org>

