

Region VIII

May 24, 2012

Sue Birch
Executive Director
Colorado Department of Health Care Policy and Financing
1570 Grant Street
Denver, CO 80203-1818

Dear Ms. Birch:

Re: Suspension of Medicaid Eligibility for Incarcerated Persons

This is in response to your letter dated May 1, 2012, requesting clarification on Federal Medicaid policy for Medicaid eligible individuals that become incarcerated. Specifically your letter focuses on community correction programs. The responses are based on the Centers for Medicare & Medicaid Services letter dated December 2, 2008, and Health Care Financing Administration Letter dated December 12, 1997. Please note that this is the current policy and is subject to change based on appropriate regulatory processes by CMS.

If facilities under the State's Community Corrections programs are limiting the individual's ability to leave the facility on permanent basis, such as through the requirement for the individual to return to the center at night, CMS interprets these facilities as institutions for incarceration. While the State provides information that the centers are separate from any governmental unit, we still believe that the individuals who reside in these settings are considered inmates. From the information we have, we conclude that Colorado Community Corrections programs are an integral part of the State's criminal justice system and act on the behalf of an overburdened traditional prison system.

Additionally, according to Colorado Revised Statute:

17-27-106 Escape from custody from a community corrections program.

(1) If an offender fails to remain within the extended limits of such offender's confinement or placement or fails to return within the time prescribed to any community corrections program to which such offender was assigned or transferred or if any offender who participates in a program established under the provisions of this article leaves such offender's place of employment or, having been ordered by the executive director of the department of corrections or the chief probation officer of the judicial district to return to the community corrections program, neglects or fails to do so, such offender shall be deemed to have escaped from custody and shall, upon conviction

thereof, be punished as provided in section 18-8-208, C.R.S., and all reductions in sentence authorized by part 2 of article 22.5 of this title shall be forfeited.

- (2) *The division of criminal justice is hereby authorized to provide notice to appropriate law enforcement agencies and the sentencing court, if applicable, that there is probable cause to believe that an offender has escaped from custody.*

Since the offender is “deemed to have escaped from custody”, it further appears that these community correction programs are in fact acting on behalf of law enforcement and are a “de-facto prison”. CMS interprets this to mean they are inmates.

Additionally, it is our understanding from State staff that when individuals leave the secure facility they acknowledge that they will not receive any healthcare benefits, and in fact are required to sign something that acknowledges this. It appears that these individuals are willing to forego medical care to live in a community correction type setting.

As you know, Federal Financial Participation is available to paroled individuals. However, individuals in community corrections are not considered to be on parole per State statute. A change in the statute may be something the State wishes to pursue so that FFP is available for these individuals.

We do understand the complex nature of this issue and remain available to engage in dialogue with you about the need to update this policy and further clarify issues. Please contact Diane Dunstan if you have questions regarding this letter. She may be reached at (303) 844-7040 or at Diane.Dunstan@cms.hhs.gov.

Sincerely,



Richard C. Allen
Associate Regional Administrator
Division of Medicaid & Children's Health Operations

cc: Chris Underwood