

The Honorable Eliot Spitzer
State Capitol
Albany, NY 12224

Antonia C. Novello, M.D., M.P.H., Dr. P.H.
New York State Commissioner of Health
New York State Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Dear Governor-elect Spitzer and Commissioner Novello:

We write on behalf of the memberships of four committees of the New York City Bar Association -- Corrections, Health Law, Mental Health Law, and Social Welfare Law -- to urge New York State to cease its current practice of terminating Medicaid eligibility for individuals incarcerated in state and local correctional facilities. We urge the State instead to suspend Medicaid eligibility. Suspension will allow incarcerated Medicaid beneficiaries to receive needed benefits promptly upon release, thereby promoting continuity of care.

Under the present system, formerly eligible individuals must reapply for Medicaid upon their release from correctional facilities. This process typically results in a significant delay in these individuals' ability to access needed care in their communities. Members of this population already are at high risk for physical and mental illnesses, including substance addiction. Additionally, many releasees have serious chronic conditions for which they received care while in prison. It is imperative that they receive swift access to adequate and affordable medical care upon release. Failure to receive such assistance can hinder their ability to become productive members of the community, and in fact, may threaten the safety and well-being of the communities to which formerly incarcerated individuals return.

Moreover, while awaiting the reinstatement of Medicaid coverage, formerly incarcerated individuals frequently turn to emergency rooms and other costly forms of care for assistance. This practice places a heavy financial toll on New York State for services that otherwise would be compensated through federal Medicaid matching funds. Suspension, rather than termination, of Medicaid benefits to eligible individuals would be a cost-effective solution to remedy this problem and ensure that formerly incarcerated individuals receive seamless medical coverage.

While Federal Financial Participation ("FFP") is not available to incarcerated individuals, this exclusion in no way affects an individual's eligibility for Medicaid. Federal law clearly allows states to suspend an eligible individual from payment status

during a period of incarceration. *See* Letter from The Secretary of Health and Human Services to the Honorable Charles B. Rangel, dated April 6, 2000 (“April 6th HHS Letter”) and Letter Glenn Stanton, Acting Director of the Disabled and Elderly Health Programs Group to State Medicaid Directors & CMS Associate Regional Administrators for Medicaid, dated May 25, 2004 (attached). Suspension enables an individual to maintain his status as Medicaid eligible, while precluding the filing of claims prior to his release. Moreover, the federal government has made clear that while such a procedure is voluntary, “a State must ensure that the incarcerated individual is returned to the rolls immediately upon release, unless the State has determined that the individual is no longer eligible for some other reason.” (*See* April 6th HHS Letter).

We strongly encourage New York State to establish a policy ensuring that individuals who meet Medicaid eligibility requirements are placed in a “suspended” status during incarceration. Please let us know how we might help to bring about this important change from current practice. We look forward to hearing from you soon.

Sincerely,

cc:

Chauncey G. Parker, Esq.
Director of Criminal Justice

Lucien LeClaire
Acting Commissioner, New York State Department of Correctional Services

Eliot L. Spitzer, Esq.
Attorney General

Kimberly A. O’Connor, Esq.,
New York State Medicaid Inspector General