FINAL REPORT

Colorado Commission on Aging

Improve Prison Release Outcomes

Senate Bill 21-146

Issued to the Colorado General Assembly on:

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Criminal Justice Reform Committee

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Executive Summary

The aging population is the fastest growing within Colorado prisons. Lack of immediate access to health insurance and health care services upon release is a barrier to helping those with high medical and/or behavioral health needs to successfully return to the community, particularly for those 65 or older.

During the 2021 legislative session, the General Assembly passed Senate Bill (SB) 21-146: Improve Prison Release Outcomes. The bill included a section directing the Colorado Commission on Aging (CCOA) to study and make recommendations to ensure that people 65 years of age and older can access health insurance coverage after release. The CCOA's statutory purposes include conducting studies about relevant issues of concern to older Coloradans and offering policy recommendations to improve their well-being. The CCOA formed a Criminal Justice Reform Ad-Hoc Committee to complete the study as directed in SB 21-146.

The Ad-Hoc Committee spent months reviewing research (See "References", consulting with subject matter experts at state and federal agencies (See "Introduction") and analyzing relevant data (from the Colorado Department of Corrections and Health Care Policy and Finance). This work illuminated key findings, including:

1. Eligibility rules and timeframes for Medicare, Medicaid and Exchange plans are detailed and complex. There are a variety of federal and state laws and regulations that determine enrollment and eligibility requirements that are not aligned and are thus often difficult to navigate.
2. Federal dollars cannot be used to pay for healthcare for incarcerated people in local jails or in state prisons, except when they are hospitalized for more than 24 hours in a separate healthcare facility. When an individual is in custody, the responsible penal authorities have the duty to provide all necessary medical care.
3. The Colorado Department of Corrections' data indicate that there are currently over 1,000 prisoners 63 or older in our prisons, and 70 percent have a mandatory release date that might indicate they will need to connect to health coverage upon release. These individuals have significant medical needs (over 70 percent have chronic health conditions, complications, high medical needs and/or terminal illness).
4. The interplay of Medicare and Social Security complexities including enrollment constraints, needed resources for premium payments, required work quarters and payment of enough payroll taxes, and incarceration release timeframes have created unique challenges to accessing health care for these older adults.
5. The Colorado Department of Corrections is in the planning and implementation stages of a Benefits Acquisition Program to assist with screening and benefits acquisition for special needs parole, SSI/SSDI, Medicaid and Medicare eligibility.
6. Colorado's status as a group payer state as opposed to a Part A Buy-in State creates enrollment barriers for Medicare and the Medicare Savings Program (group payer states make up a minority of states).
7. The Centers for Medicare and Medicaid Services (CMS) is implementing a Special Enrollment Period (a time outside the yearly Open Enrollment Period when individuals can sign up for health insurance) which could include being released from incarceration through the Consolidated Appropriations Act, 2021 (H.R. 133).

8. Relocating inmates with extensive healthcare or end-of-life needs will create cost savings for the Colorado Department of Corrections and better care and supports for those released from prison.

Based on these findings, the CCOA Criminal Justice Reform Ad-Hoc Committee has arrived at the following five key recommendations that will make measurable improvements for Coloradans who are released from prison at age 65 or older. These recommendations align with work that is concurrently happening at the Department of Corrections on benefits acquisition, at the Department of Health Care Policy and Finance to address gaps in coverage, and at a variety of community and advocacy organizations in Colorado and nationally. *Note: the recommendations are listed in order of importance here, but the location of the discussion for each is listed at the end of the recommendation.*

1. The CCOA recommends a Medicare Part A Buy-in agreement between the Department of Healthcare Policy and Finance and the Centers for Medicare and Medicaid Services (CMS) that would allow for enrollment outside of defined January 1 through March 31 enrollment period (See Section 3).
    a. As a first step, the CCOA recommends partnering with the Department of Health Care Policy and Finance (HCPF) and Department of Corrections (CDOC) on a study to understand the costs-benefits of Part A buy-in for Colorado.

2. CCOA recommends collaborating with the Colorado Division of Insurance and the Colorado Department of Corrections to advocate for Centers for Medicare and Medicaid Services (CMS) to create a special enrollment period for those being released from prison at age 65 or older. Ideally this special enrollment period for release from incarceration would include all Medicare parts: A, B, C, D (See Section 3).

3. The CCOA recommends advocating for continued support of a robust benefit acquisition process within CDOC (See Section 2).
    a. The CCOA recommends making videos (similar to a PSA - public service announcement – an educational message intended to raise awareness) utilizing subject matter experts and formerly incarcerated individuals to inform incarcerated individuals of available options prior to release.
    b. The CCOA recommends ongoing navigation support in the acquisition of health benefits for individuals approaching 65 and 65 or older (within CDOC and within the community).
        i. Navigation resources should also be leveraged within CDOC for people entering incarceration that are Medicare/ Supplemental Security Income (SSI)-enrolled to be counseled on benefits suspension and re-enrollment upon release.
        ii. These navigation supports include identifying long-term supports and assistance for those with high needs.

4. The CCOA recommends support for the Governor's FY 22-23 funding request: Long Term Compassionate Care Project (See CDOC Department Priority: R-03), which would be a set of reserved beds in a private facility that would allow inmates to be released to a facility that better supports their need for extensive or end-of-life care. The state would contract with the private entity that specializes in nursing care and guarantees bed availability for special needs parolees. Housing this population in an appropriate facility would alleviate the high healthcare costs that CDOC is experiencing and would allow the utilization of federal funding with Medicaid reimbursement (See Section 3).

5. The CCOA recommends expanding and publicizing the already-established Take Care Health Matters website that is a project of the Colorado Criminal Justice Reform Coalition. This website is currently focused on Medicaid and would be expanded to help those released from prison understand how to navigate Medicare in coordination with the CDOC Benefit Acquisition Program, State Health Insurance Assistance Programs (SHIPs) and Area Agencies on Aging (AAAs) as appropriate.

Additional detail including the background and rationale for each recommendation is included in the report to follow.

Introduction

During the 2021 legislative session, the General Assembly passed Senate Bill (SB) 21-146: Improve Prison Release Outcomes. The bill included a section directing the Colorado Commission on Aging (CCOA) to study and make recommendations to ensure that people 65 or older who are released from prison can access health insurance after release.

The CCOA represents stakeholders with a range of expertise from around the State. Conducting studies and offering policy recommendations to improve the well-being of older Coloradans are two of the key statutory purposes for the 15 commissioners. The Commission formed a Criminal Justice Reform Ad-Hoc Committee to complete the study required in SB 21-146 starting from the belief that older adults are a vital part of Colorado's urban, rural, and tribal communities. Their lifetimes of experience, knowledge and wisdom are assets to our state and communities alike.

The Criminal Justice Reform Ad-Hoc Committee offers this report to the legislature to document months of extensive research (See "References") and consulting with subject matter experts including:

- People with lived experience
- Benefits in Action – a project of the Colorado Nonprofit Development Center dedicated to improving the understanding, access, and utilization of healthcare
- Centers for Medicare & Medicaid Services (CMS) – the federal agency that is part of the Department of Health and Human Services overseeing Medicare, Medicaid, and the Children's Health Insurance Program (CHIP)
- Colorado Criminal Justice Reform Coalition – a nonprofit organization whose mission is to eliminate the overuse of the criminal justice system and to advance community health and safety
- Colorado Department of Corrections – Colorado's state agency responsible for corrections
- Colorado Department of Health Care Policy and Finance – Colorado's Medicaid Agency
- ConnectAurora – a nonprofit assister to Connect for Health Colorado
- Connect for Health Colorado – Colorado's public, nonprofit health insurance marketplace
- Justice in Aging – a national advocacy organization
- Social Security Administration – the federal agency that administers retirement, disability and survivors' benefits and enrolls individuals in Original Medicare (Part A and Part B)
- Colorado State Health Insurance Assistance Program (Colorado SHIP) – helps Medicare enrollees navigate the Medicare system housed within the Division of Insurance

Research and conversations with these authorities only confirmed the CCOA's understanding that eligibility rules and timeframes for Medicare, Medicaid and Exchange plans are detailed and complex. They are derived from a variety of state and federal laws and regulations that are not aligned and are thus often difficult to navigate. The specific rules, challenges and current costs associated with each of the programs are included in fact sheets in the Appendices to this report for use as appropriate, but the report does not assume complete understanding and familiarity with the programs.

Colorado Commission on Aging Background

The Colorado Commission on Aging (CCOA) was established under the authority of the Older Coloradans Act (C.R.S. Sections 26- 11-100.1 to 26-11-106) to serve as the primary advisory body on all matters affecting older persons. The CCOA is a bipartisan volunteer organization of seventeen people appointed by the governor and approved by the state Senate to serve for four-year terms. There are two members appointed to each of the seven congressional districts, and members representing that district may not be from the same political party. There is also one at-large commissioner and one member each of different parties from the state Senate and House.

Commissioners' statutory duties include:

- Conducting, and encouraging others to conduct, studies of problems of the state's older people
- Assisting government and private agencies to coordinate their efforts on behalf of the aging and older adults in order that efforts are effective and non-duplicative
- Promoting and aiding in the establishment of local programs and services for Colorado's aging and older adults
- Conducting promotional activities and programs for public education on problems of the aging
- Reviewing existing programs for the aging and making recommendations to the governor and General Assembly for improvements

The CCOA Criminal Justice Reform Ad-Hoc Committee reached consensus on five key recommendations that will make measurable improvements for people who are released from prison at age 65 or older. These recommendations align with the work that is concurrently happening at the Colorado Department of Corrections on benefits acquisition as well as with the Department of Health Care Policy and Finance and a variety of community/advocacy organizations.

Department of Corrections Background

The aging population is the fastest growing within the Colorado Department of Corrections' 19 state and 2 private prisons. A review of November 2021 data from CDOC included 1,012 prisoners aged 63 or older. Seventy percent (or 706) of these individuals have a Mandatory Release Date (MRD) during the next 30 years (through 2051). This subgroup was used as a

point-in-time proxy to describe people currently incarcerated who may need benefits acquisition services. It is not intended to be indicative of future populations over time.

Of the subgroup of prisoners 63 or older with an MRD through 2051, almost 96% of them are male. Race and ethnicity include:

- 59% white
- 18% Hispanic
- 19% Black
- 2% American Indian
- 2% "Other"
- Less than 1% Asian

Indicators of Intellectual Developmental Disability (IDD), Mental Health and Substance Use Disorders were relatively low in the population:

- Mental Health Code (less than 2%)
- IDD code (3%)
- Substance Use Code (13%)

Conversely, medical needs are prevalent in the subset. Over 70 percent of the population was labeled "M3" or higher, meaning they have chronic health conditions maintained by ongoing medication, advanced chronic health conditions, complications, high medical needs and/or terminal illness.

Describing how many incarcerated individuals would or would not be eligible for premium-free Medicare Part A is somewhat challenging. Over 40 percent (290) individuals had prior incarcerations before the current one reflected in the CDOC data. However, only 9 percent entered prison prior to their 35th birthday. These two numbers likely can be taken as a rough proxy for how many individuals worked at least 40 quarters contributing to the Medicare trust fund. Thus, the assumption is that a majority of incarcerated individuals have enough work quarters to receive premium-free Medicare Part A.

CDOC Terms:

Community Corrections - A sentencing or placement alternative to incarceration

Discretionary Release - Release of an inmate who has met their parole eligibility date but not yet met their mandatory release date

Mandatory Release Date (MRD)- The date on which an inmate must be released to mandatory parole if they have not been granted discretionary parole

Parole Eligibility Date – The date when an inmate becomes eligible for parole and is able to submit a parole application to the Parole Board to be released to the community

Sentence Discharge Date - The date a sentence or combination of sentences is complete, including all components of the sentence (e.g., incarceration component and mandatory parole component)

Special Needs Parole - Allows people who do not pose a threat to society and who need medical treatment for serious, chronic health conditions or mental illnesses to be released from prison before their parole eligibility date

Lack of immediate access to health insurance upon release is a barrier in helping those with high medical and/or behavioral health needs to successfully be released to the community, especially for those over the age of 65. Federal dollars cannot be used to pay for healthcare or other services for incarcerated people in local jails or in state prisons, except when they are hospitalized for more than 24 hours in a separate healthcare facility. When an individual is in custody, the responsible penal authorities have the duty to provide all necessary medical care.

Transitioning from the prison system of health care to accessing care and medications paid by insurance is fraught with challenges.

Though access to Medicare benefits is suspended during incarceration, Medicare enrollment rules remain in place. Those who become eligible and are not enrolled while incarcerated face obstacles and penalties upon release. Beneficiaries who are incarcerated or in custody need to continue to pay their monthly Part B premiums to avoid termination of Part B coverage. Beneficiaries who are released from custody and have not maintained Part B coverage can enroll in Part B during the next General Enrollment Period (January through March with coverage starting July 1). They will be assessed a monthly late enrollment penalty for as long as they have Part B coverage. The interplay of Medicare enrollment constraints and premium payments, payment of enough payroll taxes into the Part A trust fund, and incarceration timeframes have created some unique challenges in accessing health care for these older adults. The CDOC has initiated planning and hiring to better support these individuals as they return to the community.

Report Contents

The remainder of this report includes the required information gathered by the Ad-Hoc Committee as specified in SB 21-146 as follows:

Section 8 (A)	Health insurance options that might be available, including Medicare, Medicaid, Social Security, the Old Age Pension Fund or any other potential options for health care insurance and any eligibility criteria that may uniquely impact a formerly incarcerated population;	Report Section 1 and Appendix 1-3
Section 8 (B)	Enrollment processes for each health insurance option and the cost for each option;	Report Section 1 and Appendix 1-3
Section 8 (C)	Processes the Department of Corrections would need to have in place, both prior to release and after release, to ensure people sixty-five years of age or older are able to enroll in affordable health insurance upon release;	Report Section 2
Section 8 (D)	Potential challenges, gaps, or resources needed to ensure that inmates sixty-five years of age or older have health insurance upon release; and	Report Section 3
Section 8 (E)	Any other recommendations relevant to improving health care access for people sixty-five years of age or older after release from prison.	Report Section 3

Report Section 1: Health insurance options, Enrollment processes and Costs

This section of the report describes health insurance options that might be available to individuals 65 or older upon release from incarceration, including Medicare, Medicaid, Social Security, the Old Age Pension Fund and Colorado's Health Benefits Exchange (Connect for Health Colorado), as potential options for health care insurance coverage. The Social Security Administration and retirement or disability benefits, while technically not health insurance, have significance in enrollment and eligibility determinations, especially for Medicare. The specific eligibility rules, challenges and costs associated with each of the programs are included in fact sheets in the Appendices to this report for use as appropriate, but the report does not assume complete understanding and familiarity with the programs.

Introduction

The COVID-19 pandemic raised awareness about the hardship faced in obtaining and understanding health insurance (including coverage for prescription drugs) by prisoners released at or after the age of 65. The regulatory and administrative barriers to access health care benefits can result in a lack of continuity of care and difficulty in obtaining medication after release, especially with populations that have high medical, mental health and substance misuse needs.

Trying to provide special needs parole (see text box) to protect vulnerable prisoners during the COVID-19 crisis was particularly challenging given the complexity in healthcare enrollment timeframes and eligibility.

Older Coloradans released from prison at or after age 65 may find insurance coverage through Medicare, Medicaid, Connect for Health Colorado, or Veteran's or military benefits. In rare cases, inmates may be eligible for retiree health coverage of their own or through their spouse.

Special needs parole - as defined in Colorado Revised Statutes section 17-1-102 (7.5) (a) applies to persons in custody of the Department of Corrections that may be eligible for parole prior to or after the parole eligibility date pursuant to this section if:

The state board of parole determines, based on the special needs offender's condition and a medical evaluation, that he or she does not constitute a threat to public safety and is not likely to commit an offense; and

The state board of parole approves a special needs parole plan that ensures appropriate supervision of and continuity of medical care for the special needs offender.

Medicare

Generally, Medicare is available for people aged 65 or older, certain people with disabilities who are under age 65, and people of any age who have permanent kidney failure. When individuals apply for retirement or disability benefits from Social Security, it also serves as an application for Medicare. Once they get approved for Social Security, they automatically get Part A coverage once they are eligible for Medicare.

Part A (hospital insurance) helps cover inpatient care in hospitals, skilled nursing facility care, hospice care, and home health care.

Part B (medical insurance) helps cover:

- Services from doctors and other health care providers
- Outpatient care
- Home health care
- Durable medical equipment (like wheelchairs, walkers, hospital beds, and other equipment)
- Many preventive services (like screenings, shots, or vaccines, and yearly "Wellness" visits)

Part C (Medicare Advantage) is a Medicare-approved plan from a private company that offers an alternative to Original Medicare for health and drug coverage. These "bundled" plans include Part A, Part B, and usually Part D. Plans may have lower out-of-pocket costs than Original Medicare (Part A and B) and may offer some extra benefits that Original Medicare doesn't cover, like vision, hearing, and dental services.

Part D (drug coverage) helps cover the cost of prescription drugs. Individuals can join a Medicare drug plan in addition to Original Medicare or get it by joining a Medicare Advantage Plan with drug coverage. Plans that offer Medicare drug coverage are run by private insurance companies that follow rules set by Medicare.

Eligibility for Medicare Part A (Hospital Insurance) continues uninterrupted while an individual is in prison. To keep Part B (Medical Insurance) coverage, the monthly premiums must be paid, or coverage will end. If coverage ends while someone is in prison because they didn't pay their Medicare premiums, they may enroll during a General Enrollment Period (January through March of each year). Enrolling during a General Enrollment Period allows Part B coverage to start in July in the year in which they enroll. However, individuals are responsible for any unpaid past due premiums, and they may have to pay a late enrollment penalty for as long as they have Part B. While Medicare generally doesn't pay for hospital or medical bills during incarceration, they recommend paying Medicare medical insurance premiums to prevent any gaps in coverage and to avoid late enrollment penalties. See Appendix I.

Medicaid (Health First Colorado)

Medicaid provides health coverage to eligible low-income adults, children, pregnant women, elderly adults, and people with disabilities. People receiving Supplemental Security Income (SSI) benefits automatically receive Medicaid. Older adults with Medicare who also qualify for Medicaid are referred to as Medicare-Medicaid enrollees or dual eligibles.

In 2017, the Colorado Health Institute reported that Colorado had 73,000 dual eligibles, or 15 percent of the state's Medicaid enrollees and 15 percent of Medicare beneficiaries. There are two categories of dual eligibles – full and partial. For people who are fully eligible for both programs, Medicare pays for hospitalizations, physician services, prescription drugs, post-hospital home health care and some rehabilitation services. Additionally, Medicaid pays the Medicare Part B premium, co-payments and deductibles that apply to various Medicare covered services as well as mental health care services. For older adults and those with disabilities in need of long-term care, Medicaid pays the full cost of these services, whether in a nursing home or community-based setting. Partial dual eligibles have slightly higher incomes, and Medicaid pays only for the Medicare Part B premium, co-payments and deductibles.

Colorado Medicaid also administers Medicare Savings Programs (MSP), which help people with limited income and resources pay for some or all of their Medicare premiums and may also pay their Medicare deductibles and coinsurance. In some cases, Medicare Savings Programs may also pay Medicare Part A (Hospital Insurance) and Medicare Part B (Medical Insurance) deductibles and coinsurance. The MSPs have specific income and resource limits described in Appendix II.

There are several different Medicaid long-term care programs for which older Coloradans may be eligible. These programs have slightly different financial and medical (functional) eligibility requirements, as well as varying benefits.

The limited Incarcerated Benefit plan for incarcerated individuals allows Health First Colorado (Colorado's Medicaid Program) to pay for inpatient service and those services related to the inpatient stay for incarcerated Health First Colorado eligible individuals who require a 24-hour or more of inpatient hospital care.

Currently, upon release from incarceration, an individual may qualify for Health First Colorado benefits if they meet eligibility criteria. CDOC's benefit acquisition program, Medical Assistance Site and County Eligibility workers can assist incarcerated individuals with applying for the Medicaid program.

Social Security

Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) payments generally are not payable when an individual is imprisoned for committing a crime. If confinement lasts for 12 consecutive months or longer, SSI payments are terminated and must be reapplied for upon release. The Social Security Administration (SSA) must have official release documents from the jail or prison to begin or restart benefits. For those receiving SSI, payments are suspended during incarceration and may start again in the month of release. However, After a release date is established, institutions that have a prerelease agreement with the local Social Security office will notify SSA if individuals are likely to meet the requirements for SSI payments or disability benefits. If there is no prerelease agreement, once they know their anticipated release date, prisoners can contact SSA directly to apply for benefits. Applications should be submitted several months before the anticipated release to begin processing the application so benefits can start as soon as possible after release. For individuals filing for benefits based on disability, SSA will gather medical evidence to help decide whether the individual meets the definition of disability.

Old Age Pension Fund

The Old Age Pension (OAP) Health and Medical Care Program provides limited medical care for Coloradans getting Old Age Pension who do not qualify for Health First Colorado. The limited medical coverage provided through the Colorado Older Adult Pension-B does not apply to those over age 64.

Connect for Health Colorado

Coverage from Connect for Health Colorado, Colorado's health benefits marketplace, may provide an important bridge until coverage under Medicare is available because release from incarceration is considered a special enrollment period. Depending on release date and Medicare enrollment period, individuals could qualify for an Exchange Plan prior to qualifying for Medicare Part A.

Veterans Administration (VA)

Veterans honorably discharged with service-related disabilities may be eligible for some VA health care and prescription drug coverage.

TRICARE

TRICARE is a health program for uniformed service members and their families, National Guard/Reserve members and their families, survivors, former spouses, Medal of Honor recipients and their families and others registered in the Defense Enrollment Eligibility Reporting System. The TRICARE website warns retired service members and families that if they are entitled to Medicare Part A, they must have Medicare Part B to keep their TRICARE coverage. They will lose TRICARE coverage if they don't have Part B, drop Part B, or fail to pay Part B premiums. They are covered automatically by TRICARE for Life (Medicare-wraparound coverage for TRICARE-eligible beneficiaries who have Medicare Part A and B) and TRICARE's pharmacy benefit.

Report Section 2: Department of Corrections Processes

According to the U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics, inmates over 50 years of age are one of the fastest-growing prison populations. Between 2000 and 2019, the number of inmates over the age of 50 grew by more than eight times the rate of the overall general prison population.

Benefit Acquisition Program

Because of SB21-146 Improve Prison Release Outcomes, CDOC has made plans for a Benefits Acquisition Program (program) that will provide acquisition of benefits and screening for Special Needs Parole, SSI/SSDI, Medicaid and Medicare eligibility. The act requires the CDOC to:

- Develop a recommended parole plan for every inmate prior to release from prison
- Include in its monthly population report information related to delayed parole decisions
- Ensure that any inmate who is 65 or older and is being released from prison is enrolled in Medicare or health insurance if not eligible to be covered by another health insurance policy prior to release or upon release, whichever will offer more immediate and comprehensive health-care coverage
- The CDOC shall pay any insurance premiums and penalties for up to six months from the start of coverage
- The CDOC may provide financial assistance for longer than six months if the person is still under the jurisdiction of the CDOC and would otherwise be uninsured or underinsured without that financial assistance

The Benefits Acquisition Program will be a new unit combined with the current Approved Treatment Provider Program and Treatment Coordination Case Managers. CDOC has defined responsibilities for the Benefits Acquisition Program and how other clinical, prison operations and parole positions will coordinate services with this unit. Program responsibilities will include identifying, releasing individuals for eligibility for Medicare, Medicaid, and SSI/SSDI benefits, and enrolling them in health care benefits.

The program will include 12 new positions within the CDOC to assist in the determination of benefit eligibility, application, enrollment, and pre-release connection to partners in the community that can offer continuity of care.

The program will develop procedures for special needs parole, a parole plan with additional support and resources for inmates with severe physical, mental, or behavioral health issues. It will also develop procedures for the pre-screening of all releasing prisoners to identify eligibility for benefits. The Benefits Acquisition Program will identify individuals eligible for special needs parole as well as those approaching 64 years of age and develop policies and procedures related to pre-release planning. This planning will include Medicare enrollment (initial application and reinstatement), sharing data with the Social Security Administration to put benefits on hold and reinstate upon release, and have a plan for individuals who have not paid enough payroll taxes prior to incarceration to receive free Medicare Part A.

Other resources that will be leveraged by the Benefits Acquisition Program include:

- State Health Insurance Assistance Programs (SHIPs) which can provide information about Medicare and Medicaid-Medicare dual eligibility. SHIPs help Medicare enrollees navigate the Medicare system and provide free, unbiased, and individualized information. Housed within the Division of Insurance, Colorado SHIP has 17 local locations at partner agencies around the state.

State Health Insurance Assistance Program (SHIP) - A state program that gets funding from the federal government to provide free local health coverage counseling to people with Medicare

- Individuals enrolling into SSI/SSDI disability entitlement programs for the first time could benefit from the services of Independent Living Centers for assistance with the enrollment processes and completing the required paperwork and application forms.
- The SSI/SSDI Outreach, Access, and Recovery program (SOAR), a project of the Substance Abuse and Mental Health Services Administration (SAMHSA), is a promising tool for connecting older reentering individuals with Social Security benefits. This intensive, individualized approach has been successfully implemented in prison settings.

Colorado's nine nonprofit **Centers for Independent Living (CILs)** provide information and referrals, individual and systems advocacy, independent living skills training, cross disability peer counseling, and transition services.

The Benefits Acquisition Program will also leverage the automatic treatment options for individuals upon release with behavioral health or substance use disorders or sex offenders, as currently offered by the case managers:

- Those with an identified mental health disorder are matched with parole mental health clinicians around the state
- Substance use treatment referrals
- Ongoing treatment for sexual offenders
- End of life care/hospice alternative/specific facilities

The Benefits Acquisition Program could benefit from becoming a Medical Assistance (MA) Site, certified by the Department of Health Care Policy and Financing (HCPF) to accept and process the state-authorized medical assistance application for the programs that are administered by HCPF. MA Sites use the Colorado Benefits Management System (CBMS) to determine eligibility for Health First Colorado (Colorado's Medicaid Program) programs.

CCOA RECOMMENDATION

The CCOA recommends advocating for continued support of a robust benefit acquisition process within CDOC.

a. The CCOA recommends making videos (similar to a PSA - public service announcement – an educational message intended to raise awareness) with formerly incarcerated individuals to inform incarcerated individuals of available options prior to release.
b. The CCOA recommends ongoing navigation support in the acquisition of health benefits for individuals approaching 65 and 65 or older (within CDOC and within the community).
    i. Navigation resources should also be leveraged within CDOC for people entering incarceration that are Medicare/ Supplemental Security Income (SSI)-enrolled to be counseled on benefits suspension and re-enrollment upon release.
    ii. These navigation supports include identifying long- term supports and assistance for those with high needs.

As noted in Report Section 1, all Medicare beneficiaries may benefit from reviewing their program selections annually. Many of them are assisted by SHIPs, brokers, and other experts. This type of navigation is even more critically important for individuals as they enter prison after the age of 65 so they receive the best information about their Medicare options, and after they leave prison and need to weigh dates, penalties, and other costs in their health insurance decisions.

CCOA RECOMMENDATION

The CCOA recommends expanding and publicizing the already-established Take Care Health Matters website that is a project of the Colorado Criminal Justice Reform Coalition. This website is currently focused on Medicaid and would be expanded to help those released from prison understand how to navigate Medicare in coordination with the CDOC Benefit Acquisition Program, State Health Insurance Assistance Programs (SHIPs) and Area Agencies on Aging as appropriate.

Report Section 3: Potential challenges, gaps or resources needed

As noted previously, eligibility rules and timeframes for Medicare, Medicaid and Exchange plans are detailed and complex. They are derived from a variety of state and federal laws and regulations that are not aligned and are thus often difficult to navigate.

Enrollment barriers

The Medicare buy-in program was started in 1966 to allow states to enroll eligible individuals on Medicaid and pay their Part B premiums. In 1990, the program was expanded to allow states to enroll eligible Medicare beneficiaries and pay Part A premiums. All states must pay the Part A premium for individuals enrolled in the Qualified Medicare Beneficiary (QMB) program. Part A buy-in states have a Part A buy-in agreement, meaning they specifically include the payment of the Part A premium for QMBs in their buy-in agreement with CMS. Group payer states do not have a Part A buy-in agreement. Colorado is a Group payer state and individuals must complete the enrollment process during a prescribed enrollment period.

People who have Medicare can also receive Medicaid if they meet their state's eligibility criteria. These people are often called **Dual Eligibles (Duals)**. Once they are determined eligible as duals, Medicaid can cover Medicare co-payments and deductibles as well as services not covered by Medicare.

People that are QMBs and SLMBs are collectively known within Medicaid as **Partial Dual Eligibles** (PDE).

Medicare beneficiaries leaving incarceration may face challenges in enrollment when their release dates do not align with the Medicare General Enrollment Period: January 1 – March 31. States had the option to expand their State buy-in agreements to include Premium-Part A for Aged QMBs. States that include Premium-Part A in their State buy-in agreements are known as "Part A Buy-in States." CMS encourages group payer states to consider entering into a Part A buy-in agreement

Table 1: Part A Buy-in States

Alaska	Maryland	Oregon
Arkansas	Massachusetts	Pennsylvania
Connecticut	Michigan	Rhode Island
Delaware	Minnesota	South Dakota
District of Columbia	Mississippi	Tennessee
Florida	Montana	Texas
Georgia	Nevada	Vermont
Hawaii	New Hampshire	West Virginia
Idaho	New York	Washington
Indiana	North Carolina	Wisconsin
Iowa	North Dakota	Wyoming
Louisiana	Ohio	
Maine	Oklahoma	

Advantages of being a Part A Buy-in State:

- Year-round Medicare enrollment
- Waiver of late enrollment penalties **(**Part A buy-in states only pay the regular base premium for the individual's Part A coverage. States that use the group

payer arrangement must pay the full premium amount, including any applicable late enrollment penalties.)
- Streamlined enrollment into Medicare Part A

State buy-in enables eligible low-income individuals to afford to enroll in Medicare and frees up more of their limited income for life's necessities. Buy-in can also reduce state costs, ensuring that Medicare is the primary payer for Medicare-covered services for beneficiaries eligible for both Medicare and Medicaid benefits.

In Colorado, the Department of Health Care Policy and Financing (HCPF) is the Medicaid agency that initially made the decision to become a group payer state. Analysis of health care access for older Coloradans leaving incarceration has highlighted the challenges of the group payer state decision. Discussions between HCPF and CCOA members and consultants has led to the recommendation that a cost-benefit analysis would be appropriate to determine whether Colorado can improve the circumstances for these individuals by changing to a Part A Buy-in State. This would achieve the goals of the CCOA Ad-Hoc Committee and align with the work of HCPF, whose mission includes improved health care equity, access, and outcomes for the members it serves while saving Coloradans money on health care and driving value for the state. HCPF has worked to strengthen Health First Colorado enrollment for the criminal justice involved population as well as ensure they get access to the care they need. This also aligns with the Behavioral Health Administration plan to expand ongoing formal partnerships with all other State agencies that have programs or funding for behavioral health prevention, treatment, and recovery services with a focus on access to screening and quality services during incarceration and coordinated re-entry and outpatient care.

There are potential costs associated with becoming a Medicare Part A Buy-in State, but also potential cost savings as the state can pay for premiums rather than the full cost of care. Some initial data from FY 2022-23 Medical Services Premiums Exhibits indicate that there are projected Partial Dual Eligibles (PDE) of 36,260 in FY22, 34,864 in FY23, 35,099 in FY24. PDE is a combination of QMBs and SLMBs. The projected per capita cost of the PDE is $2,882.96 in FY22, $3,114.76 in FY23, and $3,330.56 in FY24. These costs are a combination of QMBs and SLMBs but also Part A and Part B costs as well as coinsurance and deductible costs. These premium costs are much lower than OAP per capita costs of $29,532 to $34,803 over that same period. By choosing to be a Part A Buy-in State and opening up the eligibility period and easing enrollment for those needing care and those enrolling them, it is likely that the numbers of partial dual eligibles will increase. This underlies the importance of working with HCPF to determine the cost impact of becoming a Part A Buy-in State. This analysis should also include

cost data from CDOC to reflect the inability to release those that are 65 or older because of a lack of access to needed care.

CCOA RECOMMENDATION

The CCOA recommends seeking a Medicare Part A Buy-in agreement with the Social Security Administration that would allow for buy-in/enrollment outside of defined January 1 through March 31 enrollment period.

a. As a first step, the CCOA recommends partnering with the Department of Health Care Policy and Finance and Department of Corrections on a study to understand the costs-benefits of Part A Buy-in for the state.

Aligning Enrollment Periods at a Federal Level

On December 21, 2020, Congress passed a COVID relief package as part of a larger omnibus spending package called the Consolidated Appropriations Act, 2021 (H.R. 133), signed into law on December 27, 2020. In addition to various public health measures aimed at combating the COVID-19 epidemic, the omnibus package included several provisions that relate directly to Medicare beneficiaries.

One of the provisions reduces barriers to care by expanding Medicare's authority to grant a Special Enrollment Period (SEP) for "exceptional circumstances." In 2023, this will be available to facilitate enrollments program-wide, enhancing beneficiary access and administrative consistency. National advocates like Justice in Aging are working to ensure that release from incarceration qualifies as one of the exceptional circumstances.

CCOA RECOMMENDATION

CCOA recommends collaborating with the Division of Insurance and the Department of Corrections to advocate for Centers for Medicare and Medicaid Services (CMS) to create a special enrollment period for those being released from prison who are 65 years old or older. Ideally this special enrollment period for release from incarceration would include all Medicare parts: A, B, C, D.

Ensuring Safe Releases

The 55-and-older population within CDOC are often denied release to parole when they become eligible for consideration because these inmates have no medically adequate care locations available to them upon release. Many nursing facilities refuse to accept justice-involved individuals due to their prior convictions. The lack of a housing plan often means these inmates remain incarcerated longer than necessary.

The Long-Term Compassionate Care Project will provide beds in a privately-run nursing facility to allow elder inmates a place to safely exit the prison system into one that better supports their higher health care needs and/ or end of life care.

Relocating inmates who need extensive healthcare or end-of-life care to nursing homes will create better support for those inmates, cost savings for CDOC, and an ability to draw down additional federal dollars. The state would contract with a private entity specializing in nursing care that would guarantee beds for special needs parolees. Housing this population in an appropriate facility would alleviate the high healthcare costs that CDOC is experiencing and would allow the utilization of federal funding with Medicaid reimbursement.

CCOA RECOMMENDATION

The CCOA recommends support for the Governor's FY22-23 funding request: Long Term Compassionate Care Project (See CDOC Department Priority: R-03), which would be a set of reserved beds in a privately-run facility that would allow inmates to be released to a facility that better supports their need for extensive or end-of-life care.

Conclusion

The CCOA is pleased to have served in accordance with its statutory role in support of this work with the Department of Human Services. Charged with conducting, and encouraging others to conduct, studies of problems of the state's older people and promoting and aiding in the establishment of local programs and services for Colorado's older adults, the CCOA will:

- Continue to monitor older adults' benefit acquisition as they enter and leave incarceration
- Support the completion of a study and cost-benefit analysis with appropriate state agencies
- Advocate for the creation of Special Enrollment Periods as described in this report

As the CDOC implements its new Benefits Acquisition Program and HCPF conducts its cost-benefit analysis on Part A Buy-In, we invite them to keep the CCOA informed of progress and additional concerns.

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Appendix I: Medicare

Generally, Medicare is available for people aged 65 or older, younger people with disabilities and people with End Stage Renal Disease (permanent kidney failure requiring dialysis or transplant). Medicare has three basic coverages (Parts A, B, and D with Part C or Medicare Advantage Plans combining some or all of these), each with different eligibility requirements, costs, enrollment periods, and penalties for individuals who do not enroll when eligible.

Because Medicare (or Medicare in conjunction with Medicaid) is the main health insurance option for most U.S. citizens aged 65 or older, accessing Medicare benefits is critical for most prisoners in this population as they are released. In addition to challenges for inmates who age into Medicare eligibility while incarcerated, those already enrolled in Medicare when incarcerated face special challenges. They are required to continue to pay their Medicare premiums even though they do not have access to any of their Medicare benefits and have been cut off from Social Security payments or Supplemental Security Income (SSI). If they do not pay—and most cannot afford the premiums—they will be disenrolled and subject to late enrollment penalties when they re-enroll. Typically, this includes three months of bills for Part B until the Social Security Administration (SSA) automatically disenrolls them. The result is having these premiums deducted from their first Social Security check upon release.

The Social Security Administration assigns Social Security numbers, and administers the Social Security retirement, survivors, and disability insurance programs. They

Individuals released from incarceration do not have a Special Enrollment Period when they leave custody and can only enroll during the General Enrollment Period (January 1-March 31) with benefits delayed until July 1, 2022. (According to changes effective 2023, coverage will start the month following enrollment, although the General Enrollment Period remains the same.) The one safety net is to qualify for a Medicare Savings Program (MSP) and be enrolled in premium- free Part A (See Appendix II).

Whether the release date falls withing an Open Enrollment Period or being released from incarceration is a qualifying event to apply for coverage impacts the options open to individuals.

Medicare Part A – Hospital Coverage, Hospice Care, and Skilled Nursing after a qualifying hospitalization.

To be eligible to receive Medicare Part A without any premium cost, individuals, or a spouse of at least ten years must have completed 40 work quarters with Social Security. Special rules apply for those eligible for Railroad Retirement Benefits or some federal employees. If work history is lower than 40 work quarters, there is a cost for Medicare Part A.

For 2022, Medicare Part A premium costs include:

- between 30-39 quarters, $274/ month premium
- fewer than 30 quarters, the premium was $499/month
- There is a $1,556 deductible for hospital coverage for each 60-day benefit period
- Significant coinsurance applies to stays longer than 60 days or for a qualifying rehab stay longer than 20 days

To enroll in Part A, individuals must contact the Social Security Administration in the period three months before or three months after their 65th birthday by phone, in person, or on-line. Since incarcerated individuals have their Social Security or SSI payments suspended while in prison, they do not qualify for automatic enrollment that others receiving payments before age 65 receive.

For individuals eligible for premium-free Part A, there is no penalty for late enrollment. For those who are not eligible for free Part A, if they do not buy it when first eligible, monthly premium may go up by ten percent. The higher premiums are assessed for twice the number of years they could have had Part A but didn't sign up. Advocates are hopeful that Social Security will approve a Special Enrollment Period for released incarcerated individuals starting in 2023.

Medicare Part B – Doctor's Visits and Outpatient Services

Work history does not dictate eligibility for Part B. It is available with a monthly premium to those 65 or older, U.S. residents, and either a U.S. citizen or legally permanent resident for five continuous years. Enrollment in Part B requires contacting the Social Security Administration in the period three months before or three months after the 65th birthday by phone, in person, or on-line. If someone misses this enrollment period, they must wait for the next General Enrollment Period (January 1-March 31), delaying benefits for as much as fourteen months.

For 2022, Medicare Part B costs include:

- $170.10 monthly premium
- annual deductible of $233 for Part B services
- coinsurance of 20% for most outpatient services with no out-of-pocket maximum

In addition to the hope for a Special Enrollment Period for released incarcerated individuals starting in 2023 which would eliminate the delay in coverage, enrollment in a Medicare Savings Program (MSP) can provide access to coverage and eliminate late enrollment penalties for those who were not enrolled in Part B when eligible. For each 12-month period enrollment in Part B was delayed, there is a ten percent Part B premium penalty every month for as long as the individual is on Medicare. After enrolling in an MSP, individuals receive premium-free Part B. MSPs to enroll in Part B, require an individual to have Medicare Part A, unless the individual qualifies for QMB (See Appendix II).

Medicare Part C – Medicare Advantage

A Medicare Advantage Plan (like an HMO or PPO) is another Medicare health plan choice. Medicare Advantage Plans, sometimes called "Part C" or "MA Plans," are offered by private companies approved by Medicare. Medicare Advantage Plans will provide all of Part A (Hospital Insurance) and Part B (Medical Insurance) coverage. Medicare Advantage Plans may offer extra coverage, such as vision, hearing, dental, and/or health and wellness programs. Most include Medicare prescription drug coverage (Part D).

Medicare pays a fixed amount for an individual's care every month to the companies offering Medicare Advantage Plans. These companies must follow rules set by Medicare. However, each Medicare Advantage Plan can charge different out-of-pocket costs and have different rules for how to get services (like referrals to see a specialist or paying only for doctors, facilities, or suppliers that belong to the plan for non-emergency or non-urgent care). Individuals may only join a plan at certain times during the year. In most cases, they are then enrolled in a plan for a year.

Medicare Part D – Prescription Drug Coverage

Part D is offered through private companies either as a stand-alone plan for those enrolled in original Medicare, or as a set of benefits included with a Medicare Advantage Plan (Part C). Premiums, copayments, and coverage of medications vary from plan to plan and can change from year to year, making this one of the most challenging Medicare benefits to understand and enroll in properly. In addition to understanding costs, choosing an appropriate Part D plan requires understanding formularies, prior authorization, and step-therapy requirements, which can slow access to needed medications.

Medicare Part D Plans may include the following restrictions:
- Formulary/Preferred Drug List
- Prior Authorization
- Step Therapy

The Part D premium is dependent on the specific coverage selected, whether late enrollment penalties apply, and eligibility for the Limited Income Subsidy (LIS). Being without Part D or creditable drug coverage for more than 63 days while eligible for Medicare incurs a Part D late enrollment penalty (LEP). The penalty is one percent of the national base beneficiary premium ($33 in 2022) for every month the individual did not have Part D or certain other types of drug coverage while eligible for Part D. This amount is added to the monthly Part D premium indefinitely. Because CDOC health care does not count as creditable coverage, this creates another cost barrier to Medicare benefits upon release from incarceration. Fortunately, there is a Special Enrollment Period for formerly incarcerated individuals to get a prescription drug plan from Medicare upon release, as long as they are enrolled in either Part A or Part B at the time of their release. Qualifying for Extra help may also eliminate the penalty for late enrollment.

Limited Income Subsidy for Part D

People with limited resources and income also may be able to get Extra Help with the costs — monthly premiums, annual deductibles, and prescription co-payments — related to a Medicare prescription drug plan.

In 2021, to qualify for Extra Help, resources must be limited to $14,790 for an individual or $29,520 for a married couple living together. Monthly income must be below $1,630 in 2021 ($2,198 for couples) (see the Extra Help

Individuals automatically qualify and don't need to apply for Extra Help if they have Medicare A and/or B and meet one of the following conditions:

- Have full Medicaid coverage
- Have Supplemental Security Income (SSI)
- Take part in a Medicare Savings Program

It is likely that immediately upon release, individuals would be low income and absence of assets that would make this possible if processing was timely.

Appendix II: Medicare Savings Programs (Administered by the Department of Health Care Policy and Finance)

Medicare Savings Programs (MSPs) are important to help people whose income and resources fall below certain levels, including those being released from incarceration, access Medicare benefits. They help pay Medicare costs for those with limited income and assets. Additional benefits of enrolling in an MSP include:

- Allowing enrollment in Medicare Part B outside of usual enrollment periods
- Eliminating any Part B late enrollment penalty
- Automatic enrollment in the Extra Help program for lower Part D premiums and

costs Table 2: Income Requirements for Medicare savings programs in 2021:

Medicare Savings Program	Individual monthly income limit	Married couple monthly limit	Colorado Individual resource limit	Colorado married couple resource limit	Helps you pay
QMB - Qualified Medicare Beneficiary	$1,094	$1,472	$9,470	$14,960	Part A premiums, Part B premiums, deductibles, copays, coinsurance
SLMB – Specified Low-Income Medicare Beneficiary	$1,308	$1,762	$9,470	$14,960	Part B premiums
QI – Qualifying Individual	$1,469	$1,980	$9,470	$14,960	Part B premiums

The Department of Health Care Policy and Finance (HCPF) determines eligibility in Colorado. Applications are usually submitted through mail through the county of residence Department of Human Services. After enrolling in an MSP, individuals should receive premium-free Part B with an effective date the same day as your MSP effective date.

The requirement to be enrolled at least in Medicare Part A to apply for an MSP is part of the rationale for SB 21-146 to require CDOC to help enroll those eligible for premium-free Part A during their Initial Enrollment Period if this occurs while they are incarcerated.

People who would be eligible for an MSP but are not eligible for premium-free Medicare A face a barrier: they must have Medicare to enroll in an MSP, but without an MSP they cannot afford to enroll in Medicare. The solution—whereby a person can conditionally apply for Medicare A and B enrollment and an MSP at the same time, depends on an agreement between the state and the Social Security Administration. This is called a buy-in agreement. In most situations, an individual or their advocate must be aware of and seek out this enrollment.

Because Social Security or SSI benefits are suspended for incarcerated individuals, enrolling in an MSP immediately upon release can circumvent the open enrollment restrictions and wipe out late enrollment penalties even if individuals lose these benefits once their regular Social Security resumes. (They may, however, lose the premium assistance and copay coverage if their income puts them above the QMB threshold.)

The Qualified Medicare Beneficiary (QMB) Program is a Medicaid program that covers Medicare Part A and Part B premiums and cost-sharing for low-income Medicare beneficiaries. The QMB program is one of the four Medicaid eligibility categories collectively known as the Medicare Savings Programs (MSPs).

Medicare Savings Programs (MSP) help people with limited income and resources pay for some or all of their Medicare premiums and may also pay their Medicare deductibles and coinsurance. In some cases, Medicare Savings Programs may also pay Medicare Part A (Hospital Insurance) and Medicare Part B (Medical Insurance) deductibles and coinsurance. Medicare Buy-in is one of the benefits of the MSPs. There are different types of MSPs with different income limits for each program (see chart above). Typically, you should receive a decision on MSP within 45 days of filing an application.

Appendix III: Summary of Open Enrollment Dates and Qualifying Events

Table 3: Open Enrollment Dates, Qualifying Events and Coverage Dates by Insurance Type

Insurance Type	Open Enrollment	Qualifying Event?	Coverage Begins
Connect for Health Colorado	Nov. 1 – January 15	Yes – Special Enrollment Period (SEP) for release	
Medicaid (Health First Colorado)	Apply any time.	Automatic if qualify for SSI	
Medicare A & B	Jan. 1 – March 31	No	July 1
Medicare Drug Coverage	Oct. 15 – Dec. 7	Yes – SEP for release	Jan. 1 With SEP used one month before release, could be as early as month of release