

# Memorandum

To: Florida Medicaid  
From: David J. Lillesand, Esq.  
Date:  
Re:

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Normally a disabled person loses Medicaid benefits when SSI is terminated.

However, Congress created a special exception to this general rule [Section 1634(c) of the Social Security Act], requiring the various states to continue Medicaid if a person, who was receiving SSI and Medicaid, loses the SSI due to an increase in his or her monthly income due to new eligibility for Disabled Adult Child benefits under Title II of the Social Security Act (a disabled adult child becomes eligible for Title II Social Security Disability Insurance Benefits on one of his parent's Social Security record when he has a parent who is deceased, retired, or disabled). Quoted below are the **federal statute** and the **SSA POMS** (see POMS SI 01715.015 Special Groups of Former SSI Recipients, paragraph B.4.) which direct that for an adult disabled child in this category, he or she is regarded as a member of a "special group of former SSI recipients" who get to keep their Medicaid benefits even though they lose their SSI. Also quoted is the **State of Florida's ESS Manual** section requiring the state to follow federal law.

## Federal Law: (binding on State of Florida)

**SOCIAL SECURITY ACT, SEC. 1634. [42 U.S.C. 1383c]**

### **DETERMINATIONS OF MEDICAID ELIGIBILITY**

(c) If any individual who has attained the age of 18 and is receiving benefits under this title on the basis of blindness or a disability which began before he or she attained the age of 22--

- (1) becomes entitled, on or after the effective date of this subsection, to child's insurance benefits which are payable under section [202\(d\)](#) on the basis of such disability or to an increase in the amount of the child's insurance benefits which are so payable, and
- (2) ceases to be eligible for benefits under this title because of such child's insurance benefits or because of the increase in such child's insurance benefits,

such individual shall be treated for purposes of title XIX as receiving benefits under this title so long as he or she would be eligible for benefits under this title in the absence of such child's insurance benefits or such increase.

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**POMS [Social Security Administration Program Operations Manual System]**

## **SI 01715.015 Special Groups of Former SSI Recipients**

### **A. BACKGROUND**

Categorical Medicaid eligibility for the aged, blind and disabled is directly related to receipt of SSI in most States. Loss of SSI payments can result in loss of Medicaid coverage.

To preserve Medicaid coverage for certain groups of individuals who lose SSI payments, Congress enacted special Medicaid continuation provisions. **These provisions require the State Medicaid agencies to continue to consider specified groups of former SSI beneficiaries as SSI beneficiaries for Medicaid purposes, as long as they would otherwise be eligible for SSI payments.** In addition, Medicaid agencies are required to determine if the individual would be eligible for Medicaid under any other group.

## B. POLICY — CONTINUATION GROUPS

### 1. Section 1619 Eligibles

Individuals who are utilizing the section 1619(b) work incentive provision do not receive SSI payments. In order to continue Medicaid eligibility, section 1619(b) participants are deemed by law to be receiving an SSI payment for Medicaid purposes.

Congress also added a special rule for section 1619(a) and (b) participants in 209(b) States. If an individual received Medicaid coverage the month before the most recent period of participation in section 1619 (a or b) began in the 209(b) State, the State **must** continue coverage so long as the individual continues to be eligible under section 1619. This applies even when the 209(b) State has a more restrictive definition of disability than that of the SSI program.

SSA notifies the States about members of this group through the State data exchange (**SDX**).

(**NOTE:** The NMI does **not** receive the SDX.)

**REMINDER:** SSA promotes use of the SSI work incentives. If an FO discovers that a section 1619 participant does **not** have Medicaid coverage, **and** there is no Medicaid bar on the SSR (i.e., in 1634 States, the individual has no Medicaid qualifying trust, has agreed to the assignment of rights and to provide third party liability information), the FO should either contact the Medicaid agency by telephone or prepare a note for the beneficiary to take to the Medicaid agency.

**EXAMPLE:** The FO discovers that a section 1619(b) participant is not receiving Medicaid. There is no bar to Medicaid receipt on the SSR. The FO prepares a note to the Medicaid State agency about the individual which:

- Contains an explanation of the relationship of the 1619 work incentive to Medicaid using the paragraph "How it applies" on page 48 of the June 1991 edition of the "Red Book on Work Incentives" in 1634 States or SSI Criteria States. In 209(b) States, the FO could use the following sentence instead of the last one in "How it applies":

"People in 209(b) States continue to be eligible for Medicaid under the section 1619 work incentive as long as they were eligible for Medicaid in the month before they became eligible for section 1619."

- Explains that the individual is currently participating in the section 1619 work incentive; and

- Shows what date the most recent period of section 1619 participation began.

## 2. Title II COLA ("Pickle Amendment")

Effective July 1, 1977, Medicaid eligibility was protected for SSI recipients who lost SSI or SSP eligibility because of title II cost-of-living adjustments (**COLAs**).

Under section 503 of Public Law 94-566, the "Pickle Amendment," title II beneficiaries who would continue to receive SSI/SSP payments (or would continue to be eligible for benefits under section 1619(b)) but for their title II COLAs continue to be considered SSI recipients for Medicaid purposes. If an individual's other income would not have precluded continuing SSI payments (or deemed payments under section 1619) without the title II COLAs, the State must continue to consider the individual to be an SSI recipient for Medicaid purposes.

When a State agency computes Pickle eligibility it uses the **current** SSI Federal benefit rate (**FBR**) plus any SSP and compares it with the beneficiary's other countable income plus the title II benefit "frozen" at the amount when SSI/SSP payment eligibility was lost without the current or subsequent COLAs after April 1977. If the FBR keeps going up as it has, the FBR can eventually overtake an individual's frozen title II plus other countable income level. Below are three examples of situations when Pickle applies:

- a. **Other Income** — If an SSI recipient had title II and other income which resulted in loss of SSI, increases in the SSI FBR or a decrease in the other income can result in eligibility for Medicaid continuation under the Pickle amendment.
- b. **Windfall Offset** — Windfall offset cases that receive SSI payment first and then lose SSI eligibility are like cases with other income. Rises in the SSI FBR can eventually overtake the frozen title II "yardstick".
- c. **Reduced SSP** — Several States (e.g., California, Michigan, Vermont) have reduced some optional supplementation levels. These reductions have caused SSI/SSP ineligibility for some recipients with other income. When the other income consists of at least some title II benefits, there is or will be potential Pickle eligibility as inflation increases the FBR.

SSA informs all States annually about potential members of this group at COLA time — each State gets two separate files to help them locate potential eligibles. SSI recipients who go into payment status E01 because of COLA's are also potential members of this group.

## 3. "ARF Widow(er)s"

In 1983, Congress amended title II and eliminated the Additional Reduction Factor (**ARF**) for widow(er)s younger than age 60 (disabled widow(er)s, **DWB's**). This increased title II benefits for some widow(er)s causing SSI ineligibility.

Congress added section 1634(b) of the Act to require the States to continue to consider widow(er)s otherwise eligible for SSI payments to be SSI recipients for Medicaid purposes if they:

- Were entitled to title II in December 1983;
- Received DWB benefits and SSI in January 1984;
- Lost SSI payment eligibility because of the change in the ARF; and
- Filed for Medicaid with their State agency by July 1, 1988.

SSA produced tapes and listings of these individuals for State use.

#### **4. Disabled Adult Children (Childhood Disability Beneficiaries)**

Section 1634(c) of the Act requires States to consider title II childhood disability beneficiaries (also known as disabled adult children, **DACs**, or childhood disability beneficiaries, **CDBs**) who lose SSI eligibility as if they were still SSI recipients for Medicaid purposes so long as they would have remained otherwise eligible for SSI benefits but for their entitlement to (or increase in) title II benefits on or after July 1, 1987.

SSA notifies the 1634 States about members of this group through the SDX. Starting on or about May 1995, members of this group in **all** States will get special Medicaid referral notice paragraphs numbers 1140 and 1141 ([NL 00804.110](#)) in their automated Notices of Planned Action when:

- they lose SSI eligibility due to excess income in a month of title II entitlement; and
- they are at least age 18; and
- the SSI computer record reflects title II continuing income with a Beneficiary Identification Code (**BIC**) of "C".

#### **5. Widow(er)s**

##### **a. Background and Eligibility**

In the Omnibus Budget Reconciliation Act of 1990 (**OBRA '90**), Congress permanently revised the special, more restrictive disability standard for DWBs to the disability standard that applies to all title II and title XVI adult disability claimants.

Effective January 1, 1991, section 1634(d) of the Act was amended so that any former SSI eligible widow(er) who:

- Would continue to be eligible for SSI benefits or SSP but for their title II benefits;
- Received an SSI/SSP benefit the month before their title II payments began; **and**
- Is not entitled to Medicare Part A,

will be considered by the State to be an SSI/SSP recipient for Medicaid purposes until they become entitled to Medicare Part A.

This provision does **not** "sunset;" it is permanent. SSA notifies members of this group as they become ineligible for federally-administered payments due to excess income and notifies the 1634 States as these cases occur through the SDX.

Widow(er)s in **all** States get special Medicaid referral notice paragraphs 1142 and 1144 ([NL 00804.110](#)) in their automated Notice of Planned Action when:

- they lose SSI eligibility due to excess income in a month of title II entitlement; and
- they have continuing title II income with a BIC of "D" or "W" ; and
- they are not entitled to Medicare Part A.

**NOTE:** From July 1, 1988 through December 31, 1990, section 1634(d) of the Act provided that the States would continue to consider otherwise eligible widow(er)s at least age 60 but not yet 65 as SSI recipients for Medicaid purposes if they became ineligible because of their title II benefits. Medicaid would continue for members of this group until they became entitled to Medicare Part A. This provision was superseded by the OBRA '90 provision.

### **b. Counting Medicare Months**

As explained in [HI 00801.154](#), when a former SSI recipient is found entitled to DWB benefits, **all** months on the SSI rolls at **any** time are credited concurrently against the 5-month disability waiting period and 24-month Medicare qualifying period. The months counted go from the first month of **any** (including prorated) payment to the month of DWB entitlement. **All** months are counted, including months of nonpayment, suspension and termination **for any reason**. Since the Disability Determination Services adopt the SSI medical decision for these cases, a DWB who received as little as one payment from SSI more than two years ago and meets the nondisability entitlement factors can become entitled to title II and Medicare Part A with no waiting period.

### **c. Informing the States**

SSA notifies the 1634 States via the SDX when widow(er)s age 50 but not yet 65 lose SSI because of income in a month of entitlement to continuing title II benefits with a BIC of "D" or "W". Since Medicaid continuation on this basis ends when Medicare Part A begins, States check their monthly beneficiary data exchange (**BENDEX**) listings or use third party queries to determine which widow(er)s are entitled to Medicare.

State employees may use the Third Party Query (**TPQY**) System or BENDEX to determine if or when widow(er)s are entitled to Medicare. States may also contact SSA FO's for this information. When requested, FO's should provide assistance by checking the MBR for Medicare Part A entitlement. If the MBR shows no Part A entitlement, a review of the SSI folder or SSI queries could reveal months to be credited towards the waiting and qualifying periods.

If no SSI folder is available, and the State needs more specific information, a Stored, Terminated and Lacking Eligibility (**STALE**) query is obtained.

## **6. Suspended/Terminated Drug Addicts and Alcoholics**

Congress added paragraph 1634(e) to the Act to continue Medicaid eligibility for certain suspended and terminated substance addicts.

- **Suspensions**

SSI recipients whose eligibility for benefits is based on a finding that drug addiction and/or alcoholism (DAA) is material to their disability who refuse to comply with or progress in treatment have their benefits suspended for noncompliance. Effective March 1, 1995, suspension for noncompliance (N1O) continues through a required period of demonstrated compliance (N11).

Congress amended the Social Security Act effective March 1, 1995 to require the States to continue to consider suspended DAA beneficiaries (DAABs) to be SSI recipients for Medicaid purposes if the sole reason for suspension is noncompliance or demonstrating compliance after a suspension for noncompliance.

- **Terminations**

The SSI DAA provision contains a "cap" of 36 months of SSI benefits through September 2004. Section 1634(e) of the Act requires the States starting March 1998 to continue to consider DAABs terminated after receiving 36 months of SSI benefits to be SSI recipients for Medicaid if the sole reason for SSI ineligibility is having received 36 months of benefits and they continue to meet all other SSI eligibility criteria.

This provision does **not** apply to terminations after 12 months of suspension. Also, SSI on the basis of DAA is terminated after completion of 36 months of title II benefits when treatment was available on the basis of DAA regardless of how many months of SSI have been paid.

## C. REFERENCES

- 1619, [SI 02302.001](#) ff.
- 1619 and Medicaid, [SI 02302.010A.-SI 02302.010C.](#)
- 1619 and Medicaid in 209(b) States, [SI 02302.010 C.](#)
- BENDEX, SM 10801.001 ff.
- CDB/DAC Medicaid Notice Language, [NL 00804.110](#)
- DWB Instructions, [DI E11015.001](#) ff. and [DI E40101.001](#) ff.
- DWB Medicaid Notice Language, [NL 00804.110](#)
- QDWI Instructions, [HI 00801.170E.1.](#)
- QMB Instructions, [HI 00801.139](#)

- SDX, SI 02601.201 ff.
- STALE File Queries, SM 01601.100, SM 01601.325
- TPQY, [GN 03310.020B.3.](#)

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Added to this file 07/09/2001

**Last Updated:** 10/06/95

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### **The Law: State of Florida**

#### **State Economic and Social Services Manual, Part 2000, "Coverage Groups"**

##### **2040.0800 SSI RELATED MEDICAID COVERAGE GROUPS (MSSI)**

The provision requirements and date of entitlement for each of the SSI related coverage groups are discussed in this section. If the financial and technical requirements have been met, the assistance group may be eligible for the following:

1. Aged, Blind and/or Disabled Medicaid for SSI eligible individuals (could be ICP, Hospice or HCBS);
2. **Protected SSI Medicaid**, including Regular Protected Medicaid, Disabled Widow(er) I Protected Medicaid, Disabled Widow(er) II Protected Medicaid, Disabled Widow(er) III Protected Medicaid and **Disabled Adult Child Protected Medicaid....**

##### **2040.0808 Protected Medicaid for Disabled Adult Children (MSSI)**

Effective July 1, 1987, disabled adult children who lose their SSI benefits because of an increase in or receipt of Social Security disability benefits under one of their parent's work records, may continue to be eligible for Medicaid if: the disabled adult child meets all SSI criteria except for income; and has income equal to or below the SSI FBR when, beginning July 1, 1987, any increase in SSA benefits or receipt of SSA benefits is subtracted from other income.

Thank you for your assistance.

Sincerely,

David J. Lillesand

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[https://lillesandlaw-my.sharepoint.com/personal/david\\_lillesandlaw\\_onmicrosoft\\_com/documents/01\\_client\\_work/medicaid/dac\\_issues/medicaid continues dac memo to florida dcf.doc](https://lillesandlaw-my.sharepoint.com/personal/david_lillesandlaw_onmicrosoft_com/documents/01_client_work/medicaid/dac_issues/medicaid continues dac memo to florida dcf.doc)