2004 SUNSET REVIEW

Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform

Colorado Inmate Medical Benefits Application Assistance Program

October 15, 2004

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
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Bill Owens
Governor

October 15, 2004

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed its evaluation of the Colorado Inmate Medical Benefits Application Assistance Program. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2005 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

> The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...
>
> The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination….

The report discusses the question of whether there is a need for the assistance required under sections 17-1-113.5 and 17-27-105.7, C.R.S., whereby prison or community corrections facility staff assist inmates in applying for Medicaid and Supplemental Security Income benefits. The report also discusses the effectiveness of the Department of Corrections, the Department of Human Services, the Department of Health Care Policy and Financing and Colorado's community corrections agencies in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this program is continued by the General Assembly.

Sincerely,

Tambor Williams

Tambor Williams
Executive Director

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Inmate Medical Benefits Application Assistance Program

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Executive Summary

Quick Facts

What Does it Do? In order to reduce the rate of re-incarceration of disabled offenders, the Inmate Medical Benefits Application Assistance Program (Program) assists severely disabled inmates who are within 120 days of release from Colorado Department of Corrections (DOC) and community corrections facilities in completing applications for Medicaid, Supplemental Security Income (SSI) or both.

Who is Involved? The Colorado Department of Health Care Policy and Financing (HCPF), DOC, the U.S. Social Security Administration (SSA) and the Colorado Department of Human Services (DHS) cooperate in making the Program work.

How Does it Work? When a severely disabled inmate is within 120 days of release from DOC or community corrections custody, a case manager from such facility assists the inmate in completing the application forms for Medicaid, SSI or both. For joint SSI/Medicaid applications, SSA reviews the application to determine whether the applicant meets certain financial eligibility requirements. DHS then determines whether the applicant satisfies disability eligibility requirements. For Medicaid-only applications, the social services office for the county into which the inmate will be released determines financial eligibility and a private vendor determines whether the inmate is disabled. Regardless of the application type, if the applicant satisfies all eligibility requirements and benefits are awarded, those benefits begin upon release.

What Does it Cost? No appropriations are associated with the Program and no fees are assessed of applicants.

How Many Inmates Have Received Assistance? While no inmates housed by a community corrections program have received applications assistance pursuant to the Program, between July 2003 and July 2004, DOC staff assisted 89 inmates in completing applications for Medicaid, SSI or both. Of these, nine were approved to receive benefits.

Where Do I Get the Full Report? The full sunset review can be found on the internet at: http://www.dora.state.co.us/opr/oprpublications.htm

Key Recommendations

Continue the Program with Respect to DOC until 2007.

The Program was scheduled for implementation by January 2003, but was not implemented until July 2003. As a result of this delay, insufficient data exists to determine whether the Program is effective. One measure of effectiveness would be the rate of re-incarceration of inmates who received assistance and benefits through the Program. Insufficient time has elapsed since the first of these inmates was released from DOC custody to evaluate whether this goal has been achieved. Additionally, preliminary cost-benefit analyses indicate that the Program could result in a cost savings for the State. The Program should be continued until 2007, at which time sufficient data should be available to measure the effectiveness of the Program.

Sunset the Program with Respect to Community Corrections.

Most inmates held in community corrections program are able to work, thus, in all likelihood, rendering them ineligible for SSI or Medicaid, as well as for assistance under the Program. Additionally, community corrections programs typically receive only 46-days' notice of inmates' release dates, which represents an insufficient amount of time to process applications for SSI and Medicaid benefits prior to release. Finally, the community corrections programs in Colorado have not implemented the Program, but have, nevertheless, offered assistance to some inmates. Thus, the Program should be sunsetted with respect to community corrections programs.

Major Contacts Made in Researching the 2004 Sunset Review of the Program

Center for Mental Health Services & Criminal Justice Research
Colorado Cross Disability Coalition
Colorado Department of Corrections
Colorado Department of Health Care Policy and Financing
Colorado Department of Human Services, Division of Disability Determination Services
Colorado Department of Public Safety, Office of Community Corrections
Council of State Governments
National Alliance for the Mentally Ill
U.S. Social Security Administration

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with the public interest. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the rights of businesses to exist and thrive in a highly competitive market, free from unfair, costly or unnecessary regulation.

Sunset Reviews are Prepared By:
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Background

The Sunset Process

The functions of the Inmate Medical Benefits Application Assistance Program (Program) in accordance with sections 17-1-113.5 and 17-27-105.7, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2005, unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies (DORA) to conduct an analysis and evaluation of the Program pursuant to section 24-34-104(8)(a), C.R.S.

The purpose of this review is to determine whether the Program should be continued for the protection of the public and to evaluate the performance of the Program and staff of the Department of Corrections, the Department of Human Services, the Department of Health Care Policy and Financing and Colorado's community corrections agencies. During this review, the Program must demonstrate that there is still a need for the Program. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly. Statutory criteria used in sunset reviews may be found in Appendix A on page 21.

Methodology

As part of this review, DORA staff attended case manager and medical personnel training sessions; conducted a literature review; reviewed Colorado statutes and rules; surveyed community corrections agencies; and interviewed representatives of the Colorado Department of Corrections, the Colorado Department of Human Services, the Colorado Department of Health Care Policy and Financing, various community corrections agencies and other interested parties.

History of Regulation

The General Assembly passed House Bill 02-1295 (HB 1295) to address a perceived gap in medical benefits for disabled inmates upon their release from the custody of the Colorado Department of Corrections (DOC) and Colorado's community corrections agencies.

Prior to the passage of HB 1295, disabled inmates could apply for Medicaid, federal Supplemental Security Income (SSI), or both. However, the application process can be quite complex and time-consuming, and neither benefit could be awarded until after the inmate was released. As a result, little effort was made to assist inmates in applying for such benefits prior to their release from custody, and, therefore, inmates were released without receiving the benefits to which they may have been entitled. The only medical assistance such inmates received was from DOC, which provided them with a 30-day supply of necessary medications upon their release.

During the House hearings on HB 1295, testimony reflected that DOC released between 50 and 100 mentally ill inmates each year. Further testimony was offered that attested to the proposition that approximately 70 percent of such inmates re-offend within 12 months of release, as compared to only 37 percent for the general inmate population. Furthermore, mentally ill inmates are the least likely to determine, on their own, how to apply for and secure SSI or Medicaid benefits.

Thus, the General Assembly passed HB 1295, which directed DOC and Colorado's community corrections agencies to work with the Department of Human Services, Division of Disability Determination Services and the Department of Health Care Policy and Financing to develop a system whereby DOC staff and the staff of community corrections agencies assist disabled inmates who are within 90 days of release, to apply for SSI, Medicaid or both. The goal is to have such applications approved and such benefits activated at the time of release so as to eliminate any gaps in medical coverage. In theory, this should help to reduce the rate of recidivism among this population, resulting in fewer victims of crime and a lower financial burden on taxpayers.

Importantly, HB 1295 did not create new SSI or Medicaid populations. Rather, it directed the various departments involved to facilitate the application process for those who are already potentially eligible in obtaining their benefits.

On February 1, 2004, DOC Administrative Regulation 550-07 went into effect, thus formalizing the process, for DOC, for the implementation of HB 1295.

Legal Framework

House Bill 02-1295 (HB 1295) created two new statutory provisions, sections 17-1-113.5 and 17-27-105.7, Colorado Revised Statutes (C.R.S.). Section 17-1-113.5, C.R.S., pertains to inmates in the custody of the Colorado Department of Corrections (DOC), and section 17-27-105.7, C.R.S., pertains to inmates in the custody of community corrections agencies.

Both statutory provisions direct that inmates who were eligible for federal Supplemental Security Income (SSI) prior to incarceration, or who are reasonably expected to meet eligibility requirements upon release, shall receive assistance from facility personnel in applying for such benefits at least 90 days prior to release. §§ 17-1-113.5(1)(b) and 17-27-105.7 (1)(b), C.R.S. Similar requirements are imposed for applications for Medicaid. §§ 17-1-113.5(2) and 17-27-105.7(2), C.R.S.

The Colorado Department of Health Care Policy and Financing (HCPF) and the Colorado Department of Human Services (DHS) are directed to provide information, education and training to facility personnel to facilitate the application processes. §§ 17-1-113.5(2) and (3), and 17-27-105.7(2) and (3), C.R.S. Both provisions specify that implementation is to occur on or before January 1, 2003.

Among those eligible for Medicaid are individuals receiving SSI. § 26-4-201(1)(i), C.R.S. Among those eligible for SSI are those who are disabled and satisfy certain income and financial resource requirements. 20 C.F.R. § 416.202

Pursuant to 20 C.F.R. § 416.905(a), for purposes of SSI eligibility, a disability is

> . . . the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

To satisfy this definition, the individual must have a “severe impairment,” which renders such individual unable to work at any substantial gainful activity. 20 C.F.R. 416.905(a). Importantly, if the disability is the direct result of an injury sustained during the commission of a felony, that disability may not serve as the basis for an award of benefits.

Additionally, in order to meet SSI eligibility requirements, an individual's income cannot exceed $584 per month and the value of the individual's assets cannot exceed $1,500. 20 CFR §§ 416.420, 416.1100 through 416.1124 and 416.1205(a). Among the items specifically excluded from the assets calculation are a home, household goods and personal effects, an automobile, life insurance policies, burial spaces and funds up to $1,500 for burial expenses, housing assistance and federal income tax refunds. 20 C.F.R. § 416.1210.

According to the Social Security Administration, the maximum benefit under SSI is $564 per month for an individual. This amount can be reduced, based upon an individual's income and assets.

Program Description and Administration

Relevant State and Federal Agencies and Aid Programs

The Inmate Medical Benefits Application Assistance Program (Program) is not so much a formal program as it is a coordinated effort by multiple state and federal agencies to assist inmates in applying for financial and medical assistance from state and federal aid programs.

Inmates who are entitled to participate in the Program are in the custody of either the Colorado Department of Corrections (DOC) or one of Colorado's 42 community corrections agencies.

Supplemental Security Income (SSI) is a federal program administered by the Social Security Administration (SSA). SSI provides eligible individuals with monetary assistance to meet the basic needs of life. An individual must be both disabled and meet certain income and asset requirements in order to be eligible for SSI.

Medicaid is a joint state and federal program administered in Colorado by the Colorado Department of Health Care Policy and Financing (HCPF). Both state and federal governments fund Medicaid, which provides basic medical care to Colorado's poor. There are a variety of means by which individuals may qualify for Medicaid, including receipt of SSI.

Finally, the Colorado Department of Human Services, Division of Disability Determination Services (DDS) contracts with SSA to determine whether individuals who apply for SSI benefits are disabled within the definitions of the various, applicable laws. As of July 1, 2004, HCPF contracted with a private vendor, Consultative Examinations, Ltd. (CEL), to make similar determinations with respect to applicants for Medicaid only. Prior to July 2004, DDS performed this function for HCPF.

Eligible Inmate Identification

Department of Corrections

All inmates in DOC custody have been assigned, at one time or another, various needs assessment codes. DOC has determined that those inmates with psychological needs assessment codes of "3" (moderate needs), "4" (moderately severe needs) or "5" (severe needs), are most likely to be eligible for SSI, Medicaid or both upon release, based on disability. Additionally, inmates with medical/dental needs assessment codes of "4" (moderately severe needs) or "5" (severe needs), may also meet eligibility requirements.

DOC personnel utilize a computer system to generate reports that include inmates with these codes that are scheduled for release within 120 days. In this way, DOC conducts initial screening of inmates.

From this list, DOC medical personnel, mental health personnel, or both, screen potential candidates. Once an inmate has been approved through both of these screening processes, a DOC case manager begins gathering the information required to complete the application forms for SSI or Medicaid. The case manager will also sit down with the inmate and complete the application forms. Particularly with respect to inmates with mental disabilities, the degree to which the inmates participate and cooperate in the process varies.

Depending on how cooperative the inmate is, the complexity of the case and the case manager's familiarity with the application forms and the types of information being solicited by them, this process typically takes anywhere from two to six hours.

Simultaneously, DOC medical or mental health personnel, as the case may be, prepare the inmate's medical/mental health file and forward a copy of it, sealed, to the case manager for inclusion in the SSI/Medicaid application packet. Due to the privacy rules associated with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), at no time is the case manager made aware of the specifics of the inmate's particular disabilities.

Once all the application forms are complete and the medical/mental health file is received, the case manager completes a "Prerelease Flag," which is a form attached to the front of the application packet that notifies the respective staffs of SSA, DDS and HCPF that this particular application is for an incarcerated inmate that is going to be released relatively soon. The entire application packet is then forwarded to the SSA office for the region in which the DOC facility is located.

It is also important to note that inmates need not apply for both SSI and Medicaid benefits. An inmate could apply for Medicaid only. In such cases, different forms are used and the application is forwarded to the social services office for the county into which the inmate will be released, rather than SSA. Most inmates, however, apply for SSI, and thus also Medicaid.

Although the program was statutorily scheduled for implementation on January 1, 2003, the first applications were not actually processed by DOC until July 2003. Between that time and July 2004, DOC staff assisted 89 inmates in completing the application process. Of these, 26 claimed only a mental disability and 17 claimed only a physical disability, meaning that the vast majority of applicants claim both mental and physical disabilities.

Community Corrections Agencies

During the course of this sunset review, the Department of Regulatory Agencies (DORA) sent surveys to all 42-community corrections agencies in Colorado. The results of this survey can be reviewed in Appendix B on page 22.

The survey revealed that at least two-thirds of Colorado's community corrections agencies were unaware of the Program and its applicability to them. Additionally, all but one survey respondent indicated that no training regarding the Program was provided. As a result, the Program has gone largely unimplemented in Colorado's community corrections agencies.

Therefore, a discussion of the implementation of the Program in Colorado's community corrections agencies is virtually impossible. However, it can reasonably be assumed that the processes and procedures at the various community corrections agencies that were aware of the Program are likely to be substantially similar to those of DOC.

An important exception is that community corrections agencies would not be aware of or have access to the Prerelease Flag. Therefore, expedited application processing would not necessarily occur. This can be particularly problematic in the community corrections context since most inmates are not released until they can demonstrate that they will have the means to successfully reintegrate into the community, which often involves a demonstration of assets, work and a place to live. This can cause a delay in the release if the inmate is going to rely on such benefits to support himself/herself upon release, which is often the case for disabled inmates.

Application Processing

In order to qualify for SSI/Medicaid, pursuant to this program, an inmate must satisfy both disability and financial eligibility requirements.

When an application is received at an SSA regional office, SSA staff reviews it for completeness, focusing on financial eligibility requirements. If the application is complete, the information is entered into a computer and a telephone interview is scheduled with the inmate. These telephone interviews are coordinated with the inmate's DOC case manager and are typically scheduled approximately four weeks in advance.

During the telephone interview, information contained in the written application is confirmed and clarified, and additional information may be solicited. Telephone interviews can be as short as 15 minutes, and can take as long as several hours, depending on the degree of cooperation on the part of the inmate, the complexity of a particular case and the completeness and accurateness of the original, written application.

During the course of the telephone interview, the SSA staff member enters information into a computer, thus completing the computerized application. At the conclusion of the interview, the SSA staff member prints the application and sends it to the inmate for signature.

When SSA receives the signed application from the inmate, the application, along with the inmate's medical/mental health file is forwarded to DDS, for a determination as to whether the inmate satisfies the disability eligibility criteria for SSI/Medicaid.

It is also important to note that inmates need not apply for both SSI and Medicaid. Since Medicaid benefits are automatically granted along with SSI, an SSI application is also an application for Medicaid. However, an inmate could elect to apply for Medicaid only. In such cases, the applications are forwarded to the social services office for the county into which the inmate will be released, which determines whether the inmate meets Medicaid's eligibility requirements, which are broader than the eligibility requirements of SSI. Applications are then forwarded to Consultative Examinations, Ltd. (CEL), a private vendor, as appropriate, for a determination as to whether the inmate is disabled.

Both DDS and CEL employ physicians, psychiatrists and psychologists, among others, to review medical/mental health files to determine whether the inmate meets the definition of "disabled," thus entitling the inmate to SSI/Medicaid benefits. These determinations are based entirely on the inmate's medical/mental health file for the immediately preceding 12 months. Thus, the accuracy of documentation on the part of DOC's medical/mental health personnel is of paramount importance.

If DDS or CEL determines that additional information is required in order to make a determination of disability, the agency can send an appropriate medical/mental health practitioner to the facility where the inmate is housed to conduct an examination. These examinations can be expensive and difficult to schedule, so all parties strive to ensure that all documentation is provided from the beginning.

DDS typically makes disability determinations within 60 days of receipt of the application from SSA, or within approximately 90 days of the original application date to SSA.

If DDS or CEL determines that the inmate satisfies the disability eligibility requirements, the application is "allowed," or approved, and returned to SSA or the social services office for the county into which the inmate will be released, as the case may be. Since Colorado law specifies that individuals receiving SSI benefits are automatically eligible for Medicaid, SSA then informs HCPF so that HCPF can establish Medicaid benefits for the inmate.

Immediately prior to release, the inmate's case manager contacts both SSA and the social services office for the county into which the inmate will be released, to confirm the inmate's release date, as well as the county and address at which the inmate has indicated he or she will reside upon release.

If everything works properly, a Medicaid Assistance Card (MAC) is waiting for the inmate, at the DOC or community corrections agency, as the case may be, upon release. The MAC works like a traditional insurance benefits card in that it informs healthcare providers and pharmacies that the identified individual is entitled to Medicaid benefits. Additionally, SSI benefits should begin immediately.

Of the 89 applications submitted by DOC-held inmates to SSA/DDS, nine applied for and have been approved to receive both Medicaid and SSI benefits. As of July 1, 2004, all had been released from DOC custody.

Post Release Procedures

Post release procedures relate primarily to Medicaid and depend on whether the released inmate receives Medicaid only, or Medicaid and SSI.

If the released inmate receives Medicaid only, then within 30 days of release, the released inmate must report to his or her county human services office in order to maintain Medicaid benefits. If the inmate fails to report, Medicaid benefits are suspended. If the released inmate fails to report within 60 days of suspension, Medicaid benefits are cancelled and the released inmate must submit a new application if he or she wishes to receive Medicaid benefits at a later date.

For inmates that are paroled, mechanisms are in place to ensure that the released inmate reports to the county human services office -- it is simply made a condition of parole and the parole officer can assist the released inmate in keeping the appointment.

For inmates that are simply released, however, there are no such mechanisms. The released inmate, at that point, is free to do whatever he or she wishes.

However, if a released inmate receives Medicaid in conjunction with SSI, such a released inmate need not report to the county. As long as the released inmate continues to receive SSI benefits, the released inmate also continues to receive Medicaid benefits.

On a weekly basis, SSA notifies the state of new SSI beneficiaries, as well as those who lose SSI benefits, and that information is electronically disseminated to county human services offices. If a released inmate receives Medicaid by virtue of also receiving SSI, and SSI benefits are terminated, Medicaid benefits are also terminated.

Of the nine inmates that were approved for SSI and Medicaid, two were released in January 2004. As of this writing, both were still receiving SSI and Medicaid benefits and neither had been re-incarcerated.

Analysis and Recommendations

Recommendation 1 - Continue the Inmate Medical Benefits Application Assistance Program with respect to the Colorado Department of Corrections, as mandated by section 17-1-113.5, Colorado Revised Statutes, until 2007.

The Inmate Medical Benefits Application Assistance Program (Program) purports to help two inmate populations, those in the custody of the Colorado Department of Corrections (DOC) and those housed in Colorado's community corrections agencies. This Recommendation 1 pertains to the DOC portion of the Program, whereas Recommendation 2 pertains to the community corrections piece.

The first sunset criterion asks whether regulation is necessary to protect the health safety or welfare of the public. While this criterion was originally designed to pertain to professional and occupational licensure programs, it is, nevertheless, applicable to the Program in the sense that it is legitimate to ask whether the Program serves to protect the public. There are two means by which the Program can be assessed to determine whether it protects and benefits the public. First, reduced recidivism among those inmates who participate in the Program and receive Supplemental Security Income (SSI), Medicaid benefits, or both, means fewer future victims of crime, thus enhancing public safety. Second, if cost savings can be realized as a result of reduced recidivism, any saved funds can be redistributed for other important purposes, thus enhancing the public welfare.

The first of these performance measures is vitally important because the purpose of the Program is to prevent released inmates who are disabled from re-offending and re-entering the criminal justice system. The theory behind this approach posits that if such disabled persons receive the medications and healthcare services that they need, they will be less likely to re-offend. This theory assumes that the disability is somehow related to the propensity to engage in criminal behavior. In the case of individuals who suffer from mental disabilities, this assumption is easier to accept than it is when discussing inmates with physical disabilities.

A study conducted in 1994 by researchers at Hahnemann University in Philadelphia found that recidivism is related to the receipt of fewer services that clients need, such as medications and continuity of care.[1] This same study found that 32 percent of people with mental illnesses were re-incarcerated within six months of release, and that 72 percent were re-incarcerated within 36 months of release. It is important to note that this study tracked pure recidivism rates; it did not track those inmates who received needed assistance.

[1] "Jail Recidivism and Receipt of Community Mental Health Services," by P. Solomon, J. Draine and A. Meyerson, *Hospital and Community Psychiatry*, Aug. 1994, pp. 793-797.

Regardless, these figures are more or less consistent with testimony that was offered during the original legislative hearings on House Bill 02-1295 (HB 1295), the bill that created the Program. At those hearings, testimony was offered that suggested a recidivism rate of 70.6 percent within 12 months of release, as compared to 37 percent among the general inmate population.

While this performance measure is vitally important, and the theory behind it plausible, it is, at this point, virtually impossible to draw any conclusions from hard data. The Program was statutorily scheduled for full implementation on or before January 1, 2003. However, the first applications were not submitted via the Program until August 2003, and the DOC's Administrative Regulation did not become effective until February 1, 2004. As a result, there is very little data to analyze in order to determine the effectiveness of the Program at reducing recidivism.

Between July 2003 and July 2004, 89 inmates received assistance pursuant to the Program. Of these, only nine were approved to receive benefits. Of these, two were released from DOC custody in January 2004, and the remaining seven were released in May and June 2004. As of July 1, 2004, none had been re-incarcerated.

Unfortunately, this pool is inadequate to render any reliable conclusions as to the effectiveness of the Program at reducing recidivism. Only with time and more approved inmates will it be possible to determine whether the philosophy behind the Program is sound.

The second performance measure identified is based purely on costs. It is reasonable to conclude that if the cost of assisting an inmate in applying for Medicaid/SSI, and the cost of those benefits are less than the cost to incarcerate such an individual, the Program is cost effective. This is a simple cost-benefit analysis. Because of differing release dates and, in most cases, the fact that most inmates have been released relatively recently, the following analysis focuses exclusively on the two inmates who were released in January 2004.

In fiscal year 01-02 (the last year for which such information is available), the average cost to incarcerate an inmate in Colorado was $28,218. This cost jumped to $67,927 for the San Carlos Correctional Facility in Pueblo, which is where most inmates with mental disabilities are incarcerated, and, importantly, the facility from which the two inmates on which this analysis focuses were released. Thus, the annual cost to house these two inmates, in fiscal year 01-02, was $135,584.

Recall that between July 2003 and July 2004, 89 applications were processed through the Program.

According to conversations with several DOC case managers, the staff members who actually assist the inmates in completing the applications, it takes anywhere from two to six hours to assist a single inmate. In order to project a worst-case scenario, the calculations that follow assume that it takes six hours of case manager time per inmate/application.

The fiscal year 03-04 salary range for a Case Manager I was $3,370 to $4,888 per month, which averages out to approximately $21 to $30 per hour. Assuming it takes a case manager six hours at $30 per hour to assist an inmate in completing an application, each application costs $180 in staff time. At 89 cases per year, total DOC case manager staff time costs approximately $16,020, or $1,456 per approved application.

Finally, according to the Colorado Department of Health Care Policy and Financing (HCPF), the total dollar value of the Medicaid benefits paid on behalf of the two released inmates for the five-month period beginning at the end of January 2004 and ending June 31, 2004, was $34,686. If this figure is annualized, it is reasonable to estimate that the total Medicaid costs for these two individuals would be approximately $83,247.

With all of this information, it is possible to conduct a simple cost-benefit analysis of the Program by taking the annual cost of incarceration for the two inmates and subtracting DOC staff time (in terms of costs per approved application) and Medicaid payouts. Such an analysis reveals an estimated annual cost savings of $49,425 per year for these two inmates.

Admittedly, this analysis is not perfect. It ignores the benefits paid by the federal government in terms of SSI benefits and is based on a data sample that is inadequate to render any reliable conclusions. Additionally, this calculation does not account for DOC medical staff time in building and maintaining the medical files necessary to support a decision to allow benefits or Department of Human Services, Division of Disability Determination Services (DDS) staff time in processing applications. However, it does lend credence to the possibility that, given time, the Program may actually generate considerable cost savings for the state.

A final, yet intangible benefit of the program relates to homelessness. The National Resource Center on Homelessness and Mental Illness reports that between 20 and 25 percent of the nation's homeless population suffers from some kind of serious mental illness.[2] This organization also reports that approximately 54 percent of the nation's homeless population has been incarcerated at some point. Thus, it is reasonable to conclude that providing released inmates with medical and other assistance upon release may not only reduce recidivism, but may also help to address Colorado's homeless problem.

[2] "Question #2: Who is Homeless?" *National Resource Center on Homelessness and Mental Illness*: *Get the Facts*, as downloaded from www.nrchmi.samhsa.gov/facts/facts_question2.asp on February 17, 2004.

Because the Program has not been in operation long enough to render reliable data as to its effectiveness at reducing criminal recidivism among those who receive assistance pursuant to the Program, and thus a reduction in victims of such crime, and because the preliminary data suggest that the State of Colorado could realize substantial cost savings by full implementation of the Program, the General Assembly should continue the Program for two years, until 2007. This short time frame will allow sufficient data to be generated upon which a more reliable conclusion can be derived as to whether the Program reduces recidivism, reduces the number of crime victims and produces a cost savings to the state.

Recommendation 2 – Repeal the Inmate Medical Benefits Application Assistance Program with respect to Colorado's community corrections agencies, as mandated by section 17-27-105.7, Colorado Revised Statutes.

The second part of the Program pertains to residents of Colorado's community corrections agencies. Just as HB 1295 directed the DOC to assist inmates that are within 90 days of release in completing applications for SSI and Medicaid, so too did it direct community corrections agencies to offer similar assistance to their inmates. However, the community corrections portion of the Program has gone largely unimplemented.

During the course of this sunset review, the Department of Regulatory Agencies (DORA) mailed an anonymous survey to all 42 community corrections agencies that were registered with the Department of Public Safety, Division of Criminal Justice, Office of Community Corrections. A copy of the survey with response totals may be found in Appendix B on page 22. Fifteen completed surveys were returned to DORA, generating a 35.7 percent response rate. Such a response rate lends itself to relatively reliable conclusions.

Ten of the 15 surveys (66 percent) returned reported that prior to receiving the survey, the administrators of the relevant community corrections agencies had been unaware of the passage of HB 1295 and its applicability to their agencies.

Indeed, a representative of HCPF confirmed that HCPF has not provided training directly to community corrections programs under the mistaken belief that coordinating training efforts with DOC would also reach the community corrections community. Not surprisingly, then, all but one of the survey respondents indicated that they received no training on assisting their inmates in completing application forms. The facility that did receive training received it from the Social Security Administration (SSA), a federal agency that is very much involved in the Program, but which is under no statutory obligation to provide such training.

Regardless, six agencies reported that they assisted inmates in completing applications, and two of these agencies were not even aware that they were statutorily required to do so. According to the survey responses, inmates of these six agencies submitted a total of 17 applications, eight of which came from agencies that were unaware of the requirements of HB 1295.

However, all of this is not to suggest that had more community corrections agencies been made aware of the statutory requirements and had they received training, more applications would have been submitted. On average, only four percent of community corrections inmates suffer from mental disabilities and only two percent suffer from physical disabilities. This indicates that the potential applicant pool is relatively small to begin with.

It is also important to note that community corrections agencies typically allow inmates to leave the facility during daytime hours to work, and then the inmates return to the facility in the evening. Because Medicaid/SSI are generally awarded to individuals that are unable to work, and because HB 1295 was enacted to assist only those inmates that are so disabled that they are unable to complete the applications themselves, it is very unlikely that a significant number of such inmates would ever be released from DOC facilities to community corrections agencies.

Additionally, and perhaps more importantly, the survey revealed that while inmates typically reside at a community corrections agency for an average of 324 days, the agencies typically receive an average of 46-days' notice of a particular inmate's anticipated release date. Even these numbers are a bit inaccurate because one survey respondent reported abnormally large numbers. If such abnormalities are factored out, the average length of stay drops to 263 days and the average advance notice of release drops to 21 days.

Recall that it typically takes 120 days for an application to be approved. Therefore, even those community corrections agencies that have assisted inmates in applying for benefits have very likely released those inmates long before benefits were approved or denied.

Since the community corrections agencies were, for the most part, unaware of the statutory requirements and because they did not receive training from HCPF, the applications submitted by community corrections agencies' inmates were not properly flagged, so it is not possible to: 1) determine whether or how many applications were approved, and 2) whether approved inmates have subsequently re-offended.

Since several community corrections agencies have demonstrated a willingness and ability to provide application assistance without a statutory requirement to do so, since very few community corrections inmates would be disabled to the extent that they fall within the scope of HB 1295, and since the average amount of advance notice given to community corrections agencies of inmates' anticipated release dates is insufficient to allow for the completion of the application process, section 17-27-105.7, Colorado Revised Statues, should be repealed.

Administrative Recommendation 1 – The DOC should designate a single case manager, or other qualified individual, in each of its facilities, to serve as the primary individual in that facility to provide medical benefits application assistance to inmates in that facility.

Case managers are the DOC staff members most responsible for assisting inmates in completing applications for Medicaid/SSI benefits. They are the individuals in DOC's facilities that sit down with the inmates, complete the forms, gather and forward records and coordinate interviews with SSA staff. To assist them in doing this, the DOC, SSA, HCPF and DDS have provided several training sessions on how to complete the necessary application forms. However, this is not the only job duty of case managers; they perform a variety of functions inside DOC facilities.

During the course of this review, a DORA representative spoke with several case managers from a variety of DOC facilities. From these interviews, it became apparent that the success or failure of the Program depends, in large part, on the willingness of case managers to take the extra two to six hours it takes to complete the application process for these inmates.

Furthermore, the application forms can be complex and difficult to understand, which is part of the justification for the Program in the first place. Many case managers expressed their frustration that they continue to receive training for duties that they may be called upon to perform only once or twice a year. Under such circumstances, it is easy to forget what needs to be done, leading to a greater time commitment on the part of the case manager to navigate through the Medicaid/SSI bureaucracy.

Additionally, DOC is structured in a fairly decentralized manner. The various DOC facilities are relatively autonomous. This is exemplified by the fact that there is no single person at DOC headquarters with direct supervisory authority over case management activities at all DOC facilities. Each facility has its own case management staff that answers to that facility's own leadership, not to a centralized bureaucracy. This has made it difficult to implement the Program because the case management staff at some facilities has simply been unwilling to provide the required assistance.

For example, the Denver Women's Correctional Facility (DWCF) is home to a special unit for disabled female inmates. However, it was not until April 2004 that the first application was submitted through the Program by a DWCF inmate. As of July 2004, four applications by women had been submitted. While it is possible that there simply were no inmates at DWCF scheduled for release who would qualify for the assistance offered by the Program, such would be inconsistent with national statistics. According to a representative of the SSA, in the general, non-incarcerated population, women file approximately 40 percent of SSI claims. This would seem to indicate that there should have been more women receiving assistance pursuant to the Program, yet such did not occur until DWCF staff was questioned by DORA staff in connection with this sunset review, as to why no applications had been filed by women.

Other facilities, such as San Carlos Correctional Facility and Colorado Territorial Correctional Facility, have designated single staff members to work on Program applications, in addition to other job duties. These two facilities have, perhaps, the highest concentrations of disabled male inmates and thus, have submitted the largest number of applications. According to representatives of DDS, applications submitted by inmates at these two facilities are generally complete and require little if any follow-up, which serves to decrease the time necessary to approve or deny an application.

All of this leads to the conclusion that DOC case management staff is a critical element in the ultimate success or failure of the Program. It is impractical to recommend that DOC reorganize itself to build-in case manager accountability for this program alone. However, relatively minor steps can be taken to instill greater facility accountability for adhering to the legislative mandate set out in HB 1295.

The DOC should require each facility to designate a single staff member to assist inmates in completing Medicaid/SSI applications. This would very likely be a duty in addition to other job duties, depending upon the facility and the number of applications likely to be submitted.

Implementation of this recommendation would increase the efficiency with which case managers could assist inmates because the case managers would, over time, become increasingly familiar with the applications themselves, the processes and bureaucracies involved and the required documentation. Additionally, it would maximize training efforts because rather than training all case managers who may or may not assist an inmate in applying for benefits, training efforts would be focused on the few case managers who are more likely to assist inmates in this process.

It would also instill a greater sense of accountability within the facility in terms of identifying which inmates qualify for assistance under the Program and ensuring that those inmates receive the statutorily mandated assistance in applying for benefits. This is vitally important because HB 1295 directs that DOC “shall” provide assistance to such inmates, and this sunset review has revealed that some DOC staff members have misinterpreted this to mean that they “may” provide such assistance.

Additionally, as institutional expertise grows, case managers that are involved with the Program will be able to better assist DOC medical staff in identifying which inmates are likely to qualify for assistance under the Program. This will enable DOC medical staff to better document the diagnosis and treatment of those inmates and also serve as a pre-screening mechanism for which inmates should participate in the Program, thus driving greater efficiencies and cost savings.

Since several case managers have questioned the necessity of training for duties they may never perform and since the DOC lacks the organizational ability to compel case managers to assist inmates, the DOC should require each facility to appoint a single case manager to handle all such cases.

Administrative Recommendation 2 – The DOC, HCPF and DDS, in coorperation with SSA, should develop a process whereby inmates that participate in the Program can be tracked both for receipt of benefits and for re-incarceration.

Although the processes that implement the Program are, admittedly, still being worked out, at least one area could be improved substantially. Due, in part, to the privacy rules promulgated pursuant to the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), the various state and federal agencies involved in the Program do not always have access to the information necessary to determine whether the Program is effective at reducing recidivism.

At the commencement of this sunset review, none of the agencies involved could report whether any of the inmates that had been approved for benefits had been re-incarcerated, and the DOC could not report whether any of the applications that had been submitted via the Program had been approved. This is due to several factors.

First, although the DOC can identify which individuals enter DOC facilities, the DOC is never informed as to whether the inmates that apply for benefits pursuant to the Program are approved and whether those inmates actually receive benefits because HIPAA prevents SSA, DDS and HCPF from revealing the identities of such individuals. Even if this were not the case, however, DOC would only be able to report on inmates that re-entered the criminal justice system in Colorado.

Similarly, HCPF does not necessarily know which of its beneficiaries receive benefits due to having received assistance via the Program, and DDS does not have access to information as to whether an inmate is re-incarcerated.

All that DOC staff ever knows is that it has assisted an inmate in applying for benefits. DDS staff knows whether SSA has approved an application based on assets and whether DDS approves or denies an application based on disability. HCPF staff only knows whether it pays Medicaid benefits to a particular individual; HCPF staff does not necessarily know how that individual came to receive benefits (i.e., through the Program). Thus, without cooperation and coordination, none of the state agencies involved in the Program could initially report whether the program is effective because none of them had access to all of the information necessary to reach a conclusion.

The SSA, on the other hand, possesses the social security numbers (SSNs) of those inmates approved for benefits through the Program and can access a national database to determine whether those individuals are re-incarcerated anywhere in the United States. DORA was able to determine that the nine inmates that had received benefits as a result of the Program had not been re-incarcerated, through working with the SSA. Although the SSA is also subject to HIPAA's privacy rules, since DORA was not concerned with identifying information, SSA's revelation of the information did not pose a problem. Similarly, DORA was able to obtain from HCPF the fact that these inmates were actually receiving Medicaid benefits and the total value of those benefits because identifying information was neither requested nor required.

Since it is impossible to determine the actual costs of the Program and whether the Program is effective at reducing recidivism without knowing whether approved inmates are re-incarcerated and the value of the benefits paid on their behalf, the three state agencies involved in the Program, plus HCPF's private vendor, should work with SSA to develop a process whereby this information is readily available without violating the privacy rules promulgated pursuant to HIPAA.

Appendix A – Sunset Statutory Evaluation Criteria

(I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;

(II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;

(III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;

(IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;

(V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;

(VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;

(VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;

(VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

(IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Appendix B – Survey of Community Corrections Programs

On April 22, 2004, the Department of Regulatory Agencies (DORA) mailed surveys to 42 community corrections programs in Colorado in order to solicit information regarding their knowledge and implementation of House Bill 02-1295. As of June 1, 2004, 15 surveys had been returned, generating a response rate of 35.7 percent. With such a high response rate, conclusions derived from the survey can be considered relatively reliable.

The actual questions posed and summaries of the responses received follow:

1. Prior to receiving this survey, was your program aware of the passage of section 11-27-105.7, C.R.S., and its applicability to Colorado's community corrections programs?

Yes __5__ No __10__

2. Has the staff of your program received any training, provided by the Colorado Department of Health Care Policy and Financing or otherwise, concerning the completion of applications for supplemental security income, Medicaid or both?

Yes __1__ No __14__

If "yes," who offered this training? _Social Security Administration___

3. Have any of your program's clients submitted an application pursuant to the process outlined in section 11-27-105.7, C.R.S.?

Yes __6__ No __9__

If so, how many? __3 (average)__
2 reported 2
1 reported 3
2 reported 5

If not, why not?

- Unfamiliar with services
- Several have applied, but not received it
- Approximately 5 per year
- Were not aware of ability to
- They were not made aware of it and/or were not eligible
- Unaware of services offered

4. On average, what percentage of your client population would you characterize as suffering from <u>severe</u> disabilities (i.e., those that would render them unable to work) due to:

Mental illness? _4_ % Physical disability? _2_ %

6 reported 0%	5 reported 0%
5 reported 1%	5 reported 1%
1 reported 4%	2 reported 2%
1 reported 5%	1 reported 3%
1 reported 10%	2 reported 10%
1 reported 38%	

5. On average, how long do most clients stay at your facility?

_324_ Days

1 reported 90 days
5 reported 180 days
1 reported 210 days
2 reported 240 days
1 reported 250 days
2 reported 360 days
1 reported 365 days
1 reported 660 days
1 reported 1,190 days

6. On average, how much advance notice does your program receive regarding the release date of a client?

__46_ Days

1 did not report
1 reported 4 days
3 reported 5 days
2 reported 7 days
6 reported 30 days
1 reported 60 days
1 reported 365 days