

Service Chapter: ACA Medicaid Non- ACA 510-03 & 510-05

Effective Date: October 1, 2025

Overview

Updating language to clarify that Medicaid coverage will be suspended for certain Medicaid eligible individuals during admission to an Institution for Mental Disease (IMD).

Clarifying what conditions need to be met for an individual to be considered gainfully employed and updating examples of what is and isn't considered gainful employment.

Description of Changes

1. Institutions for Mental Disease (IMD) 510-03-35-97 - Change

Updating verbiage to clarify what happens to Medicaid when certain individuals are admitted to an Institution for Mental Disease (IMD).

2. Institutions for Mental Disease (IMD) 510-05-35-97 - Change

Updating verbiage to clarify what happens to Medicaid when certain individuals are admitted to an Institution for Mental Disease (IMD).

3. Gainful Employment 510-05-57-15 - Change

Reformatting the original text under this policy section. Adding in more examples of what is considered gainful employment and what is not considered gainful employment. Specifying that a client must be in receipt of Workers with Disabilities (WWD) when they go on medical leave from their employment.

Policy Section Updates

1. Institutions for Mental Disease (IMD) 510-03-35-97

~~An individual under age 65 who is a “patient” in an IMD is not eligible for Medicaid, except as identified in subdivision d, unless the individual is under age 21 and is receiving inpatient psychiatric services and meets the certificate of need for admission. An individual who attains age 21 while receiving treatment, and who continues to receive treatment as an inpatient, may continue to be eligible through the month the individual attains the age of 22.~~

An IMD is a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases. A facility with 16 beds or less is not an IMD. An institution is classified as an IMD if its main purpose is for the care and treatment of mental diseases. An intermediate care facility for individuals with intellectual disabilities (ICF-IID) is not classified as an IMD.

Current listing of IMDs in North Dakota

Admission at an Institution for Mental Disease (IMD) does not make an individual ineligible for Medicaid. However, Medicaid will not pay for covered services for individuals under age 65 who reside at an IMD unless the individual:

- Is 21 and under AND
- Has a certificate of need AND
- Receives inpatient psychiatric services.

For those who do not meet the criteria for Medicaid to pay for covered services, their Medicaid coverage will be suspended while they are residing at the IMD.

In Medicaid policy, “residing” in an Institution for Mental Disease (IMD) means that a person is admitted and staying overnight at the facility and is receiving inpatient or residential treatment. Individuals who are present at the IMD only for outpatient services or day treatment are not considered to be residing in the facility. Suspension of Medicaid eligibility does not apply to individuals receiving only outpatient or day services at an IMD.

Note: An individual who attains age 21 while receiving treatment, and who continues to receive treatment as an inpatient, may continue to receive Medicaid covered services through the month the individual attains the age of 22.

- ~~a. An IMD is a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases. A facility with 16 beds or less is not an IMD. Whether an~~

~~institution is an IMD is determined by its overall character as that of a facility established and maintained primarily for the care and treatment of mental diseases. An intermediate care facility for individuals with intellectual disabilities (ICF-IID) is not an IMD.~~

~~IMDs include the North Dakota State Hospital, and facilities determined to be a Psychiatric Residential Treatment Facility (PRTF) by the Medical Services Division. For any other facility, contact the Medical Services Division for a determination of whether the facility is an IMD.~~

For current listings of IMDs use this link:

[5-24 imd facility list.pdf \(nd.gov\)](#)

~~Note: Teen Challenge in Mandan: Only the men's program is considered an IMD.~~

- ~~b.~~ **A.** An individual on conditional release or convalescent leave from an IMD is not considered to be a "patient" **residing** in that institution. However, such an individual who is under age 21 and has been receiving inpatient psychiatric services is considered to be a "patient" **residing** in the institution until unconditionally released or, if earlier, the last day of the month in which the individual reaches age 22.
- ~~c.~~ **B.** An individual on conditional release is an individual who is away from the institution, for trial placement in another setting or for other approved leave, but who is not discharged. An individual on "definite leave" from the state hospital is an individual on conditional release.
- ~~d.~~ A child under the age of 19 who is determined to be continuously eligible for Medicaid, but who does not meet the certificate of need, remains eligible for Medicaid, however, no medical services will be covered during the stay in the IMD.

The period of ~~ineligibility~~ **Medicaid suspension** under this section begins the day after the day of entry and ends the day before the day of discharge of the individual from a public institution or IMD. A Ten-Day Advance Notice is not needed when terminating benefits due to entry into the public institution or IMD. See Paragraph (4)(c)(iii) of 510-03-25-25, "Decision and Notice," for further information.

2. Institutions for Mental Disease (IMD) 510-05-35-97

~~An individual under age 65 who is a "patient" in an IMD is not eligible for Medicaid, except as identified in subdivision d and e, unless the individual is under age 21 and~~

~~is receiving inpatient psychiatric services and meets the certificate of need for admission. An individual who attains age 21 while receiving treatment, and who continues to receive treatment as an inpatient, may continue to be eligible through the month the individual attains the age of 22.~~

An IMD is a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases. A facility with 16 beds or less is not an IMD. An institution is classified as an IMD if its main purpose is for the care and treatment of mental diseases. An intermediate care facility for individuals with intellectual disabilities (ICF-IID) is not classified as an IMD.

Current listing of IMDs in North Dakota

Admission at an Institution for Mental Disease (IMD) does not make an individual ineligible for Medicaid. However, Medicaid will not pay for covered services for individuals under age 65 who reside at an IMD unless the individual:

- Is 21 and under AND
- Has a certificate of need AND
- Receives inpatient psychiatric services.

For those who do not meet the criteria for Medicaid to pay for covered services, their Medicaid coverage will be suspended while they are residing at the IMD.

In Medicaid policy, "residing" in an Institution for Mental Disease means that a person is admitted and staying overnight at the facility and is receiving inpatient or residential treatment. Individuals who are present at the IMD only for outpatient services or day treatment are not considered to be residing in the facility. Suspension of Medicaid would not occur if the individual were receiving outpatient or day services at the IMD.

Note: An individual who attains age 21 while receiving treatment, and who continues to receive treatment as an inpatient, may continue to receive Medicaid covered services through the month the individual attains the age of 22.

Note: Individuals eligible under the PACE program will remain eligible for Medicaid covered services regardless of their age while a patient in an IMD.

- ~~a. An IMD is a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases. A facility with 16 beds or less is not an IMD. An intermediate care facility for Individuals with Intellectual Disabilities (ICF-IID) is not an IMD~~

~~For current listings of IMDs use this link:~~

[5-24-imd-facility-list.pdf \(nd.gov\)](#)

~~Note: Teen Challenge in Mandan: Only the men's program is considered an IMD~~

- ~~b. **A.** An individual on conditional release or convalescent leave from an IMD is not considered to be a "patient" residing in that institution. However, such an individual who is under age 21 and has been receiving inpatient psychiatric services is considered to be a "patient" residing in the institution until unconditionally released or, if earlier, the last day of the month in which the individual reaches age 22.~~
- ~~c. **B.** An individual on conditional release is an individual who is away from the institution, for trial placement in another setting or for other approved leave, but who is not discharged. An individual on "definite leave" from the state hospital is an individual on conditional release.~~
- ~~d. A child under the age of 21 who is determined to be continuously eligible for Medicaid, but who does not meet the certificate of need, remains eligible for Medicaid, however, no medical services will be covered during the stay in the IMD.~~
- ~~e. Individuals eligible under the PACE program will remain eligible for Medicaid regardless of their age.~~

The period of ~~ineligibility~~ Medicaid suspension under this section begins the day after the day of entry and ends the day before the day of discharge of the individual from an IMD. A Ten-Day Advance Notice is not needed when terminating benefits due to entry into the IMD. See Paragraph (4)(c)(iii) of 510-03-25-25, "Decision and Notice," for further information.

3. Gainful Employment 510-05-57-15 - Change

(N.D.A.C. 75-02-02.1-24.2)

- ~~1. An individual may be regarded as gainfully employed only if the activity asserted as employment:~~
 - ~~a. Produces a product or service that someone would ordinarily be employed to produce and for which payment is received;~~
 - ~~b. Reflects a relationship of employer and employee or producer and customer;~~

- ~~c. Requires the individual's physical effort for completion of job tasks, or, if the individual has the skills and knowledge to direct the activity of others, reflects the outcome of that direction; and~~
- ~~d. The employment setting is not primarily an evaluative or experiential activity.~~
- ~~e. Gainful employment will normally look like work to a reasonable person and will normally include withholding or payment of FICA. Gainful employment could include such activities as self-employment but not day services. Gainful employment cannot be measured by the number of hours worked or amount of earnings, but is based solely on the activity involved. The following examples may help in determining what is and is not gainful employment.~~

An individual is considered gainfully employed if all the following conditions are met:

- The employed individual provides a service or product that would require employment and there is a clear employer-employee relationship.
- The individual is paid for their work and withholding taxes or FICA are withheld from their paycheck;
- If the individual is self-employed, they must provide a service or product that results in payment for the service or product); and
- The individual demonstrates the necessary skills to perform essential job functions, including physical or technical knowledge, or they have the ability to direct the activities of others.

Other considerations around gainful employment:

- Gainful employment can include self-employment
- Gainful employment cannot be measured by the number of hours worked or the amount of earnings but is based on the activity involved.
- The work activities of applicants and recipients who receive employment related Extended Services from licensed Extended Services providers meet gainful employment criteria.

EXAMPLE: ~~An individual is trained and employed as an electronics technician. However, due to a physical disability, does not have the manual dexterity to~~

~~complete testing and repair procedures. The individual has an assistant that the technician directs on those procedures. Since it is the technician's knowledge of procedures and specifications that is necessary for production, that activity is considered gainful employment even though the assistant actually performs the physical labor.—~~

~~In this example, the assistant may have a cognitive disability and does not have the knowledge to complete the procedures but does have the physical skills to do so with the technician's direction. This also would meet the test for gainful employment.—~~

EXAMPLE: ~~Vocational Rehabilitation, DD and Special Education often use situational assessments in actual business settings to evaluate vocational potential or to provide the individual with experiences in various employment settings to assist in making career decisions. There may be actual work activity in the workplace but there is no commitment to hire, or one expected as an outcome.—~~

~~The work activities of applicants and recipients who receive employment related Extended Services from Licensed Extended Service Providers meet the gainful employment criteria. Receipt of Extended Services indicates that the individual is not in an evaluative or experiential activity, but is participating in supported employment on a long-term basis. Receipt of the Extended Services can be identified in the provider's Individual Service Plan for the applicant or recipient.~~

Examples of Jobs that meet gainful employment conditions:

- An individual is trained and employed as an electronics technician but does not have the manual dexterity to complete testing and repair procedures due to physical disability. The technician directs an assistant on the testing and repair procedures using the technician's knowledge of procedures and specifications necessary for production and job completion. The technician is considered gainfully employed as the individual has the skills and knowledge to supervise or direct the activity of others who perform the physical labor.
- Individuals in receipt of Extended Services indicate the individual is not in an evaluative or experimental activity but is participating in supported employment on a long-term basis. Receipt of the Extended Services can be identified in the provider's Individual Service Plan for the applicant or recipient.

EXAMPLE: ~~An individual is engaged in an activity sorting objects such as nuts and bolts. However, when the task is completed they are dumped together and mixed up again. While there may be some therapeutic value involved for the individual, it does not~~

~~produce a product that anyone would pay for, and does not look like work to a reasonable person.~~

~~**EXAMPLE:** An individual is in a training situation where a business agrees to provide the setting for the individual to engage in some activity (stocking shelves for instance) but the business does not have a position open, does not pay the individual, and if the individual were not completing the activity, existing personnel and resources would cover it. While it is productive activity, there is not a demand by the business for that service.~~

Jobs are not considered gainful employment when:

- The individual is not paid for the work they do.
- The employer creates a job for an individual to perform a work activity but there is normally no position required for that work activity. The job could be done by existing personnel, and the individual would not be replaced if they left the job.
- An individual is engaged in an activity sorting objects such as nuts and bolts but when the task is completed, they are dumped together and mixed up again. While there may be some therapeutic value involved for the individual, it does not produce a product that anyone would pay for and is not considered gainful employment even if the individual is paid.
- The employment setting is primarily an evaluative or experimental activity.

Note: Vocational Rehabilitation, Developmental Disabilities programs and Special Education often use situational assessments in actual business settings to evaluate vocational potential or to provide the individual with experiences in various employment settings to assist in making career decisions. There may be actual work activity in the workplace but there is no commitment to hire, or one expected as an outcome.

- ~~1. When an individual who is considered gainfully employed stops working, and is no longer on the payroll, the individual is no longer considered gainfully employed. However, if an individual quits one job to begin another, the individual is considered gainfully employed if the individual will not be unemployed for more than one calendar month.~~

When an individual who is considered gainfully employed stops working, and is no longer on the payroll, the individual is no longer considered gainfully employed.

- If an individual quits one job to begin another, the individual is considered gainfully employed if the individual will not be unemployed for more than one calendar month.
- If the individual quits their job and does not have another job, a desk review must be completed to determine if they are asset eligible for traditional Medicaid. If the client does not verify their assets or they are over the medically needy asset limit, the case must be closed. Advance notice rules must apply.

~~1. When an individual who is considered gainfully employed is not working due to illness or injury, the individual is considered gainfully employed if the individual intends to, and can, return to work. If the illness or injury is expected to last more than three months, a statement from the individual's physician will be needed indicating whether the individual can reasonably be expected to return to work. Further determinations of gainful employment shall be based on the physician's statement.~~

When a recipient of WWD is unable to work due to illness or injury, the individual will continue to be considered gainfully employed if the individual intends to and can return to work.

- ❖ A statement from the individual's physician or employer will be needed to indicate when the individual can reasonably be expected to return to work. The individual can remain open on WWD coverage for up to three months while on medical leave. However, if the individual has not returned after the third month, WWD must close, and asset eligibility must be determined for traditional Medicaid. Advance notice rules apply.