

DEPARTMENT OF HEALTH SERVICES

714/744 P STREET
P.O. BOX 942732
SACRAMENTO, CA 94234-7320



July 7, 1993

TO: All County Welfare Directors
All County Administrative Officers
All County Medi-Cal Program Specialists/Liaisons

Letter No.: 93-41

MEDI-CAL ELIGIBILITY FOR INSTITUTIONAL INMATES

REF. ACWDL 93-10; ARTICLE 6, MEM MANUAL

The purpose of this letter is to make a clarification of Medi-Cal eligibility for persons in home detention programs.

"Are persons on home detention programs eligible to Medi-Cal or are they considered incarcerated? These are persons who instead of spending their sentence in jail elect to spend that same time in home detention. They wear a control device that allows probation to know whether or not they leave their home during unspecified times during the sentence."

Title 22, California Code of Regulations (CCR), Section 50273, provides that inmates who are detained under the penal system, and who are not released on probation or parole, are not eligible for Medi-Cal benefits. This contrasts with the Aid To Families With Dependent Children (AFDC) Program which allows individuals participating in the Alternatively Sentenced Parents Program to receive AFDC and cash-based Medi-Cal.

Individuals participating under either the Home Detention/House Arrest Program or the Alternative Sentencing Program are eligible for Medi-Cal benefits. Participation in these programs is in lieu of incarceration and participants are not inmates of a public institution.

Federal law and regulation state that Federal Financial Participation (FFP) is not available in expenditures for services provided to individuals who are inmates of public institutions. (See 42 U.S.C. Section 1396d(a)(24)(A) and 42 CFR Section 435.1008(a)(1).) An inmate of a public institution means a person who is living in a public institution. (See 42 CFR Section 435.1009.)

Federal law and regulation make no specific provision for individuals participating in home detention or alternative sentencing programs. However, since individuals in these programs participate in lieu of incarceration, these individuals are not living in a public institution and are not ineligible for Medi-Cal on that basis. Recent HCFA guidelines regarding institutional status indicate that persons released from prison or jail on probation, parole, or a release order, with either a condition of home arrest or with a requirement of community service, are not considered inmates of a public institution. These individuals may be eligible for participation in the Medi-Cal program and may receive services for which the federal government would contribute FFP.

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Title 22, California Code of Regulations, Section 50273 will be amended and revised to reflect federal regulations and HCFA guidelines. This letter rescinds ACL No. 93-10.

If you have any questions, please contact Elena Lara of my staff at (916) 657-0712.

Sincerely,

ORIGINAL SIGNED BY

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch

Enclosures



DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care
Financing Administration

Refer to: MCD-O-IRM

Region IX
75 Hawthorne Street
San Francisco, CA 94105

JAN 13 1992

Leonard J. Kirschner, M.D.
Director
Arizona Health Care Cost Containment System
801 East Jefferson Street
Phoenix, Arizona 85034

Dear Dr. Kirschner:

This is in reply to your letter dated December 20, 1991, in which you request guidance as to the application of the term "inmate" in the context of 42 CFR 435.1009. You ask whether persons described in the examples listed below are considered "inmates of a public institution" for purposes of title XIX. Our response is provided immediately following each example.

1. An inmate in a prison within the Arizona Department of Corrections.

Such a person is an "inmate of a public institution".

2. An inmate of a county, city or tribal jail.

Such a person is an "inmate of a public institution".

3. An inmate in a prison or jail:

- a. prior to arraignment.

Such a person is an "inmate of a public institution".

- b. prior to conviction.

Such a person is an "inmate of a public institution".

- c. prior to sentencing.

Such a person is an "inmate of a public institution".

4. An individual who, after arrest but before booking, is escorted by police to a hospital for medical treatment and held under guard.

Such a person is not an "inmate of a public institution".

5. An individual who is incarcerated, but can leave prison or jail on work release or work furlough, and must return at specific intervals.

Such a person is an "inmate of a public institution"

6. An individual in prison or jail who transfers temporarily to a halfway house or residential treatment facility prior to a formal probation release order.

Such a person is not an "inmate of a public institution".

7. An individual released from prison or jail on probation, parole, or a release order.

a. with a condition of home arrest.

Such a person is not an "inmate of a public institution".

b. work release.

Such a person is not an "inmate of a public institution".

c. community service.

Such a person is not an "inmate of a public institution".

d. outpatient treatment.

Such a person is not an "inmate of a public institution".

e. inpatient treatment.

Such a person is not an "inmate of a public institution".

8. Individuals released from prison or jail due to a medical emergency who would otherwise be incarcerated "but for" the medical emergency, or individuals released from jail under a court probation order due to a medical emergency.

The former are "inmates of a public institution", but the latter are not.

9. A minor in a juvenile detention center prior to disposition (judgement).

a. due to criminal activity.

Such a person is an "inmate of a public institution".

b. due to care, protection or in the best interest of the child (e.g., Child Protective Services).

Such a person is not an "inmate of a public institution" if there is a specific plan for that person that makes the stay at the detention center temporary. Otherwise, such a person is an "inmate of a public institution".

10. A minor placed on probation by a juvenile court.

a. on juvenile intensive probation with specific conditions of release, including residence in a juvenile detention center.

Such a person is an "inmate of a public institution".

b. on juvenile intensive probation with home arrest restrictions.

Such a person is not an "inmate of a public institution".

c. on juvenile intensive probation to a secure treatment facility contracted with the juvenile detention center.

If the secure treatment facility is a part of the criminal justice system, then the person is an "inmate of a public institution". Otherwise, such a person is not an "inmate of a public institution".

d. on juvenile intensive probation with treatment as a condition of probation.

1. in a psychiatric hospital.

Such a person is not an "inmate of a public institution".

2. in a residential treatment center.

Such a person is not an "inmate of a public institution".

3. as an outpatient.

Such a person is not an "inmate of a public institution".

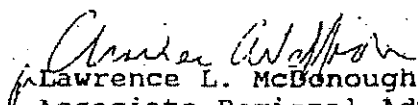
In your letter you refer to "inmates of a public institution" as "ineligible for Title XIX funds". This is a correct characterization. Although such persons may be eligible for title XIX, no title XIX Federal financial participation (FFP) is available for their medical care and treatment.

We are enclosing copies of the policy precedent material in our files per your request.

If you are still interested in other States' interpretation and application of 42 CFR 435.1009, we suggest you contact them directly.

Please have your staff contact Ian McLean of my staff if they have any questions. He can be reached at (415) 744-3593.

Sincerely,


Lawrence L. McDonough
Associate Regional Administrator
Division of Medicaid

cc: Rosada Gonzales
Arizona State Rep.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing Administration

7500 SECURITY BOULEVARD
BALTIMORE MD 21244-1850

DEC 12 1997

FROM: Director
Disabled and Elderly Health Programs Group
Center for Medicaid and State Operations

SUBJECT: Clarification of Medicaid Coverage Policy for Inmates of a Public Institution

TO: All Associate Regional Administrators
Division for Medicaid and State Operations

The purpose of this memorandum is to clarify current Medicaid coverage policy for inmates of a public institution. Recently, central office staff have become aware of a number of inconsistencies in various regional office directives on this subject which have been sent to States. Moreover, the growing influx of inquiries from the internet has prompted us to expand and, in some cases, refine our coverage policy in this area. Therefore, in the interest of insuring consistent and uniform application of Medicaid policy on inmates of a public institution, we believe that this communication is necessary.

Statute and Parameters

Section 1905(a)(A) of the Social Security Act specifically excludes Federal Financial Participation (FFP) for medical care provided to inmates of a public institution, except when the inmate is a patient in a medical institution. The first distinction that should be made is that the statute refers only to FFP not being available. It does not specify, nor imply, that Medicaid eligibility is precluded for those individuals who are inmates of a public institution. Accordingly, inmates of a public institution may be eligible for Medicaid if the appropriate eligibility criteria are met.

The next significant distinction is that under current Medicaid coverage policy for inmates there is no difference in the application of this policy to juveniles than the application to adults. For purposes of excluding FFP, for example, a juvenile awaiting trial in a detention center is no different than an adult in a maximum security prison. For application of the statute, both are considered inmates of a public institution.

Criteria for Prohibition of FFP

When determining whether FFP is prohibited under the above noted statute, two criteria must be met. First, the individual must be an inmate; and second, the facility in which the individual is residing must be a public institution. An individual is an inmate when serving time for a criminal offense or confined involuntarily in State or Federal prisons, jails, detention facilities, or other penal facilities. An individual who is voluntarily residing in a public institution would not be

considered an inmate, and the statutory prohibition of FFP would not apply. Likewise, an individual, who is voluntarily residing in a public educational or vocational training institution for purposes of securing education or vocational training or who is voluntarily residing in a public institution while other living arrangements appropriate to the individual's needs are being made, would not be considered an inmate. It is important to note that the exception to inmate status based on 'while other living arrangements appropriate to the individual's needs are being made' does not apply when the individual is involuntarily residing in a public institution awaiting criminal proceedings, penal dispositions, or other involuntary detainment determinations. Moreover, the duration of time that an individual is residing in the public institution awaiting these arrangements does not determine inmate status.

Regarding the second criteria necessary for determining whether FFP is prohibited, a facility is a public institution when it is under the responsibility of a governmental unit, or over which a governmental unit exercises administrative control. This control can exist when a facility is actually an organizational part of a governmental unit or when a governmental unit exercises final administrative control, including ownership and control of the physical facilities and grounds used to house inmates. Administrative control can also exist when a governmental unit is responsible for the ongoing daily activities of a facility, for example, when facility staff members are government employees or when a governmental unit, board, or officer has final authority to hire and fire employees.

Privatization of Prisons

Some States have contracted with a private health care entity to provide medical care in the public institution to its inmates. We have determined that FFP would not be available for the medical services provided in this situation. We believe that the inmates are not receiving services as a patient in a medical institution. Rather, they are continuing to receive medical care in a public institution because governmental control continues to exist when the private entity is a contractual agent of a governmental unit.

Some States are also considering the feasibility of selling or transferring ownership rights of the prison's medical unit (including the housing facility and the immediate grounds) to a private health care entity, thereby potentially establishing the unit as a medical institution for which FFP may be available on the greater grounds of the public institution. We do not believe this arrangement is within the intent of the exception specified in the statute. We adhere to the policy that FFP is unavailable for any medical care provided on the greater premises of the prison grounds where security is ultimately maintained by the governmental unit.



Exception to Prohibition of FFP

As noted in the above cited statute, an exception to the prohibition of FFP is permitted when an inmate becomes a patient in a medical institution. This occurs when the inmate is admitted as an inpatient in a hospital, nursing facility, juvenile psychiatric facility, or intermediate care facility. Accordingly, FFP is available for any Medicaid covered services provided to an 'inmate' while an inpatient in these facilities provided the services are included under a State's Medicaid plan and

the 'inmate' is Medicaid-eligible. We would note that in those cases where an 'inmate' becomes an inpatient of a long-term care facility, other criteria such as meeting level of care and plan of care assessments would certainly have to be met in order for FFP to be available.

FFP, however, is not available for services provided at any of the above noted medical institutions including clinics and physician offices when provided to the inmate on an outpatient basis. Nor is FFP available for medical care provided to an inmate taken to a prison hospital or dispensary. In these specific situations the inmate would not be considered a patient in a medical institution.

Policy Application

As a result of a significant number of recent inquiries from the internet and regional offices, we have provided policy guidance involving issues where inmates receiving medical care in various settings and under unique situations. The following examples will help in determining whether FFP is available or not. Please keep in mind that these are broad and general examples and extenuating circumstances may exist which could effect this determination.

Examples when FFP is available:

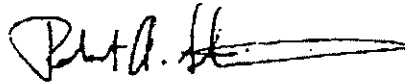
1. Infants living with the inmate in the public institution
2. Paroled individuals
3. Individuals on probation
4. Individuals on home release except during those times when reporting to a prison for overnight stay
5. Individuals living voluntarily in a detention center, jail, or county penal facility after their case has been adjudicated and other living arrangements are being made for them (e.g., transfer to a community residence)
6. Inmates who become inpatients of a hospital, nursing facility, juvenile psychiatric facility or intermediate care facility for the mentally retarded (Note: subject to meeting other requirements of the Medicaid program)

Examples when FFP is unavailable:

1. Individuals (including juveniles) who are being held involuntarily in detention centers awaiting trial ←
2. Inmates involuntarily residing at a wilderness camp under governmental control
3. Inmates involuntarily residing in half-way houses under governmental control

- 4 Inmates receiving care as an outpatient
- 5 Inmates receiving care on premises of prison, jail, detention center, or other penal setting

If there are any questions concerning this communication, please contact Thomas Shenk or Verna Tyler on 410 786-3295 or 410 786-8518, respectively



Robert A. Streimer

HCFA PROGRAM ISSUANCE

Transmittal Notice

REGION IV

DATE: March 6, 1998

PROGRAM IDENTIFIER: MCD-05-98
TO: Title XIX Agencies and Welfare Agencies
in AL, FL, GA, KY, MS, NC, SC, TN

SUBJECT: Clarification of Medicaid Coverage Policy for Inmates of a Public Institution

The purpose of this Health Care Financing Administration Program Issuance Transmittal Notice (PTN) is to clarify current Medicaid coverage policy for inmates of a public institution.

Statute and Parameters

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5. Inmates receiving care on premises of prison, jail, detention center, or other penal setting

If you have any questions, please contact Carol Langford at 404-562-7412 or Johnny Reed at 404-562-7417.

Vernell S. Britton, Branch Chief
Operations Branch
Division of Medicaid and State Operations