

DEPARTMENT OF HEALTH SERVICES

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



August 11, 1993

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

Letter No.: 93-55

MEDI-CAL ELIGIBILITY FOR INSTITUTIONAL INMATES UNDER PENAL CODE SECTIONS 1367 AND 1372

REF.: ARTICLE 6, MEDI-CAL ELIGIBILITY MANUAL

The purpose of this letter is to clarify the determination of Medi-Cal eligibility for two new categories of Penal Code patients:

1. Penal Code 1367: Those charged with a misdemeanor, but who are incompetent to stand trial, and who will now be treated by a mental health facility.

Penal Code Section 1367 provides that "A person cannot be tried or adjudged to punishment while that person is mentally incompetent." If the judge finds reason to believe that the defendant may be incompetent to stand trial (Penal Code Section 1367(b)), he may then order that the defendant be referred for evaluation and treatment. (Penal Code Section 1367.1(b).) The court "may cause the prisoner to be taken to a facility for 72-hour treatment and evaluation. . ." (Penal Code Section 4011.6.)

According to federal regulation, an inmate of a public institution means a person who is living in a public institution. (CFR Section 435.1009.) An inpatient is one who receives, or is expected to receive, room, board, and professional services for a 24-hour period or longer. (42 CFR Section 435.1009.) Admission into a mental health facility for a 72-hour treatment and evaluation period appears to be sufficient to constitute institutional status and make the individual ineligible for Medi-Cal. If evaluation results in placement in a mental health facility for treatment, then it is clear that the individual is not eligible for Medi-Cal. (42 CFR Section 435.1008.) "FFP is not available in expenditures for services provided to . . . individuals . . . who are patients in an institution for . . . mental diseases." If, however, the defendant is referred for outpatient treatment, he would not be considered an inmate of a public facility, and could be eligible for Medi-Cal benefits.

2. Penal Code 1372: Those felons incompetent to stand trial, previously treated at the state hospital, but whose competency has been restored and are returned to the Inpatient Unit to stand trial.

Penal Code Section 1372 concerns defendants who have been restored to competence. When a defendant is returned to court with a certification that competence has been regained, the court shall determine whether the person is entitled to be admitted to bail or to be released on his own recognizance status, or

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on the defendant's promise or on the promise of a responsible adult to secure the person's appearance for further proceedings (Penal Code Section 1372(d)). An individual who is released from incarceration on bail, on his or her own recognizance, or upon a promise to appear for future proceedings, does not appear to be an inmate of a public institution, and may be eligible for Medi-Cal. If not released on bail, on his or her own recognizance, or on a promise to appear for future proceedings, the individual is likely to be held in a prison or jail prior to conviction or sentencing. The individual would then be an inmate of a public institution, and would not be eligible for Medi-Cal.

The determination of eligibility for Medi-Cal benefits is dependent upon status as an inmate of a public institution. Individuals to whom Penal Code Sections 1367 and 1372 apply may be eligible for Medi-Cal.

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

Sincerely,

ORIGINAL SIGNED BY

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch

EL:sgf