

## DEPARTMENT OF HEALTH SERVICES

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June 16, 1987

TO: All County Welfare Directors  
All County Administrative Officers

Letter: 87-31

QUESTIONS AND ANSWERS ON INSTITUTIONAL STATUS FOR MEDI-CAL  
ELIGIBILITY PURPOSES DUE TO PENAL HOLDS

The purpose of this letter is to provide counties with policy regarding the effects of institutional status on Medi-Cal eligibility.

Under current federal Medicaid regulations (42 CFR 435.1008) certain individuals are ineligible for Medi-Cal due solely to institutional status. For persons between 21 (or under certain conditions 22) and 65 years of age who are inmates of a mental institution, the State's Mental Health System is responsible. For persons of any age who are detained under the penal system, the responsible party is the penal institution who retains authority over the individual.

Because of the complexity of the penal system and the many types of penal holds, a considerable number of questions have arisen with regard to eligibility of persons who are or have been detained under the penal system. These questions are divided into two categories, juveniles and adult offenders, and are addressed below. All policies presuppose other eligibility criteria (linkage, property, residency, etc.) have been met.

The following persons are ineligible for Medi-Cal:

1. persons who are under arrest.
2. persons being held pending hearing, arraignment, trial, or sentencing. (Persons released on bail are not considered "held" unless bail is revoked.)
3. persons serving a sentence.
4. persons placed in a mental institution under a pretrial or presentencing observation order or who are sentenced to such an institution.

The following persons are not ineligible (due to institutional status):

1. persons released on bail.
2. persons against whom the charges have been dropped.
3. persons released on formal probation or parole.
4. persons who have completed the sentence given by the court.

There may be a few exceptions to the above guidelines due to some unique circumstance, however in the majority of situations these rules would apply. The following questions/answers address the various situations most frequently asked about by counties.

Juveniles:

QUESTION 1:

There are instances in which children who have committed crimes are admitted to hospitals for treatment prior to their being formally detained. Can it be presumed that in such situations, children would be eligible for Medi-Cal benefits prior to their being formally detained?

RESPONSE 1:

Medi-Cal eligibility cannot be presumed in such cases. The Department is not acquainted with the circumstances under which a child who committed a crime would be treated at a hospital prior to arrest. Medical treatment involving minor children requires the legal consent of either the parent/guardian or some other agency or individual who has the authority to give such consent. It is our understanding that a law enforcement agency cannot obtain such authority without: 1) placing the child under arrest; 2) formal surrender of that authority by the parent to the law enforcement agency; or 3) court action.

QUESTION 2:

Children, regardless of whether they come under the provisions of W&I Code Sections 300, 601, or 602 are under temporary custody for 48 hours prior to the Probation Department being required to file a petition, and obtain a formal detention order in order to maintain physical custody of the children. Such children could

be in the Juvenile Hall for this period of temporary custody. If this were to occur, can children be considered eligible for Medi-Cal benefits?

RESPONSE 2:

For the purposes of Title 22, CAC, Section 50273 the term "detained under Section 602" is defined as arrested. Court review of the case, or decisions regarding "formal detention orders" are not relevant. If a child has been arrested, Medi-Cal eligibility cannot exist. As stated in response 1, we are not acquainted with the circumstances under which a minor child could be held by law enforcement agencies under Section 602 without legal authority.

It should be noted that W&I Code Sections 300 and 601 are not considered penal holds and have no effect on eligibility for Medi-Cal.

QUESTION 3:

Since there is a real distinction between detention, adjudication, and dispositional orders issued under W&I Code Section 602 and as Section 50273(a)(2) of the Medi-Cal Eligibility Manual specifically identifies only children detained under Section 602, is a child who is in Juvenile Hall awaiting placement in a foster home or group home as a result of a dispositional order of the Juvenile Court eligible for Medi-Cal benefits since the dispositional court order supersedes the detention order?

RESPONSE 3:

Children who are paroled or placed on probation (pursuant to a dispositional order) under Section 602 are not considered to be under a penal hold (see Title 22, CAC Section 50273(d)). Similarly, children who have completed their sentence, or against whom all charges have been dropped or dismissed are not considered to be under a penal hold. Such children could be eligible for Medi-Cal even if still physically present in the Juvenile Hall while awaiting placement. The MC 250 would be an appropriate application for these children if they are awaiting placement in foster care (Title 22, CAC, Section 50161(b)). Any other "disposition order" would require further review to establish eligibility.

Please be advised that a very common problem which occurs with juveniles on probation under Section 602 is that the Probation

Department frequently continues to refer to the juvenile as a "602 child." Eligibility workers should be very careful to accurately ascertain the status of the child prior to completing the eligibility determination. In addition, county Probation Departments should be advised that the generic term "602 child" is confusing and could lead to an improper denial of Medi-Cal benefits.

QUESTION 4:

Since a child detained under Section 602 for whom AFDC-FC is being paid is eligible for Medi-Cal, is the same child detained under Section 602 eligible for Medi-Cal between the date of application for AFDC-FC and the first date of eligibility for AFDC-FC, and if so, would the MC 250 application process suffice if county funds were used for the cost of placement pending eligibility for AFDC-FC."

RESPONSE 4:

Children who have been arrested or sentenced are under a penal hold under Section 602 and are ineligible for both AFDC-FC, and Medi-Cal. However, a child who is on probation may receive AFDC-FC and/or Medi-Cal if otherwise eligible. If non-AFDC based Foster Care is being paid for by a county agency and the child is not under a penal hold, an MC 250 application would be appropriate (Title 22, CAC, Section 50161(b)). In cases where a child is released from the penal hold after the first of the month and is placed in foster care (AFDC or non-AFDC) the child is only eligible for those days he/she was released. The child is ineligible any day the child was being held under the penal hold.

QUESTION 5:

In some counties a court may review an arrested juvenile's record and decide to place the child in an alternative living arrangement under the supervision of the Probation Department without sentencing the child or placing the child on probation. Is such child eligible for Medi-Cal?

RESPONSE 5:

Such juveniles are generally first time offenders or repeat offenders the court believes would benefit from removal from an abnormal home situation or from severance of past associations. In any case the court order will generally dispose in some way of the charges brought against the child, i.e. drop the charges,

suspend the sentence, etc. These children would be eligible unless the court order sentences the child to the alternative living arrangement. Such a sentence will include instructions restricting the child's movements and will set forth the consequences of violation.

QUESTION 6:

When a court order places a child arrested under Section 602 in a camp or other youth facility not considered a juvenile hall and instructs the child not to leave the grounds until completion of a set time, is the child eligible if the child is, in fact, able to come and go as he/she pleases?

RESPONSE 6:

No. This is considered a sentence. The fact that the court's instructions are disregarded is not relevant.

QUESTION 7:

Is a "602 child" in a mental institution eligible?

RESPONSE 7:

A child placed by the court in a mental institution for pretrial or presentencing observation or who is sentenced to a mental institution is not eligible. A child on probation, against whom the charges have been dropped or the sentence suspended or completed is eligible.

QUESTION 8:

Are juveniles arrested under Penal Code Sections, rather than Section 602 of the W&I Code, eligible?

RESPONSE 8:

Anyone of any age who is arrested is ineligible regardless of the Code section used. However, most juveniles will initially be arrested under Section 602 even though they may later be charged as adults if the court so decides.

QUESTION 9:

A minor child is sentenced to a term of incarceration. However, due to inadequate space in the juvenile detention center the child is temporarily placed in a foster home pending available space in the detention center.

RESPONSE 9:

The child is ineligible. The penal authority retains full responsibility for the child.

Adult Offenders:

QUESTION 10:

Are adult offenders sentenced to mental institutions eligible?

RESPONSE 10:

No. An adult over 21 and under 65 years of age is never eligible when residing in a mental institution. Persons over 65 years of age who are sentenced to a mental institution are not eligible as such persons are considered to be under a penal hold.

QUESTION 11:

Are pregnant women serving sentences in jail or person eligible?

RESPONSE 11:

No. Care for such women is the responsibility of the jail or prison. However, once born the child is eligible even if living with the mother in the jail or prison as the child has committed no criminal offense and is not sentenced to the jail/prison regardless of the living arrangement.

QUESTION 12:

Are persons sentenced under alternative sentencing methods eligible?

RESPONSE 12:

Eligibility depends on the wording of the sentence rendered by the court as well as the legal responsibility of a law enforcement agency. In short, the sentence rendered by the court must

include the periodic release of the individual and the individual must be released from the jurisdiction of the law enforcement agency for periods of not less than 24 consecutive hours with the law enforcement agency retaining no responsibility for the needs of the individual during that period. Several examples are set forth below:

EXAMPLE A:

An individual is sentenced by the court to serve a term in jail. The sentence provides that the individual is to be permitted to leave the jail daily to attend school or go to work, however, the individual must return to the jail after work or school each day and remain incarcerated on weekends, holidays, etc.

RESPONSE A:

This individual is not eligible while serving the sentence. The penal authority retains the responsibility for the individual's care.

EXAMPLE B:

An individual is sentenced to jail only on weekends but is not incarcerated during the week by order of the court.

RESPONSE B:

This individual is eligible only during the week and becomes ineligible every weekend. The penal authority is only responsible for the individual's care on weekends.

EXAMPLE C:

A married couple is sentenced to jail. However, due to the presence of minor children in the home, the court orders that each parent be released on alternate weeks so that one parent is available to care for the children.

RESPONSE C:

Each parent is eligible for the weeks spent in the home and ineligible for any week in which he/she is incarcerated.

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EXAMPLE D:

An individual(s) is sentenced to be incarcerated for a given period with no provision for temporary release as described above. The penal authority chooses to place the individual(s) in such a program without confirmation by the court, alteration of sentence, formal parole or probation.

RESPONSE D:

The individual(s) is not eligible. The penal authority has not been released from responsibility for the individual's care.

EXAMPLE E:

An individual is sentenced to perform community service work in lieu of incarceration. The individual resides at home, performs his/her community service and is (usually) loosely supervised to insure compliance with the sentence.

RESPONSE E:

This individual is eligible. The individual is not the financial responsibility of a penal authority until and unless the individual fails to comply with the sentence requirements. If the individual fails to comply with the sentence and is, as a result, taken into custody, the individual becomes ineligible.

The above questions and answers will be included in the next revision of Medi-Cal Eligibility Procedures Manual Section 6A.

If you have any further questions on this issue, please contact Toni Bailey at (916) 324-4953.

Sincerely,

Original signed by

Ricardo Bustamante, for  
Frank S. Martucci, Chief  
Medi-Cal Eligibility Branch

cc: Medi-Cal Liaisons  
Medi-Cal Program Consultants

Expiration Date: January 1, 1988