

**THE “INMATE EXCEPTION” AND ITS IMPACT ON HEALTH CARE
SERVICES FOR CHILDREN IN OUT-OF-HOME CARE IN
CALIFORNIA**

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Commissioned by

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FOREWORD

This paper was commissioned by The California Endowment. Our mission was to explore the “inmate” limitations on Medicaid for children in the juvenile justice and child welfare systems, and to offer strategies to address those limitations. We are grateful for The Endowment’s support of this important work, and the encouragement we have enjoyed from Program Officer Gwen Foster. We also thank the dozens of unnamed people in probation departments, health agencies, advocacy organizations, legislative offices, and health policy groups who gave us information and their thoughts on the inmate exception. Special thanks go to Mamie Yee and Joy Warren, Youth Law Center staff members who helped to track down and verify information. Our hope is that the paper will move us forward in assuring that children in California public systems receive timely, appropriate health care in the most appropriate setting.

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EXECUTIVE SUMMARY

Introduction

Children come into state custody with enormous health care needs. Medicaid and the State Children's Health Insurance Program (SCHIP) provide federal financial participation for health care coverage for many low-income children. However, Medicaid denies coverage for any individual who is an "inmate of a public institution" and SCHIP excludes from eligibility any "inmate of a public institution." As a result, these programs do not cover health care services for some children in state or county institutions.

Over 114,500 children are in state custody through the juvenile justice or child welfare systems in California. Of these, 97,855 children are in non-secure (unlocked) child welfare or probation placements and approximately 16,694 are in secure (locked) institutions, with stays ranging from a few days to several years. Children in the juvenile justice system who are held in correctional institutions such as juvenile halls, camps, ranches or California Youth Authority facilities are those most affected by the inmate exception.

The Inmate Exception

Medicaid and Medi-Cal

Federal law prohibits Medicaid payments "with respect to care or services for any individual who is an inmate of a public institution." Although federal law and guidance leave questions in several areas, some things are clear: Medicaid coverage may be suspended but eligibility should not be terminated upon incarceration; Medicaid coverage must be immediately restored upon release unless the person is no longer eligible; and youth who have a dispositional (sentencing) order that they be placed in a non-correctional setting such as a group home are not "inmates" under federal law, and are entitled to coverage.

The California legislature clearly intended to maximize access to health care services consistent with federal Medicaid coverage through Medi-Cal, California's Medicaid program. However, state regulations terminate Medi-Cal eligibility for inmates, and a survey of California Probation Departments shows disparities in County practices with respect to Medi-Cal billing for youth in institutions.

SCHIP

The State Children's Health Insurance Program (SCHIP) provides federal funding to states for health insurance coverage of uninsured children up to 200% of the federal poverty level (FPL). California's SCHIP program is called Healthy Families. As of June 2002, 562,614 children were enrolled in Healthy Families. SCHIP excludes from its definition of targeted children "a child who is an inmate of a public institution or a patient in an institution for mental diseases." California has not issued state regulations or policies on the inmate exception and relies on federal law to determine whether children are eligible. State data on reasons for ineligibility do not specifically track the number of children excluded because of the inmate exception.

Maximizing Medicaid Coverage

State and County policy and practice could be changed to increase federal financial participation in health care services to youth in the juvenile justice system. Strategies include 1) coverage of youth awaiting placement, 2) ensuring that court orders, placements, and program structure maximize eligibility for coverage, 3) clarifying state policy concerning termination of eligibility, reinstatement of benefits upon release, and coverage of treatment services provided in the community to youth who are wards of the California Youth Authority. The Little Hoover Commission also recommends pursuing a Medicaid waiver to fund mental health services in the juvenile justice system.

Eliminating the Inmate Exception

Elimination of the inmate exception is controversial. Additional federal and state funds could improve health services in institutions, and offer a way to pay for much needed health and mental health assessments. At the same time, Medicaid coverage might remove incentives to provide services in a non-institutional setting and result in the increased use of correctional settings to provide treatment services. Clearly, there are important considerations on all sides of this debate. Deliberate attention to all points of view and a more thorough discussion among those involved in treatment for youth in the juvenile justice system could lead to a solution that would provide needed services to youth without contributing to inappropriate institutionalization.

Recommendations

A. Information and Data Collection

An accurate picture of the health care needs of youth in the juvenile justice system, their eligibility for health care coverage, and the current funding structure is critical to any future policy work. However, little data exist on health care needs and eligibility for coverage of these youth. The Foundation could support:

- Better data collection on health care services and outcomes for children in the juvenile justice system, including compliance with Title 15, California Code of Regulations (*Minimum Standards for Juvenile Facilities*) and EPSDT standards.
- Better data collection on Medi-Cal and SCHIP eligibility for children in the juvenile justice system.
- An analysis of the current costs of health care services for youth in the juvenile justice system and the effectiveness of current financing mechanisms.
- Advocacy to require probation departments, juvenile halls, and the California Youth Authority to collect Medi-Cal and SCHIP eligibility information as part of initial health screening.

B. Increasing Medi-Cal Access Under Current Law

California counties could increase their use of Medi-Cal under current state and federal policies. The Foundation could support efforts to:

- Increase the use of Medi-Cal services, such as early mental health intervention and substance abuse treatment to prevent the need for institutionalization.
- Maximize the use of community-based resources that qualify for Medi-Cal funding. Examples include Therapeutic Behavioral Services (TBS), foster care placement, and wrap around services to allow children to live at home or in a non-institutional setting.
- Advocate for intake and classification policies that divert youth with significant treatment needs from correctional institutions to more appropriate settings that qualify for federal financial participation.
- Help health agencies, probation officials and institutional providers maximize Medi-Cal coverage for children in their care. For example, more counties could access Medi-Cal for youth with a disposition order who are awaiting placement outside an institution.
- Help local jurisdictions identify the characteristics of and increase the number of quality treatment programs that are or could be Medi-Cal eligible – e.g., Regional Facilities for Seriously Emotionally Disturbed Wards, Community Treatment Facilities, or other one-of-a-kind treatment programs.

- Advocate for policies that require juvenile halls and the California Youth Authority to take steps to ensure that youth have immediate access to health care coverage upon release.

C. Policy Clarification

Clarifying policy is not without risk. However, clearer policies will encourage more jurisdictions to maximize Medicaid coverage and may expand coverage to children who are currently excluded. The Foundation could support:

- Advocacy to ensure that California policy does not terminate Medi-Cal eligibility in violation of federal law and to require that children have immediate access to services upon leaving inmate status.
- Advocacy to clarify State regulations and Medi-Cal policy guidance to make language consistent with California juvenile court terminology and eliminate confusing and irrelevant terminology and references.
- Research and/or advocacy to clarify state policy with respect to coverage of services provided in community hospitals to wards of the California Youth Authority.
- Research and/or advocacy to clarify federal policy concerning coverage of youth awaiting juvenile court adjudication.

D. Advocating for Policy Change

Elimination of the inmate exception in federal law, or funding institutional services with state Medi-Cal funds, are controversial proposals. A more thorough discussion among those with differing views is necessary before making any recommendation for policy change. The Foundation could support further discussion of these issues including:

- Whether to eliminate the “Inmate Exception” from federal Medicaid Law; whether to eliminate the exception for children only.
- Whether to provide state Medi-Cal funds to cover children in institutional settings (juvenile halls, camps, California Youth Authority); whether to use partial state Medi-Cal funding to expedite provision of services upon release.
- Whether to seek a federal Medicaid waiver permitting California to cover children in juvenile correctional institutions.