

Article 5 Section 06 Institutional Status

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05.06.01 Institutions

05.06.01 General

This section provides staff with instructions regarding the determination of CMS eligibility for persons in public institutions. Eligibility staff must consider both the facility and the individual's circumstances when making a CMS determination of eligibility for an adult who is incarcerated or placed in any type of public institution.

05.06.01A Public Institutions

The following are identified as public institutions and inmates or residents are NOT entitled to CMS benefits:

- State or Federal prisons.
- Correctional facilities.
- County, city, or tribal jails.
- Detention Centers.

- Residential facilities located on the grounds of or adjacent to any large public institution.
 - Correctional or holding facilities for prisoners or individuals being held under court order as witnesses.
 - Education or vocational training institutions that provide an accredited program for its resident.
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**05.06.01B
Non-Public
Institutions**

The following facilities are not public institutions and residents of these facilities are entitled to CMS coverage, if otherwise eligible:

- A medical institution.
 - An intermediate care facility.
 - A publicly operated residence that serves no more than 16 residents.
 - A community care facility which is maintained and operated to provide 24-hour non-medical care for adults, including but not limited to, the physically handicapped, mentally impaired, incompetent persons, and neglected or abused adults.
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05.06.02 Institutional Status for Inmates and Non-Inmates

**05.06.02A
Ineligible to
CMS**

The following individuals are **NOT** entitled to CMS benefits:

- An inmate in a prison or a county, city, or tribal jail. **Note:** This includes inmates being held prior to arraignment, conviction, or sentencing. It does not include individuals who are out on bail or their own recognizance.
 - An individual, who is incarcerated, but can leave prison or jail on work release or work furlough and must return at specific intervals.
 - Individuals released from prison or jail due to a medical emergency who would otherwise be incarcerated but for the medical emergency.
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**05.06.02B
CMS Eligible**

The following individuals are entitled to receive CMS benefits, if otherwise eligible:

- An individual who, after arrest but before booking, is escorted by police to a hospital for medical treatment and held under guard.
- An individual in prison or jail who transfers temporarily (one to two months) to a halfway house or residential treatment facility prior to a formal probation release order.
- An individual who is released from prison or jail, but who is on probation, parole, or release order with one of the following conditions:
 - Home arrest,

- Work release,
 - Community service,
 - Outpatient treatment, or
 - Inpatient treatment.
 - An individual released from prison or jail under a court probation order due to a medical emergency.
 - Individuals with tuberculosis who are under an order of detention in one of the following facilities to protect public health:
 - A residential treatment center;
 - A skilled nursing facility; or
 - A county, city or tribal jail awaiting placement for treatment.
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**05.06.02C
Penal Code
Sections**

Penal Code 1367

This penal code applies to individuals charged with a misdemeanor but who are incompetent to stand trial. Penal Code 1367 provides that “A person cannot be tried or adjudged to punishment while that person is mentally incompetent.”

If a judge finds reason to believe that a defendant may be incompetent to stand trial, he/she may order that the defendant be referred for 72-hour treatment and evaluation. During this time, the defendant is entitled to CMS benefits, if otherwise eligible. If the result of the evaluation is that the individual is to be placed in a mental health facility for treatment, he/she may be entitled to receive CMS benefits, if otherwise eligible.

Penal Code 1370

This code applies to individuals charged with a serious felony who are placed in a mental health facility because they were determined incompetent to stand trial. If an individual is still determined to be incompetent after the placement period, a Murphy Conservatorship may be established. An individual under a Murphy Conservatorship may be entitled to receive CMS benefits, if otherwise eligible.

Penal Code 1372

This code applies to defendants who have regained competency. When a defendant returns to court with a certification that competence has been regained, the court shall determine whether the person is to be released on bail. An individual who is released on bail is not a resident of a public institution, and therefore entitled to receive CMS benefits, if otherwise eligible. If not released on bail, the individual is likely to be held in a prison or jail prior to conviction or sentencing. In this situation, the individual would be a resident of a public institution

and would **not** be eligible for CMS benefits.

05.06.03 Institution for Mental Disease (IMD)

**05.06.03
General** Applicants in an IMD can receive CMS benefits, if otherwise eligible.

**05.06.03A
Definition** An IMD is defined as 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. Whether an institution is an IMD is determined by whether it functions primarily as a facility established and maintained for the care and treatment of individuals with mental diseases and it does not have to be licensed as such. An institution for the mentally retarded is not an IMD.

05.06.04 Fleeing and Drug Abuse Felons

**05.06.04A
General** Fleeing felons and drug abuse felons are entitled to CMS benefits, if otherwise eligible.

Under federal regulations, a fleeing felon is defined as an individual who is “fleeing to avoid prosecution or custody or confinement after conviction for a crime which is a felony under the laws of the place from which the individual flees, or (who is) violating a condition of probation or parole imposed under Federal or State law.”

**05.06.04B
Fleeing
Felons** In order to receive CMS, fleeing felons are subject to all the eligibility requirements of the program. If otherwise eligible, fleeing felons can continue to receive CMS benefits until they have been booked, sentenced, or incarcerated. When any of the three occur, eligibility to CMS ends.

**05.06.04C
Drug Abuse
Felons** Drug abuse felons, if otherwise eligible, are entitled to CMS. As long as they remain otherwise eligible, they can continue to receive benefits until they have been booked, sentenced, or incarcerated.

Appendix A Identifying Inmates and Non-Inmates

**Inmates and
Non-inmates**

THE FOLLOWING ARE CONSIDERED AN INMATE OF A PUBLIC INSTITUTION AND ARE NOT ELIGIBLE FOR CMS:	THE FOLLOWING ARE NOT AN "INMATE OF A PUBLIC INSTITUTION" AND ARE ELIGIBLE FOR CMS:
An inmate in a prison.	An individual who, after arrest <u>but before booking</u> , is escorted by police to a hospital for medical treatment and held under guard.
An inmate of a county, city, or tribal jail.	An individual in prison or jail who transfers temporarily to a halfway house or residential treatment facility prior to a formal probation release order.
An inmate in a prison or jail: <ul style="list-style-type: none"> • Prior to arraignment • Prior to conviction • Prior to sentencing 	An individual released from prisoner jail on probation, parole, or release order: <ul style="list-style-type: none"> • With a condition of home arrest • Work release • Community service • Outpatient treatment • Inpatient treatment
Individuals released from prison or jail due to a medical emergency WHO WOULD OTHERWISE BE INCARCERATED BUT FOR THE MEDICAL EMERGENCY.	Individuals released from prison or jail under a court probation order due to a medical emergency.
An individual who is incarcerated but CAN LEAVE prison or jail on work release or work furlough and MUST return at specific intervals.	Individuals with tuberculosis who are under an order of detention in one of the following facilities to protect public health: <ul style="list-style-type: none"> • A residential treatment center; • A skilled nursing facility; or • A county, city or tribal jail awaiting placement for treatment.