

**CHAPTER 161. PERSONS IN INSTITUTIONS**

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**Cross References**

This chapter cited in 55 Pa. Code § 141.41 (relating to policy); 55 Pa. Code § 141.61 (relating to policy); 55 Pa. Code § 141.71 (relating to policy); and 55 Pa. Code § 141.81 (relating to eligibility policy for Medically Needy Only).

**GENERAL PROVISIONS**

**§ 161.1. [Reserved].**

**AFDC/GA PROVISIONS FOR PERSONS IN INSTITUTIONS**

**§ 161.21. Policy.**

(a) The Social Security Act (42 U.S.C.A. §§ 301—1397f), provides that Federal participation cannot be obtained for payments made to or on behalf of a per-

son who is an inmate of a public institution, except as a patient in a medical institution, or who is a patient in an institution for tuberculosis or mental disease.

(b) The Public Assistance Law, as amended, prohibits granting GA to an inmate of a public institution. Blind Pension may be granted to a blind person who is an inmate of a public institution if it is not a mental, penal, reform, or correctional institution.

(c) Both the Social Security Act (42 U.S.C.A. §§ 301—1397f) and the Public Assistance Law prohibit the granting of AFDC to a child or caretaker residing anywhere but in “his or their home.”

(d) The act of June 29, 1953 (P. L. 300, No. 64) (62 P. S. §§ 2561—2565) (repealed 1967) defines an institution as an establishment which furnishes food and shelter to three or more persons unrelated to the proprietor, and which provides some care or service which meets a need beyond the basic provision of food, shelter and laundry. The following institutions come within the meaning of the definition:

- (1) Homes for the aged and infirm.
- (2) Nursing homes.
- (3) Convalescent homes.
- (4) Boarding homes for adults which provide personal care and services.
- (5) Rehabilitation centers providing living-in facilities.
- (6) Hospitals.
- (7) Infirmaries providing living-in arrangements.

### § 161.22. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Inmate or resident*—An inmate or resident of an institution is a person who resides in the institution, that is, he is not making his home elsewhere. Persons not considered to be residing in an institution are a person who is in a hospital for temporary care, or a person who is on leave of absence from a public mental institution. A person who is boarded out by a public mental institution is considered to be residing in the institution.

*Medical institution*—A medical institution is one established to provide medical care, including nursing and convalescent care, that has the professional personnel, equipment, and facilities to provide the medical needs of patients on a continuing basis, and is staffed by professional medical or professional nursing personnel who have clear and definite responsibility to the institution in the provision of medical services to patients.

*Patient*—A patient is a person in a medical institution because of illness, injury, or other defect for whom there is planned, continuing medical treatment, including nursing care, directed toward improvement in health, or for whom

palliative medical measures are required, though improvement in health or recovery cannot be expected, and who is receiving professional medical treatment or care.

(i) A person eligible for a nursing home care or intermediate care payment is always considered to be a patient in a medical institution.

(ii) A person is not considered to be a patient if he is in an institution for purposes of sheltered or custodial care because of a disability for which he does not receive continuing planned medical treatment.

(iii) A person aged 16 or more and emancipated who is eligible in all other respects, may be eligible for public assistance when living in a group home under the Community Living Arrangements Program for the Mentally Retarded of the Department. The persons are free to come and go as they please and are free to make other living arrangements at any time. These persons, however, would not be entitled to Food Stamps when living on a room and board basis.

*Private institution*—An institution is considered to be private when its management, administration, and operations are privately controlled and the source of its funds is either private, or private and public.

*Public institution*—An institution is considered to be public when a governmental unit controls the management or administration of the institution and provides the major part of the funds.

#### Cross References

This section cited in 55 Pa. Code § 451.3 (relating to requirements).

### § 161.23. Requirements.

(a) *Institutional status and effect on eligibility.* The following table shows whether a person in an institution may receive assistance and the conditions that affect each category. If more than one code appears, each one will apply.

<i>Code</i>	<i>Description</i>
YES	Eligibility not affected by institutional status.
A	Yes, but only if the person is free to make financial arrangements with the institution and to leave at any time.
B	Yes, but only if there is a physician's statement to substantiate that the person is a patient (§ 161.22 (relating to policy)) and that he is not in the institution because of a diagnosis of tuberculosis or psychosis. Also required is information to substantiate that the institution is a medical institution (§ 161.22) and that the institution is not one established for the treatment of tuberculosis or mental disease.

<i>Code</i>	<i>Description</i>
NO	Assistance may not be granted.
Z	No, except an applicant who has a definite plan to leave the institution (§ 161.24(b) (relating to procedures)).

<i>PUBLIC INSTITUTIONS</i>	<i>AFDC</i>	<i>GA</i>	<i>BP-P</i>
<u>Inmate or Resident</u> of a public Mental, Penal, Reform or Correctional Institution	Z	Z	No
<u>Inmate or Resident</u> of any other Public Institution	Z	Z	Yes
<u>Temporary Hospitalization</u> in a Public Mental Institution	No	A	A
<u>Temporary Hospitalization</u> in any Tuberculosis Institution or a Patient in a Medical Institution because of a diagnosis of Tuberculosis or Psychosis	No	A	Yes
<u>Temporary Hospitalization</u> in any other Medical Institution	A,B	A	Yes
<i>PRIVATE INSTITUTIONS</i>	<i>AFDC</i>	<i>GA</i>	<i>BP-B</i>
<u>Resident</u> of Private Tuberculosis or Mental Institution or Patient in a Medical Institution because of a diagnosis of Tuberculosis or Psychosis	No	A	Yes
<u>Resident</u> of Other Medical Institution	No	A	Yes
<u>Resident</u> of a Non-Medical Institution	No	A	Yes
<u>Temporary Hospitalization</u> in any Tuberculosis or Private Mental Institution or a <u>patient</u> in a Mental Institution because of a diagnosis of Tuberculosis or Psychosis	No	A	Yes

<i>PUBLIC INSTITUTIONS</i>	<i>AFDC</i>	<i>GA</i>	<i>BP-P</i>
<u>Temporary Housing</u> in any other Medical Institution	A,B	A	Yes

### § 161.24. Procedures.

(a) *Recipients who are temporarily institutionalized.* The following provisions apply to temporarily institutionalized recipients:

(1) *AFDC and GA recipients who are hospitalized.* Assistance will continue for recipients who are temporarily hospitalized.

(2) *SBP recipients who are hospitalized.* The following procedures apply to hospitalized SBP recipients:

(i) *Recipients not receiving nursing home care payments when hospitalized.* For these recipients the grant for SBP will be computed as if the recipient had not been hospitalized.

(ii) *Recipients receiving nursing home care payments when hospitalized.* The following procedures will apply for these recipients:

(A) For the first month, the grant and eligibility for nursing home care payments will be computed as if the hospitalized recipient remained in the nursing home, if the following conditions are met:

(I) The recipient is expected to return to the nursing home.

(II) The nursing home reserves for the recipient the facilities that had been provided.

(III) The nursing home requires payment for the facilities that are RESERVED.

(B) If one or more of these conditions is not met, the grant and eligibility for SBP will be computed as provided in § 3760, but not § 3764.

(C) For the succeeding months, the grant for SBP will be computed as provided in § 3760, but not § 3764.

(b) *Applicants about to leave a public institution.* An applicant who is about to leave a public institution will be eligible for one maximum semimonthly grant immediately before he leaves the institution to enable him to make living arrangements for himself outside the institution.

#### Cross References

This section cited in 55 Pa. Code § 141.42 (relating to definitions); and 55 Pa. Code § 227.24 (relating to procedures).

**MA PERSONS IN INSTITUTIONS PROVISIONS FOR THE  
CATEGORICALLY NEEDY**

**§ 161.71. [Reserved].**

**§ 161.72. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Public medical institution*—A skilled public nursing or intermediate care home, restoration center, State school and hospital or a mental institution.

**§ 161.73. Requirements.**

(a) *General.* A person in a correctional institution under the supervision and control of the Department of Corrections or in a jail operated by local authorities will be ineligible for MA either as a patient in a hospital of the institution or as a patient in any other hospital. A person may not be eligible for MA services provided to him in an institution under the following circumstances:

- (1) He is an inmate of a public institution, except as a patient in a medical institution.
- (2) He is a patient in an institution for tuberculosis, and is under age 65.
- (3) He is a patient in an institution for mental diseases and is between 21 and 65 years of age. However, the persons shall be eligible for the care provided outside the institution by practitioners not on the institutional staff.

(b) *Institutional contracts.* Institutional contract requirements will be as follows:

(1) *Between person and institution.* A person living in a public or private institution who has a contract with the institution for life care will not be eligible for MA benefits if the institution is financially able to fulfill the provisions of the life care contract. If the institution claims it is financially unable to fulfill the conditions of the life care contract, reference should be made to § 181.23(b)(1) (relating to changes in income, expenses and circumstances). However, if the contract does not specify that the institution is to provide inpatient hospital care, the person may be eligible for MA inpatient hospital care.

(2) *Between institution and hospital.* A person living in an institution, private or public, will not be eligible for MA inpatient hospital care if the institution has a written agreement with a hospital to purchase inpatient hospital care for residents of the institution.

**Notes of Decisions**

The Department properly determined that pre-1975 agreements between a retirement village and certain of its residents were life-care contracts considered to be third-party resources which must first be exhausted before the resident is eligible for MA. *ECC Retirement Village v. Department of Public Welfare*, 629 A.2d 1046 (Pa. Cmwlth. 1993).

**MA PERSONS IN INSTITUTIONS PROVISIONS FOR THE  
MEDICALLY NEEDY**

**§ 161.81. [Reserved].**

**§ 161.82. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Public medical institution*—A skilled public nursing or intermediate care home, restoration center, State school and hospital or a mental institution.

**§ 161.83. Requirements.**

(a) *General.* A person in a correctional institution under the supervision and control of the Department of Corrections or in a jail operated by local authorities will be ineligible for MA either as a patient in a hospital of the institution or as a patient in any other hospital. A person may not be eligible for MA services provided to him in an institution under the following circumstances:

(1) He is an inmate of a public institution, except as a patient in a medical institution.

(2) He is a patient in an institution for tuberculosis, and is under age 65.

(3) He is a patient in an institution for mental diseases and is between 21 and 65 years of age. However, the persons shall be eligible for the care provided outside the institution by practitioners not on the institutional staff.

(b) *Institutional contracts.* Institutional contract requirements will be as follows:

(1) *Between person and institution.* A person living in a public or private institution who has a contract with the institution for life care will not be eligible for MA benefits if the institution is financially able to fulfill the provisions of the life care contract. If the institution claims it is financially unable to fulfill the conditions of the life care contract, reference should be made to § 181.23(b)(1) (relating to changes in income, expenses and circumstances). However, if the contract does not specify that the institution is to provide inpatient hospital care, the person may be eligible for MA inpatient hospital care.

(2) *Between institution and hospital.* A person living in an institution, private or public, may not be eligible for MA inpatient hospital care if the institution has a written agreement with a hospital to purchase inpatient hospital care for residents of the institution.

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