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## Notice in Juvenile Delinquency Proceedings

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## NATIONAL HEALTH LAW PROGRAM

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### A New Look at HMOs

As the economic picture worsens, state governments, particularly those constitutionally prohibited from operating at deficit levels, will be looking for ways to cut expenses, and Medicaid is likely to be one of the state programs targeted for cost curtailment. (For a detailed discussion of Medicaid, see Butler, *The Medicaid Program*, 8 CLEARINGHOUSE REV. 2 (May 1974).)

Under the federal statutes and regulations, states currently have a variety of options for lowering Medicaid program costs, including restricting eligibility and the scope of benefits. An alternative method is the Pre-Paid Health Plan (PHP) which California adopted several years ago in an effort to lower its Medicaid (Medi-Cal) program costs. While other states are considering adopting this strategy, California and HEW are conducting a massive re-examination of the system, which could lead to its overhaul or even abandonment. Accordingly, Legal Services attorneys representing Medicaid recipients should be aware of the California experience with PHPs, and with the state and federal efforts to re-appraise them.

The PHP, also known as the Health Maintenance Organization (HMO), in theory provides a complete range of health services to an enrolled population for a fixed amount of money. Theoretically, the HMO has many potential advantages over conventional fee-for-service care: comprehensive, non-fragmented care; greater emphasis on early diagnosis and other preventive measures reducing the incidence of hospitalization; increased physician productivity through efficient organization and the use of intermediate level health practitioners; and improvements in the quality of care through informal and continuous peer supervision. Because the care which HMOs provide is financed by fixed capitation fees paid periodically, the payor (whether the individual or a government agency) knows in advance the health costs for a given period of time. (There are a number of HMOs with a long history of successful delivery of health care, including Kaiser Foundation Health Plan, Health Insurance Plan of Greater New York, and the Group Health Cooperative of Puget Sound. (For more extensive discussion of HMOs see Stern, *Health Care Expansion*, 8 CLEARINGHOUSE REV. 89 (June 1974); and Stern, *The Health Maintenance Organization Act*, 8 CLEARINGHOUSE REV. 604 (Jan. 1975).)

The California experience has shown, however, that a loosely regulated PHP system can result in much lower quality medical care for the poor—without even lowering costs. Apart from adopting the economies of a large organization, there are only two ways a PHP can keep its operating costs down: it can either prevent its patients from developing expensive medical problems, or it can fail to treat them. Many of the newly developed PHPs in California have shown more interest in the latter method than the former.

Some PHPs simply have failed to contract with sufficient providers to cover patient needs. Even among PHPs which have the resources, a pattern of refusing treatment for enrollees with serious (*i.e.*, expensive) medical problems has developed. Patients have been ignored or diverted to county facilities. (Theoretically, the PHP remains liable for

the cost of care, but county hospital efforts to collect generally fail.) As a result, the care provided under the PHP system has been considerably less than that mandated by Title XIX and its regulations, and by the standard contract between the state and the PHPs.

Once the patient is enrolled in a PHP, the state will not pay for services given elsewhere until the patient is formally disenrolled. Initially, the state did not even have a disenrollment procedure. Protests produced one, but its operation is so cumbersome that many patients spend months in a health care limbo, tied to a plan they distrust or that will not provide care, and unable to obtain health care elsewhere.

In response to consumer protests, newspaper articles and legislative investigations, California's new administration has declared a moratorium on new PHP contracts and is conducting an intensive investigation of existing plans. As a result of the 1972 amendments to the Social Security Act, HEW is preparing regulations governing HMO participation in the Medicaid program. NHELP will be monitoring the manner in which both the Brown administration and HEW respond to the California experience in working out formulas to shape future HMO activity. Legal Services attorneys with clients receiving Medicaid should be alert to these developments and to their own state's activities in this area. Attorneys and client groups should strongly urge that PHPs not be used as a vehicle for providing health care to the poor until such regulations and other means are adopted to prevent a recurrence of the disastrous California experience. Contact this program if you have information or questions concerning PHPs.

## NATIONAL JUVENILE LAW CENTER

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### Notice in Juvenile Delinquency Proceedings

Among the rights extended to juveniles via the fourteenth amendment is the right to notice of charges in a delinquency proceeding. In order to comply with due process requirements, notice "must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must 'set forth the alleged misconduct with particularity.'" *In re Gault*, 387 U.S. 1, 33 (1967).

Although the Court in *Gault* did not specify what would constitute timely and specific notice, it did cite several cases that had discussed notice as examples of the application of this due process requirement. 387 U.S. 1, 33 (1967) n. 53. In *Cole v. Arkansas*, 333 U.S. 196 (1948), the Court held that due process forbade conviction of a man under a criminal statute "for violation of which . . . [h]e had not been charged". In *In re Oliver*, 333 U.S. 257 (1948), the Court found due process violated where a defendant was not afforded "reasonable" notice of the charge against him and an opportunity to be heard. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), appears to give a slightly fuller explanation of due process requirements. There, in a case dealing with notice in a civil context, the Court calls for notice "rea-

sonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.... The notice must be of such nature as reasonably to convey the required information . . . and it must afford a reasonable time for those interested to make their appearance...." 339 U.S. at 314. This holding is restated in *Armstrong v. Manzo*, 380 U.S. 545 (1965), another civil case and the last example suggested by the Court in footnote 53.

Despite these suggestions, the problem of what constitutes adequate notice continues to plague juvenile courts. Furthermore, by suggesting two criminal and two civil cases as examples, the Court added the issue of whether a civil or a criminal standard for notice should be applied. Courts that have addressed this issue have reached different conclusions. For example, in New York, Mississippi, Georgia, Arizona, California and Illinois, courts going beyond the dictates of statutory provisions have maintained that a criminal standard must be met. Thus one court dismissed a petition because it failed to meet the same standards of sufficiency required of a criminal information. *In re Walsh*, 300 N.Y.S. 2d 859 (Fam. Ct. 1969). Another court reversed an adjudication of delinquency because the petition failed to cite the criminal statute allegedly violated by the child, and so charged an offense with less particularity than that required in a criminal indictment. *In re Dennis*, 291 So.2d 731 (Miss. 1974). Still other courts have reversed where a child was found delinquent of an offense other than that alleged in the petition. *See e.g., D.P. v. State*, 200 S.E.2d 499 (Ga. App. 1973); *In re Maricopa County, Juvenile Action No. J-75755*, 521 P.2d 641 (Ariz. App. 1974); *In re M.*, 510 P.2d 33 (Cal. 1973).

An Illinois appellate court succinctly stated the reason for notification that meets the same standard of specificity required in a criminal case. A juvenile must have notice of the charges against him set out with "particularity" so that he "will be able to prepare a proper defense and conduct 'such investigation [of the charges] as may be necessary'...." *In re Bryant*, 310 N.E.2d 713 at 716 (Ill. App. 1974). In Texas, New Jersey and Louisiana, on the other hand, satisfaction of criminal notice standards has not been held imperative. *Carillo v. State*, 480 S.W. 2d 612 (Tex. 1972); *In re L.B.*, 240 A.2d 709 (N.J. Super. 1968); *State ex rel. Breswell*, 294 So.2d 896 (La. App. 1974).

Where a civil standard predominates, courts have relied for justification upon the idea that a juvenile proceeding is civil in nature (*see e.g. Carillo v. State*, 480 S.W.2d 612 (Tex. 1972)), and have apparently ignored the seriousness of the possible dispositions facing the child upon adjudication.

The paternalistic view that calls for informality of procedure in a juvenile hearing is another breeding ground for this kind of decision. Because "lay" personnel often prepare these petitions, courts have felt that they should not be held to the higher standard required by a criminal court. *See In re L.B.*, 240 A.2d 709 (N.J. Super. 1968). These decisions appear to indicate that administrative expediency is more important than the protection of a child's right to be made aware of the exact nature of the charges brought against him and his corollary right to prepare and present an adequate defense.

Those courts that require a criminal standard appear to be most closely aligned with the stance adopted by the Supreme Court in its decisions of recent years. First in *Gault* and later in *In re Winship*, 391 U.S. 358 (1970), and *Mc-*

*Keiver v. Pennsylvania*, 403 U.S. 528 (1971), the Court stressed the need to look past the simplistic labels often attached to juvenile proceedings and to consider instead the substance of the proceeding and the possible consequences to a child when considering whether that child is entitled to protection of a due process right. Because in a delinquency proceeding a juvenile is normally accused of an act that would be a crime if committed by an adult, and, more importantly, is subject to possible institutionalization upon a finding of delinquency, he should be entitled to the same standard of notice afforded a criminal defendant.

## CENTER ON SOCIAL WELFARE POLICY AND LAW

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### Supplemental Security Income: Advocates' Handbook Available

The Center on Social Welfare Policy & Law has completed a 200-page Supplemental Security Income Advocates' Handbook which reflects program policies and rules in effect as of January 1975. The handbook explains the various eligibility conditions for SSI, discussing, for example, the meaning of the federal definition of age, blindness, and disability. It also includes discussion of such matters as proof requirements related to age, blindness, and disability, and special questions related to drug addiction and alcoholism, childhood disability, and vocational rehabilitation requirements. Other chapters explain the income and resource limits for the program, and provide examples to guide individuals in determining whether clients are financially eligible. The handbook also contains explanations of various operational aspects of the program, such as the applications process (which includes sample application forms), the procedures followed when an SSI recipient has been overpaid, and the hearing process and appeal rights.

This handbook is now available for distribution. One copy will be sent to each OEO-funded Legal Services project office listed in the September 1974 OEO directory (OEO Pamphlet 6140-2, "Legal Services Projects and Legal Services Project Directors"). We would appreciate receiving the address of any branch office which would like a copy of the handbook. We regret that we are unable to provide more than one free copy per office, but additional copies are available at a cost of \$3.50 each or \$3.00 for ten or more. Copies will be sent book rate because of high postage costs. This means approximately three weeks between mailing and receipt. If you wish to receive additional copies and want them sent first class, add \$1.00 per copy to the cost. In order to fit this enterprise within our limited staff capacities, we ask that you include pre-payment with any such orders.

The handbook does not include copies of the program regulations. The Center has prepared a complete compilation of SSI program regulations which has now been updated to January 1975, and this compilation is available from the National Clearinghouse for Legal Services, 500 N. Michigan Ave., Suite 2220, Chicago, Ill. 60611, Clearinghouse No. 12,761. These regulations will not be available in codified form in the C.F.R. until May 1975. It is anticipated that a