
CMCS Informational Bulletin

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SUBJECT: Prohibition on Termination of Enrollment Due to Incarceration (Division G, Title I, Section 205, of the Consolidated Appropriations Act, 2024)

The purpose of this Center for Medicaid and CHIP Services (CMCS) Informational Bulletin (CIB) is to highlight statutory changes that impact Medicaid and CHIP eligibility requirements for individuals who are inmates of public institutions. Division G, title I, Section 205, of the Consolidated Appropriations Act, 2024 (Pub. L. 118-42) (CAA, 2024),¹ signed into law on March 9, 2024, amended sections 1902(a)(84)(A) and 2102(d)(1)(A) of the Social Security Act (the Act) to expand the populations for which states are prohibited from terminating Medicaid and CHIP eligibility to *all* individuals who are inmates of a public institution.²

Effective January 1, 2026, states must ensure they do not terminate Medicaid eligibility for an individual or CHIP eligibility for any targeted low-income child or pregnant woman when only due to their status as an inmate of a public institution. This CIB reminds states of operational strategies, including suspension of eligibility or benefits, available to effectuate the requirements in section 1902(a)(84) and 2102(d)(1)(A) of the Act while ensuring appropriate claiming of federal financial participation (FFP) for services provided to individuals who are incarcerated.

Background on Medicaid and CHIP Coverage Policies during Incarceration

Medicaid

Medicaid regulations at 42 C.F.R. § 435.1010 generally define an inmate of a public institution as “a person who is living in a public institution”³ and define a public institution as “an institution that is the responsibility of a governmental unit or over which a governmental unit

¹ See <https://www.congress.gov/118/plaws/publ42/PLAW-118publ42.pdf>.

² Children covered under the From-Conception-to-End-of-Pregnancy (FCEP) option in CHIP are not considered incarcerated because they are not the individual who has been adjudicated, and the parent’s incarceration status does not impute to the child.

³ 42 C.F.R. § 435.1010 further specifies that an individual is not considered an inmate if they are in a public educational or vocational training institution for purposes of securing education or vocational training or in a public institution for a temporary period pending other arrangement appropriate to their needs.

exercises administrative control.”⁴ These same definitions are also applied to separate CHIPs through cross-reference at 42 C.F.R. § 457.310(c)(2)(I). As clarified in State Health Official letter (SHO) 16-007,⁵ a public institution includes a correctional institution,⁶ and CMS considers an individual of any age to be an inmate if the individual is in custody and held involuntarily through operation of law enforcement authorities in a public institution.

Status as an inmate of a public institution is not a condition of Medicaid eligibility and does not render an individual ineligible for coverage. Inmates of a public institution may be eligible for and enrolled in Medicaid. However, federal Medicaid funds generally may not be used to pay for services for such individuals while they are an inmate of a public institution, except in the following circumstances: (1) for inpatient stays at a medical institution (as defined at 42 C.F.R. § 435.1010); (2) in the case of eligible juveniles as described at section 1902(a)(84)(D), for screenings, diagnostic services, referrals, and targeted case management services required under such section; and, (3) at the option of the state, for services for an individual who is an eligible juvenile while such individual is incarcerated pending disposition of charges.⁷ This funding limitation, with these exceptions, is hereinafter referred to as the “inmate payment exclusion.”

Since 2019, states have been prohibited from terminating an eligible juvenile’s⁸ Medicaid coverage under the state plan solely because the juvenile is an inmate of a public institution. Instead, states may suspend coverage during periods of incarceration,⁹ as explained in State Medicaid Director Letter (SMDL) #21-002.¹⁰ These policies are required by section 1902(a)(84) of the Act, which was first added by section 1001 of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (The SUPPORT for Patients and Communities Act, herein referred to as “the SUPPORT Act,” (Pub. L. 115-271)), signed into law on October 24, 2018.

⁴ In accordance with 42 C.F.R. § 435.1010, a public institution does not include a medical institution, intermediate care facility, publicly operated community residence that serves no more than 16 residents, or a child-care institution with respect to children for whom foster care maintenance payments are made under title IV-E of the Social Security Act (the Act) and children receiving AFDC-foster care under title IV-A of the Act.

⁵ SHO #16-007, RE: To Facilitate successful re-entry for individuals transitioning from incarceration to their communities. Available at: <https://www.medicaid.gov/federal-policy-guidance/downloads/sho16007.pdf>.

⁶ Correctional institutions include state or federal prisons, local jails, detention facilities, or other penal settings (e.g. boot camps, wilderness camps). See SHO #16-007 for additional information at: <https://www.medicaid.gov/federal-policy-guidance/downloads/sho16007.pdf>.

⁷ Section 1905(a)(32)(A), as amended by sections 5121 and 5122 of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), provides exceptions to the inmate payment exclusion. For more information on these exceptions, please see SHO #16-007 at <https://www.medicaid.gov/federal-policy-guidance/downloads/sho16007.pdf>; and, SHO #24-004 at <https://www.medicaid.gov/federal-policy-guidance/downloads/sho24004.pdf>.

⁸ Section 1001 of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act also amended section 1902 of the Act to add paragraph (nn), which defines the terms juvenile and eligible juvenile for the purposes of section 1902(a)(84). Eligible juvenile is defined as individuals under age 21 and individuals enrolled in the mandatory eligibility group for former foster care children.

⁹ For the purposes of this CIB, the term incarcerated means that the individual is an inmate of a public institution, the definition of which is outlined in SHO # 16-007 at <https://www.medicaid.gov/federal-policy-guidance/downloads/sho16007.pdf>.

¹⁰ SMDL #21-002, RE: Implementation of At-Risk Youth Medicaid Protections for Inmates of Public Institutions (Section 1001 of the SUPPORT Act), available at: <https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/smd21002.pdf>.

CHIP

In contrast to Medicaid, incarceration status continues to be a factor of eligibility in a separate CHIP.¹¹ Sections 2110(b)(2)(A) and 2112(d)(2)(C) of the Act exclude a child or pregnant woman who is an inmate of a public institution from the definition of a targeted low-income child or targeted low-income pregnant woman. Therefore, children or pregnant women in a carceral setting are generally not included in the population that is eligible for a separate CHIP.¹² Beginning January 1, 2024, 12-month continuous eligibility (CE) for children in Medicaid and CHIP became mandatory under section 5112 of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328).¹³ Under current CHIP regulations, incarceration is not an exception to CE.¹⁴ This means that children determined eligible for CHIP at initial application or renewal who later become incarcerated during a CE period, remain eligible through the remainder of that 12-month period.

Effective January 1, 2025, section 2102(d)(1)(A) of the Act, as amended by section 5121 of the CAA, 2023, prohibits states from terminating CHIP coverage for otherwise-eligible children solely because they are inmates of a public institution. States retain the option to suspend CHIP coverage or continue to provide CHIP state plan services to children who are incarcerated, as discussed in SHO #24-004.¹⁵ States that elect to suspend coverage may utilize the same suspension options available under Medicaid, as described below, but the scope of benefits during a CHIP suspension differs from the service limits that apply to Medicaid beneficiaries who are inmates of a public institution because CHIP does not include an inmate payment exclusion. As a result, states may continue to provide CHIP state plan services that are not otherwise provided by the carceral facility, as long as the child remains eligible for CHIP while they are incarcerated, and must also provide mandatory pre-release services during the 30 days preceding release.

Changes under the CAA, 2024

Section 205 of the CAA, 2024, amends section 1902(a)(84) and section 2102(d)(1)(A) of the Act to expand the prohibition on terminating eligibility solely because an individual is an inmate of a public institution. Beginning January 1, 2026, this protection will apply to adults enrolled in Medicaid under the State plan (or waiver of such plan) and to targeted low-income pregnant women enrolled in CHIP. The CAA, 2024 amendment does not make any changes to the Medicaid inmate payment exclusion, which takes effect upon a beneficiary becoming an inmate of a public institution; states must continue to ensure that FFP is claimed only for allowable

¹¹ Title XXI-funded Medicaid expansions are subject to Medicaid eligibility rules.

¹² Section 2110(b)(2)(A) of the Act and regulations at 42 C.F.R. § 457.310 define targeted low-income child. Section 2112(d)(2)(C) of the Act defines targeted low-income pregnant women.

¹³ Prior to January 1, 2024, states could elect whether to provide CE in CHIP (and Medicaid). In states that elected CE, a child could remain in CHIP for the duration of the CE period. In states that did not elect CE, a child had to be terminated from CHIP upon incarceration because the child no longer met the definition of a targeted low-income child at 2110(b)(2). As of January 1, 2024, all states must provide CE in CHIP (and Medicaid) consistent with section 2107(e)(1)(K) of the Act.

¹⁴ 42 C.F.R. § 457.342

¹⁵ For more information on the suspension options available to states with a separate CHIP, see pages 24-25 of State Health Official Letter #24-004 available at: <https://www.medicaid.gov/federal-policy-guidance/downloads/sho24004.pdf>.

services. Additionally, the amendment does not make any changes to the CHIP eligibility exclusion for pregnant women who are incarcerated and newly applying for CHIP.¹⁶

Starting January 1, 2026, for both Medicaid and CHIP, states must cease terminating Medicaid and CHIP eligibility for adult inmates, including targeted low-income pregnant women. States may instead suspend Medicaid and CHIP coverage for all individuals, including adults as well as juveniles, who are or become inmates of a public institution.¹⁷

Suspension and Other Operational Strategies, Implications, and Resources

In implementing sections 1902(a)(84) and 2102(d)(1)(A) of the Act, which prohibit the termination of Medicaid and CHIP coverage solely because an individual is an inmate of a public institution, states may use the same strategies available for and applied to incarcerated juveniles to suspend coverage for incarcerated adults who are enrolled in Medicaid or CHIP. Regardless of which strategy is chosen, states will need a mechanism to identify when a Medicaid or CHIP beneficiary becomes an inmate of a public institution and suspend coverage accordingly. Making this assessment will require effective coordination between the Medicaid or CHIP agencies and justice agencies. States that already operate suspension policies will need to review their policies and procedures to ensure they are aligned with the requirements established by section 205 of the CAA, 2024 and, as needed amend their policies and procedures for the various incarcerated populations as necessary to comply with all applicable requirements.

Suspension Options

As with incarcerated juveniles, states may adopt one of two approaches to effectuate the requirements in section 1902(a)(84) and 2102(d)(1)(A) of the Act: suspension of eligibility or suspension of benefits. These strategies can be applied to all individuals enrolled in Medicaid or CHIP while incarcerated.

Eligibility Suspension: Under an eligibility suspension, the individual's eligibility is not terminated, but it is effectively paused. The individual cannot receive Medicaid or CHIP coverage for services, and FFP is generally not available, except in the following circumstances: 1) the individual is enrolled in Medicaid and is hospitalized or becomes an inpatient in another type of medical institution, and the state intends to claim FFP for inpatient services furnished during the stay;¹⁸ 2) the individual is enrolled in CHIP and requires CHIP state plan services that are not otherwise provided by the carceral facility; 3) the individual is an eligible juvenile, as described in sections 1902(nn) and 2102(d)(2) of the Act, is enrolled in Medicaid or CHIP and is within 30 days of the date on which they are scheduled to be released, and the state intends to claim FFP for mandatory pre-release services;¹⁹ or 4) the state has elected the option to lift the Medicaid inmate payment and CHIP eligibility exclusions and provide coverage of all Medicaid and CHIP state plan services to eligible juveniles who are incarcerated pending disposition of

¹⁶ Section 2112(d)(2)(C) of the Act.

¹⁷ Because CHIP does not have an inmate payment exclusion like Medicaid, states can elect not to place the enrollee in a suspended status and continue to provide CHIP state plan services that are not otherwise provided by the carceral facility, as long as the enrollee remains eligible for CHIP while they are incarcerated. However, if states elect the option to provide CHIP state plan services during an enrollee's incarceration, FFP is not available for any services that are otherwise provided by the carceral facility, regardless of the individual's insurance status.

¹⁸ Paragraph (A) of the matter following the last numbered paragraph of section 1905(a) of the Act.

¹⁹ Sections 1902(a)(84)(D) and 2102(d)(2) of the Act.

charges.²⁰ When eligibility is suspended, a state may, but is not required, to conduct regular renewals or redetermine eligibility based on changes in circumstances. States that elect to suspend eligibility and need to lift the suspension prior to covering services must ensure the individual's eligibility has been determined or redetermined within the applicable eligibility period. For most beneficiaries, this period is 12 months.²¹ If more than 12 months have elapsed since the individual first applied or last renewed (or if a shorter eligibility period has elapsed under prevailing requirements), the state must complete a renewal in accordance with renewal requirements described in 42 C.F.R. §§ 435.916 (2023) (Medicaid) and, before lifting the suspension.²²

Benefits Suspension: Under a benefits suspension, an individual continues to be enrolled in Medicaid or CHIP, but Medicaid coverage is limited to services for which the inmate payment exclusion does not apply,²³ and in CHIP, coverage is limited to CHIP state plan services not otherwise provided by the carceral facility and pre-release services for eligible juveniles under section 2102(d)(2) of the Act. During a benefits suspension, the state must conduct regular renewals and redetermine eligibility when the individual experiences a change in circumstance, in accordance with renewal requirements described in 42 C.F.R. §§ 435.916 (2023) and 457.343, as applicable, for the duration of the individual's incarceration.

Notice Requirements

For Medicaid, placement of an eligible individual into either an eligibility suspension or a benefits suspension status is an adverse action under 42 C.F.R. § 431.201 and a decision affecting the individual's eligibility under 42 C.F.R. § 435.917. Therefore, states must provide eligible individuals with timely and adequate written notice at least 10 days in advance of the date of action in accordance with 42 C.F.R. §§ 431.211-214. In accordance with federal

²⁰ Paragraph (A) of the matter following the last numbered paragraph of section 1905(a) and section 2110(b)(7) of the Act.

²¹ Some states conduct renewals more frequently than once every 12 months for non-MAGI beneficiaries consistent with 42 C.F.R. § 435.916(b) (2023). In addition, section 71107 of Public Law 119-21, referred to as the Working Families Tax Cut legislation by CMS, requires that the 50 states and the District of Columbia complete eligibility redeterminations once every six months, beginning with renewals scheduled on or after January 1, 2027, for most individuals enrolled in the Medicaid adult group under section 1902(a)(10)(A)(i)(VIII) of the Act or those enrolled in coverage "under a waiver" of the state plan (including through a section 1115 demonstration) that provides coverage that is equivalent to minimum essential coverage to all individuals described in section 1902(a)(10)(A)(i)(VIII) of the Act. Additional guidance on the implementation of 6-month renewals is forthcoming.

²² Section 71102 of Pub. L. 119-21 (July 4, 2025) imposed a moratorium prohibiting CMS from implementing, administering or enforcing certain amendments made by a CMS final rule entitled "Streamlining the Medicaid, Children's Health Insurance Program, and Basic Health Program Application, Eligibility Determination, Enrollment, and Renewal Processes" final rule (89 Fed. Reg. 22,780 (April 2, 2024)) (the "2024 E&E Final Rule"). The moratorium applies to certain provisions of the 2024 E&E Final Rule that had a compliance date after July 4, 2025, the date Pub. L. 119-21 was enacted, and ends on September 30, 2034. To comply with the moratorium, CMS refers to the renewal requirements and the requirements for acting on changes in circumstances at 42 C.F.R. § 435.916, including those cross-referenced at 42 C.F.R. § 457.343, in effect as of 2023 in this CIB. For more information on the moratorium, see November 18, 2025 CMCS Informational Bulletin "Working Families Tax Cut Legislation," Public Law 119-21: Summary of Medicaid and Children's Health Insurance Program (CHIP) Related Provisions." Available at <https://www.medicaid.gov/federal-policy-guidance/downloads/cib11182025.pdf>.

²³ For more information on benefit suspensions and the inmate payment exclusion, see page 6 of SMDL #21-002 at: <https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/smd21002.pdf>. For more information about the changes made to the inmate payment exclusion by sections 5121 and 5122 of the CAA, 2023, see page 12 of SHO #24-004 at: <https://www.medicaid.gov/federal-policy-guidance/downloads/sho24004.pdf>.

requirements, state notices of an adverse action must be written in plain language, be accessible to individuals who have limited English proficiency and to those who have a disability and must provide all information required under 42 C.F.R. §§ 431.206-210. This notice must inform the eligible individual of their fair hearing rights, pursuant to 42 C.F.R. part 431 subpart E. For CHIP, an eligibility suspension or benefits suspension is subject to review under 42 C.F.R. § 457.1130. States must also provide sufficient notice to ensure that families have time to take any appropriate actions to avoid gaps in coverage and provide information on the individuals' right to a review, consistent with 42 C.F.R. §§ 457.340(e) and 457.1180.

State Plan Amendment (SPA) Requirements

For Medicaid, states are not required to submit a SPA or notify CMS of the suspension approach(es) states will use for other eligible individuals or populations. Instead, and consistent with 42 C.F.R. § 431.18, a state should document its suspension approach for eligible individuals in an appropriate and publicly accessible location. In contrast, for CHIP, states that elect to cover targeted low-income pregnant women in CHIP will need to submit a SPA to comply with the new CHIP eligibility requirements under section 2102(d)(1)(A) of the Act. To have an effective date of January 1, 2026, states must submit their CHIP SPA no later than the end of the state fiscal year in which January 1, 2026, falls.²⁴ CMS is developing a CHIP SPA template for states and will provide it at a later date.

Potential Impacts of Incarceration on Eligibility

Incarceration may impact the household composition and therefore the underlying Medicaid or CHIP eligibility of both incarcerated individuals and their families. The extent of this impact depends, in part, on whether eligibility of the incarcerated individual or other household members was determined using household and income counting methodologies based on modified adjusted gross income (MAGI) or non-MAGI methodologies.²⁵

Incarceration may also impact the state of residency of an eligible Medicaid or CHIP individual. Regulations at 42 C.F.R. § 435.403 define standards for determining the residency of individuals, including those residing in an institution (including public institutions within the meaning of 42 C.F.R. § 435.1010) as well as individuals not residing in an institution.²⁶ When eligible individuals are incarcerated by their home state, they remain a resident of that state, even if they are sent to an out-of-state public institution.²⁷ However, if an eligible individual commits a crime outside of their home state and is incarcerated by another state, they become a resident of

²⁴ 42 C.F.R. §§ 457.60 and 457.65.

²⁵ For more details on how incarceration impacts household composition for Medicaid, please see Question 11 of SHO #16-007, available at: <https://www.medicaid.gov/federal-policy-guidance/downloads/sho16007.pdf>. Additionally, see pages 9-11 of SMDL #21-002 for more information on how the incarceration status of eligible juveniles impacts Medicaid financial eligibility, some of which applies equally to adults. Available at: <https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/smd21002.pdf>.

²⁶ These definitions related to residency and inmates of a public institution apply to CHIP through cross references at 42 C.F.R. §§ 457.320(e) and 457.310(c)(2)(i) respectively.

²⁷ 42 C.F.R. § 435.403(e).

the incarcerating state for the duration of their incarceration, which would cause a change in state residency.²⁸

We also remind states that incarceration status is not an exception to continuous eligibility (CE) for children, as required under sections 1902(e)(12) and 2107(e)(1)(K) of the Act,²⁹ or for pregnant and postpartum women, who are provided 60 days of postpartum coverage under sections 1902(e)(5) of the Act, or, at state option, 12 months of extended postpartum coverage under sections 1902(e)(16) and 2107(e)(1)(K) of the Act.³⁰ Current Medicaid and CHIP regulations do not include incarceration as a permissible reason to end a child's CE period.³¹ Therefore, if a child becomes incarcerated during their CE period, the child remains eligible for the remainder of that 12-month CE period while incarcerated.³² Similarly, an individual receiving extended postpartum coverage would remain eligible for the remainder of their continuous coverage period during incarceration.³³

Implications for Managed Care

States with managed care plans can determine the most efficient way to ensure compliance with the limitation on FFP for incarcerated individuals for their program. For example, states may provide coverage of inpatient services for eligible individuals on a fee-for-service basis or leave the individuals enrolled in a managed care plan. While we defer to states to determine the best methodology for their program, we remind states that capitation payments can only be made for Medicaid- and CHIP-eligible enrollees for services covered under the contract and authorized under Medicaid and CHIP in accordance with 42 C.F.R. §§ 438.3(c), 438.4, and 457.1201(c).³⁴ As such, states need to ensure that their managed care plan contracts provide for the suspension or termination of capitation payments, or for payment of a capitation payment developed specifically for incarcerated individuals solely for services covered under the Medicaid or CHIP state plan, as appropriate. Further, if inappropriate capitation payments are made to a managed care plan covering all or part of a month in which an eligible individual is incarcerated, state managed care contracts need to provide for the recoupment of such payments from the managed

²⁸ For more information regarding state residency and incarceration, refer to 42 C.F.R. §§ 435.403 and 435.1010 and questions 15 and 16 of SHO #16-007 available at:

<https://www.medicaid.gov/federal-policy-guidance/downloads/sho16007.pdf>.

²⁹ Section 5112 of the Consolidated Appropriations Act, 2023 (CAA, 2023, (Pub. L. 117-328)), signed into law on December 29, 2022, amended section 1902(e)(12) and section 2107(e)(1) of the Act to make 12 months continuous eligibility a requirement for children under age 19 in Medicaid and CHIP.

³⁰ Section 2107(e)(1)(K) requires that states also provide 12 months of extended postpartum coverage when it is elected under section 1902(e)(16). All states that have elected to cover targeted low-income pregnant women in CHIP also elected the postpartum coverage option when it became available under section 1902(e)(16), and therefore, all provide 12 months of continuous extended postpartum coverage. No state in CHIP provides 60 days postpartum only to this population.

³¹ 42 C.F.R. §§ 435.926, 457.342.

³² For additional information about the interaction between CE, incarceration, and eligibility suspensions and benefits suspensions, please see SHO #25-001 at:

<https://www.medicaid.gov/federal-policy-guidance/downloads/sho25001.pdf>.

³³ For additional information about the 12 months continuous postpartum coverage, please see page 5 of SHO #21-007 at: <https://www.medicaid.gov/federal-policy-guidance/downloads/sho21007.pdf>.

³⁴ See Section I, Item 3.A of the Medicaid Managed Care Rate Development Guide for further details: <https://www.medicaid.gov/medicaid/managed-care/guidance/rate-review-and-rate-guides>.

care plan. It is important that states establish a process that enables the state to notify its plans of an enrollee's incarceration status and address capitation payments in a timely fashion.³⁵

Availability of Enhanced Federal Funding

Expenditures on certain state Medicaid agency IT systems necessary to support the implementation of section 205 of the CAA, 2024 may be eligible for enhanced federal financial participation (FFP). Approval of enhanced FFP requires the submission of an Advanced Planning Document (APD).³⁶ A state may submit an APD requesting approval for 90 percent enhanced FFP for the design, development, and installation of their Medicaid Enterprise Systems (MES) initiatives contributing to the economic and efficient operation of the program.³⁷ States may also submit an APD to request 75 percent enhanced FFP for ongoing operations of CMS-approved systems.³⁸ States should refer to 45 C.F.R. Part 95 Subpart F – *Automatic Data Processing Equipment and Services-Conditions for FFP* for the specifics related to APD submission, and 42 C.F.R. Part 433 Subpart C – *Mechanized Claims Processing and Information Retrieval Systems* for the specifics related to systems approval.

For CHIP, states may be eligible to claim expenditures at their regular enhanced CHIP match for systems development, changes, and operations appropriately allocated, in the case of systems shared with Medicaid or other programs subject to the title XXI 10 percent limit on administrative expenditures.³⁹

Conclusion

CMS looks forward to its continued work with states on the implementation of requirements added by the CAA, 2024. If you have any questions regarding the information in this CIB, please submit your questions to CMCS@cms.hhs.gov.

³⁵ For more information on the implications of incarceration on managed care enrollment, please see pages 13-14 of SMDL #21-002 available at: <https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/smd21002.pdf>.

³⁶ 45 C.F.R. Part 95 Subpart F

³⁷ 42 C.F.R. § 433.112

³⁸ 42 C.F.R. § 433.116

³⁹ Section 2105(c)(2)(A) of the Act; 42 C.F.R. §§ 457.230 and 457.618.