

CHAPTER 69

AFDC-RELATED MEDICAID

Authority

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193; the Balanced Budget Act of 1997, Public Law 105-33; Section 1902(a)8, 1902(a)10, 1902(e) and Section 1931(a) of the Social Security Act (42 U.S.C. § 1396a(a)8, 1396a(a)10, 1396a(e) and 1396u-1(a) respectively); 42 C.F.R. 435.2 through 435.170 and 436.100 through 436.128; N.J.S.A. 30:4D-1 et seq.; N.J.S.A. 44:10 -3, P.L. 1997 c.13, 14, 37, 38 and 352.

Source and Effective Date

R.1999 d.233, effective July 19, 1999.
See: 31 N.J.R. 1009(a), 31 N.J.R. 1960(a).

Executive Order No. 66(1978) Expiration Date

Chapter 69, AFDC-Related Medicaid, expires on July 19, 2004.

Chapter Historical Note

Chapter 69, Reimbursement to Pharmaceutical Consultants in Long-Term Care Facilities, was adopted as R.1976 d.6, effective January 9, 1976. See: 7 N.J.R. 504(a), 8 N.J.R. 70(c).

Chapter 69, Reimbursement to Pharmaceutical Consultants in Long-Term Care Facilities, was repealed by Emergency Repeal R.1976 d.216, effective July 12, 1976. See: 8 N.J.R. 385(c).

Chapter 69, Hearing Aid Assistance to the Aged and Disabled, was adopted as new rules by R.1988 d.250, effective June 6, 1988. See: 20 N.J.R. 519(a), 20 N.J.R. 1220(a).

Pursuant to Executive Order No. 66(1978), Chapter 69, Hearing Aid Assistance to the Aged and Disabled, was readopted as R.1993 d.281, effective May 14, 1993. See: 25 N.J.R. 228(a), 25 N.J.R. 2589(a).

Pursuant to Reorganization Plan No. 001-1996, Chapter 69, Hearing Aid Assistance to the Aged and Disabled, was recodified as N.J.A.C. 8:83B, effective October 15, 1997. See: 29 N.J.R. 4679(a).

Chapter 69, AFDC-related Medicaid, was adopted as new rules by R.1999 d.233, effective July 19, 1999. See: Source and Effective Date.

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SUBCHAPTER 1. AFDC-RELATED MEDICAID IN NEW JERSEY

10:69-1.1 Background

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, enacted August 22, 1996, implemented Federal welfare reform. The new Federal law eliminated the Aid to Families with Dependent Children (AFDC) program and created a Temporary Assistance for Needy Families (TANF) block grant for states to provide time-limited cash assistance. New Jersey's block grant program is established as Work First New Jersey (WFNJ) in accordance with the Work First New Jersey Act, P.L. 1997, c.13, c.14, c.37 and c.38. P.L. 104-193 also required that the regulations governing a state's eligibility for AFDC-related Medicaid in effect in the State as of July 16, 1996, must continue to determine eligibility for AFDC-related Medicaid. This chapter is the continuation of the appropriate AFDC-related Medicaid rules.

10:69-1.2 Purpose and scope

The purpose of this chapter is to set forth the policies and procedures necessary for the orderly and equitable provision of AFDC-related Medicaid on a Statewide basis. It is binding on the county boards of social services (CBOSSs) and enforceable by the Division of Medical Assistance and Health Services (DMAHS). Questions of interpretation shall be resolved by the Division of Medical Assistance and Health Services.

10:69-1.3 Administrative organization

(a) The Department of Human Services is the administrative unit of State government which has the responsibility for the Medicaid program and is designated under Federal law as the "single State agency."

(b) The Division of Medical Assistance and Health Services is the administrative unit of the Department responsible for the general policies governing the administration of medical assistance, and for effecting the issuance of rules and administrative bulletins to implement statutory provisions and to coordinate the administration of medical assistance with the Division of Family Development. The Division of Medical Assistance and Health Services provides for the payment of claims, evaluates health services rendered under the program, maintains administrative liaison with the other Departmental divisions, and establishes incapacity under the AFDC-related Medicaid program.

(c) The Division of Medical Assistance and Health Services has local Medicaid District Offices (MDOs) throughout the State. The role of these offices is to act as a liaison with providers of health services; provide information about Medicaid to beneficiaries and members of the community; and provide information about Medicaid to, and cooperate with, appropriate agencies in order to ensure maximum utilization of the services available through the Medicaid program.

10:69-1.4 AFDC-related Medicaid

(a) The AFDC-related Medicaid program is a State program with Federal participation. It is designed to make payments to providers for medical care and services on behalf of certain individuals whose income is determined to be inadequate to enable them to secure quality medical care at their own expense.

(b) The Aid to Families with Dependent Children-related Medicaid program is composed of three segments:

1. AFDC-C related Medicaid, through which medical assistance is provided for children and their natural or adoptive parents or certain designated relatives with whom they were living, when they are financially eligible and deprived of parental support and care by reason of death, continued absence, or incapacity of one or both parents;

2. AFDC-F related Medicaid, through which medical assistance is provided to families with children when both parents are in the home, neither is incapacitated and the principal earner meets the Federal definition of unemployment; and

3. AFDC-N related Medicaid, through which medical assistance is provided to families with children when both parents are in the home and are not incapacitated but have inadequate income for support of the family.

(c) Information, applications and staff agency personnel shall be available to assist non-English speaking applicants for AFDC-related Medicaid income maintenance programs listed in N.J.A.C. 10:69-1.8. Spanish language program material is routinely prepared by the Division and distributed to county agencies. Minority program materials in languages other than Spanish may be prepared based on knowledge of the population served by programs under the auspices of the Division.

Special amendment, R.2000 d.411, effective September 12, 2000 (to expire March 12, 2001).
See: 32 N.J.R. 3598(a).

In (a), substituted "income is" for "resources are" preceding "determined"; and in (b)3, deleted a reference to resources.
Adopted concurrent proposal, R.2001 d.123, effective March 12, 2001.
See: 32 N.J.R. 3598(a), 33 N.J.R. 1123(c).

Readopted provisions of R.2000 d.411 without change.

10:69-1.5 Definitions

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

"Adequate notice" means notice to a client of the county board of social services (CBOSS) decision or action which must state the nature, effective date, factual and legal basis of the decision or action, and the right to a fair hearing.

"Adjusted gross income" means, in self-employment, the net income as determined by subtracting the cost of producing the income from total gross earnings.

"AFDC" means the former Aid to Families with Dependent Children.

"AFDC-related Medicaid" means medical assistance provided to families who would otherwise qualify for AFDC or deemed to qualify for AFDC if the program were still in existence.

"Agency" means the county board of social services.

"Applicant" means parent or parent-person who applies for AFDC-related Medicaid and whose application has not been officially acted upon by the CBOSS.

"Application process" means all activity performed by the eligibility staff until there is an official disposition of the application.

"Approved application" means an applicant has been determined to be eligible for AFDC-related Medicaid.

"Authorized representative" means an individual (or organization) whom a client designates orally or in writing to act on his or her behalf, or, in cases of incompetency, the person designated to act for the client.

"Beneficiary" means the family unit of parent(s) or parent-person(s) and child(ren) of eligible age who have been found eligible for AFDC-related Medicaid including any individual who is an eligible member of such family.

"Boarder, roomer, roomer-boarder" means a person, other than a member of an eligible unit, whose acceptance in the household is a business arrangement based upon payment in cash for board, room, or room and board.

"BQC" means the Bureau of Quality Control in the Division of Medical Assistance and Health Services.

"Calculated earned income" means amount of earned income remaining after applicable disregards and deductions have been subtracted from total gross earnings. This is the accountable amount to be used in determining the eligible unit's total income.

"Capacity of a legally responsible relative (LRR) to support" means the amount of contribution to be anticipated from an LRR.

"Caretaker relative" means the legally responsible adult or adults residing with the children for whom the application for presumptive eligibility is being made. This definition is used for application of presumptive eligibility only (see N.J.A.C. 10:69-12).

"Carnegie unit" means the credit given for the successful completion of one year's study in one subject in a secondary school. Four Carnegie units per year represents full time attendance.

"Case record" means the official file of forms, chronological narrative, correspondence and other documents pertinent to the application and eligibility of client case record. It constitutes a complete record which supports the decisions and actions of the CBOSS on a case.

"Categorical program" means a program established by the Federal Social Security Act for the purpose of enabling a state to furnish assistance to financially eligible individuals or families who meet specific eligibility requirements.

"CBOSS" means the county board of social services.

"CBOSS Director" means the county board of social services Director or staff member to whom he or she has delegated specified responsibility.

"Child born of unmarried parents" means a child born to a mother who is not married to the father of such child.

"Child of eligible age" means a child up to the age of 18 or a child up to the age of 19 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training and reasonably expected to complete the program before reaching age 19.

10:69-10.8 Eligible AFDC child or parent regularly attending school or in vocational training at a Residential Job Corps Center

(a) When an eligible child is a student regularly attending school, college or university, or regularly attending a course of vocational training designed to fit him or her for gainful employment, this child shall be included as a member of the eligible unit whether or not he or she is living in the home during the period in which he or she is pursuing his or her studies. (See N.J.A.C. 10:69-10.9 for definitions of school attendance.)

(b) Any grant, scholarship, student loan or other financial aid received by such child shall be fully disregarded in determining eligibility so long as the child continues to attend school as stated in (a) above and meets the conditions under which such moneys are granted.

1. Funds received through college work-study programs shall be disregarded.

(c) When a child receives vocational training at a Residential Job Corps Center which permits him or her to return home for weekends, the child shall be considered temporarily absent and regarded as an eligible member of the family unit. (A child receiving training at a National Job Corps Centers is to be considered permanently absent and shall not be considered a member of the eligible family for AFDC-related Medicaid program eligibility.)

10:69-10.9 School attendance defined

(a) A child eligible under the age requirements of N.J.A.C. 10:69-3.13 shall be considered a student regularly attending a school or training course when he or she is enrolled in and physically attending, as certified by the school or institute, a program of study or training leading to a certificate, diploma or degree:

1. Full time;

2. At least half-time and is regularly employed part-time or is available for and actively seeking part-time employment; or

3. At least half-time and is precluded from full-time attendance or part-time employment because of a verified physical disability.

(c) Full-time and half-time attendance are defined as:

1. In a trade or technical school, in a program involving shop practice, full-time is 30 clock hours per week and half-time is 15 clock hours; in a program without shop practice, full-time is 25 clock hours and half-time is 12 clock hours;

2. In a college or university, full-time is 12 semester or quarter hours and half-time is eight semester or quarter hours;

3. In a secondary school, full-time is 25 clock hours per week or four Carnegie units per year and half-time is 12 clock hours or two Carnegie units; and

4. In a secondary education program of cooperative training or in apprenticeship training, full-time attendance is as defined by the State Department of Education.

(d) When a parent of an eligible child is a student regularly attending school as defined in this section, the provisions of N.J.A.C. 10:69-10.8(b) and (c) shall apply.

(e) A child shall be considered in regular attendance in months in which he or she is not attending because of official school or training program, vacation, illness, convalescence or family emergency, and for the month in which he or she begins, completes or discontinues his or her school or training program.

10:69-10.10 General provisions—income

(a) Income may be earned, unearned or in the form of contributions.

(b) Earned income shall not include the amount of Earned Income Credit payment that an individual receives.

10:69-10.11 Definition of earned income

(a) Earned income refers to gross income earned by an individual through the receipt of wages, tips, salaries or commissions from activities in which he or she is engaged as an employee or from his or her self-employment. It includes earnings over a period of time for which settlement is made in one payment, as in the sale of farm crops.

(b) When an individual receives shelter in return for performing work duties, the monetary value shall be determined from Schedule VI in N.J.A.C. 10:69-10:42(c) and included in the total amount of gross earned income. The amount of mandatory payroll deductions to be recognized shall be determined in relation to such total amount.

(c) When an individual is employed in a position where tipping is customary, a daily log or other acceptable documentation of tips received shall be used for income calculation. Tips income calculation shall not be based on estimated information as reported on W-2 forms.

10:69-10.12 Earned income from self-employment including provisions of personal care services

(a) With respect to self-employment, the term "earned income" means the total profit from a business enterprise (such as farming) resulting from a comparison of the gross receipts with the business expenses. Business expenses are those costs directly related to producing the goods or services and, without which, the goods or services could not be produced. However, items such as depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the

principal of loans for capital assets or durable goods are not business expenses.

1. Persons who are self-employed shall be required to submit evidence of business receipts and expenditures as the basis for a sound estimate of earned income. A reliable, accurate accounting system or the method utilized in reporting to the Internal Revenue Service shall be acceptable for determining net income.

(b) In the case of an individual who is self-employed, it may be clearly evident that the expense of producing the income exceeds the income produced. AFDC-related Medicaid program shall not be continued if such person persists in operating the business.

1. A period of up to 24 months from the start of a new business shall be considered adequate to demonstrate a new business's potential for self-support. In situations where, in the judgment of the county board of social services, additional time would enable the business to show a profit, the period may be extended up to 12 months.

2. A business which is already established (that is, in operation for at least 36 months) and which shows only marginal profit, either constant or intermittent, shall be considered for purposes of AFDC-related Medicaid program eligibility to be failing if the profit, averaged over the preceding 12 months, is less than \$375.00 per month.

(c) An individual who is providing extensive personal services along with room and board accommodation to a noneligible individual shall be considered self-employed. An amount of \$125.00 shall be recognized as the business expense and cost of providing room, board and extensive personal services. Any income from this arrangement in excess of \$125.00 shall be recognized as earned income.

10:69-10.13 Earned income disregards for AFDC-C and AFDC-F related Medicaid

(a) The CBOSS shall disregard from the earned income of each employed individual in the eligible family, the first \$90.00 of such earnings to cover work-related expenses including, but not limited to, transportation and mandatory payroll deductions.

(b) The CBOSS shall disregard from the total earned income not already disregarded, an amount equal to the difference between the Income Standard established for the size of the family unit, in accordance with the chart at N.J.A.C. 10:69-10.3(b), and the current official poverty level for that family size (see 42 C.F.R. § 9902(2)).

(c) The CBOSS shall disregard from the remaining earned income, the actual costs paid for child care or for care of an incapacitated individual in the same home as the AFDC-C, -F or -N eligible family when the circumstances described at (d) below exist. The amount of the disregard shall not exceed the limits as follows.

1. \$175.00 per month, per child age two or older, or incapacitated adult, for full-time employment;
2. \$200.00 per month, per child under age two, for full-time employment;
3. \$135.00 per month, per child age two or older, or incapacitated adult, for part-time employment; and
4. \$150.00 per month, per child under age two, for part-time employment.

(d) None of the disregards above shall apply to the earned income of the individual for any month which one of the following conditions apply to him or her:

1. His or her employment is terminated or his or her earned income is reduced without good cause within 30 days prior to that month.
 - i. Good cause includes the following circumstances:
 - (1) The termination or reduction is not voluntary;
 - (2) The wages of employment are below the applicable minimum wage;
 - (3) The individual is not physically able to engage in the employment;
 - (4) The employment constitutes a risk to health or safety; or
 - (5) The applicant voluntarily requested AFDC-related Medicaid be terminated for the primary purpose of avoiding the receipt of the \$30.00 and one-third disregard for four consecutive months.

(e) The earned income disregard of a full-time or part-time student is described in N.J.A.C. 10:69-10.15.

(f) None of the disregards above in this section shall apply to the earned income of the individual for any month in which one of the following conditions apply to him or her:

1. The individual terminated his or her employment or reduced his or her earned income without good cause within 30 days prior to that month.
 - i. Good cause includes the following circumstances:
 - (1) The termination or reduction is not voluntary;
 - (2) The wages of employment are below the applicable minimum wage;
 - (3) The individual is not physically able to engage in the employment; and
 - (4) The employment constitutes a risk to health or safety.

2. The individual refused without good cause, within 30 days prior to that month, to accept employment in which he or she is able to engage which is offered through the State Division of Employment Security or any other bona fide offer of employment. The good cause provisions of (f)1i above apply.

3. The individual voluntarily requested AFDC-related Medicaid program coverage to be terminated for the primary purpose of avoiding the receipt of the \$30.00 and one-third disregard for four consecutive months.

Special amendment, R.2000 d.411, effective September 12, 2000 (to expire March 12, 2001).

See: 32 N.J.R. 3598(a).

Rewrote the section.

Adopted concurrent proposal R.2001 d.123, effective March 12, 2001.

See: 32 N.J.R. 3598(a), 33 N.J.R. 1123(c).

Readopted provisions of R.2000 d.411 with changes, effective April 2, 2001.

10:69-10.14 Disregard of certain allowances and payments in AFDC-related Medicaid program (all segments) for participation in JTPA

(a) Unearned income (including moneys to offset training expenses) received by an AFDC dependent child through the Job Training Partnership Act (JTPA) is exempt in the determination of initial eligibility, maximum income eligibility, and prospective needs test.

(b) Earned income received through the JTPA by an AFDC-related Medicaid program dependent child is exempt in the determination of initial eligibility, maximum income eligibility, and prospective needs test. However, the disregard of such income shall not exceed six months in any calendar year.

1. This disregard of income is independent of the earned income disregard found at N.J.A.C. 10:69-10.8 and 10.15. If a full-time student secures employment unrelated to JTPA participation, another six-calendar-month period shall be established in accordance with the provisions of N.J.A.C. 10:69-10.15(g).

(c) Income received by an AFDC-related Medicaid program parent or parent-person through the JTPA is treated as any other income received by such an individual with the exception of those payments classified as "needs based payments." Needs based payments (that is, moneys paid to offset expenses related to training) shall be disregarded in the determination of initial eligibility, maximum income determination, and prospective needs test.

10:69-10.15 Earned income disregards of a child who is a full or part-time student

(a) The earned income of any child in the eligible unit who is a full-time student, or is a part-time student who is not a full-time employee, shall be exempt in determining need of the eligible unit and in evaluating his or her capacity as a legally responsible relative. (See N.J.A.C. 10:69-10.9 for definitions of full and part-time students.)

(b) For the purposes of this section, a full-time employee shall be any student whose average employment on a monthly basis equals 35 hours a week or more.

(c) A student who is a full or part-time student during the regular school term shall be considered to be a full or part-time student during all vacation periods.

(d) When a child claiming the exemption of earned income described in this section is over 16 years of age, this student shall be informed in writing that he or she has a responsibility for participating in determining his or her eligibility for such exemption. The student and the county board of social services have joint responsibility for securing the factual data from the school necessary to make the determination as to whether he or she is a full or part-time student, and for securing from his or her employer the factual data of monthly hours employed.

(e) Part-time students who are fully employed and are thus not eligible for the exemption of earned income as described in this section are eligible for the appropriate disregards depending on program related Medicaid program.

(f) The exemption of earned income of part-time students under this section does not apply in determining maximum income eligibility in N.J.A.C. 10:69-10.3.

(g) The earned income of a full-time student shall be disregarded in the determination of maximum income eligibility (N.J.A.C. 10:69-10.3) for a total of six months in any one calendar year.

10:69-10.16 Income from family day care

(a) Payments by individuals or agencies for children placed in an eligible family's home for family day care shall be considered as gross earned income from self-employment. Earned income procedures for self-employment are discussed at N.J.A.C. 10:69-10.12.

1. The net income (adjusted gross earnings) to the eligible family is the difference between the cost of providing family day care and the total monthly amount paid for such care. Appropriate disregards apply in determining the calculated earned income (see N.J.A.C. 10:69-10.13).

10:69-10.17 Division of Youth and Family Services payments for foster care

(a) Division of Youth and Family Services' basic monthly payments for the placement of children in foster care and the clothing allowance shall be considered as equal to the cost of providing such care and maintenance. However, when extra payment is received for special services, such additional amount shall be considered as earned income from self-employment (see N.J.A.C. 10:69-10.13).

(b) For purposes of determining AFDC-related Medicaid program eligibility, such foster care children are not considered members of the eligible unit.

10:69-10.18 Income which is not earned

Net income from noneligible household members (except as stated in N.J.A.C. 10:69-10.12(c)), returns from capital investment such as dividends and interest, benefits and pensions, annuities, contributions from relatives, compensation payments, and any other payments not considered as earned income, shall be considered as unearned income. All such income shall be recognized in establishing eligibility.

10:69-10.19 Income from roomer-boarders and table boarders

Roomer-boarders or table boarders are noneligible household members.

10:69-10.20 Income from apartments, rooms or housekeeping units in the eligible unit's home

(a) When the eligible unit is receiving payment from rental of apartments, rooms or housekeeping units, the net income shall be determined by deducting the costs of operation and maintenance from the gross rental income received.

1. The costs of operation and maintenance are the greater of:

i. The actual costs of operation and maintenance, if known or subject to determination, or such reasonable allocation of actual or determined costs as may be indicated according to the space being rented out; or

ii. The number of rooms, excluding bathrooms, being rented out multiplied by the applicable monthly cost figure as follows:

- (1) With no utilities: \$23.00;
- (2) Including heat only: \$29.00;
- (3) Including all utilities: \$34.00.

2. To determine the total cost, multiply the monthly cost figure by the number of rooms in each apartment or housekeeping unit, excluding any room used solely as a bathroom.

3. Deduct the total cost from the amount of rental income received by the eligible unit. The difference is the net income.

i. Rental income shall be treated as earned income except in those situations where rental properties are in the hands of rental agencies; in such case, the income shall be considered as unearned.

(b) When the functions of property management including the collection of rents are performed by a member(s) of the eligible unit, the net is earned income; otherwise it is unearned income.

10:69-10.21 Contributions of support

(a) Obligatory contributions to the support of one or more members of the eligible unit shall be recognized as unearned income, regardless of whether such contributions are in cash or in kind. (See N.J.A.C. 10:69-10.42, Acceptable forms of support.)

(b) When shelter is being provided by a legally responsible relative (LRR) who has been determined by the CBOSS IV-A unit to have a capacity to provide support, the actual cash value shall, whenever possible, be determined and recognized as unearned income to the eligible unit. Where the actual value cannot be established, and is not stipulated by a court order to be made in an identifiable cash amount to a third party, the monthly monetary values shall be recognized according to Schedule VI in N.J.A.C. 10:69-10.42(c) and shall not exceed the LRR's evaluated capacity.

(c) Non-obligatory contributions, other than occasional gifts identified in N.J.A.C. 10:69-3.2, shall be recognized as unearned income only when made in cash to one or more members of the eligible unit (see also N.J.A.C. 10:69-2.2). This does not apply to LRRs who have an evaluated capacity to support.

10:69-10.22 Exempt income

(a) Exempt income is not considered in determining eligibility for AFDC-related Medicaid program.

(b) Income shall be exempted as follows:

1. Income tax refunds, including Homestead Property Tax Rebates;

2. Earned income credit (EIC) payments shall be excluded.

3. Payments for child care (see N.J.A.C. 10:69-5).

4. Child care payments for "special circumstance" children and transportation or the cost of transportation, which is not available from any other source, to transport the "special circumstance" child to and from the child care site when it is essential for the child's physical health and safety.

5. Supplemental aid by other agencies or organizations, whether public or private, provided that:

i. There is no duplication between such aid and the TANF grant;

ii. Such aid is for a special purpose not within the function of the public assistance agency (for example, vocational rehabilitation); or