

2. Coverage under a government funded, non-employee based health insurance program which is targeted for low-income uninsured shall not preclude a child from being eligible for NJ KidCare-Plans B, C and D.

3. Coverage of a child in accordance with the Consolidated Omnibus Budget Reconciliation Act (COBRA) continuation rights or other continuation rights available under State law shall not preclude a child from being eligible for NJ KidCare-Plans B, C and D, if the reason for the termination is expiration of the COBRA continuation rights. If the coverage was voluntarily terminated by the family prior to the expiration of continuation rights, the child is precluded from NJ KidCare-Plans B, C and D eligibility for six months, from the date of COBRA termination.

4. The child was covered by Medicaid.

i. Eligibility for Medically Needy with a unmet "spend-down" liability shall not preclude a child from being eligible for NJ KidCare-Plans B, C and D.

5. Coverage or eligibility for coverage, as applicable, under a group health benefits plan, whether sponsored through a governing entity or private employer, for the six month period shall not be used to preclude the child's eligibility for NJ KidCare-Plans B, C and D when:

i. The employer has ceased operations in this State, and there is no succeeding employer for that business;

ii. The employer has ceased operations in this State, and the succeeding employer has not retained the group health plan;

iii. The employer has ceased operations in this State, and the succeeding employer has altered the terms of a noncontributory group health plan to require a premium contribution (for a class of employee to which the child's household member belongs); or

iv. The employee-certificate holder becomes unemployed, through no fault of their own.

Amended by R.1998 d.154, effective February 27, 1998 (operative March 1, 1998; to expire August 31, 1998).

See: 30 N.J.R. 1060(a).

Rewrote the section.

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998. See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 with changes, effective September 21, 1998.

Amended by R.1999 d.190, effective June 21, 1999.

See: 31 N.J.R. 517(a), 31 N.J.R. 1613(a).

In (e) and (f), substituted references to six months for references to 12 months.

Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

In (e) and (f), inserted references to Plan D throughout; and in (e)1 and 2 and (f)5, substituted references to six months for references to 12 months.

### 10:79-3.9 Persons sanctioned under TANF or AFDC rules

Persons who are ineligible for TANF or would have been ineligible for AFDC using the rules in effect as of July 16, 1996, due to the imposition of a sanction of ineligibility for a factor of AFDC or TANF eligibility that does not apply in NJ KidCare (such as noncooperation with work registration) shall have eligibility determined under this chapter without regard to the sanction. (For persons ineligible for TANF due to a period of ineligibility imposed as a result of the receipt of lump sum income, see N.J.A.C. 10:79-4.3(c)).

### 10:79-3.10 Application for other benefits

(a) As a condition of eligibility for the NJ KidCare program, sponsoring adults on behalf of applicants, applicants, and beneficiaries are required to take all necessary steps to obtain any health insurance, annuities, and disability benefits to which the child is entitled, unless they can show good cause for not doing so.

1. Annuities and disability benefits include, but are not limited to, veterans' compensation and pensions, Social Security benefits, and unemployment compensation. They do not include TANF, Supplemental Security Income (SSI), or General Assistance.

### 10:79-3.11 Inmates of public institutions

(a) Any child who is an inmate of a public institution is ineligible for the NJ KidCare program.

(b) Any child who is incarcerated in a Federal, State, or local correction facility (prison, jail, detention center, reformatory, etc.) is not eligible for the NJ KidCare program.

## SUBCHAPTER 4. FINANCIAL ELIGIBILITY

### 10:79-4.1 Income eligibility limits

(a) Income limits for children through 18 years covered under the provisions of this chapter for NJ KidCare-Plan A shall be based on 133 percent of the poverty income guideline as defined by the U.S. Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35). The monthly income standard will be  $\frac{1}{2}$  of 133 percent of the annual poverty income guideline rounded up to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline will be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

(b) Income limits for children through 18 years covered under the provisions of this chapter for Plan B shall be no greater than 150 percent of the poverty income guideline as defined by the Department of Health and Human Services

in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35). The monthly income standard will be one-twelfth of 150 percent of the annual poverty income guideline rounded down to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline will be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

(c) Income limits for children through 18 years covered under the provisions of this chapter for Plan C shall be no greater than 200 percent of the poverty income guideline as defined by the Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35). The monthly income standard will be one-twelfth of 200 percent of the annual poverty income guideline rounded down to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline will be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

(d) Income limits for children through 18 years covered under the provisions of this chapter for Plan D shall be no greater than 350 percent of the poverty income guideline as defined by the Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35). Net income limits shall be no greater than 200 percent of the poverty income guideline after the application of disregards as defined at N.J.A.C. 10:79-4.4(c). The monthly income standard will be one-twelfth of 350 percent of the annual poverty income guideline rounded down to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline shall be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

(e) In order to be eligible for NJ KidCare benefits under the provisions of this chapter, monthly household income (as determined by this chapter) must be equal to or less than the income limit established in (a) through (d) above.

(f) Income eligibility exists for each month in which the household unit's income is equal to or less than the income limits.

Amended by R.1998 d.154, effective February 27, 1998 (operative March 1, 1998; to expire August 31, 1998).

See: 30 N.J.R. 1060(a).

Rewrote the section.

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998. See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

Inserted a new (d); recodified former (d) and (e) as (e) and (f); and in the new (e), substituted a reference to (a) through (d) for a reference to (a).

#### 10:79-4.2 Prospective budgeting of income

(a) The eligibility determination agency shall establish the best estimate of income that will be available to the household unit.

1. The best estimate of income shall be based on an average of the household unit's income for the full two-month period preceding the date of application or re-determination. Adjustments shall be made to the estimated income to reflect changes in income that either have occurred or which are reasonably anticipated to occur which would affect the household unit's income during a period of eligibility.

#### 10:79-4.3 Countable income—Plan A

(a) For purposes of Plan A eligibility, except as specified below, countable income for children under the provisions of this chapter shall include the income of all members of the household unit as determined at N.J.A.C. 10:79-3.5, and shall be determined in accordance with regulations applicable to income in the AFDC-C program (see N.J.A.C. 10:82).

1. The maximum income limits as provided for at N.J.A.C. 10:82-1.2(d) do not apply.

2. Neither the \$30.00 nor the one-third disregard of earned income at N.J.A.C. 10:82-2.8(a)3 and (c) apply.

3. The deeming of stepparent income at N.J.A.C. 10:82-2.9(d) does not apply. (See N.J.A.C. 10:79-3.5(a) regarding the inclusion or exclusion of the stepparent in the household unit.)

4. The deeming of an alien sponsor's income at N.J.A.C. 10:82-3.13 does not apply.

(b) Nonrecurring lump sum income received by a household unit of a child shall be added to any other income received by the household unit in that month. The total shall be divided by the income eligibility limit applicable to the household. The result will be the number of months the eligible members of the household unit shall be ineligible to receive NJ KidCare under the provisions of this chapter. Any remaining income from this calculation is treated as if it were unearned income in the first month following the period of ineligibility.

1. The period of ineligibility shall begin the first month subsequent to the month the nonrecurring income is received or, if there is insufficient time to provide timely adverse action notice, the following month.

2. Once established, the period of ineligibility may be reduced only in accordance with the AFDC provisions for shortening a period of ineligibility as found at N.J.A.C. 10:82-4.15(a)5. The basis for a determination to shorten the period of ineligibility shall be fully documented in the case record.

(c) Any person who received AFDC or Medicaid based on AFDC rules and became ineligible for such assistance because of a period of ineligibility imposed as a result of the provisions of N.J.A.C. 10:82-4.15 may establish eligibility under the provisions of this chapter. The amount of the lump sum used to determine the original period of ineligibility shall be divided by the applicable income eligibility limit to determine the period of ineligibility for NJ KidCare under this chapter. If that period has already expired, eligibility for benefits under this chapter may be established so long as all other eligibility criteria are met.

(d) The parents of children and the spouse of a child are legally responsible relatives to children applying for or eligible for benefits under the provisions of this chapter. When a legally responsible relative resides in the same household, his or her income is considered in the determination of eligibility and no further action is required. When a legally responsible relative does not reside in the same household, the eligibility determination agency shall pursue support from that relative in accordance with the provisions of N.J.A.C. 10:82-3.8 et seq.

1. Except when the legally responsible relative resides in the same household, income of the relative shall be counted only to the extent that the income is actually made available to the household unit.

Amended by R.1998 d.154, effective February 27, 1998 (operative March 1, 1998; to expire August 31, 1998).

See: 30 N.J.R. 1060(a).

In (a), added "For purposes of Plan A eligibility," at the beginning. Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998. See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

#### 10:79-4.4 Countable income—Plans B, C and D

(a) For purposes of Plan B, C or D eligibility, gross income for the applicant shall include the gross income of members of the household unit as defined in N.J.A.C. 10:79-3.6.

1. Income from a legally responsible relative who does not reside with the family shall be counted only to the extent that the income is actually made available to the household unit.

2. A minor child who is in receipt of Supplemental Security Income (SSI) shall not be included in the household income.

3. Earned income of a child who is a full or part-time as defined in N.J.A.C. 10:82-4.7 shall be counted in the household income.

(b) Income for purposes of determining eligibility for the NJ KidCare—Plans B, C or D shall be determined as follows:

1. For self-employed persons, income shall be calculated using adjusted gross income reported on the family's Federal income tax form(s) from the prior year as the baseline and adding back in reported depreciation, carry-over loss, and net operating loss amounts that apply to the business in which the family is currently engaged. Applicants shall report the most recent financial situation of the family if it has changed from the period of time covered by the Federal income tax form. The report may be in the form of a percentage increase or decrease.

2. For wage earners, income shall be calculated based on gross income reported in the three months immediately preceding application for NJ KidCare—Plans B, C or D program.

i. Income received weekly shall be multiplied by 4.333 to determine the monthly amount; biweekly income shall be multiplied by 2.167; variable amounts should be averaged for the appropriate frequency (that is, weekly paychecks should have a weekly average calculated; biweekly amounts should be averaged to determine a biweekly average, etc.). That amount should then be multiplied by the appropriate formula to determine monthly gross income. Other income should also have the same methodology applied to determine monthly income.

3. For unemployed persons eligible for a governmental income program, income shall be determined as it exists at time of application, with notification of changes to be the responsibility of the applicant. If income evaluated in this fashion renders an applicant ineligible, documented cessation of the income source after the date of application shall be considered.

4. For other individual circumstances, income, including unearned income, shall be calculated based on a combination and/or variation of (b)1, 2, and/or 3 above, as appropriate.

(c) For purposes of Plan D eligibility, the amount of gross income greater than 200 percent and not in excess of 350 percent of the Federal poverty level shall be subject to disregard.

New Rule, R.1998 d.154, effective February 27, 1998 (operative March 1, 1998; to expire August 31, 1998).

See: 30 N.J.R. 1060(a).

Former N.J.A.C. 10:79-4.4, Resource eligibility, recodified to N.J.A.C. 10:79-4.5.

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998.

See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

In (a) and (b), inserted references to Plan D; and added (c).

**10:79-4.5 Resource eligibility**

Children seeking NJ KidCare benefits under the provisions of this chapter are eligible without regard to the value of the household unit's resources. The eligibility determination agency shall inquire about the household unit's resources only in order to establish income that may result from the household unit's resources.

Recodified from N.J.A.C. 10:79-4.4 by R.1998 d.154, effective February 27, 1998 (operative March 1, 1998; to expire August 31, 1998). See: 30 N.J.R. 1060(a).

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998. See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

**SUBCHAPTER 5. ADMINISTRATION**

**10:79-5.1 Eligibility determination agencies—Plans B, C and D**

Financial eligibility for the NJ KidCare program is administered by the eligibility determination agencies under the supervision of the Division of Medical Assistance and Health Services. Financial eligibility for the NJ KidCare—Plans B, C and D is administered by the Statewide eligibility determination agency under the supervision of the Division of Medical Assistance and Health Services.

Amended by R.1998 d.154, effective February 27, 1998 (operative March 1, 1998; to expire August 31, 1998). See: 30 N.J.R. 1060(a).

Added a second sentence.

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998. See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

Inserted a reference to Plan D.