

**CHAPTER 71**

**MEDICAID ONLY**

**Authority**

N.J.S.A. 30:4D-3, 7, 7a, 7b and 7c.

**Source and Effective Date**

R.2000 d.415, effective September 15, 2000.  
See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 71, Medicaid Only, expires on March 14, 2006. See: 37 N.J.R. 3774(a).

**Chapter Historical Note**

Chapter 71, Medicaid Only, was originally codified in Title 10 as Chapter 94, Medicaid Only Manual. Chapter 94, was adopted as R.1976 d.157, effective July 1, 1976. See: 7 N.J.R. 464(d), 8 N.J.R. 287(d).

Subchapter 3, Eligibility Factors, was readopted as R.1983 d.317, effective July 20, 1983. See: 15 N.J.R. 948(a), 15 N.J.R. 1382(a).

Subchapter 4, Resources, and Subchapter 5, Income, were readopted as R.1983 d. 373, effective August 22, 1983. See: 15 N.J.R. 999(b), 15 N.J.R. 1477(a).

Subchapter 7, Other Payments, Subchapter 8, Responsibilities, and Subchapter 9, Medical Assistance for the Aged Continuation, were readopted as R.1986 d.5, effective January 6, 1986. See: 17 N.J.R. 2340(a), 18 N.J.R. 276(a).

Chapter 94, Medicaid Only Manual, was recodified as N.J.A.C. 10:71, effective March 16, 1987. See: 19 N.J.R. 466(e).

Pursuant to Executive Order No. 66(1978), Chapter 71, Medicaid Only Manual, was readopted as R.1991 d.33, effective December 24, 1990. See: 22 N.J.R. 3357(a), 23 N.J.R. 215(a).

Pursuant to Executive Order No. 66(1978), Chapter 71, Medicaid Only Manual, was readopted as R.1995 d.651, effective November 17, 1995. See: 27 N.J.R. 3543(a), 27 N.J.R. 5046(a).

Pursuant to Executive Order No. 66(1978), Chapter 71, Medicaid Only, was readopted as R.2000 d.415, effective September 15, 2000. See: Source and Effective Date. See, also, section annotations.

**Law Review And Journal Commentaries**

Healthy Financial Planning for Nursing Home Care. Michael K. Feinberg, 138 N.J.Law. 33 (Mag.) (Jan./Feb. 1991).

Nursing Homes in the Garden State: A Legal Perspective. Janice Chapin, 141 N.J.Law. 38 (Mag.) (July/August 1991).

**CHAPTER TABLE OF CONTENTS**

**SUBCHAPTER 1. INTRODUCTION**

- 10:71-1.1 General introduction
- 10:71-1.2 Choice of program by applicant
- 10:71-1.3 Living arrangements
- 10:71-1.4 Information on the chapter
- 10:71-1.5 Administrative organization
- 10:71-1.6 Basic principles of administration
- 10:71-1.7 Examination or review of chapter
- 10:71-1.8 County board of social services responsibility; chapter
- 10:71-1.9 Providing chapter material in adverse action situations
- 10:71-1.10 Revisions of the chapter

- 10:71-1.11 Availability of chapter

**SUBCHAPTER 2. THE APPLICATION PROCESS**

- 10:71-2.1 Definitions
- 10:71-2.2 Responsibilities in the application process
- 10:71-2.3 Policy and procedure on prompt disposition
- 10:71-2.4 Intake policy and procedure
- 10:71-2.5 Application policy and procedure
- 10:71-2.6 Registration procedures and record of inquiries
- 10:71-2.7 Reports to the Commission for the Blind and Visually Impaired under specified circumstances
- 10:71-2.8 Assignment of pending application for completion of eligibility determination
- 10:71-2.9 Process of establishing eligibility
- 10:71-2.10 Collateral investigation
- 10:71-2.11 Case recording
- 10:71-2.12 Recommendation for agency decision
- 10:71-2.13 Supervisory review and approval
- 10:71-2.14 Disposition of application
- 10:71-2.15 Notice of agency decision
- 10:71-2.16 Retroactive eligibility for Medicaid

**SUBCHAPTER 3. ELIGIBILITY FACTORS**

- 10:71-3.1 General provisions
- 10:71-3.2 Citizenship; requirements
- 10:71-3.3 Citizenship; alien status-documentation requirements
- 10:71-3.4 Residence requirement
- 10:71-3.5 Resident defined
- 10:71-3.6 Change of county residence
- 10:71-3.7 Eligibility of beneficiaries who leave New Jersey
- 10:71-3.8 Medicaid eligibility for individuals who enter New Jersey in order to secure medical care
- 10:71-3.9 Age
- 10:71-3.10 Disability and blindness factors
- 10:71-3.11 Determination of disability and blindness eligibility; a State function
- 10:71-3.12 Disability; definitions
- 10:71-3.13 County board of social services responsibility and procedures
- 10:71-3.14 Institutional eligibility
- 10:71-3.15 County board of social services responsibility and procedures; eligibility factors
- 10:71-3.16 Medical assistance units

**SUBCHAPTER 4. RESOURCES**

- 10:71-4.1 Financial eligibility standards; resources
- 10:71-4.2 Countable resources
- 10:71-4.3 (Reserved)
- 10:71-4.4 Excludable resources
- 10:71-4.5 Resource eligibility standards
- 10:71-4.6 Deeming of resources
- 10:71-4.7 Transfer of resources
- 10:71-4.8 Institutional eligibility; resources of a couple
- 10:71-4.9 Resource assessment
- 10:71-4.10 Transfer of assets
- 10:71-4.11 Trusts

**SUBCHAPTER 5. INCOME**

- 10:71-5.1 Income; financial eligibility standards
- 10:71-5.2 Determination of countable income
- 10:71-5.3 Income exclusions
- 10:71-5.4 Includable income
- 10:71-5.5 Deeming of income
- 10:71-5.6 Income eligibility standards
- 10:71-5.7 Post-eligibility treatment of income; institutionalized individuals
- 10:71-5.8 Eligibility under life care and pay-as-you-go agreements
- 10:71-5.9 Deeming from sponsor to alien

**SUBCHAPTER 6. CASE RECORDS AND FILES**

- 10:71-6.1 Purpose of case records
- 10:71-6.2 Contents of the case record
- 10:71-6.3 Forms applicable to the Medicaid Only program
- 10:71-6.4 Maintenance and custody of case records
- 10:71-6.5 Movement of case records
- 10:71-6.6 Retention and destruction of records

**SUBCHAPTER 7. OTHER PAYMENTS**

- 10:71-7.1 General provisions
- 10:71-7.2 Services and service payments
- 10:71-7.3 Other service payments
- 10:71-7.4 Emergency assistance payments
- 10:71-7.5 Payment of burial and funeral expenses

**SUBCHAPTER 8. RESPONSIBILITIES**

- 10:71-8.1 Other agency responsibilities
- 10:71-8.2 Redetermination of medical eligibility
- 10:71-8.3 Notice of county board of social services decision
- 10:71-8.4 Complaints and fair hearings
- 10:71-8.5 Fraudulent receipt of assistance
- 10:71-8.6 Reporting criminal offenses to law enforcement authorities
- 10:71-8.7 Safeguarding information
- 10:71-8.8 Nondiscrimination in public assistance programs

**SUBCHAPTER 9. MEDICAL ASSISTANCE FOR THE AGED CONTINUATION**

- 10:71-9.1 General statement
- 10:71-9.2 Initial certification
- 10:71-9.3 Termination
- 10:71-9.4 Continuation of medical need
- 10:71-9.5 Eligibility for other programs

**SUBCHAPTER 1. INTRODUCTION**

**10:71-1.1 General introduction**

On January 1, 1974, Title XVI of the Social Security Act replaced previous Titles I (Old Age Assistance), X (Aid to the Blind) and XIV (Aid to the Disabled), which were repealed. The Social Security Administration administers Title XVI, Supplemental Security Income (SSI), which provides cash payments to the aged, blind and disabled. Individuals who desire medical care only apply through the county board of social services for the Medicaid Only program under Title XIX.

Amended by R.2000 d.415, effective October 16, 2000.  
See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).

Substituted "board of social services" for "welfare board".

**10:71-1.2 Choice of program by applicant**

(a) An aged, blind or disabled person who desires Medicaid and does not wish to receive a money payment may apply for the Medicaid Only program. To qualify for this program, he/she must have financial eligibility as determined by the regulations and procedures set forth in this chapter.

(b) Persons who are neither aged, blind nor disabled qualify for Medicaid benefits when they are determined by the county board of social services to be eligible for AFDC-related Medicaid program. Persons whose eligibility is thus established may choose to receive Medicaid Only benefits without accepting money payments. Regulations governing these programs are set forth in the AFDC-related Medicaid chapter (N.J.A.C. 10:69).

Amended by R.2000 d.415, effective October 16, 2000.

See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).

In (a), substituted "chapter" for "manual"; and rewrote (b).

**10:71-1.3 Living arrangements**

(a) Aged, blind and disabled persons who are living in the community and meet the requirements of the SSI program may receive Medicaid Only.

(b) Aged, blind and disabled persons who are receiving care in an eligible medical institution and, because of income or resources, do not qualify for SSI may be eligible for Medicaid Only.

**10:71-1.4 Information on the chapter**

This chapter sets forth the policies and procedures necessary for the orderly and equitable administration of the Medicaid Only program as it relates to the aged, blind and disabled. It is a statement of policy and procedures separate from all other assistance programs, and is applicable to "Medicaid Only." The criteria for determination of eligibility are based on SSI policy and procedure which do not necessarily coincide with standards for other public assistance programs and therefore require separate instructions.

Amended by R.2000 d.415, effective October 16, 2000.

See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).

Substituted "chapter" for "manual".

**10:71-1.5 Administrative organization**

The Medicaid Only program is administered by the county boards of social services (CBOSS) of the State of New Jersey through the Division of Medical Assistance and Health Services in the Department of Human Services. The CBOSSs contract with the Division of Medical Assistance and Health Services for the purpose of providing Medicaid Only benefits to eligible persons.

Amended by R.1995 d.651, effective December 18, 1995.

See: 27 N.J.R. 3543(a), 27 N.J.R. 5046(a).

Amended by R.2000 d.415, effective October 16, 2000.

See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).

Substituted references to county boards of social services for references to County Welfare Agencies throughout.

**10:71-1.6 Basic principles of administration**

(a) The following principles of administration shall apply to the Medicaid Only program.

**10:71-2.7 Reports to the Commission for the Blind and Visually Impaired under specified circumstances**

By law, the CBOSS is required to report to the Commission for the Blind and Visually Impaired, every individual coming to its attention who is known to be, or who is believed likely to become, permanently blind. The permanent information shall be registered with the Commission in the prescribed form.

Amended by R.1995 d.651, effective December 18, 1995.  
 See: 27 N.J.R. 3543(a), 27 N.J.R. 5046(a).  
 Amended by R.2000 d.415, effective October 16, 2000.  
 See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).  
 Substituted "CBOSS" for "CWA".

**10:71-2.8 Assignment of pending application for completion of eligibility determination**

Each CBOSS shall provide a method to assure assignment of pending application to a worker within three working days and establish a follow-up tickler system.

Amended by R.1995 d.651, effective December 18, 1995.  
 See: 27 N.J.R. 3543(a), 27 N.J.R. 5046(a).  
 Amended by R.2000 d.415, effective October 16, 2000.  
 See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).  
 Substituted "CBOSS" for "CWA".

**10:71-2.9 Process of establishing eligibility**

The process of establishing eligibility involves a review of the application for completeness, consistency, and reasonableness. A personal face to face interview with the applicant or his/her authorized agent is required.

**Cross References**

Determination of continuing eligibility. see N.J.A.C. 10:71-8.1.

**10:71-2.10 Collateral investigation**

(a) "Collateral investigation" shall refer to contacts with individuals other than members of applicant's immediate household, made with the knowledge and consent of the applicant(s).

(b) The primary purpose of collateral contacts is to verify, supplement or clarify essential information.

(c) The applicants will usually be able to help select the most likely sources of information about themselves. If they are unwilling to have the necessary inquiries made and are unwilling to secure the required information from such sources themselves, then it shall be explained that the CBOSS will be unable to certify entitlement to Medicaid Only.

Amended by R.1995 d.651, effective December 18, 1995.  
 See: 27 N.J.R. 3543(a), 27 N.J.R. 5046(a).  
 Amended by R.2000 d.415, effective October 16, 2000.  
 See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).  
 In (c), substituted "CBOSS" for "CWA".

**Case Notes**

Home was non-liquid resource excluded from determining Medicaid eligibility as long as applicant agreed to liquidate within six months of application date. *J.N. v. Division of Medical Assistance*, 95 N.J.A.R.2d (DMA) 55.

**10:71-2.11 Case recording**

All pertinent information relating to the eligible applicant shall be recorded.

**10:71-2.12 Recommendation for agency decision**

The eligibility worker is initially responsible for the recommendation for approval or denial. The eligibility worker will complete the work sheet and authorization for medical assistance PR-1 and a copy will be sent to the Medicaid unit for preparation of the MAP-1. The statement of income available for nursing home payment PR-1 (formerly PA-3L) will be completed in appropriate cases.

Amended by R.2000 d.415, effective October 16, 2000.  
 See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).

Substituted references to eligibility workers for income maintenance workers throughout, substituted "medical assistance PR-1" for "public assistance (PA-3A)" in the second sentence, and substituted "PR-1 (formerly PA-3L)" for "(PA-3L)" in the third sentence.

**10:71-2.13 Supervisory review and approval**

(a) In most cases an eligibility worker will complete the investigation and processing of the application.

(b) All records shall be reviewed by a supervisory staff member prior to final disposition.

(c) Any difference of opinion between worker and supervisor shall be resolved by a conference, and, if necessary, the issue shall be referred to a higher administrative level for disposition.

(d) All records of application shall be approved in writing by the supervisor following review, either by signature or initialed transcript signature.

Amended by R.2000 d.415, effective October 16, 2000.  
 See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).

In (a), substituted "eligibility worker" for "IM worker".

**10:71-2.14 Disposition of application**

(a) It is the intent of State law and policy that the normal method for disposing of applications recommended for approval shall be by the authority vested in the director of welfare to make decisions on eligibility for Medicaid Only. The director of welfare has the same authority to make case decisions other than approvals.

(b) The director may delegate such authority to any staff member or members as he/she may determine. He/she shall exercise this right of delegation in such a way as to assure the available at all times of some staff member possessing the requisite authority to make decisions and to

authorize payment by the Division of Medical Assistance and Health Services.

(c) Applications which may be held for the welfare board are:

1. Those where immediate medical need is not indicated; or
2. Those where the director believes that there is valid cause to question the available evidence on any point of eligibility, or where the case presents a special problem;
3. If so held, the application shall be identified in the narrative portion of the minutes, and in each instance shall include a brief statement of the question or special problem involved and the decision of the board.

#### 10:71-2.15 Notice of agency decision

Designation of personnel responsible for preparation of decision notices shall be at the discretion of the agency.

#### 10:71-2.16 Retroactive eligibility for Medicaid

(a) All applicants for Medicaid Only shall be queried as to whether or not they have outstanding unpaid medical bills incurred within the three month period prior to the month of application for Medicaid Only. Those indicating the existence of such bills are to be supplied with an "Application for payment of unpaid medical bills," form FD-74, for completion. The intake worker will be responsible for assisting the applicant, where necessary, in the interpretation and completion of the application form (regardless of whether the individual is eventually determined to be eligible for Medicaid). The intake worker will not be responsible for making a financial determination of eligibility for the three-month period in question.

(b) The applicant shall attach all outstanding unpaid medical bills to the FD-74 form and forward it to the:

Division of Medical Assistance and Health Services  
Retroactive Eligibility Unit  
PO Box 712 Mail Code 10  
Trenton, NJ 08625-0712

(c) For individuals who are incapable of acting on their own behalf, an authorized agent can make application for retroactive Medicaid eligibility when there are outstanding medical bills. Such persons, at the time of application, should be provided with a form FD-74 for completion and submission to the retroactive eligibility unit with the unpaid medical bills attached.

(d) In the case of an individual who is deceased, an authorized agent, as defined above, may make application for retroactive Medicaid eligibility by obtaining an application form FD-74 from either the county welfare board or the Medicaid District Office.

Amended by R.1995 d.651, effective December 18, 1995.  
See: 27 N.J.R. 3543(a), 27 N.J.R. 5046(a).  
Amended by R.2000 d.415, effective October 16, 2000.  
See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).

In (a), substituted "Medicaid" for "public assistance" in the third sentence.

#### Case Notes

Untimely application for three months retroactive benefits under Medicaid program was not waived and was properly denied. Estate of G.K. v. Division of Medical Assistance, 95 N.J.A.R.2d (DMA) 27.

### SUBCHAPTER 3. ELIGIBILITY FACTORS

#### Law Review and Journal Commentaries

Protecting the Home in Government Benefits Planning. Gary Martz, 164 N.J.Law. 34 (Mag.) (Oct. 1994).

#### 10:71-3.1 General provisions

(a) Eligibility must be established in relation to each legal requirement to provide a valid basis for granting or denying medical assistance.

(b) The applicant's statements regarding his/her eligibility, as set forth in the application form, are evidence. The statements must be consistent and meet prudent tests of credibility. Incomplete or questionable statements shall be supplemented and substantiated by corroborative evidence from other pertinent sources, either documentary or non-documentary:

1. Documentary sources of evidence present factual information recorded at some previous date by a disinterested party and filed as part of a record. Examples: certificates, legal papers, insurance policies, licenses, bills, receipts, notices of RSDI benefits, and so forth.

2. Nondocumentary sources of evidence are factual oral statements which appear to be reliable by individuals, based on the observation and personal knowledge of applicant's circumstances.

#### Case Notes

Comparison of Medicaid monthly income eligibility limits to those for the Medical Assistance to the Aged program; Medicaid income eligibility depends on participants' living arrangements (citing former N.J.A.C. 10:94-4.33 Table A). *Texter v. Dept. of Human Services*, 88 N.J. 376, 443 A.2d 178 (1982).

#### 10:71-3.2 Citizenship; requirements

(a) The applicant must be a resident of the United States who is either a citizen or an alien who can be classified as an eligible alien in accordance with this subchapter.

iv. The Medical Review Team (MRT) shall also maintain a control file in order to ensure appropriate and timely reevaluation by the MRT. The MRT will notify CBOSS one month in advance of cases scheduled for such review. Cases also for reevaluation will be listed on Form PA-655.

2. "Undetermined" cases:

i. If further medical and/or social information is required by the MRT for the initial determination of eligibility, the CBOSS shall obtain the information promptly and resubmit the case. Reports from medical specialists shall be submitted on their own letterheads.

ii. If the applicant fails or refuses to present himself/herself for required examinations or tests, the application shall be referred to the MRT for recommendations.

3. "Disapproved" cases:

i. Any case determined as not medically eligible for "Medicaid Only" by the MRT shall be denied Medicaid Only by the CBOSS.

ii. Appropriate notification shall be given to the applicant as well as any specific recommendations for follow-up care and treatment.

(j) When page 5 of Form PA-5 carries the signature of the medical consultant approving the payment of the examining physician, such payment shall be forwarded to the physician from administrative funds, regardless of whether the action on the record of action is "approved", "disapproved" or "undetermined". (In an "undetermined" case, if the request for additional information relates to an incomplete report from the examining physician, approval for payment will not appear on page 5 of the PA-5.)

(k) Payment for special diagnostic reports shall likewise be forwarded to the medical specialist or clinic from administrative funds regardless of whether the case is "approved", "disapproved", or "undetermined".

(l) Maximum allowances for examining physician (completion of PA-5) are as follows.

1. Examination at office or hospital: \$20.00.
2. Examination at patient's home: \$30.00.
3. Examination at public institution: No fee.

(m) Diagnostic examination services rules are:

1. This subsection is concerned with medical specialty consultant evaluation services and diagnostic studies (that is, clinical laboratory, diagnostic x-ray and special diagnostic examinations) incident thereto, authorized by a CBOSS upon recommendation of the MRT, when deemed essential as part of the initial determination of medical eligibility.

2. These examinations and procedures are exclusively for diagnostic eligibility, are chargeable as matchable administrative costs and a medical vendor payment should be promptly made upon approval of the consultant's report by the reviewing physician employed by the State agency.

3. The following schedule of fees is exclusive to laboratory, x-ray and other special diagnostic studies which may be required.

i. Diagnostic Consultation and Report (ophthalmologic includes refraction: otological includes audiometric screening) other than psychiatric or neurologic: \$45.00.

ii. Diagnostic Consultation requiring complete psychiatric or complete neurological examination or complete neuropsychiatric examination, with detailed report: \$50.00.

iii. Electrocardiogram with interpretation and report: \$25.00.

(n) Payment of the above allowance is to be approved only when the specialist has received prior authorization to perform the diagnostic evaluation and when the examination is performed by a qualified specialist (that is, eligible for or certified by the appropriate American board; or recognized by hospital, community and peers as a specialist, and practice is limited to the specialty). See current membership directory of the Medical Society of New Jersey.

(o) The fee(s) listed in fees for professional and diagnostic services issued by the Medical-Surgical Plan of New Jersey (Revised 6-1-73) shall be approved when diagnostic x-ray or radioisotope studies, laboratory and/or special diagnostic studies are deemed essential by the medical specialist authorized to perform the diagnostic consultant evaluation. Payment based on the allowances listed by the Medical-Surgical Plan, Series 575, shall be limited to medical specialists as defined in the section.

As amended, R.1977 d.334, effective October 1, 1977.

See: 9 N.J.R. 340(a), 9 N.J.R. 479(c).

As amended, R.1978 d.212, effective June 22, 1978.

See: 10 N.J.R. 190(c), 10 N.J.R. 344(c).

As amended, R.1979 d.364, effective November 1, 1979.

See: 11 N.J.R. 379(b), 11 N.J.R. 519(e).

As amended, R.1979 d.449, effective November 13, 1979.

See: 11 N.J.R. 518(a), 11 N.J.R. 527(d).

Amended by R.1995 d.651, effective December 18, 1995.

See: 27 N.J.R. 3543(a), 27 N.J.R. 5046(a).

Amended by R.2000 d.415, effective October 16, 2000.

See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).

Substituted references to CBOSSs for references to CWAs and substituted references to the Medical Review Team for the Disability Review Unit throughout.

**10:71-3.14 Institutional eligibility**

(a) Persons who are otherwise eligible for Medicaid Only receive medical coverage while receiving patient care in eligible medical institutions. Such coverage shall be provided.

ed through the appropriate payment mechanism of the Division of Medical Assistance and Health Services. The Medicaid Cap income standard is applied only to certain institutions.

(b) Individuals who are inmates of public institutions are not eligible for Medicaid coverage, unless they are receiving care in a Title XIX approved section of such facility.

(c) Individuals incarcerated in a Federal, State or local correctional facility (prison, jail, detention center, reformatory, etc.) are not eligible for Medicaid coverage. The needs of such individuals (inmates) are met through another agency of the Federal or State government or political subdivision thereof (see N.J.A.C. 10:71-1.6(a)3).

(d) An "institution" is any group living arrangement in which food, shelter and personal care (other than nursing care) are furnished on a continuous basis to four or more persons unrelated to the operator or in which food, shelter and personal care, including nursing care, are furnished on a continuous basis to four or more persons unrelated to the operator; or any establishment or facility licensed or approved by the State of New Jersey.

(e) Application of Medicaid Cap rules are:

1. General or Class A special hospitals: When a person is confined to such a hospital, the Medicaid Cap standard does not apply; eligibility will be determined according to the applicable living arrangement in Table B (see N.J.A.C. 10:71-5.6(c)5).

2. Long term care facilities (eligible private medical institutions): This may include licensed nursing homes, intermediate care facilities, or Class B and C special hospitals. These facilities must be licensed by the Department of Health and Senior Services licensing authority, and approved by the Department of Human Services for provider participation in the Title XIX Medicaid program. When a person is confined to a long term care facility, the Medicaid Cap standard is used.

3. Licensed boarding homes for sheltered care (including nonprofit incorporate homes for the aged): These homes must be licensed by the Department of Health and Senior Services in accordance with N.J.A.C. 8:43. When the person is in a facility of this type, the income standard for licensed boarding home is used.

(f) An "eligible medical institution" outside New Jersey is a public or voluntary medical institution which is licensed, certified or approved by the proper authority of the jurisdiction in which the institution is located, so that the costs of care and services provided therein may be paid. Evidence of such license, certification or approval shall be obtained from the Department of Welfare or similar authority of the jurisdiction in which the institution is located.

1. Use of out-of-state facilities shall be restricted to temporary emergency situations where it is established that there is no eligibility for coverage under a welfare or nonwelfare program in the other state.

Amended by R.1986 d.71, effective March 17, 1986.

See: 17 N.J.R. 2522(a), 18 N.J.R. 564(b).

New (b) and (c) added; old (b)-(d) now (d)-(f).

Amended by R.1995 d.651, effective December 18, 1995.

See: 27 N.J.R. 3543(a), 27 N.J.R. 5046(a).

Amended by R.2000 d.415, effective October 16, 2000.

See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).

In (e)2, deleted "(skilled nursing facilities)" following "homes".

#### 10:71-3.15 County board of social services responsibility and procedures; eligibility factors

(a) The CBOSS shall be responsible for determining income and resource eligibility, as outlined in N.J.A.C. 10:71-4, for Medicaid Only when applicant is receiving care in institutions defined above. This does not include residents of the State psychiatric hospitals, the State schools for the mentally retarded, Bergen Pines County Psychiatric Hospital, and Essex County Hospital Center, which are the responsibility of the Institutional Services Section of the Division of Medical Assistance and Health Services.

(b) When eligibility depends upon the disability or blindness factor, the determination of medical eligibility shall be the responsibility of the medical review team. The CBOSS shall furnish the MRT with current, pertinent social and medical information as outlined in this subchapter.

(c) When eligibility for Medicaid Only has been determined, the CBOSS will complete and process a Medicaid Status File Transaction, Form MAP-1, within ten working days from the date of such determination. The CBOSS will issue and distribute Medicaid validation stubs to Medicaid Only beneficiaries who are not in long term care facilities. The CBOSS will complete the statement of income available for nursing home payment (PR-1) (formerly PA-3L) when appropriate.

(d) A determination of continuing eligibility shall be made in accordance with subchapter 5 of this chapter.

Amended by R.1995 d.651, effective December 18, 1995.

See: 27 N.J.R. 3543(a), 27 N.J.R. 5046(a).

Amended by R.2000 d.415, effective October 16, 2000.

See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).

Substituted references to CBOSSs for references to CWAs throughout; and in (c), substituted "beneficiaries" for "recipients" in the second sentence, and substituted "(PR-1) (formerly PA-3L)" for "(PA-3L)" in the third sentence.

#### 10:71-3.16 Medical assistance units

(a) Medicaid District Office (MDO): The Division of Medical Assistance and Health Services has local medical offices throughout the State, known as Medicaid District Offices (MDOs). The role of these offices is to provide liaison with providers of health services; provide information about Medicaid to beneficiaries and members of the community; provide utilization review in determining the medical need for certain covered services requiring prior authorization; 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.

In (d)2, substituted "Medical Review Team" for "Disability Review Section"; in (i), substituted "beneficiaries" for "recipients". Amended by R.2001 d.199, effective June 18, 2001. See: 32 N.J.R. 2021(a), 33 N.J.R. 2195(a).

In (a), rewrote the introductory paragraph; in (b), inserted "shall" preceding "apply" in the introductory paragraph.

**Law Review and Journal Commentaries**

Marital Status and The 60+ Crowd. Elizabeth Brody. 164 N.J.Law 39 (Mag.) (Oct.1994).

Protecting the Home In Government Benefits Planning. Gary Mazart, 164 N.J.L.J. 34 (1994).

**Case Notes**

Since federal and state Medicaid laws permit interspousal transfers of the marital home, a guardian may execute such a transfer provided that it complies with the best interest of the ward inclusive of his desire to benefit the natural objects of his bounty. Matter of Labis, 314 N.J.Super. 140, 714 A.2d 335 (N.J. 1998).

House sale made exclusively for purpose other than to qualify for Medicaid prior to traumatic onset of unforeseen disability. M.M. v. Division of Medical Assistance and Health Services and the Bergen County Board of Social Services, 97 N.J.A.R.2d (DMA) 39.

Reimbursement of Medicaid benefits ordered where recipient transferred his interest in former residence for less than fair market value. J.K. v. Division of Medical Assistance and Health Services, 97 N.J.A.R.2d (DMA) 12.

Nursing home applicant entitled to Medicaid benefits after transferring property to adult children who lived in home longer than two years and provided personal services to applicant. M.M. v. Department of Medical Assistance and Health Services and Burlington County Welfare Board, 97 N.J.A.R.2d (DMA) 6.

1990 transfer of property was effective for purposes of Medicaid eligibility despite delayed recording of deed. L.A. v. Bergen County Board of Social Services, 96 N.J.A.R.2d (DMA) 92.

Medicaid applicant's transfer of home to son for less than fair market value did not disqualify her for benefits. L.S. v. DMAHS and Burlington County Board of Social Services, 96 N.J.A.R.2d (DMA) 11.

Son's long-term care of disabled parents supports exemption for Medicaid eligibility purposes of transfer of their house to him. J.L. v. Medical Assistance and Health Services Division, 96 N.J.A.R.2d (DMA) 5.

Funds in fixed annuity and family trust were not countable or accessible resources for purpose of determining Medicaid eligibility. F.E. v. Division of Medical Assistance, 95 N.J.A.R.2d (DMA) 67.

Transfer of real property for less than true value raised presumption of transfer to obtain Medicaid benefits. P.V. v. Camden County Board, 95 N.J.A.R.2d (DMA) 38.

Presumption of transfer of assets for less than fair market value in order to establish applicant's Medicaid eligibility was not rebutted. S.G. v. Division of Medical Assistance, 95 N.J.A.R.2d (DMA) 33.

Transfer by applicant of his interest in a mortgage within 24 months of application did not preclude his eligibility for Medicaid benefits. A.R. v. Passaic County, 95 N.J.A.R.2d (DMA) 21.

Securities transferred by recipient were not a resource for Medicaid eligibility when solely for purpose of repaying a loan. W.B. v. Dmahs & Atlantic County, 95 N.J.A.R.2d (DMA) 17.

Transfer of a resource, a mortgage, held on a condominium for less than fair market value operated to render applicant ineligible for Medicaid benefits. C.M. v. Division of Medical Assistance, 95 N.J.A.R.2d (DMA) 14.

Transfer of securities was not a countable resource in determining Medicaid eligibility. Applewood Estates v. Division of Medical Assistance, 95 N.J.A.R.2d (DMA) 1.

Institutional level services Medicaid eligibility; penalty period of 30 months; couple sold house to children at less than fair market value. G.A. v. Ocean County Board of Social Services, 94 N.J.A.R.2d (DMA) 45.

Trust was Medicaid qualifying trust, and application for Medicaid was properly denied. C.C. v. Bergen County Board of Social Services, 94 N.J.A.R.2d (INS) 31.

Presumption that transfer of home was made solely to qualify for Medicaid rebutted. A.W. v. Morris County Board of Social Services, 94 N.J.A.R.2d (DMA) 22.

There was failure to rebut presumption that marital assets were transferred for less than fair market value in order to contravene eligibility guidelines. S.G. v. Union County Division of Social Services, 94 N.J.A.R.2d (DMA) 13.

Medicaid eligibility denied; presumption that property was transferred to establish eligibility. M.C. v. DMAHS, 94 N.J.A.R.2d (DMA) 1.

Transfer of property to children preserving life estate was prohibited transfer of resources. C.D. v. Division of Medical Assistance and Health Services, 93 N.J.A.R.2d (DMA) 91.

Reduction in alimony pursuant to consent order was transfer of resources. B.S. v. Division of Medical Assistance and Health Services, 93 N.J.A.R.2d (DMA) 35.

Husband's estate funds were available to pay wife's nursing home costs. L.S. v. Division of Medical Assistance and Health Services, 93 N.J.A.R.2d (DMA) 7.

Presumption that transfer of three-family building was for purpose other than to establish Medicaid eligibility was not rebutted. E.B. v. Hudson County Board of Social Services, 92 N.J.A.R.2d (DMA) 13.

Penalty period for transfer of resources governed by regulations in effect on date of transfer. H.P. v. Division of Medical Assistance and Health Services, 92 N.J.A.R.2d (DMA) 7.

**10:71-4.8 Institutional eligibility; resources of a couple**

(a) In the determination of resource eligibility for an individual requiring long-term care, the county board of social services shall establish the combined countable resources of a couple as of the first period of continuous institutionalization beginning on or after September 30, 1989. This determination shall be made upon request for a resource assessment in accordance with N.J.A.C. 10:71-4.9 or at the time of application for Medicaid benefits. The total countable resources of the couple shall include all resources owned by either member of the couple individually or together. The county board of social services shall establish a share of the resources to be attributed to the community spouse in accordance with this section. (No community spouse's share of resources may be established if the institutionalized individual's current continuous period of institutionalization began at any time before September 30, 1989.)

1. The community spouse's share of the couple's combined countable resources is based on the couple's countable resources as of the first moment of the first day of the month of the current period of institutionalization beginning on or after September 30, 1989 and shall not exceed \$92,760, as indexed annually in accordance with 42 U.S.C. § 1396r-5(g) and published as a notice in the New

Jersey Register, and unless authorized in (a)4 or 5 below. The community spouse's share of the couple's resources shall be the greater of:

i. \$18,552, as indexed annually in accordance with 42 U.S.C. § 1396r-5(g) and published as a notice in the New Jersey Register; or

ii. One half of the couple's combined countable resources.

2. In determining the resource eligibility of the institutionalized spouse, the community spouse's share of the resources is subtracted from couple's total combined resources as of the first moment of the first day of the month of application for Medicaid. If the remaining resources are less than or equal to \$2,000, the institutionalized spouse is resource eligible. If the remaining resources exceed \$2,000, eligibility may not be established.

i. In the case of an individual whose eligibility for institutional care is determined in accordance with the rules applicable for New Jersey Care (see N.J.A.C. 10:72 et seq.), resource eligibility will exist when the couple's combined resources, less the community spouse's share of the resources, are equal to or less than \$4,000.

3. To the extent that the community spouse's share of the combined resources are not already owned by the community spouse, the ownership of the community spouse's share of the resources must be transferred to the community spouse within 90 days of a determination of eligibility for institutional Medicaid services. The CBOSS may extend the transfer period if individual circumstances warrant a longer period to affect the transfer. Resources not transferred by the end of the 90-day period (or extension) shall be counted in the determination of eligibility for the institutionalized individual.

i. Eligibility for the institutionalized individual shall be established pending the actual transfer of the resources if he or she attests, in writing, that he or she intends to transfer the community spouse's share of the resources to the community spouse.

4. If a court of competent jurisdiction has ordered that resources be transferred to the community spouse in an amount higher than that authorized in (a)1 above, the higher court-ordered amount shall be recognized as the community spouse's share. Any resource transferred under such a court order shall not be subject to the resource transfer penalty described at N.J.A.C. 10:71-4.7.

5. If, in accordance with N.J.A.C. 10:71-5.7(d), additional resources have been authorized to be set aside for the community spouse in order to provide for a sufficient income maintenance level, such additional resources are not subject to the limitation in this section on the community spouse's share of the couple's combined resources. Any resource transferred to the community spouse under this provision shall not be subject to the resource transfer provision described at N.J.A.C. 10:71-4.7.

6. For purposes of this section, an institutionalized individual does not include any individual who is not likely to remain in a Title XIX facility for a period of 30 consecutive days. If a physician has not certified that the individual's stay in the facility is expected to be a period of 30 or more consecutive days, that individual's Medicaid eligibility will be determined as if he or she continued to reside in the community until he or she has been in a Title XIX facility (or a combination of Title XIX facilities) for a period of 30 consecutive days.

7. For purposes of this section, a continuous period of institutionalization means 30 consecutive days of institutional care in a medical institution, and/or Medicaid funded home and community-based waiver services. Continuity is broken by absences from the institution for 30 consecutive days or the non-receipt of home or community based services for 30 consecutive days.

8. For purposes of determining the community spouse's share of the couple's resources only, countable resources of a couple shall include all resources not subject to exclusion under N.J.A.C. 10:71-4.4, except that one automobile shall be excluded without regard to the dollar limits set forth at N.J.A.C. 10:71-4.4(b)2 and personal effects and household goods shall be excluded without regard to the dollar limits set forth at N.J.A.C. 10:71-4.4(b)3.

9. In determining retroactive eligibility (the three-month period immediately preceding the month of application) based on the first Medicaid application in a continuous period of institutionalization, the community spouse's share of the resources shall be deducted from the couple's combined total resources. If the institutionalized individual subsequently files another Medicaid application for the same continuous period of institutionalization, retroactive eligibility will be based on all resources actually owned by the institutionalized individual.

New Rule, R.1991 d.32, effective January 22, 1991.

See: 22 N.J.R. 7(a), 23 N.J.R. 215(b).

Emergency Amendment, R.1992 d.84, effective January 22, 1992, operative January 1, 1992, (expires March 22, 1992).

See: 24 N.J.R. 651(a).

Resource eligibility revised upward.

Adopted concurrent amendment, R.1992 d.191, effective April 20, 1992.

See: 24 N.J.R. 651(a), 24 N.J.R. 1498(b).

Provisions of emergency amendment, R.1992 d.84, readopted without change.

Amended by R.1993 d.402, effective August 16, 1993.

See: 25 N.J.R. 1818(a), 25 N.J.R. 3786(a).

Amended by R.1994 d.428, effective August 15, 1994.

See: 26 N.J.R. 1754(a), 26 N.J.R. 3478(a).

Amended by R.1996 d.46, effective January 16, 1996.

See: 27 N.J.R. 3668(a), 28 N.J.R. 291(a).

In (a)1 and (a)1i resource eligibility revised upward.

Amended by R.1996 d.466, effective October 7, 1996.

See: 28 N.J.R. 2779(c), 28 N.J.R. 4480(a).

Amended by R.2000 d.415, effective October 16, 2000.

See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).

In (a), substituted "board of social services" for "welfare agency" in the introductory paragraph, substituted "\$84,120" for "\$76,740" in the introductory paragraph of 1, substituted "\$16,824" for "\$15,348" in 1i, and substituted "CBOSS" for "CWA" throughout.

Amended by R.2001 d.199, effective June 18, 2001.

See: 32 N.J.R. 2021(a), 33 N.J.R. 2195(a).

In (a), rewrote the third and fourth sentences of the introductory paragraph, substituted "\$84,120, as indexed annually in accordance with 42 U.S.C. § 1396-5(g) and published as a notice in the New Jersey Register, and" for "\$74,740" in l, and rewrote li.

Amended by R.2004 d.401, effective November 1, 2004.

See: 36 N.J.R. 922(h), 36 N.J.R. 4982(a).

In (a)l, substituted "\$92,760" for "\$84,120" in the introductory paragraph, and substituted "\$18,552" for "\$16,824" in i.

**Case Notes**

Medicaid eligibility when one spouse is institutionalized and the other is living in the community is determined by reference to total assets owned by the couple at time of application, and amount of exempt assets attributable to community spouse that was previously established at time of institutionalization, plus \$2,000 of assets attributable to institutionalized spouse, constitute the asset cap that cannot be exceeded at the time of application, unless that cap was increased to reflect a rise in the consumer price index. *A.K. v. Div. of Med. Assistance*, 350 N.J.Super. 175, 794 A.2d 835.

Federal Medicaid statute requiring that state's methodology for determining resource eligibility of medically needy person be no more

restrictive than for categorically needy person required exclusion of husband's individual retirement account from computation of wife's resources for purposes of determining eligibility. *Mistrick v. Division of Medical Assistance and Health Services*, 299 N.J.Super. 76, 690 A.2d 651 (A.D.1997).

Individual Retirement account (IRA) in husband's name is includable resource for purposes of determining a wife's Medicaid eligibility when wife enters a nursing home but husband remains in the community, despite claim that the "no more restrictive" provision excluding IRAs from supplemental security income (SSI) eligibility determinations controlled; the "no more restrictive" provision was superseded by Medicare Catastrophic Coverage Act of 1988 (MCCA). *Mistrick v. Division of Medical Assistance & Health Services*, 154 N.J. 158, 712 A.2d 188 (N.J. 1998).

Spouse's IRA must be included in calculation of institutionalized spouse's available resources for Medicaid eligibility determination. *S.M. v. Division of Medical Assistance and Health Services and Passaic County Board of Social Services*, 96 N.J.A.R.2d (DMA) 37.

Combined countable resources included unsecured promissory notes. *H.H. v. New Jersey Division of Medical Assistance and Health Services*, 93 N.J.A.R.2d (DMA) 58.

Husband's estate funds were available to pay wife's nursing home costs. *L.S. v. Division of Medical Assistance and Health Services*, 93 N.J.A.R.2d (DMA) 7.

**10:71-4.9 Resource assessment**

(a) At the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989), the institutionalized spouse or the community spouse (or a representative of either spouse) may request an assessment of the couple's total countable resources. The purpose of the assessment is to establish the community spouse's share of the couple's total countable resources (see N.J.A.C. 10:71-4.8(a)).

(b) The county board of social services shall, upon a request for a resource assessment, advise the requesting parties of the documentation and verification necessary to make the assessment. When the necessary documentation and verification is not submitted to the county board of social services in a timely manner, the requesting parties shall be advised that the resource assessment cannot be completed. Upon receipt of all relevant documentation of resources from the couple the county board of social services shall establish the total countable resources of the couple. The county board of social services shall notify both members of the couple of the total value assigned to their combined countable resources and the community spouse's share of those resources. A copy of the notice shall be retained at the county board of social services.

1. The county shall complete the resource assessment and notify the requesting parties of its results within 45 calendar days of the request unless third party verification has not been received by the county board of social services or the requesting parties request a delay.

(c) At the time of providing the couple with a copy of the resource assessment, the county board of social services shall advise the couple that there is no immediate right to a fair hearing on the county's resource assessment, but that there will be an opportunity to appeal the findings of the assessment when and if the institutionalized spouse applies for Medicaid.

New Rule, R.1991 d.32, effective January 22, 1991.  
 See: 22 N.J.R. 7(a), 23 N.J.R. 215(b).  
 Amended by R.2000 d.415, effective October 16, 2000.  
 See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).

In (b) and (c), substituted "board of social services" for "welfare agency" throughout.

**10:71-4.10 Transfer of assets**

(a) The provisions of this section shall apply, effective June 18, 2001, only to persons who are receiving an institutional level of services, including individuals who are receiving services under a 42 U.S.C. § 1915(c) home and community care waiver under Medicaid, or who are seeking that level of service, and who have transferred assets on or after August 11, 1993. An individual shall be ineligible for institutional level services through the Medicaid program if he or

she (or his or her spouse) has disposed of assets at less than fair market value at any time during or after the 36 month period, or the 60 month period in the case of a transfer to a trust, immediately before:

1. In the case of an individual who is already eligible for Medicaid benefits, the date the individual becomes an institutionalized individual; or
2. In the case of an individual not already eligible for Medicaid benefits, the date the individual applies for Medicaid as an institutionalized individual.

(b) The following definitions shall apply to the transfer of assets:

1. Individual means:
  - i. The individual him or herself who is applying for benefits;
  - ii. The individual's spouse;
  - iii. A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse;
  - iv. Any person including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

2. An institutionalized individual, for the purposes of this chapter, is a person who is receiving care in a Medicaid certified nursing facility, intermediate care facility for the mentally retarded (ICFMR), or a licensed special hospital (Class C) or Title XIX psychiatric hospital (if under the age of 21 or age 65 and over). For purposes of this chapter, an institutionalized individual shall also include a person seeking benefits under a home or community care waiver program. An institutionalized individual shall not include a person who is receiving care in an acute care general hospital.

3. Assets shall include all income and resources of the individual and of the individual's spouse. Assets shall also include income and resources which the individual or the individual's spouse is entitled to but does not receive because of action or inaction by the individual or the individual's spouse; or by any person, including a court or administrative body with the legal authority to act in place of or on behalf of the individual or the individual's spouse; or any person, including a court or administrative body, acting at the direction of or upon the request of the individual or the individual's spouse. Examples of actions that would cause income or resources not to be received shall include, but shall not be limited to:

- i. Irrevocably waiving pension income;
- ii. Waiving the right to receive an inheritance, including spousal elective share pursuant to N.J.S.A. 3B:8-10;

- iii. Not accepting or accessing injury settlements;
  - iv. Tort settlements which are diverted by the defendant into a trust or similar device to be held for the benefit of an individual who is a plaintiff; and
  - v. Refusal to take legal action to obtain a court ordered payment that is not being paid, such as child support or alimony.
4. Resources, for the purpose of asset transfer, shall include all resources, both included and excluded, in accordance with the provisions of this chapter. For example, the transfer of a home, even if it is serving as the individual's principal place of residence, shall be subject to the transfer of assets provisions.
5. Income, for the purposes of this section, shall have the same definition as found in N.J.A.C. 10:71-5. In determining whether a transfer of assets involves countable income, the income disregards in N.J.A.C. 10:71-5 shall be applied.
6. Fair-market value shall be an estimate of the value of an asset, based on generally available market information, if sold at the prevailing price at the time it was actually transferred. Value shall be based on the criteria for evaluating assets as found in N.J.A.C. 10:71-4.1(d).
- i. In determining whether or not an asset was transferred for fair-market value, only tangible compensation, with intrinsic value shall be considered. For example, a transfer for "love and affection" shall not be considered a transfer for fair market value.
  - ii. In regard to transfers intended to compensate a friend or relative for care or services provided in the past, care and services provided for free at the time they were delivered shall be presumed to have been intended to be delivered without compensation. In regard to transfers allegedly intended to compensate a friend or a relative for care or services that were provided in the past, care and services provided for free at the time they were delivered shall be presumed to have been intended to be delivered without compensation. Thus, a transfer of assets to a friend or relative for the alleged purpose of compensating for care or services provided free in the past shall be presumed to have been transferred for no compensation. This presumption may be rebutted by the presentation of credible documentary evidence preexisting the delivery of the care or services indicating the type and terms of compensation. Further, the amount of compensation or the fair market value of the transferred asset shall not be greater than the prevailing rates for similar care or services in the community. That portion of compensation in excess of the prevailing rate shall be considered to be uncompensated value.

iii. Under a life estate, an individual who owns property transfers the ownership of that property to another individual, while retaining for the rest of his or her life, or the life of another person, certain rights to that property. A life estate entitles the owner of the life estate to possess, use, and obtain profits from the property as long as he or she lives, although actual ownership of the property has passed to another individual. In a transaction involving a life estate, a transfer of assets is involved. In determining whether a penalty shall be assessed in the case of a transfer involving a life estate, the value of the asset transferred and the value of the life estate shall be computed. The value of the asset transferred is computed by determining the fair market value. The value of the life estate is calculated in accordance with the life estate table published by the Health Care Financing Administration (HCFA) at 49 FR Vol. 49 No. 93, 5-11-84 and 26 C.F.R. 20.2031-7. The value of the life estate is determined by multiplying the current market value of the property by the life estate factor that corresponds to the grantor's age. The value of the life estate is then subtracted from the value of the asset transferred to determine the portion of the asset that was transferred for less than fair market value. If only the value of the transferred portion is needed, the current market value of the asset is multiplied by the remainder factor. The transfer in which a life estate is retained shall be considered a transfer for less than fair market value whenever the value of the asset transferred is greater than the value of the rights conferred by the life estate.

7. Uncompensated value (UV) shall be the difference between the fair market value at the time of the transfer (less any outstanding loans, mortgages or other encumbrances on the asset) and the amount of consideration received for the asset. If the asset was jointly owned before disposal, the UV considered shall be only the individual's share of that value (see N.J.A.C. 10:71-4.1(d)). If the individual is seeking institutional services or applying for an institutional level of services and has a spouse residing in the community, the UV considered shall be either spouse's share of that value (see N.J.A.C. 10:71-4.8).

(k) The presence of one or more of the following factors, while not conclusive, may indicate that the assets were transferred exclusively for some purpose other than establishing Medicaid eligibility for long term care services:

1. The occurrence after transfer of the asset of:
  - i. Traumatic onset of disability;
  - ii. Unexpected loss of other assets which would have precluded Medicaid eligibility; or
  - iii. Unexpected loss of income which would have precluded Medicaid eligibility;
2. Court-ordered transfer (when the court is not acting on behalf of, or at the direction of, the individual or the individual's spouse); or
3. Evidence of good faith effort to transfer the asset at fair market value.

(l) Agency determination pursuant to client rebuttal shall be as follows:

1. The presumption that assets were transferred to establish Medicaid eligibility shall be considered successfully rebutted only if the applicant demonstrates that the asset was transferred exclusively for some other purpose.
2. If the applicant had some other purpose for transferring the asset, but establishing Medicaid eligibility appears to have been a factor in his or her decision to transfer, the presumption shall not be considered successfully rebutted.
3. The agency's determination shall not include an evaluation of the merits of the applicant's stated purpose of transferring assets. The determination shall only deal with whether or not the applicant has proven that the transfer was solely for some purpose other than establishing Medicaid eligibility.
4. The final determination regarding the purpose of the transfer shall be made at a supervisory level at the county board of social services and shall be documented in the case record.
5. The applicant shall be sent a notice of the decision, which shall include information on his or her right to a fair hearing in accordance with N.J.A.C. 10:49-10.

(m) For the purposes of this subchapter, the penalty period shall be the period of time during which payment for long-term care level services is denied. An institutionalized individual who is ineligible for payment of long-term care services as a result of an asset transfer shall be precluded from eligibility, but shall be entitled to ancillary services if otherwise eligible.

1. In accordance with 42 U.S.C. § 1396p(c)(1)(E), the penalty period for asset transfer shall be the number of months equal to the total, cumulative uncompensated value of all assets transferred by the individual, on or

after the look-back date, divided by the average monthly cost of nursing home services in the State of New Jersey adjusted annually in accordance with the change in the Consumer Price Index-All Urban Consumers, rounded up to the nearest dollar. The annual adjustment to the average monthly cost of nursing home services in New Jersey shall be published as a notice of administrative change in the New Jersey Register. As of November 2003, the average cost is \$6,050. The result of this division shall be rounded down. The penalty period shall begin with the month of the resource transfer. There shall be no limit on the length of the penalty period.

- i. For the purpose of determining a penalty period, the transfer of real property shall be considered to have occurred the date the title is recorded or registered with the appropriate office.

2. In the case of an asset transfer which occurs during an existing asset transfer penalty period, the penalty for the subsequent transfer shall not begin until the expiration of the previous penalty period.

3. When assets have been transferred in amounts and/or frequencies that would make the calculated penalty periods overlap or structured to run consecutively, the uncompensated value of all the asset transfers shall be added together and divided by the average cost of nursing home care. This will result in a single penalty period, beginning on the first day of the month in which the first transfer was made. For example: An individual transfers \$15,000 in January, \$15,000 in February, and \$15,000 in March. Calculated individually, the penalty periods would overlap. Because the three penalty periods overlap, each of the asset transfers shall be added together and divided by the average cost of nursing home care creating a single penalty period beginning on January 1.

4. When assets have been transferred in such a way that the penalty periods would not overlap, or are not structured to run consecutively, each asset transfer shall be treated as a separate event, each with its own penalty period. For example: An individual transfers \$15,000 in January, \$15,000 in November and \$15,000 in March of the following year. The penalty period for the January transfer would be January and February. The penalty for the November transfer would be November and December. The penalty period for the March transfer would be March and April of the following year.

(n) When an individual's income is given or assigned in some manner, such gift or assignment shall be considered an asset transfer. The following standards shall be used to determine the penalty period:

1. Income, in order to be considered transferred, shall have been irrevocably assigned or otherwise unavailable to the individual. If income has been waived or deferred and that waiver or deferral can be reversed, the waived or deferred income shall be considered available to the individual, regardless of whether the income is actually

received, and shall be counted in the determination of eligibility.

2. In the event an individual gives up his or her rights to receive a lump sum payment or transfers a lump sum payment in the month it is received, the period of ineligibility shall be based on the amount of the lump sum payment to which he or she was otherwise entitled.

3. In the event a stream of income (that is, income received on a regular basis), such as a pension, is transferred, the county board of social services shall make a determination of the total projected amount of income that has been transferred, based on the individual's life expectancy. This determination shall be based on the most recent life expectancy tables published by the Health Care Financing Administration. In determining the projected amount, the county board of social services shall strictly adhere to the life expectancy tables without adjustment for the individual's medical condition or other factors. The projection shall be based on the value of the income at the time of transfer and there shall be no attempt to account for future cost-of-living adjustments over the life expectancy of the individual.

4. In determining if there has been a transfer of income, the county board of social services need not ascertain the individual's spending habits over the appropriate look-back period. Unless there is a reason to believe otherwise, the county board of social services shall assume that the individual's income was legitimately spent on the normal costs of living. The county board of social services may ask questions of the applicant and/or the applicant's representative concerning past and present sources and levels of income and whether the individual has transferred income to others.

(o) When an asset is held by an individual in common with another person or persons via joint tenancy, tenancy in common, joint ownership, or similar arrangements, the asset (or the affected share of the asset) shall be considered to be transferred by the individual when any action is taken, either by the individual or any other person, that reduces or eliminates the individual's ownership or control of the asset.

1. If the addition of another name to the ownership of an asset does not change the individual's ownership interest, the action does not constitute a resource transfer. For instance, if another name is added to an individual's account with the term "or," the individual shall not be considered to have transferred assets since he or she continues to have unrestricted access to the funds. In the event the newly added owner subsequently withdraws the funds from the account, that action shall be considered to be a transfer by the individual. The transfer shall be considered to have occurred on the date that the funds are withdrawn from the account.

2. If the addition of another name to the ownership of an asset restricts the individual's access, right to sell or otherwise dispose of the asset (for example, the addition of another name requires that the new co-owner(s) agree to the sale or disposal of the asset where no such agreement was necessary before), the addition of the name shall constitute a transfer of assets. The transfer shall be considered to have occurred on the date that the additional name was added to the account. In the case of real property for the purpose of this chapter, if another name is added to a deed, the transfer shall be considered to have occurred the date the new deed is recorded.

3. N.J.A.C. 10:71-4.1 shall apply to determine what portion of a jointly owned resource is presumed to belong to the individual. Any portion belonging to the individual that is withdrawn by another owner shall be considered a transfer of assets. If the individual can satisfactorily establish that the withdrawn funds were, in fact, the sole property of, and were contributed to the account by the other owner, and thus never belonged to the individual, the withdrawal of those funds shall not result in the imposition of an asset transfer penalty.

(p) Annuity provisions shall be as follows:

1. Any annuity purchase in which the entity issuing the annuity is not a commercial financial institution shall be considered to be a transfer of an asset in order to qualify for Medicaid benefits, regardless of the terms of the annuity payout. The entire amount transferred into such an annuity shall be the amount considered in determining eligibility.

2. Any commercial annuity purchased which is not actuarially sound, based on the life expectancy of the individual (as set forth in life expectancy tables published by the Health Care Financing Administration) or term certain (the length of payout is specified and payment does not terminate upon the death of the annuitant) shall be considered to be a transfer of an asset in order to qualify for Medicaid benefits. In the event that an annuity is not actuarially sound at the time of purchase, the amount that shall be considered to have been transferred at less than fair market value shall be that proportion of the annuity purchase price which is not actuarially sound. This shall be the same proportion as the amount by which the pay-out period exceeds the life expectancy of the individual at the time of the annuity purchase. (Life expectancy divided by the pay-out period of the annuity multiplied by the purchase amount of the annuity is subtracted from the total amount of the annuity to determine the uncompensated value.)

i. If an annuity is purchased for a community spouse with any portion of the couple's funds and the annuity purchase price exceeds the amount of the protective share of the community spouse, as determined in accordance with the procedures specified at N.J.A.C. 10:71-4.8(a), the amount in excess of the community spouse's protected share shall be counted in determining the applicant's eligibility.

(q) Upon imposition of a period of ineligibility for long-term care level services because of an asset transfer, the county board of social services shall notify the applicant/beneficiary of his or her right to request an undue hardship exception. An applicant/beneficiary may apply for an exception to the transfer of asset penalty if he or she can show that the penalty will cause an undue hardship to him or herself. The applicant/beneficiary shall provide sufficient documentation to support the request for an undue hardship waiver to the county board of social services within 20 days of notification of the transfer penalty.

1. For the purposes of this chapter, undue hardship shall be considered to exist when:

i. The application of the transfer of assets provisions would deprive the applicant/beneficiary of medical care such that his or her health or his or her life would be endangered. Undue hardship may also exist when application of the transfer of assets provisions would deprive the individual of food, clothing, shelter, or other necessities of life; and

ii. The applicant/beneficiary can irrefutably demonstrate the transferred assets are beyond his or her control and that the assets cannot be recovered. The applicant/beneficiary shall demonstrate that he or she made good faith efforts, including exhaustion of remedies available at law or in equity, to recover the assets transferred.

2. Undue hardship shall not exist when the application of a transfer penalty merely causes the applicant/beneficiary an inconvenience or restricts his or her lifestyle.

3. In the event that a waiver of undue hardship is denied, neither the Department of Human Services, the Department of Health and Senior Services, nor the county boards of social services shall have any obligation to take any action to assure that payment of services is provided during the penalty period.

4. If the request for undue hardship consideration is denied by the CBOSS, the CBOSS shall notify the applicant of the denial and that the applicant may request a fair hearing in accordance with the provisions of N.J.A.C. 10:49-10.

New Rule, R.2001 d.199, effective June 18, 2001.

See: 32 N.J.R. 2021(a), 33 N.J.R. 2195(a).

Petition for Rulemaking.

See: 35 N.J.R. 1456(a), 2532(b).

Amended by R.2004 d.401, effective November 1, 2004.

See: 36 N.J.R. 922(b), 36 N.J.R. 4982(a).

In (m), rewrote 1, and substituted "\$15,000" for "\$12,000" throughout 4.

**Law Review and Journal Commentaries**

Saving the family home. Harold L. Grodberg, 164 N.J.L.J. 1166 (2001).

**Case Note**

Medicaid applicants' challenge to state-payback requirement for community spouse annuity trusts (CSATs), whereby state was required to be named first beneficiary of trust assets upon death of spouse residing in community if it had paid benefits on behalf of institutionalized spouse, was moot, where, upon its decision to count CSAT assets in determining Medicaid eligibility, state no longer imposed state-payback condition. *Johnson v. Guhl*, 357 F.3d 403.

**10:71-4.11 Trusts**

(a) For purposes of this subchapter, effective June 18, 2001, a trust is any legal instrument, device, or arrangement which is similar to a trust, in which a grantor transfers property to an individual or entity with fiduciary obligations (considered to be a trustee for purposes of this section). The grantor transfers the property with the intention that it be held, managed, or administered by the trustee for the benefit of the grantor or others. For the purposes of this chapter, a trust shall include, but not be limited to, escrow accounts, annuities, investment accounts, and other similar devices managed by an individual or entity with fiduciary obligations.

(b) The standards set forth in this section shall apply to trusts without regard to:

1. The purposes for which the trust is established;
2. Whether the trustee(s) has discretion or exercises such discretion under the trust;
3. Any restrictions on when or whether distribution can be made from the trust; or
4. Any restrictions on the use of distributions from the trust.

(c) Definitions, for the purposes of this section, shall be as follows:

1. A grantor shall be any individual who creates a trust. This section shall apply only to situations in which the grantor is:
  - i. The individual;
  - ii. The individual's spouse;
  - iii. A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the individual or the individual's spouse; or
  - iv. A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

2. A revocable trust is a trust which can, under State law, be revoked by the grantor. A trust, which provides that the trust can be only modified or terminated by a court, is considered to be a revocable trust, since the grantor (or his or her representative) can petition the court to terminate the trust. Also, a trust that declares itself to be irrevocable, but which terminates upon conditions relating to the grantor during his or her lifetime,

shall be, for the purposes of this section, considered to be revocable. For example, a trust may require a trustee to terminate a trust and disburse the funds to the grantor if the grantor leaves a nursing facility. Such a trust shall be considered to be revocable.

3. An irrevocable trust is a trust which cannot, in any way, be revoked by the grantor.

4. A beneficiary is any individual or individuals designated in the trust instrument as benefiting in some way from the trust. The term "beneficiary" shall not include the trustee or any other individual whose benefit consists only of reasonable fees or payments for managing or administering the trust. The beneficiary can be the grantor, another individual, or individuals, or any combination of any of these parties.

5. For purposes of this chapter, a payment from a trust shall be any disbursement from the corpus of the trust or from income generated by the trust which benefits the party receiving it. A payment may include actual cash, as well as noncash or property disbursements, such as the right to use or occupy real property.

(d) Individuals to whom the trust provisions apply shall include any individual who establishes a trust and who is an applicant or beneficiary of Medicaid. An individual shall be considered to have established a trust if any of his or her assets, regardless of the amount, were used to form part or all of the corpus of the trust and if any of the parties described as a grantor in (c)1 above established the trust, other than by will.

1. When the corpus of a trust includes assets of another person or persons not described in (c)1 above, as well as assets of the individual, the rules apply only to the portion of the trust attributable to the assets of the individual. Thus, in determining countable income and resources in the trust for eligibility and post-eligibility purposes, the county board of social services shall prorate any amounts of income and resources, based on the proportion of the individual's assets in the trust to those of other persons.

2. When the corpus of a trust includes assets of either an institutionalized spouse as defined in N.J.A.C. 10:71-4.7(b)3 or a community spouse, this section shall apply to the portion of the trust attributable to either spouse for the purposes of determining eligibility for the institutionalized spouse.

(e) Treatment of trusts, for purposes of determining Medicaid eligibility, shall be dependent on the characteristics of the trust. The look-back period for evaluation of resource transfer shall be 60 months. The following are the rules for consideration of various kinds of trusts:

1. In the case of a revocable trust:

i. The entire corpus of the trust shall be counted as a resource available to the individual;

ii. Any payments from the trust made to or for the benefit of the individual shall be counted as income (unless otherwise excludable, see N.J.A.C. 10:71-5.3); and

iii. Any payments from the trust which are not made to or for the benefit of the individual shall be considered assets disposed of for less than fair market value (see N.J.A.C. 10:71-4.10).

2. In an irrevocable trust from which payment can be made under the terms of the trust to or for the benefit of the individual from all or a portion of the trust, the following shall apply to that trust or that portion of the trust:

i. Payments from income or from the corpus made to or for the benefit of the individual shall be treated as income to the individual unless otherwise excludable (see N.J.A.C. 10:71-5.3);

ii. Income on the corpus of the trust which could be paid to or for the benefit of the individual shall be counted as a resource available to the individual;

iii. The portion of the corpus that could be paid to or for the benefit of the individual shall be treated as a resource available to the individual; and

iv. Payments from income or from the corpus that are made, but not to or for the benefit of the individual, shall be treated as a transfer of assets for less than fair market value (see N.J.A.C. 10:71-4.10).

3. In the case of an irrevocable trust from which payments from all or a portion of the trust cannot, under any circumstances, be made to or for the benefit of the individual, all of the trust, or any such portion or income thereof, shall be treated as a transfer of assets for less than fair market value (see N.J.A.C. 10:71-4.10).

i. In treating these portions as a transfer of assets, the date of transfer shall be considered to be the date the trust was established, or, if later, the date on which the right of payment to the individual was foreclosed.

ii. For transfer of assets purposes, in determining the value of the portion of the trust which cannot be paid to the individual, amounts that have been paid, for whatever purpose, shall not be subtracted from the value of the trust on the date the trust was created or, if later, the date that payment to the individual was foreclosed. The value of the transferred amount shall be no less than the value on the date the trust is established or on the date that payment is foreclosed. If additional funds are added to this portion of the trust, those funds shall be treated as a new transfer of assets or less than fair market value.

14. One-third of the amount received as child support from an absent parent shall be excluded.

15. Income received as compensation for services performed as an employee, or from self-employment, by an unmarried student who is under 22 years of age, shall be excluded to the extent that such income does not exceed \$1,200 in a calendar quarter and/or \$1,620 per calendar year.

i. A person shall be considered a student if he or she meets the following criteria:

(1) He or she is enrolled in a course or courses of study and attends to the extent required for continued enrollment. Specifically, a person must attend:

(A) A college or university at least eight semester or quarter hours weekly; or

(B) A secondary school at least 12 clock hours weekly; or

(C) A course of vocational or technical training (other than at a secondary school, college, or university) designed to prepare the student for gainful employment involving shop practice, at least 15 clock hours a week; or without shop practice, at least 12 clock hours per week; or

(D) Less than the appropriate requirements in (a)15i(1)(A), (B), and (C) above, if it is determined that there are extenuating circumstances beyond the control of the student and he/she is pursuing a course of study comparable to the requirements of (a)15i(1)(A), (B), and (C) above.

(2) A student shall be considered in regular attendance if he or she is engaged in home study provided by a secondary school, college, university, or governmental agency, and a home visitor or tutor supervises the study or training. For purposes of this section, government-sponsored courses in the various self-improvement and anti-poverty programs are considered to be for the purposes of preparing the student for gainful employment.

(3) A student shall be considered in regular attendance during normal vacation periods if he or she is in regular attendance in the month immediately preceding and immediately following the vacation period.

(4) A student shall be considered to be in regular attendance for the month in which he or she completes or discontinues his or her school or training program.

16. Benefits provided under the State's Lifeline Utility Credit Program shall be excluded.

17. Interest on or appreciation in value of burial funds excluded from consideration as resources at N.J.A.C. 10:71-4.4(b)9 shall be excluded from income.

18. The first \$20.00 per month of income, other than income received as a VA pension based upon need, shall be excluded. This exclusion shall be applied first to unearned income, and any remaining amount of exclusion then applied to earned income. In the determination of countable income of a couple, this \$20.00 exclusion is applied to the combined income of both.

19. Earned income, in the amount of \$65.00 per month plus one-half of the remaining sum, shall be excluded. In the determination of countable income of a couple, this exclusion applies to the combined earned income of both.

20. In the case of blind persons only, all expenses reasonably attributable to the earning of income shall be excluded.

21. In the case of blind or otherwise disabled persons, the amount of money which is needed to achieve an approved plan of self-support shall be excluded.

i. In order for this exclusion to apply, the plan of support must have been approved, in writing, by the Division of Vocational and Rehabilitation Services or the Commission for the Blind and Visually Impaired. The plan must also be current.

As amended, R.1983 d.167, effective June 6, 1983.  
See: 15 N.J.R. 422(a), 15 N.J.R. 925(a).

17. Interest on burial funds added, 17-20 renumbered 18-21.  
Amended by R.1995 d.651, effective December 18, 1995.  
See: 27 N.J.R. 3543(a), 27 N.J.R. 5046(a).

**Law Review and Journal Commentaries**

Medicaid. P.R. Chenoweth, 136 N.J.L.J. No. 14, 56 (1994).

**Case Notes**

Definition of "available income" for Medicaid eligibility; valid. Estate of G.E. v. Division of Medical Assistance and Health Services, 271 N.J.Super. 229, 638 A.2d 833 (A.D.1994).

Pension was "available income" for Medicaid eligibility even though payment ordered to wife. Estate of G.E. v. Division of Medical Assistance and Health Services, 271 N.J.Super. 229, 638 A.2d 833 (A.D.1994).

Regulation governing when income is available did not constitute exercise by the state of its authority to adopt less restrictive income standards than federal standards. Estate of G.E. v. Division of Medical Assistance and Health Services, 271 N.J.Super. 229, 638 A.2d 833 (A.D.1994).

Court-ordered spousal support was nevertheless available income to applicant and otherwise countable toward determining Medicaid eligibility. L.M. v. Division of Medical Assistance, 95 N.J.A.R.2d (DMA) 51.

Receipt of worker's compensation benefits causing loss of AFDC eligibility did not entitle recipient to 12-month extension of Medicaid eligibility. C.S. v. Morris County Board of Social Services, 94 N.J.A.R.2d (DEA) 1.

Countable income reduced by child support. R.M. v. Division of Medical Assistance and Health Services, 93 N.J.A.R.2d (DMA) 41.

**10:71-5.4 Includable income**

(a) Any income which is not specifically excluded under the provisions of N.J.A.C. 10:71-5.3 shall be includable in the determination of countable income. Such income shall include, but is not limited to, the following:

1. Wages, salaries, tips, and commissions: Any and all compensation for services performed as an employee shall be included as earned income.

2. Income from self-employment: Net adjusted income from self-employment shall be included as earned income.

i. Determination of net adjusted income from self-employment: In the determination of net adjusted income, IRS rules shall apply.

(1) Individual business: Net adjusted income shall be the amount of gross income, less all allowable deductions attributable to the trade or business.

(2) Partnership: Net adjusted income shall be the individual's distributive share of the trade or business in which he/she is a partner.

ii. Annualization of income: If income from self-employment is received on other than a monthly basis, such income shall be averaged over the most recently ended taxable year in order to determine the average monthly or quarterly income to the individual, with the following exceptions:

(1) Seasonal self-employment: An individual whose income from seasonal self-employment is supplemented by income from employment and/or other sources during the balance of the year shall not have his/her self-employment income annualized. Income from self-employment shall be averaged only over the period in which it is intended to cover.

3. Annuities, pensions, and other benefits: Payments received in an annuity, pension, retirement or disability benefits, workers or unemployment compensation, veteran's Social Security (gross income), or strike benefits shall be included as unearned income.

i. Social security income: SSA gross income shall be defined as the actual amount of the check, plus any premium deduction made under the Supplemental Medical Insurance Program (SMI on Part B Medicare).

4. Educational grants and loans: Scholarships, educational grants, fellowships, and veteran's educational benefits shall be included as unearned income, except as provided in N.J.A.C. 10:71-5.3(a)10.

5. Support, alimony, and inheritances: Support, alimony, and inheritances, in the amounts actually received, shall be included as unearned income except as provided in N.J.A.C. 10:71-5.3(a)14.

6. Vendor payments: Cash payments, except those for medical costs, which are made on behalf of the individual by an organization or other third party shall be included as unearned income.

7. Proceeds of life insurance policies: Payments made as the result of the settlement of a life insurance policy claim shall be included as unearned income except as provided in N.J.A.C. 10:71-5.3(a)8.

8. Prizes, gifts, and awards: Cash or in-kind payments which are received as prizes, gifts, or awards shall be included as unearned income. (Occasional gifts, such as Christmas presents, with a value of \$20.00 or less, are excluded.)

i. Gift defined: A gift shall be defined as any payment which is neither given as compensation for services or other consideration, nor as satisfaction of any legal obligation to the beneficiary of the gift.

ii. Value of in-kind prizes, gifts, or awards: The value of an in-kind prize, gift, or award shall be its cash value.

9. Dividends, interest royalties: Dividends, interest, and royalties shall be included as unearned income.

10. Rental income and income from roomer-boarder: The amount remaining, after all the costs (except depreciation costs) of producing the income have been deducted, shall be included as unearned income.

11. Lump-sum payments: A lump-sum payment shall be included as income (either earned or unearned, as appropriate) either in the month in which it is received or prorated over three months when the payment exceeds the individual's monthly deficit, except as follows:

i. No portion of a cash reward provided to any individual by the Division for providing information about fraud and/or abuse in any program administered in whole or in part by the Division shall be included in the computation of income for financial eligibility purposes.

12. Support and maintenance furnished in-kind (community cases): Support and maintenance encompasses the provision to an individual of his or her needs for food, clothing, and shelter at no cost or reduced value. Persons determined to be "living in the household of another" in accordance with N.J.A.C. 10:71-5.6 shall not be considered to be receiving in-kind support and maintenance as the income eligibility levels have been reduced in recognition of such receipt. Persons not determined to be "living in the household of another" who receive in-kind support and maintenance shall be considered to have income in the amount of:

\$208.00 for an individual

\$302.00 for a couple

i. In the event the individual/couple can demonstrate that the actual value of in-kind support and maintenance is less than the assigned value, the lesser value shall be counted as unearned income.

ii. The income levels in (a)12 above shall be revised annually to reflect the annual cost-of-living adjustment to the SSI payment standard made by the Social Security Administration in accordance with 42 U.S.C. § 1382f. The income level revisions to (a)12 above will be published annually as a notice of administrative change in the New Jersey Register.

**13. Support and maintenance furnished in-kind (other living situations):**

i. Title XIX facilities: In-kind support and maintenance is not counted in cases in which the individual is considered institutionalized for program purposes (i.e., the individual's eligibility is determined under the Medicaid "Cap").

ii. Private nonprofit domiciliary care facility: The value of in-kind support and maintenance provided an individual in a nonprofit residential care facility is excluded when all the following conditions are met:

(1) The facility is not a public facility. A public facility is one which is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

(2) The facility, or the distinct portion in which the individual resides, is neither a Title XIX in-kind nor an institution for educational or vocational training.

(3) The facility is tax-exempt under Section 501(c) or (d) of the Internal Revenue Code.

(4) The facility (or organization controlling it) provides support and maintenance to the individual but does not receive payment for that part to be excluded or receives such payment from a private nonprofit organization which is also tax exempt under Section 501(c) or (d) of the Internal Revenue Code.

(5) The nonprofit facility or nonprofit organization has not undertaken an express obligation to furnish full support and maintenance to the individual. An express obligation to provide full support and maintenance exists when an institution agrees to provide lifetime care in return for a specified lump sum payment and there is no requirement for any current or future payment. An express obligation also exists if, as a result of the membership of the individual or of a relative, in an organization (fraternal or religious order, union, etc.) there exists a written document requiring the facility to provide lifetime care regardless of payment provided.

(6) If the criteria in (a)13ii(1)-(5) above are not met, the value of support and maintenance is determined in accordance with (a)13iii below.

**iii. Other nonmedical facilities:**

(1) Facility is proprietary (private for-profit) or private non-profit and no third party pays: The value of in-kind support and maintenance is excluded from income if it is provided by such a facility, no third party payment is made for it, and:

(A) The individual makes some payment which the facility accepts as payment in full (even though its usual charge may be higher); or

(B) The individual contracts a written indebtedness to the facility for his/her support and maintenance and the facility accepts the amount of the debt plus the individual's payment, if any, as payment in full.

(2) Facility if proprietary or private nonprofit and third party pays: When a proprietary (private for-profit) or private nonprofit facility provides support and maintenance to an individual because a third party pays the facility on that individual's behalf, that individual is receiving in-kind support and maintenance. The value of the in-kind support and maintenance is determined in accordance with (a)12 above.

(3) Other situations regardless of third-party payment: In other types of facilities, support and maintenance provided by that facility is unearned income to the individual in accordance with (a)12 above.

(b) Countable income: Income remaining after appropriate income exclusions shall be applied toward the applicable income eligibility standard. The applicant's living arrangement affects the method of treatment of income and its relationship to the standards as stated in the variations appearing below.

1. Applicant/beneficiary living alone: If the applicant/beneficiary lives alone, only his or her countable income shall be applied to the appropriate income standard.

2. Applicant/beneficiary couple: In the case of an applicant/beneficiary couple, living together, the total amount of husband's and wife's countable income shall be combined and applied to the appropriate income eligibility standard for a couple. Such individuals will continue to have their countable income combined until they have been separated for a period of six months.

i. One member of couple institutionalized: When one member of an applicant/beneficiary couple is institutionalized and the other remains in the community, no income of the community spouse will be used in the determination of income eligibility beginning in the month of admission into a Title XIX facility.

ii. Institutionalized couple: When an applicant/recipient couple is institutionalized in the same facility, the gross income of each individual is combined and applied to an amount equal to two times the Medicaid

"Cap." If, however, the applicant/recipient couple is institutionalized in separate facilities, the income of each is applied individually to the Medicaid "Cap."

3. Applicant/beneficiary living with ineligible spouse: if the applicant/beneficiary lives with an ineligible spouse, the income of the ineligible spouse is deemed to the applicant/beneficiary (see N.J.A.C. 10:71-5.5). Such individual's income shall continue to be deemed until the husband and wife have been separated for one month. At such time the individuals will be considered to be living alone and deeming shall cease.

i. Effect of institutionalization: Income of the community spouse shall not be considered in the determination of income eligibility of the institutionalized individual beginning with the month of admission into a Title XIX facility.

4. Applicant/beneficiary unmarried and under 18 years of age, living with parents: If the applicant/recipient is an unmarried child under 18 years of age who lives with his or her parents (including stepparents), the income of the parents is deemed to the child (see N.J.A.C. 10:71-5.5(c)3). Such deeming will cease when a child has ceased living with his/her parents for a period of one calendar month.

i. Child not living with parents due to institutionalization: If a physician has certified that the child's duration of stay in a Title XIX facility (or a combination of such facilities) is expected to be a full calendar month or more, such child shall be considered to be not living with his/her parents and deeming shall cease at the time of such certification.

Emergency Amendment, R.1981 d.276, effective July 1, 1981.

See: 13 N.J.R. 501(a).

Adopted concurrent proposal, R.1981 d.385, effective September 24, 1981.

See: 13 N.J.R. 501(a), 13 N.J.R. 773(a).

Substantially amended.

Amended by R.1982 d.314, effective August 31, 1982.

See: 14 N.J.R. 758(a), 14 N.J.R. 1058(a).

Amended by R.1983 d.381, effective August 30, 1983.

See: 15 N.J.R. 1187(a), 15 N.J.R. 1585(a).

Originally filed as an emergency rule R.1983 d.289, effective July 1, 1983.

As amended as emergency rule R. 1983 d.593, effective December 19, 1983, operative January 1, 1983.

See: 15 N.J.R. 1733(a), 15 N.J.R. 2171(a).

Readopted, R.1984 d.566, effective November 28, 1984 (amendments effective January 1, 1985).

See: 16 N.J.R. 2845(a), 16 N.J.R. 3451(a).

Previously filed as emergency rule R.1984 d.289. Raised amounts of unearned income.

Emergency Amendment R.1985 d.714, effective December 27, 1985 (operative January 1, 1986, expires February 24, 1985).

See: 18 N.J.R. 215(a).

Unearned income raised.

Amended by R.1986 d.74, effective February 24, 1986.

See: 18 N.J.R. 215(a), 18 N.J.R. 565(a).

Emergency amendment, R.1987 d.78, effective December 29, 1986 (operative January 1, 1987; expires February 27, 1987).

See: 19 N.J.R. 245(a).

Unearned income raised.

Adoption of concurrent proposal, R.1987 d.174, effective April 20, 1987.

See: 19 N.J.R. 245(a), 19 N.J.R. 646(b).

Emergency amendment, R.1988 d.55, effective January 4, 1988 (operative January 4, 1988, expires March 4, 1988).

See: 20 N.J.R. 207(a).

Unearned income raised.

Adopted concurrent proposal, R.1988 d.193, effective May 2, 1988.

See: 20 N.J.R. 207(a), 20 N.J.R. 985(a).

Previously filed as an Emergency Rule.

Emergency amendment, R.1989 d.57, effective December 29, 1988 (operative January 1, 1989, expires February 27, 1989).

See: 21 N.J.R. 207(a).

Individual raised from \$138.00 to \$142.67 and couple raised from \$197.33 to \$204.33.

Emergency amendment expired February 27, 1989. Concurrent proposal adopted February 28, 1989, as R.1989 d.174, effective March 20, 1989.

See: 21 N.J.R. 217(a), 21 N.J.R. 763(a).

Emergency provisions retained.

Emergency amendment R.1990 d.55, effective December 26, 1989, operative January 1, 1990 (expires February 24, 1990).

See: 22 N.J.R. 251(a).

Includable income limits raised at (a)12.

Adopted concurrent proposal, R.1990 d.177, effective February 23, 1990.

See: 22 N.J.R. 251(a), 22 N.J.R. 954(a).

Provisions of emergency amendment R.1990 d.55 readopted without change.

Amended by R.1991 d.32, effective January 22, 1991.

See: 22 N.J.R. 7(a), 23 N.J.R. 215(b).

Deleted text in N.J.A.C. 10:71-5.4(b)2i concerning includable income when one member of a couple is institutionalized and added statement establishing new guidelines. Deleted text in N.J.A.C. 10:71-5.4(b)3i concerning physician's certification and added statement establishing new includable income standard.

Emergency amendment, R.1991 d.37, effective December 31, 1990 (operative January 1, 1991).

See: 23 N.J.R. 233(a).

Increase in Medicaid Only eligibility computation amounts at (a)12.

Adopted Concurrent Proposal, R.1991 d.169, effective March 1, 1991.

See: 23 N.J.R. 233(a), 23 N.J.R. 1007(a).

Provisions of emergency amendment R.1991 d.37 readopted without change.

Emergency Amendment, R.1992 d.84, effective January 22, 1992, operative January 1, 1992, (expires March 22, 1992).

See: 24 N.J.R. 651(a).

Increase in Medicaid Only eligibility computation amounts at (a)12.

Amended by R.1993 d.402, effective August 16, 1993.

See: 25 N.J.R. 1818(a), 25 N.J.R. 3786(a).

Amended by R.1994 d.428, effective August 15, 1994.

See: 26 N.J.R. 1754(a), 26 N.J.R. 3478(a).

Amended by R.1996 d.46, effective January 16, 1996.

See: 27 N.J.R. 3668(a), 28 N.J.R. 291(a).

In (a)12 imputed income amounts revised upward.

Amended by R.1996 d.466, effective October 7, 1996.

See: 28 N.J.R. 2779(c), 28 N.J.R. 4480(a).

Amended by R.2000 d.415, effective October 16, 2000.

See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).

Substituted "beneficiary" for "recipient" throughout; and (a)12, increased dollar amount from \$176.67 to \$190.67 for an individual and \$255.00 to \$276.33 for a couple.

Amended by R.2002 d.124, effective April 15, 2002.

See: 33 N.J.R. 4188(a), 34 N.J.R. 1546(a).

In (a)11, added ". except as follows" at the end of the introductory paragraph and added i.

Amended by R.2004 d.401, effective November 1, 2004.

See: 36 N.J.R. 922(b), 36 N.J.R. 4982(a).

In (a)12, substituted "\$208.00" for "\$190.67" and "\$302.00" for "\$276.33" in the introductory paragraph and added ii.

(e) Deeming of income from a parent (and spouse of a parent) to a child: The computation methods for deeming of income from an ineligible parent (and spouse of a parent) to a child differ depending on the type of parental income.

1. Step 1: Determine the total monthly parental income, both earned and unearned (separately), less any income excluded in N.J.A.C. 10:71-5.5(b). Do not combine the two totals.

i. Determine the living allowance for each ineligible child not receiving public assistance, by subtracting the child's countable income from the amount of the living allowance for an ineligible child in Table A, Figure 1. No allowance may be deducted for a child receiving public assistance.

ii. Subtract the living allowance for each ineligible child, determined in (e)1i above, from the unearned income of the parent(s). Subtract any remaining living allowance from the earned income of the parent(s).

iii. The remaining parental income should be treated in accordance with the procedures of Step 2, 3, or 4 below, as appropriate.

2. Step 2: Remaining parental income is earned income only:

i. From the remaining parental earned income, subtract \$85.00 (\$20.00 general income exclusion plus \$65.00 work expense exclusion).

ii. Next, subtract the appropriate parental living allowance for the parent (and spouse of a parent) living in the household. This parental allowance is found in Table A, Figure 4a.

iii. The remaining amount is the income deemed to the applicant/beneficiary child(ren). This deemed income is treated as unearned income.

iv. Combine any income deemed to the eligible child together with any countable income of the eligible child.

(1) Subtract the \$20.00 general income exclusion from the child's unearned income.

v. If the child's total countable income is less than the appropriate income eligibility standard in Table B, the child is financially eligible for Medicaid Only.

3. Step 3: Remaining parental income is unearned only:

i. From the remaining parental unearned income, subtract \$20.00 (general income exclusion).

ii. Next, subtract the appropriate parent living allowance for the parent (and spouse of a parent) living in the household. This parental allowance is found in Table A, Figure 4b.

iii. The remaining amount is the income deemed to the applicant/beneficiary child(ren). This deemed income is treated as unearned income.

iv. Combine any income deemed to the eligible child together with any countable income of the eligible child.

(1) Subtract the \$20.00 general income exclusion from the child's unearned income.

v. If the child's total income is less than the appropriate income eligibility standard in Table B, the child is financially eligible for Medicaid Only.

4. Step 4: Remaining parental income is both earned and unearned:

i. First, subtract the \$20.00 general income exclusion from the remaining parental unearned income. Then, subtract any unused portion of the general income exclusion from the remaining parental earned income.

ii. From the remaining earned income, subtract \$65.00 (work expense allowance) and one-half of the remainder of earned income. Combine any remaining earned income with the remaining unearned income.

iii. Subtract the appropriate parental living allowance for the parent (and spouse of parent) living in the household. This parental allowance is found in Table A, Figure 4c.

iv. The remaining amount is the income deemed to the applicant/beneficiary child(ren). This deemed income is treated as unearned income.

v. Combine any income deemed to the eligible child together with any countable income of the eligible child.

(1) Subtract the \$20.00 general income exclusion from the child's unearned income.

vi. If the child's total income is less than the appropriate income eligibility standard in Table B, the child is financially eligible for Medicaid Only.

(f) Treatment of income deemed to a child: Any income deemed to a child is treated as unearned income and thus subject to the \$20.00 general income exclusion. If there is more than one applicant/beneficiary child in the household, the deemable income is divided equally among them. However, no income is to be deemed in excess of the amount which, when combined with the child's own countable income, creates ineligibility. That portion of deemed income that exceeds the eligibility level in Table B, for the appropriate living arrangement, is available for deeming equally to other applicant/beneficiary children in the household in addition to their equal shares of the total parental deemable income. The following steps shall apply in treatment of income deemed to a child:

1. Step 1: Combine any income deemed to the eligible child together with any countable income of the eligible child.

2. Step 2: Subtract the \$20.00 general income exclusion from the child's unearned income.

3. Step 3: If the child's total remaining income is less than the appropriate income eligibility standard in Table B the child is financially eligible for Medicaid Only. The child has no excess deemed income available for other applicant/beneficiary children.

4. Step 4: If, in the process of deeming of income to an applicant/beneficiary child, such child becomes financially ineligible for Medicaid Only, that portion of deemed income that exceeds the appropriate income eligibility standard in Table B shall be divided equally among other applicant/beneficiary children in the household, in addition to their equal shares of the total parental deemable income, and shall be counted in determining financial eligibility for Medicaid Only for such other children.

(g) Table A which follows shall be used in deeming computation amounts. Table A will be revised annually in accordance with Federal cost-of-living adjustments made pursuant to 42 U.S.C. § 1382(f). A notice of administrative changes containing the revisions will be published annually in the New Jersey Register.

TABLE A

Deeming Computation Amounts

- 1. Living allowance for each ineligible child \$282.00
- 2. Remaining income amount

<u>Head of Household</u>	<u>Receiving Support and Maintenance</u>
\$ 282.00	\$ 188.00

- 3. Spouse to Spouse Deeming—Eligibility Levels
  - a. Residential Health Care Facility \$1,409.36
  - b. Eligible Individual Living Alone with Ineligible Spouse \$1,153.36
  - c. Living Alone or with Others \$ 877.25
  - d. Living in the Household of Another \$ 657.09
- 4. Parental Allowance—Deeming to Children Remaining Income is:

	<u>One Parent</u>	<u>Parent and Spouse of Parent</u>
a. Earned only	\$1,128.00	\$1,692.00
b. Unearned only	\$ 564.00	\$ 846.00
c. Both earned and unearned	\$ 564.00	\$ 846.00

As amended on an emergency basis, R.1981 d.276, effective July 1, 1981.

See: 13 N.J.R. 501(a). Readopted, R.1981 d.385, effective September 24, 1981.

See: 13 N.J.R. 501(a). 13 N.J.R. 773(a). Substantially amended.

Amended by R.1982 d.314, effective August 31, 1982.

See: 14 N.J.R. 758(a), 14 N.J.R. 1058(a).

Figures which appeared at 14 N.J.R. 758(a) were effective upon filing through September 30, 1982. The new figures became effective October 1, 1982 and represent a \$2.10 increase in the optional State supplement in SSI payment level.

Amended by R.1983 d.381, effective August 30, 1983, with changes upon adoption.

See: 15 N.J.R. 1187(a), 15 N.J.R. 1585(a).

Originally filed as emergency rule R.1983 d.289 effective July 1, 1983. Amended by R.1983 d.593, effective December 19, 1983, operative January 1, 1984.

See: 15 N.J.R. 1733(a), 15 N.J.R. 2171(a).

Deeming computation amounts increased.

As amended on an emergency basis, R.1984 d.467, effective September 28, 1984 (operative October 1, 1984).

See: 16 N.J.R. 2845(a).

Table A amended.

Readopted, R.1984 d.566, effective November 28, 1984 (amendments effective January 1, 1985).

See: 16 N.J.R. 2845(a), 16 N.J.R. 3451(a).

Previously filed as emergency rule R.1984 d.289.

(d): Raised computation amounts.

Emergency amendment, R.1985 d.714, effective December 27, 1985 (operative January 1, 1986, expires February 24, 1986).

See: 18 N.J.R. 215(a).

Table A amended.

Amended by R.1986 d.53, effective March 3, 1986.

See: 17 N.J.R. 2732(a), 18 N.J.R. 484(a).

(a) added text "regarding earnings of ... reaches age 18". Old (c) deleted; new (c)-(e) added; old (d) recodified to (g).

Emergency amendment, R.1987 d.78, effective December 29, 1986 (operative January 1, 1987; expires February 27, 1987).

See: 19 N.J.R. 245(a).

Table A amended.

Adoption of concurrent proposal, R.1987 d.174, effective April 20, 1987.

See: 19 N.J.R. 245(a), 19 N.J.R. 646(b).

Emergency amendment, R.1988 d.55, effective January 4, 1988 (operative January 4, 1988, expires March 4, 1988).

See: 20 N.J.R. 207(a).

Table A amended.

Adoption of concurrent proposal, R.1988 d.193, effective May 2, 1988.

See: 20 N.J.R. 207(a), 20 N.J.R. 985(a).

Previously filed as Emergency Rule.

Emergency amendment, R.1989 d.57, effective December 29, 1988 (operative January 1, 1989, expires February 27, 1989).

See: 21 N.J.R. 207(a).

Table A amended.

Emergency amendment expired February 27, 1989. Concurrent proposal adopted February 28, 1989, as R.1989 d.174, effective March 20, 1989.

See: 21 N.J.R. 207(a), 21 N.J.R. 763(a).

Emergency provisions retained.

Emergency amendment R.1990 d.55, effective December 26, 1989, operative January 1, 1990 (expires February 24, 1990).

See: 22 N.J.R. 251(a).

Deeming computation amounts raised.

Adopted concurrent proposal, R.1990 d.177, effective February 23, 1990.

See: 22 N.J.R. 251(a), 22 N.J.R. 954(a).

Provisions of emergency amendment R.1990 d.55 readopted without change.

Emergency amendment, R.1991 d.37, effective December 31, 1990 (operative January 1, 1991).

See: 23 N.J.R. 233(a).

Increase in Medicaid Only eligibility computation amounts at (g).

Adopted concurrent proposal, R.1991 d.169, effective March 1, 1991.

See: 23 N.J.R. 233(a), 23 N.J.R. 1007(a).

Provisions of emergency amendment, R.1991 d.37, readopted without change.

Emergency Amendment, R.1992 d.84, effective January 22, 1992, operative January 1, 1992, (expires March 22, 1992).

See: 24 N.J.R. 651(a).

Increase in Medicaid Only eligibility computation amounts at (g).

Adopted concurrent amendment, R.1992 d.191, effective April 20, 1992.  
See: 24 N.J.R. 651(a), 24 N.J.R. 1498(b).

Provisions of emergency amendment, R.1992 d.84, readopted without change.

Amended by R.1993 d.402, effective August 16, 1993.

See: 25 N.J.R. 1818(a), 25 N.J.R. 3786(a).

Amended by R.1994 d.428, effective August 15, 1994.

See: 26 N.J.R. 1754(a), 26 N.J.R. 3478(a).

Amended by R.1996 d.46, effective January 16, 1996.

See: 27 N.J.R. 3668(a), 28 N.J.R. 291(a).

Table A amended.

Amended by R.1996 d.466, effective October 7, 1996.

See: 28 N.J.R. 2779(c), 28 N.J.R. 4480(a).

Amended by R.2000 d.415, effective October 16, 2000.

See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).

Substituted references to beneficiaries for references to recipients throughout; and in (g), increased dollar amounts throughout.

Amended by R.2004 d.401, effective November 1, 2004.

See: 36 N.J.R. 922(b), 36 N.J.R. 4982(a).

Rewrote (g).

**10:71-5.6 Income eligibility standards**

(a) Table B which follows shall be used to determine income eligibility for aged, blind, and disabled persons who make application for Medicaid Only benefits. The standard used for applicants/beneficiaries shall be determined in accordance with the following living arrangement categories. (For cases involving the deeming of income, this section shall be used in conjunction with N.J.A.C. 10:71-5.5). The income eligibility standards in Table B which follows will be revised annually to reflect the annual cost-of-living adjustments to the SSI payment standards made by the Social Security Administration in accordance with 42 U.S.C. § 1382f. A notice of administrative changes containing the revisions will be published annually in the New Jersey Register.

(b) The income standard for Residential Health Care Facilities (RHCFs) (Table B, Figure I) shall be used for individuals/couples residing in such facilities which are licensed by the New Jersey Department of Health and Senior Services. Individuals in unlicensed facilities shall always be categorized as "living alone" (N.J.A.C. 10:71-5.6(c) and Table B, II).

**(c) Non-institutional living arrangements:**

1. The category "living alone" (Table B, Figure II) shall be used for individuals/couples who are:

- i. Living physically alone;
- ii. Living in a commercial establishment, such as a motel, hotel, rooming or boarding house (including type A, B, and C, formerly known as unlicensed boarding homes) that holds itself open to the public as such;
- iii. Living in a business-like arrangement;
- iv. Purchasing or preparing food separately, which applies to persons living with others in a private dwelling, but separately purchasing or preparing their own food. The determination is based on the person's customary food purchase and preparation habits. Occasional joint purchase or preparation of food does not preclude a person from this classification.

casual joint purchase or preparation of food does not preclude a person from this classification.

v. Taking of all meals elsewhere, which applies to persons living with others in a private dwelling but taking all meals elsewhere.

vi. Persons living as members of a household but having ownership or rental responsibility and paying more than their pro rata share of the household expenses (because other members are paying less) are considered to be living alone.

(1) It is assumed that a couple share rental or ownership responsibility. Therefore, the following steps are necessary to determine if the eligible individual with ineligible spouse and other household members is paying more than his or her pro rata share of household expenses.

(A) If the eligible individual's contributions (singly) are more than his/her pro rata share of household expenses, he/she will be considered living alone. If not, proceed to (c)1vi(1)(B) below.

(B) If the contributions of both the eligible individual and ineligible spouse to the household are more than their pro rata share, they shall be considered to be living alone. If their contribution is equal to or less than their pro rata share, the applicants/beneficiaries shall be considered to be living with others (see N.J.A.C. 10:71-5.6(c)3).

(C) Household expenses are limited to: food; mortgage or rental payments; real property taxes; heating fuel; gas; electricity; water; sewer; garbage removal.

2. The category "living alone with ineligible spouse" (Table B, Figure III) applies when an individual lives with his or her ineligible spouse and there are no other persons who are part of the household. If any other persons, even minor children, are present in the same household, this category does not apply. Parents with minor children are always considered to be in the same household; therefore, the presence of minor children would result in the living arrangements described in either N.J.A.C. 10:71-5.6(c)3 or 5.6(c)4.

3. The category "living with others" (see Table B, Figure II) applies when the individual/couple resides with others and either:

- i. Has ownership or rental liability and pays an amount equal to or less than pro rata share of household expenses (see N.J.A.C. 10:71-5.6(c)1vi(1)(C)); or
- ii. Does not have ownership or rental liability and is sharing household expenses with other members of the household. Sharing is defined as paying a pro rata share or more of household expenses (see N.J.A.C. 10:71-5.6(c)1vi(1)(C)).

4. If the individual/couple lives in a household with adults other than a spouse and the living arrangement has not already been determined in N.J.A.C. 10:71-5.6(c)1 through 5.6(c)3 above, the individual/couple may be considered to be living in the household of another (Table B, Figure IV). The specific criteria for categorization in this living arrangement is the receipt of both support and maintenance. That is, the individual/couple does not purchase either food or shelter separately in accordance with (c)4i below.

i. If meals are consumed by an individual/couple in the household and the individual/couple does not purchase either food or shelter separately, the individual/couple shall be considered living in the household of another.

(1) Separate purchase of food means that the individual/couple pays a pro rata share of the household's food or actually purchases food separately. An individual/couple receiving food stamps as a separate food stamp household shall be considered to be purchasing food separately.

(2) Separate purchase of shelter exists when the individual/couple contributes an amount equal to the pro rata share of the household's shelter expenses. Shelter expenses are limited to all items except "food" in N.J.A.C. 10:71-5.6(c)1vi(1)(C).

ii. Persons determined to be living in the household of another shall not be considered to be receiving support and maintenance in-kind pursuant to N.J.A.C. 10:71-5.4(a)12 because such in-kind income has already been taken into account in the eligibility standards.

5. Table B follows:

TABLE B

Variations in Living Arrangements	Medicaid Eligibility Income Standards	
	Individual	Couple
I. Residential Health Care Facility	\$ 714.05	\$1,409.36
II. Living Alone or with Others	\$ 595.25	\$ 871.36
III. Living Alone with Ineligible Spouse	\$ 871.36	
IV. Living in Household of Another	\$ 420.31	\$ 657.09
V. Title XIX Approved Facility: Includes persons in acute general hospitals, nursing facilities, intermediate care facilities/mental retardation (ICFMR) and licensed special hospitals (Class A, B, C) and Title XIX psychiatric hospitals (for persons under age 21 and age 65 and over) or a combination of such facilities for a full calendar month.	\$1,692.00†	

† Gross income (that is, income prior to any income exclusions) is applied to this Medicaid "Cap."

(d) For the purpose of the Medicaid program, Title XIX approved facilities shall include acute care general hospitals, nursing facilities, intermediate care facilities for the mentally retarded (ICF/MR), and licensed special hospitals (Class A, B, and C) and Title XIX psychiatric hospitals (for persons under age 21 and age 65 and over).

1. Persons are considered institutionalized if they enter a Title XIX approved facility and a physician has certified that the duration of stay in the Title XIX facility (or a combination of such facilities) is expected to be 30 consecutive days or more. Income eligibility shall be determined in accordance with the variations contained in N.J.A.C. 10:71-5.4(b). However, the income of the institutionalized individual shall not be reduced by any of the income exclusions found in N.J.A.C. 10:71-5.3.

2. Institutionalized individuals, identified in (d)1 above, who are found Program eligible will receive benefits as of the date of admission.

3. Persons in a facility which is not Title XIX approved or whose stay is expected to be a period of less than 30 consecutive days will have eligibility determined in accordance with the community living arrangement which existed prior to entering the facility.

4. Temporary absence from the institution: Any temporary absence, during which the individual remains a patient of the institution, does not interrupt a continuous stay in the institution.

5. Persons living in the community who do not otherwise qualify for Medicaid benefits and who elect to participate in the hospice program, or who are assigned a slot in the CCPED or other waiver programs, will have financial eligibility determined in the same manner as those who reside in an institution.

i. Such individuals who are found eligible will receive benefits on the date of the election of hospice benefits, or the date of assignment to a waiver slot, whichever is applicable.

(e) No portion of a cash reward provided to any individual by the Division for providing information about fraud and/or abuse in any program administered in whole or in part by the Division shall be included in the computation of income for financial eligibility purposes.

Amended on emergency basis, R.1981 d.276, effective July 1, 1981.

See: 13 N.J.R. 501(a).

Readopted, R.1981 d.385, effective September 24, 1981.

See: 13 N.J.R. 501(a), 13 N.J.R. 773(a).

Substantially amended.

Amended by R.1982 d.314, effective August 31, 1982.

See: 14 N.J.R. 758(a), 14 N.J.R. 1058(a).

Figures which appeared at 14 N.J.R. 758(a) were effective upon filing through September 30, 1982.

The new figures became effective October 1, 1982 and represent a \$2.10 increase in the optional State Supplement in SSI payment level.

Amended by R.1983 d.381, effective August 30, 1983 with changes upon adoption.  
 See: 15 N.J.R. 1187(a), 15 N.J.R. 1585(a).  
 Originally filed as emergency rule R.1983 d.289, effective July 1, 1983.  
 Amended by R.1983 d.593, effective December 19, 1983, operative January 1, 1984.  
 See: 15 N.J.R. 1733(a), 15 N.J.R. 2171(a).  
 Eligibility income standards increased.  
 Amended by R.1984 d.244, effective June 18, 1984.  
 See: 16 N.J.R. 684(a), 16 N.J.R. 1611(a).  
 Table B: "882.00" was "852.90."  
 As amended on emergency basis, R.1984 d.467, effective September 28, 1984 (operative October 1, 1984).  
 See: 16 N.J.R. 2845(a).  
 Table B eligibility Income Standards increased.  
 Readopted, R.1984 d.566, effective November 28, 1984 (amendment effective January 1, 1985).  
 See: 16 N.J.R. 2845(a), 16 N.J.R. 3451(a).  
 Previously filed as emergency rule R.1983 d.289.  
 (c)4: Table B, Figure "V" changed to "IV;" (c)5: Income standards raised in Table B.  
 Amended by R.1985 d.169, effective April 15, 1985 (operative May 1, 1985).  
 See: 17 N.J.R. 39(a), 17 N.J.R. 969(b).  
 (e)4 added.  
 Emergency amendment, R.1985 d.714, effective December 27, 1985 (operative January 1, 1986, expires February 24, 1986).  
 See: 18 N.J.R. 215(a).  
 Table B amended.  
 Adopted concurrent proposal, R.1986 d.74, effective February 24, 1986.  
 See: 18 N.J.R. 215(a), 18 N.J.R. 565(a).  
 Emergency amendment, R.1987 d.78, effective December 29, 1986 (operative January 1, 1987; expires February 27, 1987).  
 See: 19 N.J.R. 245(a).  
 Table B amended.  
 Adoption of concurrent proposal, R.1987 d.174, effective April 20, 1987.  
 See: 19 N.J.R. 245(a), 19 N.J.R. 646(b).  
 Emergency Amendment, R.1988 d.55, effective January 4, 1988 (operative January 4, 1988, expires March 4, 1988).  
 See: 20 N.J.R. 207(a).  
 Table B amended.  
 Adopted concurrent proposal, R.1988 d.193, effective May 2, 1988.  
 See: 20 N.J.R. 207(a), 20 N.J.R. 985(a).  
 Previously filed as an Emergency Rule.  
 Emergency amendment, R.1989 d.57, effective December 29, 1988 (operative January 1, 1989, expires February 27, 1989).  
 See: 21 N.J.R. 207(a).  
 Table B amended.  
 Emergency amendment expired February 27, 1989. Concurrent proposed amendments adopted and filed February 28, 1989, as R.1989 d.174, effective March 20, 1989.  
 See: 21 N.J.R. 217(a), 21 N.J.R. 763(a).  
 Provisions retained.  
 Emergency amendment, R.1990 d.55, effective December 26, 1989, operative January 1, 1990 (expires February 24, 1990).  
 See: 22 N.J.R. 251(a).  
 Income eligibility standards raised.  
 Adopted concurrent proposal, R.1990 d.177, effective February 23, 1990.  
 See: 22 N.J.R. 251(a), 22 N.J.R. 954(a).  
 Provisions of emergency amendment, R.1990 d.55, readopted without change.  
 Amended by R.1991 d.32, effective January 22, 1991.  
 See: 22 N.J.R. 7(a), 23 N.J.R. 215(b).  
 Added (d)4.  
 Emergency amendment, R.1991 d.37, effective December 31, 1990 (operative January 1, 1991).  
 See: 23 N.J.R. 233(a).  
 Increase in income eligibility standards at (c)5.  
 Adopted concurrent proposal, R.1991 d.169, effective March 1, 1991.  
 See: 23 N.J.R. 233(a), 23 N.J.R. 1007(a).

Provisions of emergency amendment, R.1991 d.37, readopted without change.  
 Emergency amendment, R.1992 d.84, effective January 22, 1992, operative January 1, 1992, (expires March 22, 1992).  
 See: 24 N.J.R. 651(a).  
 Increase in income eligibility standards at (c)5.  
 Adopted concurrent amendment, R.1992 d.191, effective April 20, 1992.  
 See: 24 N.J.R. 651(a), 24 N.J.R. 1498(b).  
 Provisions of emergency amendment, R.1992 d.84, readopted without change.  
 Amended by R.1992 d.442, effective November 2, 1992.  
 See: 24 N.J.R. 2778(a), 24 N.J.R. 4036(a).  
 Revised (d).  
 Amended by R.1993 d.402, effective August 16, 1993.  
 See: 25 N.J.R. 1818(a), 25 N.J.R. 3786(a).  
 Amended by R.1994 d.428, effective August 15, 1994.  
 See: 26 N.J.R. 1754(a), 26 N.J.R. 3478(a).  
 Amended by R.1995 d.651, effective December 18, 1995.  
 See: 27 N.J.R. 3543(a), 27 N.J.R. 5046(a).  
 Amended by R.1996 d.46, effective January 16, 1996.  
 See: 27 N.J.R. 3668(a), 28 N.J.R. 291(a).  
 Table B amended.  
 Amended by R.1996 d.466, effective October 7, 1996.  
 See: 28 N.J.R. 2779(c), 28 N.J.R. 4480(a).  
 Amended by R.2000 d.415, effective October 16, 2000.  
 See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).  
 Substituted references to beneficiaries for references to recipients throughout; and in (c)5, increased dollar amounts throughout.  
 Amended by R.2002 d.124, effective April 15, 2002.  
 See: 33 N.J.R. 4188(a), 34 N.J.R. 1546(a).  
 Added (e).  
 Amended by R.2004 d.401, effective November 1, 2004.  
 See: 36 N.J.R. 922(b), 36 N.J.R. 4982(a).  
 In (a), added the fourth and fifth sentences; in (c), increased the amounts for eligibility income standards in Table B.

**Law Review and Journal Commentaries**

Protecting the Home in Government Benefits Planning. Gary Martz. 164 N.J.Law. 34 (Mag) (Oct.1994).

**10:71-5.7 Post-eligibility treatment of income; institutionalized individuals**

(a) The amounts specified in (b) through (h) of this section shall be deducted from the income of an institutionalized individual prior to the application of his or her income to the cost of the long term care. These deductions apply only after the individual is determined eligible for Medicaid and shall not be deducted in the determination of income eligibility.

1. Should the total deductions authorized under this section exceed the institutionalized individual's income, no assistance is available from the Medicaid program to make up the deficit. In such circumstances, available funds shall first be used to provide the institutionalized individual with his or her personal needs allowance. Any remaining deductible income may be distributed to the community spouse or other family members as decided by the institutionalized individual, not to exceed the amount authorized under this section for any individual.

2. The deductions authorized in (c) through (e) below for the maintenance of the community spouse and other family members apply only so long as there is a community spouse as defined in (c) below. Deductions for the community spouse and other family members shall cease

in the first full-calendar month after the community spouse dies, becomes divorced, or is institutionalized.

(b) A personal needs allowance in the amount of \$35.00 shall be deducted from the institutionalized individual's income. In addition, gross income derived from employment that is considered essential toward satisfying the individual's developmental need to achieve a certain amount of independence shall be deducted from the individual's income. The combination of these deductions shall not exceed the amount in Table B for an individual living alone as found at N.J.A.C. 10:71-5.6(c)5.

(c) There shall be deducted from the institutionalized individual's income an amount for the maintenance of the community spouse. Except as specifically provided below, the deduction for the maintenance of the community spouse shall not exceed \$1,383. For purposes of this section, a community spouse shall be defined as an individual who is legally married to an institutionalized individual under the provisions of State law and who is not himself or herself institutionalized. In arriving at the amount that may be deducted for the maintenance of the community spouse, the deductions authorized by this section shall be reduced by the gross income of the community spouse. The community spouse deduction is authorized only to the extent that the income deducted is actually made available to (or for the benefit of) the community spouse. No amount of the community spouse's maintenance deduction may be retained by the institutionalized individual.

1. If the community spouse's average monthly shelter expenses for his or her principal place of residence exceed \$414.00, the amount of that excess shall increase the maximum community spouse maintenance deduction. Shelter expenses are limited to rent or mortgage (including principal and interest), taxes and insurance, a utility standard for the individual's utility expenses, and in the case of a condominium or cooperative, the monthly required maintenance charge.

2. A utility allowance shall not be authorized unless the community spouse directly incurs charges for utilities. A community spouse who directly incurs charges for heating fuel (in accordance with food stamp regulations at N.J.A.C. 10:87-5.10(a)5iv) separate and apart from their rent or mortgage payments, shall be entitled to a utility allowance in the amount specified as the "Heating Utility Allowance" at N.J.A.C. 10:87-12.1. If the community spouse does not directly incur heating fuel charges but does directly incur charges for a utility other than telephone, water, sewerage, or garbage collection, a utility allowance in the amount specified as "Standard Utility Allowance" at N.J.A.C. 10:87-12.1 shall be authorized. If the only direct utility charge incurred by the community spouse separate and apart from the rent or mortgage is the telephone the amount specified at N.J.A.C. 10:87-12.1 as "Uniform Telephone Allowance" shall be added to the community spouse's monthly shelter costs. The telephone allowance shall not be used if either of the above utility allowances have been used because those standard allowances include telephone charges.

(d) When the institutionalized individual's income is insufficient to provide the maximum authorized deduction for the community spouse, either the institutionalized spouse or the community spouse can request a fair hearing in accordance with N.J.A.C. 10:71-8.4. If either member can establish at the fair hearing that the income generated from the community spouse's share of the couple's resources is inadequate to raise the community spouse's income (together with the community spouse maintenance deduction) to the maximum authorized level, additional resources (beyond the community spouse's share as established at N.J.A.C. 10:71-4.8) may be set aside for the community spouse. The amount of resources to be set aside shall be that amount that is determined sufficient to generate sufficient income to raise the community spouse's gross income to the maximum authorized level.

(e) If either the institutionalized spouse or the community spouse is dissatisfied with the determination of the amount of the community spouse maintenance deduction, he or she may request a fair hearing in accordance with N.J.A.C. 10:71-8.4. If it is established at the fair hearing that the community spouse needs income above the amount established by the community spouse maintenance deduction due to exceptional circumstances resulting in financial duress, there shall be substituted for the community spouse maintenance deduction such amount as is necessary to alleviate the financial duress and for so long as directed in the final hearing decision.

(f) If a court has entered an order against an institutionalized spouse for monthly income for the support of a community spouse and the amount of the order is greater than the amount of the community spouse deduction, the amount so ordered shall be used in place of the community spouse deduction.

(g) A family member maintenance deduction shall be calculated for each family member of the institutionalized individual.

1. For purposes of this section, family members must reside with the community spouse and shall be limited to the following persons:

i. Children of either member of the couple who are under the age of 21;

ii. Children over the age of 21 who are claimed as dependents by either member of a couple for tax purposes under the Internal Revenue Code;

iii. Parents of either member of a couple who are claimed as dependents for tax purposes under the Internal Revenue Code as dependents by either spouse; or

iv. A brother or sister (including half-brothers and half-sisters and siblings gained through adoption) of either member of a couple and who are claimed as dependents for tax purposes under the Internal Revenue Code.

2. The family member deduction shall be computed as follows. The family member's gross income shall be subtracted from \$1,383. One-third of the remaining amount shall be the family member deduction for that family member.

(h) If a physician has certified that the individual will be institutionalized for a temporary period only and is likely to return to the residence within six months of the date of institutionalization, a maximum of \$150.00 may be deducted from the institutionalized individual's income for the maintenance of his or her home in the community. This deduction shall be limited to the actual costs of such maintenance (for example, mortgage or rent payments, taxes, insurance, and other incidental costs) or \$150.00, whichever is less. This deduction may be applied against the individual's income for no longer than six months. This deduction may not be applied if a deduction has been made for the maintenance of a community spouse or other family member residing in that residence.

1. This deduction must be applied to the costs of maintaining the residence and may not be accumulated by the institutionalized individual.

(i) If the institutionalized individual has health insurance covering himself or herself, the amount of the insurance premiums shall be deducted.

1. If the premium is billed other than monthly, the amount of the premium shall be prorated and deducted accordingly.

2. If the premium covers other individuals in addition to the institutionalized individual, only that portion of the premium attributable to the institutionalized individual shall be deducted.

(j) No portion of a cash reward provided to any individual by the Division for providing information about fraud and/or abuse in any program administered in whole or in part by the Division shall be included in the computation of income for financial eligibility purposes.

New Rule, R.1991 d.32, effective January 22, 1991.  
 See: 22 N.J.R. 7(a), 23 N.J.R. 215(b).  
 Amended by R.2000 d.415, effective October 16, 2000.  
 See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).  
 In the introductory paragraph of (c) and (g)2, increased dollar amounts from \$856.00 to \$1,383; and in (c)1, increased dollar amount from \$257.00 to \$414.00.  
 Amended by R.2002 d.124, effective April 15, 2002.  
 See: 33 N.J.R. 4188(a), 34 N.J.R. 1546(a).  
 Added (j).

**Law Review and Journal Commentaries**

Marital Status and The 60+ Crowd. Elizabeth Brody. 164 N.J.Law 39 (Mag) (Oct. 1994).

**Case Notes**

New Jersey did not violate Medicare Catastrophic Coverage Act by employing "income-first" approach in determining Medicaid eligibility

of spouse institutionalized in long-term care facility. Cleary ex rel. Cleary v. Waldman, 167 F.3d 801 (3rd Cir. N.J. 1999).

Assets of institutionalized spouse may be diverted to cover community spouse's statutory minimum needs allowance, where community spouse's income is insufficient to meet allowance, for purposes of Medicare spend down requirements; however, resources transferred to community spouse need not be adequate to cover shortfall. Cleary v. Waldman, D.N.J.1997, 959 F.Supp. 222.

Both interest and principal of community spouse's monthly annuity payments constituted income for purposes of determining minimum monthly maintenance allowance under Medically Needy Program. J.M. and E.M. v. Division of Medical Assistance and Health Services, 96 N.J.A.R.2d (DMA) 86.

Full amount of Medicaid applicant's Social Security benefits would be included as "available income" and applied to his long-term care costs, even though applicant used portion of his benefits to satisfy pre-existing alimony obligation. L.C. v. Division of Medical Assistance and Health Services, 96 N.J.A.R.2d (DMA) 73.

Exceptional circumstances resulting in significant financial distress warranted an upward adjustment in community spouse maintenance amount. M.G. v. Division of Medical Assistance, 95 N.J.A.R.2d (DMA) 47.

**10:71-5.8 Eligibility under life care and pay-as-you-go agreements**

(a) In a contractual agreement where the individual has transferred his available assets to the facility in exchange for full medical care in the institution, the institution has a legal responsibility to provide such care and Medicaid benefits are not payable for the institutional care. However, Medicaid eligibility may exist in the following circumstances (see also N.J.A.C. 10:71-5.4(a)13):

1. When it can be determined that no enforceable contract exists (for example, because the facility is financially unable to fulfill its responsibilities under the contract and all terms of the agreement are thus void), the facility has a legal obligation to refund to the individual any assets which remain from the amount assigned at the time the contract was signed. The individual may be eligible for Medicaid Only as long as all other eligibility criteria (including resources) are met.

2. When a contract is not actually rescinded and the individual retains his or her right under the terms of the contract but, where his or her contract rights for care in the facility are not fully met, Medicaid benefits may be available for those medical expenses not being met by this facility if the individual meets eligibility requirements.

3. When the contractual agreement for care in the facility does not include all of the medical care (for example, is limited to basic room and board), Medicaid benefits may be available for those medical expenses not covered by the contract as long as all eligibility criteria are met.

4. In those contractual situations above in which Medicaid eligibility may exist, the value of in-kind room and board is not considered income.

New Rule, R.1991 d.32, effective January 22, 1991.

See: 22 N.J.R. 7(a), 23 N.J.R. 215(b).

### 10:71-5.9 Deeming from sponsor to alien

(a) For the purposes of determining eligibility for Medicaid Only for a legal alien (applying for the first time on or after October 1, 1980), the income and resources (see N.J.A.C. 10:71-4.7) of any person who sponsored the alien's entry into the United States will be deemed to the alien. Such deeming applies for a period of three years from the month of the alien's entry into the United States. However, deeming shall not apply to any alien who is:

1. Admitted to the United States under the provisions of section 203(a)(7) of the Immigration and Nationality Act which were in effect prior to April 1, 1980;
2. Admitted to the United States under the provisions of section 207(c)(1) of such Act which became effective March 31, 1980;
3. Paroled into the United States as a refugee under section 212(d)(5) of such Act;
4. Granted political asylum by the Attorney General;
5. Determined to be blind or disabled if such blindness or disability began after the date of admission into the United States for permanent residence; or
6. Sponsored by an institutional sponsor such as an employer or a church.

(b) In the event an alien is sponsored by a person subject to the deeming rules at N.J.A.C. 10:71-5.5, those rules will be used in lieu of the sponsor-to-alien rules.

(c) No inquiry shall be made regarding a sponsor's financial circumstance unless the alien's own countable income and resources indicate potential program eligibility.

(d) Normal income exclusions do not apply in deeming of a sponsor's income to an alien. Additionally, SSI benefits, TANF payments, as well as any other public income maintenance payments are not excluded in sponsor-to-alien deeming.

(e) To determine the amount of income to be deemed to an alien, the dollar amounts in (e)2 and 3 below will be updated annually by publication of a notice of administrative changes in the New Jersey Register reflecting the Federal cost-of-living adjustment to the SSI standards established pursuant to 42 U.S.C. § 1382f. The CBOSS shall proceed as follows:

1. Determine the total gross earned (wages and net earnings from self employment) and gross unearned income of the sponsor (and spouse if living with the sponsor).

2. Subtract \$564.00 for the sponsor, \$846.00 for the sponsor if living with his or her spouse, \$1,128 for the sponsor if his or her spouse is a co-sponsor.

3. Subtract \$282.00 for any other dependent of the sponsor who is or could be claimed for Federal Income Tax purposes.

4. The remaining amount is deemed as unearned income to the alien.

(f) In the event that a sponsor has sponsored more than one alien, there is no proration of deemable income among the sponsored aliens. The income is fully charged to each alien for which the sponsor has executed an affidavit of support.

R.1983 d.373, effective September 6, 1983.

See: 15 N.J.R. 999(b), 15 N.J.R. 1477(a).

As amended on emergency basis, R.1983 d.593, effective December 19, 1983, operative January 1, 1984.

See: 15 N.J.R. 1733(a), 15 N.J.R. 2171(a).

Deeming amounts increased.

Amended by R.1984 d.566, effective November 28, 1984 (amendments effective January 1, 1985).

See: 16 N.J.R. 2845(a), 16 N.J.R. 3451(a)

Previously filed as emergency rule R.1984 d.289.

(e): amounts of income substantially amended.

Emergency amendment, R.1985 d.714, effective December 27, 1985 (operative January 1, 1986, expires February 24, 1986).

See: 18 N.J.R. 215(a).

Amount of income in (e)2 and 3 raised.

Readopted R.1986 d.74, effective February 24, 1986.

See: 18 N.J.R. 215(a), 18 N.J.R. 565(a).

Emergency amendment, R.1987 d.78, effective December 29, 1986 (operative January 1, 1987, expires February 27, 1987).

See: 19 N.J.R. 245(a).

Amount of income in (e)2 and 3 raised.

Adoption of concurrent proposal, R.1987 d.174, effective April 20, 1987.

See: 19 N.J.R. 245(a), 19 N.J.R. 646(b).

Emergency amendment, R.1988 d.55, effective and operative January 4, 1988 (expires March 4, 1988).

See: 20 N.J.R. 207(a).

Amount of income in (e)2 and 3 raised.

Adopted concurrent proposal, R.1988 d.193, effective May 2, 1988.

See: 20 N.J.R. 207(a), 20 N.J.R. 985(a).

Previously filed as an Emergency Rule.

Emergency amendment, R.1989 d.57, effective December 29, 1988 (operative January 1, 1989, expires February 27, 1989).

See: 21 N.J.R. 207(a).

(c)2 and 3 raised amount to be subtracted.

Emergency amendment expired February 27, 1989. Concurrent proposed amendment adopted and filed February 28, 1989, as R.1989 d.174, effective March 20, 1989.

See: 21 N.J.R. 207(a), 21 N.J.R. 763(a).

Provisions retained.

Emergency amendment R.1990 d.55, effective December 26, 1989, operative January 1, 1990 (expires February 24, 1990).

See: 22 N.J.R. 251(a).

Deeming computation amounts raised.

Adopted concurrent proposal, R.1990 d.177, effective February 23, 1990.

See: 22 N.J.R. 251(a), 22 N.J.R. 954(a).

Provisions of emergency amendment R.1990 d.55 readopted without change.

Emergency amendment, R.1991 d.37, effective December 31, 1990 (operative January 1, 1991).

See: 23 N.J.R. 233(a).

Increase in Medicaid Only eligibility computation amounts at (e).  
 Amended by R.1991 d.32, effective January 22, 1991.  
 See: 22 N.J.R. 7(a), 23 N.J.R. 215(b).  
 Section recodified from 5.7.  
 Adopted Concurrent Proposal, R.1991 d.169, effective March 1, 1991.  
 See: 23 N.J.R. 233(a), 23 N.J.R. 1007(a).  
 Provisions of emergency amendment R.1991 d.37 readopted without change.  
 Emergency amendment, R.1992 d.84, effective January 22, 1992, operative January 1, 1992.  
 See: 24 N.J.R. 651(a).  
 Increase in Medicaid Only eligibility computation amounts at (e).  
 Adopted concurrent amendment, R.1992 d.191, effective April 20, 1992.  
 See: 24 N.J.R. 651(a), 24 N.J.R. 1498(b).  
 Provisions of emergency amendment, R.1992 d.84, readopted without change.  
 Amended by R.1993 d.402, effective August 16, 1993.  
 See: 25 N.J.R. 1818(a), 25 N.J.R. 3786(a).  
 Amended by R.1994 d.428, effective August 15, 1994.  
 See: 26 N.J.R. 1754(a), 26 N.J.R. 3478(a).  
 Amended by R.1996 d.46, effective January 16, 1996.  
 See: 27 N.J.R. 3668(a), 27 N.J.R. 291(a).  
 Increased amounts in (e)2 and 3.  
 Amended by R.1996 d.466, effective October 7, 1996.  
 See: 28 N.J.R. 2779(c), 28 N.J.R. 4480(a).  
 Amended by R.2000 d.415, effective October 16, 2000.  
 See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).  
 In (d), substituted "TANF" for "AFDC"; and in (e), substituted "CBOSS" for "CWA" in the introductory paragraph, and increased dollar amounts in 2 and 3.  
 Amended by R.2004 d.401, effective November 1, 2004.  
 See: 36 N.J.R. 922(h), 36 N.J.R. 4982(a).  
 Rewrote (e).

**SUBCHAPTER 6. CASE RECORDS AND FILES**

**10:71-6.1 Purpose of case records**

The case record is a complete record in support of the CBOSS's decisions and actions for each case.

Amended by R.1995 d.651, effective December 18, 1995.  
 See: 27 N.J.R. 3543(a), 27 N.J.R. 5046(a).  
 Amended by R.2000 d.415, effective October 16, 2000.  
 See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).  
 Substituted "CBOSS's" for "CWA's".

**10:71-6.2 Contents of the case record**

(a) The following items shall be included in the case record:

1. The narrative recording;
2. All medical reports and record of action from the MRT (appropriate cases);
3. All forms related to financial eligibility; and
4. All related correspondence, memoranda and documents except those which are required by law and regulation to be maintained in some other files.

**10:71-6.3 Forms applicable to the Medicaid Only program**

Forms applicable to the Medicaid Only program (aged, blind and disabled) are listed on page 1 of Appendix A; sample forms follow that list.