

CHAPTER 70

MEDICALLY NEEDED PROGRAM

Authority

N.J.S.A. 30:4D-1 et seq. and 30:4J-8 et seq.

Source and Effective Date

R.2006 d.364, effective September 12, 2006.
See: 38 N.J.R. 2368(a), 38 N.J.R. 4480(c).

Chapter Expiration Date

Chapter 70, Medically Needed Program, expires on September 12, 2011.

Chapter Historical Note

Chapter 70, Medically Needed Program, was adopted as R.1986 d.237, effective June 16, 1986 (operative July 1, 1986). See: 18 N.J.R. 831(a), 18 N.J.R. 1294(a).

Pursuant to Executive Order No. 66(1978), Chapter 70, Medically Needed Program, was readopted as R.1991 d.331, effective June 7, 1991. See: 23 N.J.R. 964(a), 23 N.J.R. 2042(a).

Pursuant to Executive Order No. 66(1978), Chapter 70, Medically Needed Program, was readopted as R.1996 d.263, effective May 9, 1996. See: 28 N.J.R. 1463(a), 28 N.J.R. 3001(a).

Pursuant to Executive Order No. 66(1978), Chapter 70, Medically Needed Program, was readopted as R.2001 d.183, effective May 8, 2001. See: 33 N.J.R. 977(a), 33 N.J.R. 1918(b).

Chapter 70, Medically Needed Program, was readopted as R.2006 d.364, effective September 12, 2006. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. INTRODUCTION

10:70-1.1 Program scope

(a) The Medically Needed Program, enacted by P.L. 1985, Chapter 371, extends limited Medicaid program benefits to certain groups of medically needed persons whose income and/or resources exceeds the standards for the Medicaid program but are within the standards for the Medically Needed Program, or whose income exceeds the standards for the Medically Needed Program but is insufficient to meet their medical expenses as determined in this chapter.

(b) Eligibility for the Medically Needed Program is limited to the following eligibility groups within the family and adult eligibility categories:

1. AFDC-related:
 - i. Pregnant women; and
 - ii. Children under 21 years of age.
2. SSI-related:
 - i. Persons 65 years of age or older;
 - ii. Persons who are blind; and
 - iii. Persons who are disabled.

(c) The medical services covered under the Medically Needed Program are limited to eligibility group and by the

spend-down provisions of N.J.A.C. 10:70-6. All restrictions and limitations on services applicable to the Medicaid program apply to services for the Medically Needy. The services covered under the Medically Needy Program (by eligibility group) are described in N.J.A.C. 10:49-5.3.

(d) Retroactive eligibility for the Medically Needy Program is available beginning with the third month prior to the month of application, if members of an eligibility group have incurred expenses for covered services within that period which have not yet been paid and the members would have been eligible for the Medically Needy coverage in the month in which the services were received. Members of the eligibility group need not be eligible for the program at the time of application in order to be eligible for retroactive eligibility. Application for retroactive eligibility may be made on behalf of a deceased person so long as the person was alive during a portion of the retroactive eligibility period and he or she incurred medical expenses for covered services.

1. Retroactive coverage is not available for any period prior to July 1, 1986, the effective date of the Medically Needy Program.

Amended by R.1996 d.263, effective June 3, 1996.

See: 28 N.J.R. 1463(a), 28 N.J.R. 3001(a).

Amended by R.2006 d.364, effective October 16, 2006.

See: 38 N.J.R. 2368(a), 38 N.J.R. 4480(c).

In (c), substituted "N.J.A.C. 10:70-" for "subchapter" and updated N.J.A.C. reference at end.

10:70-1.2 Purpose of the Medically Needy Manual

(a) Purpose of the regulations contained within this chapter is to:

1. Set forth eligibility for the Medically Needy Program;
2. Establish policy for calculating spend-down liability for persons whose income exceeds the Medically Needy Income Level; and
3. Specify the rights and responsibilities of program applicants and eligible persons.

(b) Circumstances which are neither specifically nor generally addressed in these regulations shall be referred to designated staff of the Division of Medical Assistance and Health Services for resolution.

(c) The directors of the county boards of social services shall assign copies of this manual to administrative staff, all Medically Needy Program staff working with applicants and beneficiaries, and to social services staff as appropriate and shall ensure that each staff member is thoroughly familiar with its contents in order to apply the required policy and procedures consistently.

(d) The Division of Medical Assistance and Health Services will issue revisions to the Manual as necessary. It is the responsibility of each holder of the Manual to maintain its

accuracy by inserting new material and removing obsolete pages promptly.

1. At least one administrative copy of all obsolete pages of the Manual must be maintained by the county board of social services.

(e) This manual is a public document. It is important that all copies in use be absolutely accurate and up-to-date. The manual is available as follows:

1. Copies are available in the State office of the Division of Medical Assistance and Health Services and in each county board of social services office for examination or review during regular office hours.

2. Specific policy material necessary for an applicant or beneficiary or his or her representative to determine whether a fair hearing is to be requested or to prepare for a fair hearing shall be provided to such persons without charge.

3. All public and university libraries which have agreed to keep the manual up-to-date will have a copy available under their regulations.

4. Each legal services office will be furnished with a copy of this manual.

5. Welfare, social service, and other nonprofit organizations will be furnished with a copy of this manual at no cost upon an official written request on agency letterhead to the Division of Medical Assistance and Health Services.

6. A current up-to-date copy of the manual or any part of it is available from the Division of Medical Assistance and Health Services at the cost of printing and mailing to anyone who requests it in writing.

Amended by R.2006 d.364, effective October 16, 2006.

See: 38 N.J.R. 2368(a), 38 N.J.R. 4480(c).

In (c), substituted "directors" for "director" and "beneficiaries" for "recipients"; in (c), (d)1 and (e)1, substituted "board of social services" for "welfare agency"; and in (e)2, substituted "beneficiary" for "recipient".

10:70-1.3 Administrative organization

The Medically Needy Program is administered by the county welfare agencies under the supervision of the Division of Medical Assistance and Health Services of the Department of Human Services.

10:70-1.4 Principles of administration

(a) The following principles of administration apply in the Medically Needy Program.

1. Any individual who believes he or she is eligible shall be afforded an opportunity to make application (or reapplication) for the Medically Needy Program without delay.

2. Program applicants or eligible persons are the primary source of information concerning program eligibility and spend-down liability. The county board of social services shall, when necessary, in the process of determining eligibility and spend-down liability, use secondary sources of information with the knowledge and consent of the applicant or eligible person.

3. There shall be strict adherence to law and complete conformity with regulations and administrative policy. Requirements other than those established by law or regulation shall not be imposed as a condition of receiving assistance under the Medically Needy Program.

Amended by R.2006 d.364, effective October 16, 2006.

See: 38 N.J.R. 2368(a), 38 N.J.R. 4480(c).

In (a)2, substituted "board of social services" for "welfare agency".

10:70-1.5 Confidentiality of information

(a) No member, officer, or employee of a county board of social services shall produce or disclose any confidential information to any person, except as authorized below.

1. Information considered confidential includes, but is not limited to, the following:

- i. Names and addresses;
- ii. Medical services provided;
- iii. Social and economic conditions or circumstances;
- iv. County board of social services evaluation of personal information; and
- v. Medical data, including diagnosis and past history of disease or disability.

2. The county board of social services may disclose information concerning an applicant or eligible person to persons and agencies directly related to the administration of Medicaid, including the Medically Needy Program. Persons and agencies directly related to program administration are those that are properly authorized to be involved in the:

- i. Establishment of eligibility;
- ii. Determination of the amount and scope of medical assistance;
- iii. Provision of services for beneficiaries; and
- iv. Conduct or assisting in the conduct of an investigation, prosecution, or civil or criminal proceeding related to the Medically Needy Program.

3. The county board of social services may release information whenever the applicant or eligible person waives confidentiality, but only to the extent authorized by the waiver.

4. If a court issues a subpoena for a case record or any other confidential information or for any agency repre-

sentative to testify concerning an applicant or eligible person, the county board of social services, personally or through counsel, shall make a statement substantially as follows:

i. "Under provisions of the Social Security Act, information concerning applicants and beneficiaries of Medical Assistance must be restricted to persons directly connected with the administration of such assistance. The authorities of the Federal government have advised that this includes a requirement of nondisclosure of such information in response to a subpoena. If a disclosure is made of this information, either by personal testimony or by production of records, this is considered nonconformance with Federal requirements and may subject the State to loss of Federal financial participation in the Medical Assistance program."

5. In no instance is it intended that any officer or employee of the agency place him or herself in contempt of court through refusal to follow the orders of a court. However, the above action as appropriate shall be taken in all instances, and a report of the results shall be entered in the case record.

6. Pertinent information and records may be released in conjunction with an administrative hearing conducted by the Office of Administrative Law regarding action or inaction by the county board of social services affecting an applicant's or eligible person's eligibility or entitlement under the Medically Needy Program.

Amended by R.2006 d.364, effective October 16, 2006.

See: 38 N.J.R. 2368(a), 38 N.J.R. 4480(c).

Substituted "board of social services" for "welfare agency" throughout; in (a), substituted "a" for "the"; in (a)2iii, substituted "beneficiaries" for "recipients"; and in (a)4i, substituted "beneficiaries" for "recipient".

10:70-1.6 Materials distributed to program applicants or eligible persons

(a) All materials distributed to applicants or eligible persons must:

1. Directly relate to the administration of the Medicaid program;
2. Have no political implications;
3. Contain names only of individuals directly connected with the administration of the Medicaid program; and
4. Identify those individuals only in their official capacity with the State or the county board of social services.

(b) The county board of social services shall not distribute materials such as "holiday" greetings, general public announcements, voting information, or alien registration notices.

(c) The county board of social services may distribute materials directly related to the health and welfare of program applicants and eligible persons, such as announcements of free medical examinations, availability of surplus food, voter registration and consumer protection information.

Amended by R.2006 d.364, effective October 16, 2006.
See: 38 N.J.R. 2368(a), 38 N.J.R. 4480(c).

In (a)4 and (c), substituted "board of social services" for "welfare agency"; in (b), substituted "board of social services shall" for "welfare agency must"; and in (c), inserted "voter registration".

10:70-1.7 Nondiscrimination

(a) Title VI of the Federal Civil Rights Act of 1964 (Public Law 88-352), the Americans with Disabilities Act, P.L. 101-336, and Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the ground of race, color, national origin, or handicap in the administration of any program for which Federal funds are received. Strict compliance with the provisions of this Act and any regulations based thereon is required as a condition of eligibility to receive Federal funds for assistance programs administered through the county boards of social services. These principles apply to the Medically Needy Program in New Jersey.

1. The county board of social services shall inform all staff members of their obligations in regard to Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, P.L. 101-336, and Section 504 of the Rehabilitation Act of 1973.

2. All persons seeking medical assistance shall be informed of Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, P.L. 101-336, and Section 504 of the Rehabilitation Act of 1973.

3. All persons seeking or receiving medical assistance shall be afforded an opportunity to file a complaint alleging discrimination on the ground of race, color, national origin, or handicap. Such complaints may be filed directly with the Regional Manager, U.S. Department of Health and Human Services, Office for Civil Rights, Jacob Javits Federal Building, 26 Federal Plaza, Suite 3312, New York, New York 10007, or with the Director, Division of Medical Assistance and Health Services, P.O. Box 712, Trenton, New Jersey 08625-0712.

4. In any instance in which a complaint of alleged discrimination is filed with a State or county agency, the complaint shall be forwarded immediately to the Director, Division of Medical Assistance and Health Services. The Director, upon receipt of any such complaint, will take whatever action he or she deems appropriate to the situation. This action may include, but is not limited to, the securing of reports from whatever sources may have knowledge pertinent to the situation and referral to the Division of Civil Rights of the New Jersey Department of Law and Public Safety, for investigation, evaluation, and recommendation by that agency.

5. The county board of social services shall afford full cooperation in the investigation of complaints of discrimination as may be requested by the Federal Department of Health and Human Services, the Division of Medical Assistance and Health Services, or the Division of Civil Rights.

6. The Director, Division of Medical Assistance and Health Services, will be responsible for all final determinations as to whether or not the fact of discrimination has been established and for all decisions as to the disposition of the complaint. In arriving at such determinations, the Director will take into consideration relevant decisions or actions on the part of a court or governmental agency.

7. Each county board of social services shall comply with the decision of the Director of the Division of Medical Assistance and Health Services on any complaint of discrimination, including the imposition of disciplinary action as found necessary and reasonable in the case of discrimination by a staff member.

Amended by R.2006 d.364, effective October 16, 2006.
See: 38 N.J.R. 2368(a), 38 N.J.R. 4480(c).

Inserted "the Americans with Disabilities Act, P.L. 101-336," and substituted "board of social services" for "welfare agency" throughout; in the introductory paragraph of (a), substituted "boards of social services" for "welfare agencies"; and in (a)3, updated address.

10:70-1.8 Assignment of medical support rights

(a) Any person who applies for the Medically Needy Program, by virtue of the application for benefits, is deemed to have assigned to the Commissioner of the Department of Human Services any rights to support for the purpose of medical care as determined by a court or administrative order and any rights to payment for care from any third party. It is required that program applicants and beneficiaries cooperate in the identification of and the obtainment of any such rights.

1. The county board of social services shall advise applicants and beneficiaries of the terms of the assignment and the consequences thereto.

Amended by R.2006 d.364, effective October 16, 2006.
See: 38 N.J.R. 2368(a), 38 N.J.R. 4480(c).

In the introductory paragraph of (a) and in (a)1, substituted "beneficiaries" for "recipients"; and in (a)1, substituted "board of social services" for "welfare agency".

SUBCHAPTER 2. CASE PROCESSING

10:70-2.1 Application

(a) Application for the Medically Needy Program shall be accomplished by the completion and signing of Form PA-1G for SSI-related cases and Form PA-1J for AFDC-related cases, as well as, any addenda to those forms as prescribed by the Division of Medical Assistance and Health Services.

1. Application for the Program shall be executed by:

- i. A parent, caretaker relative, or guardian for cases with children under the age of 21 residing with a parent or caretaker relative;
- ii. A child age 18 or older when not residing with a parent or caretaker relative;
- iii. A pregnant woman age 18 or older;
- iv. The parent or caretaker relative of a disabled or blind child;
- v. The adult seeking benefits as aged, blind, or disabled.

2. For cases which, because of confinement, illness, incapacity, disability, or lack of competence of the person(s) required to execute the application, and for children who not yet attained the age of 18, the application may be executed on such person's behalf by:

- i. A relative by blood or marriage;
- ii. A staff member of a public or private welfare agency of which the person seeking program benefits is a client, who has been designated by the agency to so act;
- iii. The attorney or physician of the person seeking program benefits;
- iv. A staff member of an institution or facility in which the person is receiving care, who has been designated by the institutional facility to so act.

3. A legal guardian shall be recognized as an authorized agent to initiate an application for the Medically Needy Program.

(b) The county board of social services, under policies and procedures established by the Division of Medical Assistance and Health Services, has the direct responsibility in the application process to:

1. Inform applicants of the purpose and the eligibility requirements for the Medically Needy Program, their rights and responsibilities under the Program, and of their right to a fair hearing;
2. Receive applications and review them for completeness, consistency, and reasonableness;
3. Assist program applicants in exploring their eligibility for program benefits;
4. Make known to program applicants, the appropriate resources and services both within the agency and the community; and
5. Assure the prompt and accurate submission of eligibility data to the Medicaid Status File for eligible persons and prompt notification to ineligible persons of the reasons for their ineligibility.

(c) As part of the application process, the program applicant has the responsibility to:

1. Complete, with assistance from the county board of social services as needed, any forms required as part of the application process;
2. Assist the county board of social services in securing evidence that verifies his or her statements;
3. Report any change in circumstances that may affect program eligibility or amount of benefits;
4. Provide the county board of social services evidence, as requested, of incurred medical expenses and liability for payment; and
5. If applicable, submit to examinations or tests and provide such medical and other evidence as may be necessary to determine disability or blindness.

(d) With the exceptions noted below, disposition of an application for the Medically Needy Program must be accomplished within 30 days of the date of application (or the date of the inquiry form PA-1C, if applicable) for AFDC-related cases and for persons applying on the basis of being aged. The disposition standard for the disabled and blind is 60 days from the date of application (or the date of the inquiry form PA-1C, if applicable).

1. "Disposition of the application" means the official determination by the county board of social services of application approval or rejection.

2. Disposition of the application may exceed the applicable processing standards when substantially reliable evidence of eligibility or entitlement is lacking at the end of the processing period. In such circumstances, the application may be continued in pending status. The county board of social services shall document that the delay in application processing resulted from one of the following:

- i. Circumstances wholly within the applicant's control;
- ii. A determination to afford the applicant, whose evidence of eligibility or entitlement is inconclusive, additional time to provide sufficient evidence of eligibility before final action on his or her application;
- iii. An administrative or other emergency that could not reasonably be avoided; or
- iv. Circumstances wholly outside the control of both the applicant and the county board of social services.

3. When application processing is delayed beyond the processing standards, the county board of social services shall provide to the program applicant written notification prior to the expiration of the processing period setting forth the specific reasons for the delay.

4. Each county board of social services director shall establish appropriate operational controls to expedite the processing of applications and assure maximum compliance with the processing standards.

i. The county board of social services shall maintain control records which identify all pending applications which did not meet the processing standards and the reason therefor. That record shall be adequate to make possible the preparation of reports of such information as may be requested by the Division of Medical Assistance and Health Services.

(e) The following actions on an application qualify as disposition of an application for purposes of the processing standards:

1. Approved: The applicant(s) has been determined eligible for participation in the Medically Needy Program;

2. Denied: The applicant(s) has been determined ineligible for participation in the Medically Needy Program;

3. Eligible pending spend-down: The applicant(s) is eligible for participation in the Medically Needy Program in all respects except that the countable income of the budget unit exceeds the medically needy income levels. Eligibility for program benefits may be established through medical spend-downs (see subchapter 6);

4. Dismissed: A decision by the county board of social services that the application process need not be completed because:

i. The death of the applicant(s) (the application process must be completed if there are unpaid medical bills for covered services incurred in either the retroactive coverage period or subsequent to program application or inquiry);

ii. The applicant(s) cannot be located;

iii. The application was registered in error;

iv. The applicant(s) moved out of the State during the application process (see N.J.A.C. 10:70-2.4 for a move to another county within the State during the application process).

5. Withdrawn: The applicant(s) request that eligibility for the Medically Needy Program not be considered further.

(f) The county board of social services is required by law (N.J.S.A. 30:6-1.2) to report to the Department of Human Services, Commission for the Blind and Visually Impaired, every individual coming to its attention who is known to be, or is believed likely to become, permanently blind. Such information shall be reported on a form prescribed by the Commission.

Amended by R.1991 d.331, effective July 1, 1991.

See: 23 N.J.R. 964(a), 23 N.J.R. 2042(a).

Word "collaborates" deleted in (c)2.

Amended by R.2006 d.364, effective October 16, 2006.

See: 38 N.J.R. 2368(a), 38 N.J.R. 4480(c).

Substituted "board of social services" for "welfare agency" throughout; in (b)4 and (c)4, added "and" at the end; in (d)2, inserted "applicable"; in (d)4i, substituted "board of social services shall" for "welfare agency will" and deleted "will" preceding "identify"; and in (f), updated N.J.S.A. reference.

10:70-2.2 Interview

A personal face-to-face interview with the program applicant(s) or the authorized agent is required as part of the process of determining program eligibility.

10:70-2.3 Collateral verification

(a) Collateral verification is the use of third-party information (both documentary and nondocumentary) from agencies or individuals other than members of the applicant's household to substantiate the accuracy of statements made on the application and during the interview.

1. Program applicants have the primary responsibility for providing verification of factors of eligibility. If it would be difficult or impossible for the applicants to provide necessary verification in a timely manner, the county board of social services shall provide assistance in obtaining the evidence.

2. In the absence of credible verification of all eligibility factors, eligibility for the Medically Needy Program may not be established.

Amended by R.2006 d.364, effective October 16, 2006.

See: 38 N.J.R. 2368(a), 38 N.J.R. 4480(c).

In (a)1, substituted "board of social services" for "welfare agency".

10:70-2.4 Case transfer

(a) When individuals move permanently to another county within the State, responsibility for the case shall be transferred in accordance with the provisions of this section. The case transfer shall be accomplished in a manner so not to adversely affect the rights of any individual to program entitlement. In a case transfer, the existing eligibility period, as established by the county of origin, does not change.

1. A temporary visit out-of-county shall not be considered to be a change of county residence until the visit has continued for longer than three calendar months.

(b) The county of origin shall initiate and the receiving county shall, on request, immediately undertake an investigation of the circumstances surrounding the move. If the move is permanent, each county shall execute its respective responsibilities in accordance with (c) and (d) below.

(c) For persons who move from the county in which application for the Medically Needy Program is made prior to a determination of eligibility or ineligibility:

1. The county in which the application was made has the responsibility to:

ii. Refugee—INS Form I-94 annotated with stamp showing entry as refugee under section 207 of the Immigration and Nationality Act and date entry into the United States; INS Form I-688B annotated “274a.12(a)(3),” I-766 annotated “A3,” or I-571. Refugees usually adjust to Lawful Permanent Resident status after 12 months in the United States, but for purposes of determining Medically Needy eligibility, they are considered refugees. Refugees whose status has been adjusted will have INS Form I-551 annotated “RE-6,” “RE-7,” “RE-8,” or “RE-9.”

iii. Asylees—INS Form I-94 annotated with a stamp showing grant of asylum under section 208 of the Immigration and Nationality Act, a grant letter from the Asylum Office of the Immigration and Naturalization Service, Form-688B annotated “274a.12(a)(5),” or I-766 annotated “A5.”

iv. Deportation Withheld—Order of an Immigration Judge showing deportation withheld under section 243(h) of the Immigration and Nationality Act and the date of the grant, or INS Form I-688B annotated “274a.12(a)(10)” or I-766 annotated “A10.”

v. Parole for at Least a Year—INS Form I-94 annotated with stamp showing grant of parole under section 212(d)(5) of the Immigration and Nationality Act and a date showing granting of parole for at least a year.

vi. Conditional Entry under Law in Effect before April 1, 1980—INS Form I-94 with stamp showing admission under section 203(a)(7) of the Immigration and Nationality Act, refugee-conditional entry, or INS Form I-688B annotated “274a.12(a)(3)” or I-766 annotated “A3.”

vii. Cuban Haitian Entrant—INS Form I-94 stamped “Cuban/Haitian Entrant” under section 212(d)(5) of the INA.

viii. An American Indian born in Canada—INS Form I-551 with code S13 or an unexpired temporary I-551 stamp (with code S13) in a Canadian passport or on Form I-94.

ix. A member of certain Federally recognized Indian tribes—Membership card or other tribal document showing membership in tribe.

x. Amerasian Immigrant—INS Form I-551 with the code AM1, AM2, or AM3 or passport stamped with an unexpired temporary I-551 showing a code AM6, AM7, or AM8.

4. For aliens subject to the five-year waiting period before eligibility for Medically Needy can be established, the date of entry into the United States shall be determined as follows:

i. On INS Form I-94, the date of admission should be found on the refugee stamp. If missing, the county

board of social services should contact the INS local district office by filing Form G-845, attaching a copy of the document;

ii. If the alien presents INS Form I-688B (Employment Authorization Document), I-766, or I-571 (Refugee Travel Document), the county board of social services shall ask the alien to present Form I-94. If that form is not available, the county board of social services shall contact the INS via the submission of Form G-845, attaching a copy of the documentation presented;

iii. If the alien presents a grant letter or court order, the date of entry shall be derived from the date of the letter or court order. If missing, the county board of social services shall contact the INS by submitting a Form G-845, attaching a copy of the document presented.

5. For aliens who present themselves as on active duty or honorably discharged from the United States Armed Forces, the following serve as documentation:

i. For discharge status, an original, or notarized copy of the veteran’s discharge papers issued by the branch of service in which the applicant was a member;

ii. For active duty military status, an original, or notarized copy, of the applicant’s current orders showing the individual is on full-time duty with the U.S. Army, Navy, Air Force, Marine Corps., or Coast Guard (full-time National Guard duty does not qualify), or a military identification card (DD Form 2 (active));

iii. A self declaration under penalty of perjury may be accepted, pending receipt of acceptable documentation.

Amended by R.1999 d.253, effective August 2, 1999.

See: 31 N.J.R. 97(a), 31 N.J.R. 2203(b).

Rewrote the section.

Amended by R.2006 d.364, effective October 16, 2006.

See: 38 N.J.R. 2368(a), 38 N.J.R. 4480(c).

Substituted “board of social services” for “welfare agency” throughout; in the introductory paragraph of (a), inserted “an alien who has been lawfully admitted for permanent residence for the five years prior to the application”; in (a)2, substituted “shall” for “will”; rewrote the introductory paragraph of (f); and in (f)3x, substituted “AM6” for “AN6”.

10:70-3.3 Residency

(a) In order to be eligible for the Medically Needy Program, an individual must be a resident of the State of New Jersey. State residence shall be determined in accordance with the regulations at N.J.A.C. 10:71-3.5, 3.7, and 3.8.

Amended by R.1991 d.331, effective July 1, 1991.

See: 23 N.J.R. 964(a), 23 N.J.R. 2042(a).

Changed internal N.J.A.C. cites.

10:70-3.4 Eligibility group criteria

(a) Eligibility for the Medically Needy Program is limited to groups of persons within two specified eligibility categories. An individual must meet the definition of one of the

categories below to be eligible for the Medically Needy Program.

(b) The following eligibility groups are within the AFDC-related eligibility category:

1. Pregnant women: Needy pregnant women of any age during the term of a medically verified pregnancy, through the end of the month during which the 60th day from delivery occurs.

i. A child born to a woman eligible as a pregnant woman under the provisions of this chapter shall remain eligible for a period not less than 60 days from his or her birth, and up to one year so long as the mother remains eligible for Medicaid, or would remain eligible if pregnant, whether or not application has been made, if the child lives with his or her mother.

2. Children under the age of 21: Needy children under the age of 21.

i. Children under the age of 21 may be eligible regardless of: Parental deprivation; school attendance; emancipation; residence with parent(s) or other caretaker relative(s); or Work Incentive program (WIN) or other AFDC employment or training requirements.

ii. A child may be eligible for program benefits when temporarily absent from his or her family in accordance with the provisions of N.J.A.C. 10:69-3.28 through 3.30.

(c) The following eligibility groups are within the SSI-related eligibility category:

1. Aged: Needy persons who are 65 years of age or older.

2. Blind: Needy persons who are statutorily blind. Statutory blindness is central visual acuity of 20/200 or less in the better eye with the use of correcting lens. An eye which has a limitation in the field of vision so that the widest diameter of the visual field subtends at an angle no greater than 20 degrees is considered to have a central visual acuity of 20/200 or less.

i. Persons who are receiving Social Security disability benefits as a result of blindness are presumed to be blind for purposes of this program.

ii. Except for persons described in (c)2i above, the determination of statutory blindness is the responsibility of the Division of Medical Assistance and Health Services, Disability Review Section.

3. Disabled: Needy persons who are disabled. Disability is the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. The severity of

impairment must be such that the individual is unable to do his or her previous work or any other substantial gainful activity which exists in the national economy. In the determination of a person's ability to do any other work, residual functional capacity, age, education, and work experience are considered.

i. Disability for children under the age of 18 is any medically determinable physical or mental impairment which compares in severity to an impairment that would make an adult disabled.

ii. Persons who are receiving Social Security disability benefits are presumed to be disabled for purposes of this program.

iii. Except for persons described in (c)3ii above, the determination of disability is the responsibility of the Division of Medical Assistance and Health Services, Disability Review Section.

(d) Under certain circumstances, an individual may be considered for eligibility under both the SSI-related and AFDC-related categories (for example, a blind child under the age of 21). Such an individual may select the category under which he or she wishes to be considered for program eligibility upon being advised by the county board of social services of the option and the consequences thereof.

Amended by R.1989 d.397, effective August 7, 1989.

See: 21 N.J.R. 965(a), 21 N.J.R. 2383(a).

Provisions on eligibility of newborn and specification of time limit of eligibility of mother after delivery added at (b).

Amended by R.1991 d.331, effective July 1, 1991.

See: 23 N.J.R. 964(a), 23 N.J.R. 2042(a).

Shift in administrative functions from Division of Public Welfare, Bureau of Medical Affairs, Medical Review Team to Division of Medical Assistance and Health Services, Disability Review Section.

Amended by R.2006 d.364, effective October 16, 2006.

See: 38 N.J.R. 2368(a), 38 N.J.R. 4480(c).

In the introductory paragraph of (b), deleted "AFDC-related:" from the beginning; in (b)1, inserted "pregnant"; in (b)2ii, updated N.J.A.C. references; in the introductory paragraph of (c), deleted "SSI-related:" from the beginning; in (c)1, substituted "who are" for "aged"; and in (d), substituted "board of social services" for "welfare agency".

10:70-3.5 Budget unit

(a) The term "budget unit" means those persons whose income and resources are counted in the determination of eligibility for persons applying for or eligible for the Medically Needy Program. Incurred medical expenses of all members of the budget unit are applied in meeting spend-down liability when applicable (see N.J.A.C. 10:70-6). Only those members of the budget unit who are either SSI-related or AFDC-related (see N.J.A.C. 10:70-3.4) may qualify for coverage under the Medically Needy Program.

(b) For AFDC-related persons (pregnant women and children under the age of 21), the budget unit shall be constituted as follows:

1. A pregnant woman shall comprise a budget unit of two (except in medically verified cases of multiple preg-

nancy, where the budget unit shall consist of the pregnant woman and the confirmed number of fetuses). If the pregnant woman is married and living with her husband, the budget unit shall consist of one additional person. The woman's natural or adoptive children under the age of 21, living in the same household, shall be included in the budget unit. If the pregnant woman is under the age of 21 and resides in the same household as her natural or adoptive parents, the parents shall be included in the budget unit.

2. For children under the age of 21, the budget unit shall be composed of all blood-related or adoptive brothers and sisters under the age of 21 living in the same household, as well as the natural or adoptive parent(s) of the children when living in the same household.

i. In the event the children under the age of 21 reside with a stepparent, the stepparent may be included in the budget unit. If the stepparent is included in the budget unit, his or her income and resources will be included in the determination of Medically Needy eligibility and his or her medical expenses will apply in the determination of spend-down liability, if applicable. If the stepparent is not to be included in the budget unit, his or her income, resources, and medical expenses will not be included in the determination of Medically Needy eligibility.

ii. The option of including or not including the stepparent in the budget unit, and the consequences thereof, shall be fully explained to program applicants so that an informed decision may be made.

3. Any person who is in receipt of AFDC or SSI or who has applied for and been found eligible for regular Medicaid benefits related to those programs shall not be included in the budget unit of an AFDC-related case. Any person whose income and resources have been deemed to an eligible SSI beneficiary shall likewise not be included in the budget unit.

(c) For SSI-related persons (aged, blind, and disabled individuals), the budget unit shall be constituted as follows:

1. An aged, blind, or disabled adult not living with his or her spouse is a budget unit of one regardless of the number of other persons (related or unrelated) living in the same household.

2. An aged, blind, or disabled adult living with his or her spouse (whether or not the spouse is program eligible) is a budget unit of two regardless of other persons (related or unrelated) living in the same household (see N.J.A.C. 10:70-4.6(d)1 for an exception to this rule in circumstances involving an SSI-related child).

3. For a blind or disabled child (under the age of 21), the budget unit shall consist of the child. Parental income is deemed to any such child under the age of 18 in accordance with provisions at N.J.A.C. 10:70-4.6(d).

4. For circumstances in which more than one sibling residing in the same household with their parent(s) apply as SSI-related, each such child will be a budget unit of one person and parental income deemed in accordance with provisions at N.J.A.C. 10:70-4.6(d).

5. Any person who is in receipt of AFDC or SSI or who has applied for and been found eligible for regular Medicaid benefits related to those programs shall not be included in the budget unit of an SSI-related case.

6. When one or more siblings of a Medically Needy SSI-related child apply for and are found eligible for the Medically Needy Program as AFDC-related, the SSI-related child will be considered in a budget unit of one. (Parental income and resources will be considered toward the AFDC-related children only.)

(d) In family groups living in the same household, some of the members may qualify as SSI-related and others as AFDC-related. The family's choice of persons for whom Medically Needy benefits are sought will vary the composition of the budget unit and affect eligibility for the program. Available options shall be fully explained to the family by the county board of social services so that the family may make an informed decision regarding application options.

Amended by R.1991 d.331, effective July 1, 1991.

See: 23 N.J.R. 964(a), 23 N.J.R. 2042(a).

Change to consider pregnant mother and medically verified number of fetuses in budget unit.

Amended by R.2006 d.364, effective October 16, 2006.

See: 38 N.J.R. 2368(a), 38 N.J.R. 4480(c).

In (b)3, substituted "beneficiary" for "recipient"; and in (d), substituted "board of social services" for "welfare agency".

Cross References

Special Medicaid programs, household units, see N.J.A.C. 10:72-3.5.

10:70-3.6 Third party liability

Program applicants and beneficiaries shall identify to the county board of social services any third party (individual, entity, or program) that is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or beneficiary.

Amended by R.2006 d.364, effective October 16, 2006.

See: 38 N.J.R. 2368(a), 38 N.J.R. 4480(c).

Substituted "beneficiaries shall" for "recipients are required to", "board of social services" for "welfare agency", and "beneficiary" for "recipient".

10:70-3.7 Eligibility under other Medicaid categories

Eligibility for the Medically Needy Program will not be established for any individual who is eligible for Medicaid Only, Medicaid Special, Medicaid for the Unborn, or extended Medicaid benefits resulting from the previous receipt of AFDC. Such individuals are eligible for payment of covered medical services under the categorically needy Medicaid program.

10:70-3.8 Persons sanctioned under AFDC rules

(a) Persons who are ineligible for AFDC due to the imposition of a sanction of ineligibility in that program may be eligible for the Medically Needy Program (with the exception below) without regard to the sanction.

1. Any person ineligible for AFDC solely as a result of being on strike is likewise ineligible for the Medically Needy Program. Because caretaker relatives are not eligible for the Medically Needy Program, participation in a strike by the caretaker relative will not affect the eligibility of children applying for the Medically Needy Program.

2. See N.J.A.C. 10:70-4.5(c) for persons ineligible for AFDC due to a period of ineligibility imposed as a result of the receipt of lump sum income.

10:70-3.9 Application for other benefits

(a) As a condition of eligibility for the Medically Needy Program, applicants and beneficiaries are required to take all necessary steps to obtain any annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Applicants and beneficiaries shall avail themselves of any health insurance available to the budget unit at no cost, such as coverage provided at no cost by an employer.

1. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensation and pensions, Social Security benefits, unemployment compensation.

Amended by R.2006 d.364, effective October 16, 2006.
See: 38 N.J.R. 2368(a), 38 N.J.R. 4480(c).

In the introductory paragraph of (a), substituted "beneficiaries" for "recipients" and "beneficiaries shall" for "recipients must".

10:70-3.10 Inmates of public institutions

(a) Any person who is an inmate of a public institution is ineligible for the Medically Needy Program.

(b) Any person who is incarcerated in a Federal, State, or local correctional facility (prison, jail, detention center, reformatory, etc.) is not eligible for Medically Needy Program benefits.

SUBCHAPTER 4. INCOME ELIGIBILITY**10:70-4.1 Medically Needy Income Levels**

(a) Income eligibility for the Medically Needy Program may be established by two methods. If the countable income of the budget unit (as determined in this subchapter) is equal to or less than the Medically Needy Income Level (MNIL) appropriate for the budget unit size, income eligibility is established and the eligible persons are entitled to Medically Needy Program payment for covered services. For cases in

which the countable income of the budget unit exceeds the appropriate MNIL, income eligibility may only be established through medical spend-down (see N.J.A.C. 10:70-6).

1. The monthly MNIL for budget units consisting of two to 10 persons shall be based on the AFDC allowance standards (as set forth at N.J.A.C. 10:69-10.3). The allowance standard for the eligible unit size corresponding to the budget unit size will be multiplied by 1.333. The result of this computation shall be multiplied by 12 and the result rounded up to the next nearest \$100.00. After rounding, the amount shall be divided by 12. Any cents resulting from this calculation are dropped and the remainder is the monthly MNIL.

2. To establish the monthly MNIL for budget units of more than 10 persons, the calculation in (a)1 above shall be applied to the AFDC increment applicable for each additional person in eligible units of more than 10 persons (see N.J.A.C. 10:69-10.3). The resulting amount for each additional budget unit member shall be added to the monthly MNIL for 10 persons.

3. For budget units of one person, the AFDC allowance standard for two persons shall be reduced by the increment for each additional person applicable to eligible units of more than 10 persons (see N.J.A.C. 10:69-10.3). The result of this computation shall be calculated as in (a)1 above. The resulting amount is the monthly MNIL for one person.

Amended by R.2006 d.364, effective October 16, 2006.

See: 38 N.J.R. 2368(a), 38 N.J.R. 4480(c).

In (a)1, (a)2, and (a)3, deleted "-C and -F" following "AFDC", substituted "10" for "ten", and updated N.J.A.C. references; in (a)2, substituted "10" for "12"; and in (a)2 and (a)3, substituted "in (a)1 above" for "in 1. above".

10:70-4.2 Eligibility periods

(a) The retroactive eligibility period is the three calendar months immediately preceding the month in which application for benefits is made.

(b) The prospective eligibility period is the six calendar months beginning with the month of application. Once established, the prospective eligibility period will not be changed unless the case becomes ineligible for the Medically Needy Program during the eligibility period. Upon reapplication for the program, a new prospective eligibility period will be established.

1. Except for certain pregnant women, eligibility does not extend beyond the end of the eligibility period. A pregnant woman, who delivers her child near the end of the six-month eligibility period, may be eligible for a period exceeding six months if her post-partum extended eligibility exceeds the last day of the prospective eligibility period (see N.J.A.C. 10:70-3.4(b)1). In all other cases, continuation of program benefits is contingent upon a redetermination of all factors of eligibility (see N.J.A.C. 10:70-2.5). Any period of eligibility for a pregnant woman

action shall be considered as income to the eligible family, except as follows:

1. The county board of social services shall not terminate eligibility when the proceeds from the sale of an exempt resource are promptly reinvested in another exempt resource of the same type. Funds designated by the client as being reserved for such reinvestment, including any interest accrued during the period, may be held for up to three months, provided the funds are held in escrow or are otherwise unavailable for daily living expenses. The three-month period may be extended upon written approval of the Division of Medical Assistance and Health Services.

(j) When a trust fund exists for a member of the eligible family, the county board of social services shall determine whether or not the funds are currently accessible.

1. If accessible, the funds represent a source of funds for support and shall be considered in determining eligibility.

2. If not accessible, the following shall apply:

i. When a trust fund is not currently accessible and it exists at the time of application, the client shall, as a condition of eligibility, make a bona fide presentation of a petition to the appropriate court for release of the funds for current and future support. The agency shall assist the client if necessary.

ii. When a trust fund is not currently accessible and the trust fund came into being during the term of the assistance case, the agency shall present a petition to the appropriate court for release of funds for current and future support. The client shall, as a condition of continuing eligibility, provide whatever cooperation as may be necessary in the presentation of the petition.

Repeal and New Rule, R.2006 d.364, effective October 16, 2006.
See: 38 N.J.R. 2368(a), 38 N.J.R. 4480(c).
Section was "AFDC-related cases".

10:70-5.3 SSI-related cases

(a) For SSI-related cases, the resource provisions of the Medicaid Only (Aged, Blind, and Disabled) program shall apply in determining countable resources for the Medically Needy Program.

1. Medicaid Only provisions requiring the deeming of the resources of an alien's sponsor (N.J.A.C. 10:71-4.6(f)) do not apply in the Medically Needy Program.

(b) The provisions relating to deeming of resources found at N.J.A.C. 10:71-4.6 apply in SSI-related cases. In the deeming of resources from one parent to a child, the countable parental resource in excess of the Medicaid Only resource limit for an individual shall be deemed to the child. When the resources of two parents must be deemed to the child, countable parental resources in excess of the Medicaid Only resource limit for a couple shall be deemed to the child.

Amended by R.1991 d.331, effective July 1, 1991.
See: 23 N.J.R. 964(a), 23 N.J.R. 2042(a).
Internal N.J.A.C. cites changed.

10:70-5.4 Transfer of resources; pursuit of resources

(a) For AFDC-related cases, the provisions of this subsection shall apply to all members of the budget unit.

1. Applicants shall disclose promptly any transfer of property made within 24 months prior to the time of application. Beneficiaries shall promptly disclose any transfer of property made during the entire time the case is in active status.

2. The circumstances surrounding the transfer of property shall be evaluated and a determination will be made regarding whether the transfer was for adequate consideration.

3. If the transfer of the property was determined to have been made for adequate consideration, any proceeds remaining shall be evaluated as resources.

4. If the transfer of the property was determined to have been made without receipt of adequate consideration, the applicant or beneficiary may have legal rights to secure the return of the property or the payment of adequate consideration. The county board of social services shall assist the applicant or beneficiary in reclaiming the property or in obtaining adequate consideration for the property. Any proceeds resulting from such effort shall be evaluated as resources.

5. Applicants under this chapter shall pursue all legal rights to child support, including medical support, unless good cause exists, as specified at N.J.A.C. 10:90-16.5.

(b) For SSI-related cases, the Medicaid Only Program rules regarding the transfer of resources shall apply to all members of the budget unit. Such assignments and transfers shall be evaluated as follows:

1. Transfers made before June 1, 2001 shall be evaluated in accordance with N.J.A.C. 10:71-4.7.

2. Transfers made on and after June 1, 2001 shall be evaluated in accordance with N.J.A.C. 10:71-4.10.

Amended by R-1991 d.331, effective July 1, 1991.
See: 23 N.J.R. 964(a), 23 N.J.R. 2042(a).
Internal N.J.A.C. cite changed.

Amended by R.2006 d.364, effective October 16, 2006.
See: 38 N.J.R. 2368(a), 38 N.J.R. 4480(c).
Section was "Transfer of resources". Rewrote the section.

SUBCHAPTER 6. MEDICAL SPEND-DOWN

10:70-6.1 Eligibility under medical spend-down

(a) Persons who are eligible in all respects for the Medically Needy Program, except that the countable income of the

budget unit as determined in subchapter 4 exceeds the medically needy income level, may establish eligibility for payment of covered services benefits through medical spend-down.

1. Medical spend-down is a process whereby the excess countable income of a budget unit is offset by the allowable incurred medical expenses of the budget unit.

2. Spend-down liability is the amount by which the countable income of the budget unit exceeds the medically needy income level as determined under the provisions of this subchapter.

(b) The retroactive eligibility period is the three calendar months immediately preceding the month in which application for benefits is made. For each of the three months, a monthly spend-down liability is established. The monthly spend-down liability shall be the amount by which actual countable income of the budget unit for that month exceeds the medically needy income level for that month.

1. Within the retroactive eligibility period, income eligibility is established for any month in which the allowable incurred medical expenses of the budget unit exceed the spend-down liability established for that month.

2. Eligibility for payment of covered services is established effective with the first day of each or any month in which the allowable incurred medical expenses of the budget unit exceed the spend-down liability only for those claims for services that are not covered under the Medically Needy Program and were not used to meet spend-down liability. (Note: The effective date to be entered in the Medicaid Status File is the day after the day that spend-down liability is met.)

(c) Except for retroactive eligibility, income eligibility for the Medically Needy Program is determined using a six-month prospective eligibility period. The six-month period begins with the month in which application for benefits is made. For the full six-month period, a six-month spend-down liability is established. The six-month spend-down liability shall be the amount by which the countable income of the budget unit, as determined at N.J.A.C. 10:70-4, exceeds the budget unit's medically needy income level for the full six-month period.

1. Eligibility for medically needy benefits is established effective with the first day of the month in which the allowable incurred medical expenses of the budget unit exceed the six-month spend-down liability only for those claims for services that are covered under the Medically Needy Program and were not used to meet spend-down liability. (Note: The effective date to be entered on the Medicaid Status File is the day after the day spend-down liability is met.)

2. Changes in the countable income of the budget unit and/or the size of the budget unit during the six-month

prospective period require a recalculation of the six-month spend-down liability.

3. In order to receive program benefits, upon meeting the spend-down liability, all other factors of program eligibility must also be met.

Amended by R.2006 d.364, effective October 16, 2006.

See: 38 N.J.R. 2368(a), 38 N.J.R. 4480(c).

In the introductory paragraph of (c), updated the N.J.A.C. reference.

10:70-6.2 Allowable incurred medical expenses

(a) Allowable incurred medical expenses which may be applied against spend-down liability are those which are:

1. Incurred by a member of the budget unit and for which a member of the budget unit has an express obligation for payment;

2. For necessary medical or remedial services recognized under state law, provided, prescribed, or recommended by a qualified and appropriately licensed medical practitioner; and

3. Submitted with sufficiently detailed information and documentation to determine the allowableness of the expense. Minimum necessary information includes: the date of the service, name of the provider, the nature of the service, the name of the individual to whom the service was provided, and the total amount of the bill, as well as the remaining balance outstanding.

(b) Medical expenses which have been paid in full prior to the retroactive budget period, shall not be applied against spend-down liability. However, medical expenses paid by a member of the budget unit during an eligibility period may be used in meeting spend-down liability so long as the expense met the criteria specified in (a) above.

(c) The county board of social services shall refer the submission of expenses for questionable medical services to designated staff of the Division of Medical Assistance and Health Services for a determination of allowableness.

(d) To the extent that payment of any bill for medical service is the responsibility of a third party (for example, a health insurer), the expense shall not be applied against spend-down liability. An exception would be made for any medical expense paid by a State or territory, or a subdivision of a State or territory (except for a Medicaid program), if the program is financed by a State or territory.

(e) Any bill for medical services rendered more than six months prior to the bill's submission to the county board of social services for application against spend-down liability must be accompanied by a statement from the provider that the expense remains an express obligation of a member of the budget unit and has not been forgiven by the provider or otherwise determined uncollectible.

Amended by R.1991 d.331, effective July 1, 1991.

See: 23 N.J.R. 964(a), 23 N.J.R. 2042(a).