

## CHAPTER 72

NEW JERSEY CARE . . . SPECIAL MEDICAID  
PROGRAMS MANUAL

## Authority

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

## Source and Effective Date

R.1992 d.364, effective September 21, 1992.  
See: 24 N.J.R. 2145(a), 24 N.J.R. 3343(a).

## Executive Order No. 66(1978) Expiration Date

Pursuant to the requirements and criteria of Executive Order No. 66(1978), Chapter 72 expires on August 24, 1997.

## Chapter Historical Note

Chapter 72, New Jersey Care . . . Special Medicaid Programs Manual, became effective June 29, 1987 as Emergency New Rules R.1987 d.312 and was continued in effect by R.1987 d.380. See: 19 N.J.R. 1324(a), 19 N.J.R. 1731(a).

See section annotations for additional rulemaking.

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## SUBCHAPTER 1. INTRODUCTION

## 10:72-1.1 Program scope

(a) This chapter contains the criteria for Medicaid eligibility for certain pregnant women and children not eligible under the provisions of N.J.A.C. 10:81 and 82, as well as, certain aged, blind, and disabled persons not eligible under the provisions of N.J.A.C. 10:71.

1. Because the eligibility criteria established by the rules contained within this chapter are more liberal than those applicable under AFDC-related Medicaid and SSI-related Medicaid, children (of the applicable ages), pregnant women, and aged, blind or disabled individuals losing Medicaid eligibility because of financial reasons should be evaluated under the provisions of this chapter for the possibility of continuing Medicaid eligibility.

2. Persons financially ineligible for Medicaid under the provisions of N.J.A.C. 10:71, 81 and 82 and who are income ineligible for Medicaid under the provisions of this chapter shall be evaluated for eligibility as Medically Needy under the provisions of N.J.A.C. 10:70.

i. Persons determined eligible for the Medically Needy Program may be also determined eligible as specified low-income Medicare beneficiaries.

(b) Medicaid eligibility under the provisions of this chapter is limited to:

1. Pregnant women; and

2. Children under the age of six years and children born after September 30, 1983 who have:

i. Effective December 1, 1991, attained the age of six, seven, or eight;

ii. Effective October 1, 1992, attained the age of nine;

- iii. Effective October 1, 1993, attained the age of 10;
- iv. Effective October 1, 1994, attained the age of 11;
- v. Effective October 1, 1995, attained the age of 12;
- vi. Effective October 1, 1996, attained the age of 13;
- vii. Effective October 1, 1997, attained the age of 14;
- viii. Effective October 1, 1998, attained the age of 15;
- ix. Effective October 1, 1999, attained the age of 16;
- x. Effective October 1, 2000, attained the age of 17; and
- xi. Effective October 1, 2001, attained the age of 18.

3. Aged, blind, and disabled individuals (as defined by Title XIX of the Social Security Act). For purposes of this chapter, an aged individual is a person who is 65 years of age or older.

4. Aged, blind, and disabled individuals (as defined in (b)3 above) who qualify as specified low-income Medicare beneficiaries.

i. Specified low-income Medicare beneficiaries must be residents of the State, must be receiving Medicare benefits, Parts A and B, and must meet the income and resource requirements specified in N.J.A.C. 10:72-4.1(b) and 4.5(b).

ii. The eligibility determination process for specified low-income Medicare beneficiaries is the responsibility of the Division of Medical Assistance and Health Services, through the Office of Pharmaceutical Assistance to the Aged (PAAD), using the standard PAAD application form.

iii. Persons determined eligible as specified low-income Medicare beneficiaries are entitled to payment of Medicare Part B Premiums only, beginning in the month of application and up to three prior months, but no earlier than January 1, 1993.

iv. The Division of Medical Assistance and Health Service shall promptly notify any applicant for, or recipient of the specified low-income Medicare beneficiary benefit, in writing, of any agency decision affecting the application disposition or the receipt of the benefit. When a decision relates to any adverse action which may entitle an individual to a fair hearing, the action may not be implemented until at least 10 days after the mailing of the notice. Such notices shall conform with provisions at N.J.A.C. 10:72-5.1(b).

(c) Retroactive Medicaid eligibility is available beginning with the third month prior to the month of application for Medicaid for any month during which the applicant meets all eligibility criteria and during which the applicant has unpaid medical expenses for covered services. In order to qualify for retroactive coverage, an individual need not be determined eligible at the time of application for Medicaid benefits. Application for retroactive Medicaid coverage may be made on behalf of a deceased person so long as the person was alive during a portion of the three month period immediately prior to the month of application and he or she has unpaid medical expenses for Medicaid covered services.

1. Retroactive Medicaid coverage is not available under the provisions of this chapter for a child for any period prior to the effective date of program coverage for the age of the child. Retroactive eligibility is not available to pregnant women and children up to the age of one whose family income exceeds 133 percent of the Federal poverty guideline for any period prior to July 1, 1991.

Emergency Amendment, R.1988 d.96, effective February 2, 1988 (expired April 2, 1988).

See: 20 N.J.R. 548(a).

Substantially amended.

Adopted Concurrent Proposal, R.1988 d.212, effective May 16, 1988.

See: 20 N.J.R. 548(a), 20 N.J.R. 1103(a).

Emergency Amendment, R.1991 d.223, effective March 28, 1991 (operative April 1, 1991; expires May 27, 1991).

See: 23 N.J.R. 1200(a).

Deleted obsolete language and adopted Federally required coverage pursuant to Omnibus Budget Reconciliation Act of 1989.

Adopted Concurrent Proposal, R.1991 d.302, effective May 24, 1991.

See: 23 N.J.R. 1200(a), 23 N.J.R. 1945(a).

Provisions of emergency amendment R.1991 d.223 readopted without change.

Emergency Amendment, R.1991 d.445, effective July 29, 1991 (expires September 27, 1991).

See: 23 N.J.R. 2543(a).

In (c)1: revised text to add 133 percent guideline for retroactive Medicaid coverage.

Adopted Concurrent Proposal, R.1991 d.526, effective October 21, 1991.

See: 23 N.J.R. 2453(a), 23 N.J.R. 3144(a).

Provision of emergency amendment R.1991 d.526 adopted without change.

Amended by R.1992 d.484, effective December 7, 1992.

See: 24 N.J.R. 1860(a), 24 N.J.R. 4378(a).

Eligibility expanded to include children of specified ages born after September 30, 1983.

Administrative Correction to (a).

See: 25 N.J.R. 704(a).

Amended by R.1993 d.369, effective July 19, 1993.

See: 25 N.J.R. 1042(b), 25 N.J.R. 3217(a).

## 10:72-1.2 Purpose

(a) The purpose of the rules contained within this chapter is to:

- 1. Set forth eligibility criteria for the Medicaid program; and
- 2. Specify the rights and responsibilities of program applicants and eligible persons.

(b) Determination of retroactive eligibility is the responsibility of the Division of Medical Assistance and Health Services. If the applicant has unpaid medical bills from the retroactive eligibility period, the county welfare agency shall provide the applicant with an Application for Payment of Unpaid Medical Bills (FD-74) and instruct the applicant to forward it to the Division of Medical Assistance and Health Services, Retroactive Eligibility Unit, CN-712, Trenton, New Jersey 08625-0712. An application for retroactive eligibility must be received by the Retroactive Eligibility Unit within six months of the date of application for Medicaid at the county welfare agency.

Emergency Adoption, R.1988 d.96, effective March 7, 1988.

See: 20 N.J.R. 548(a).

Substantially amended (a).

Amended by R.1992 d.364, effective September 21, 1992.

See: 24 N.J.R. 2145(a), 24 N.J.R. 3343(a).

Form specified at (b).

#### Case Notes

Application for Medicaid, though filed after six-month deadline, was nevertheless sufficient to meet three month requirement for retroactive eligibility. *A.D. v. Division of Medical Assistance*, 95 N.J.A.R.2d (DMA) 11.

### SUBCHAPTER 3. NONFINANCIAL ELIGIBILITY FACTORS

#### 10:72-3.1 General provisions

(a) Eligibility for the Medicaid program must be established in relation to each requirement of the Medicaid program to provide a valid basis for the granting or denying of medicaid assistance.

(b) The applicant's statements regarding his or 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.

#### 10:72-3.2 Citizenship

(a) In order to be eligible for the Medicaid program, an individual must be a citizen of the United States, an alien lawfully admitted for permanent residence, or an alien approved for temporary residence.

1. The term "citizen of the United States" includes persons born in Puerto Rico, Guam, the Virgin Islands, Swains Island, American Samoa, and the Northern Mariana Islands.

2. The following aliens shall be considered lawfully admitted for permanent residence for purposes of establishing eligibility for the Medicaid program:

i. Immigrant: An alien lawfully admitted for permanent residence pursuant to sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act;

ii. Continuous residence: An alien who entered the United States prior to June 30, 1948, or some later date as required by law, and has continuously maintained residency in the United States since then, and is not ineligible for citizenship but is considered to be lawfully admitted for permanent residence as a result of an exercise of discretion by the United States Attorney General pursuant to section 249 of the Immigration and Nationality Act;

iii. Conditional entry after March 31, 1980: An alien qualified for conditional entry after March 31, 1980 because of persecution or fear of persecution on account of race, religion, or political belief pursuant to section 207 (formerly section 203(a)(7)) of the Immigration and Nationality Act;

iv. Conditional entry prior to April 1, 1980: An alien who qualifies for conditional entry prior to April 1, 1980 pursuant to former section 203(l)(7) of the Immigration and Nationality Act;

v. Granted asylum: An alien granted asylum through an exercise of discretion by the United States Attorney General pursuant to section 208 of the Immigration and Nationality Act;

vi. Emergent reasons: An alien lawfully present in the United States as a result of an exercise of discretion by the United States Attorney General for emergent reasons or for reasons deemed strictly to be in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act, or as a grant of parole by the United States Attorney General;

vii. Deportation withheld: An alien living in the United States to whom the United States Attorney General has withheld deportation pursuant to section 243 of the Immigration and Nationality Act because of the judgement of the United States Attorney General that the alien would otherwise be subject to persecution on account of race, religion, or political opinion.

3. Aliens granted the status of lawfully admitted for temporary residence by the Immigration and Naturalization Service are, if otherwise eligible, entitled to Medicaid under the provisions of this chapter.

#### 10:72-3.3 State residency

(a) In order to be eligible for the Medicaid program, an individual must be a resident of the State of New Jersey. The term "resident" shall be interpreted to mean a person who is living in the State voluntarily and not for a temporary purpose, that is, with no intention of presently removing therefrom.

1. If an individual leaves New Jersey with the intent to establish permanent residence elsewhere, or for an indefi-

nite period for purposes other than a temporary visit, he or she ceases to be eligible to receive Medicaid from this State.

2. When an individual enters this State in order to receive medical care and applies for Medicaid to meet all or a portion of the costs of such care, the fact that the immediate purpose of the move was to secure medical care does not, in and of itself, have the effect of making the person ineligible for the Medicaid program. It is the responsibility of the county welfare agency to evaluate all such cases and to make an eligibility determination, considering carefully all the following criteria:

i. Whether the move is a temporary one, being solely for the purpose of receiving medical care for a limited time;

ii. Whether there is clear expression of intent on the part of the individual to remain permanently in this State;

iii. Whether there is objective evidence that the individual has, in fact, abandoned or not abandoned residence in the State from which he or she came;

iv. Whether the state in which the individual previously resided recognizes him or her as having continuing eligibility under the Medicaid program (or other program providing payment for medical care) of that jurisdiction.

3. If, after full consideration of the above factors, the county welfare agency is satisfied that the individual has become a resident of this State, Medicaid eligibility may be established.

#### Case Notes

Pregnant alien with student visa could not be denied Medicaid. *W.W. v. DMAHS*, 93 N.J.A.R.2d (DMA) 101.

#### 10:72-3.4 Eligible persons

(a) The following persons who meet all eligibility criteria of this chapter are eligible for Medicaid benefits:

1. Pregnant women: Needy women of any age during the term of a medically verified pregnancy.

i. A women who is determined eligible under the criteria of this chapter will, for purposes of eligibility, be considered to be a pregnant woman until the end of the 60-day period beginning with the last day of her pregnancy.

2. Children under the age six years, and children born after September 30, 1983 who have:

i. Effective December 1, 1991, attained the age of six, seven, or eight;

ii. Effective October 1, 1992, attained the age of nine;

iii. Effective October 1, 1993, attained the age of 10;

iv. Effective October 1, 1994, attained the age of 11;

v. Effective October 1, 1995, attained the age of 12;

vi. Effective October 1, 1996, attained the age of 13;

vii. Effective October 1, 1997, attained the age of 14;

viii. Effective October 1, 1998, attained the age of 15;

ix. Effective October 1, 1999, attained the age of 16;

x. Effective October 1, 2000, attained the age of 17; and

xi. Effective October 1, 2001, attained the age of 18.

3. The child born to a woman eligible under the provisions of this chapter (except to a presumptively eligible pregnant woman who has subsequently been found ineligible for the month the child was born) shall remain eligible for a period of 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.

4. Any child receiving Medicaid under the provisions of this chapter who but for the age limits in (a)2 above would be eligible for Medicaid under the provisions of this chapter and who is receiving inpatient services covered by Medicaid at the time he or she reaches the age limit, will continue to be eligible for Medicaid until the end of the stay for which the inpatient services are furnished.

5. Aged individuals: Persons who are age 65 years or older.

6. Disabled individuals: Persons who have been medically determined to meet the criteria of disability as set forth at N.J.A.C. 10:71-3.10 through 3.13.

7. Blind individuals: Persons who have been medically determined to meet the criteria of blindness as set forth at N.J.A.C. 10:71-3.10 through 3.13.

Emergency Amendment, R.1988 d.96, effective February 2, 1988 (expired April 2, 1988).

See: 20 N.J.R. 548(a).

Added (a)6.-8.

Adopted Concurrent Proposal, R.1988 d.212, effective May 16, 1988.

See: 20 N.J.R. 548(a), 20 N.J.R. 1103(a).

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 added at (b).

Emergency Amendment, R.1991 d.223, effective March 28, 1991 (operative April 1, 1991; expires May 27, 1991).

See: 23 N.J.R. 1200(a).

Deleted obsolete language and adopted Federally required coverage pursuant to Omnibus Budget Reconciliation Act of 1989.

Adopted Concurrent Proposal, R.1991 d.302, effective May 24, 1991.

See: 23 N.J.R. 1200(a), 23 N.J.R. 1945(a).

Provisions of emergency amendment R.1991 d.223 readopted without change.

Amended by R.1991 d.483, effective October 7, 1991.

See: 23 N.J.R. 1889(a), 23 N.J.R. 3028(a).

In (a)3: revised text to clarify eligibility for newborns of Medicaid eligible women in Medicaid recipients. Added text regarding presumptively eligible pregnant women who have been found ineligible for the month the child was born.

Amended by R.1992 d.484, effective December 7, 1992.

See: 24 N.J.R. 1860(a), 24 N.J.R. 4378(a).

Eligibility expanded to include children of specified ages born after September 30, 1983.

### 10:72-3.5 Household unit

(a) The term "household unit" means those persons whose income is counted in the determination of eligibility under the provisions of this chapter. The following persons, if they reside with the program applicant or recipient, shall be considered members of the household unit:

1. In the case of a pregnant woman:
  - i. The pregnant woman and the unborn child (or children, when it is medically verified that there is more than one fetus);
  - ii. The pregnant woman's spouse;
  - iii. The pregnant woman's natural or adoptive children under the age of 21;
  - iv. The blood-related siblings (including those of half-blood) of the pregnant woman's children who are under the age of 21; and
  - v. The natural or adoptive father of any children in the household unit.
2. In the case of a child:
  - i. The child;
  - ii. The child's natural or adoptive parents;
  - iii. The child's blood-related (including half-blood) and adoptive siblings under the age of 21; and
  - iv. At the option of the applicant, the child's stepparent. If the applicant elects not to include the stepparent in the household unit, his or her income will not be included in the determination of eligibility except to the extent that he or she makes it available to the eligible members.
3. In the case of an aged, blind, or disabled individual, the household unit will consist of that individual and his or her spouse if the spouse resides with the aged, blind, or disabled individual. In the case of a blind or disabled child, the household unit will consist of only that child; however, the income and resources of the child's parents will be deemed to that child in accordance with N.J.A.C. 10:72-4.4(d).
4. Any person who is in receipt of AFDC or SSI or who has applied for and been found eligible for Medicaid based on eligibility for those cash assistance programs will not be included in the household unit. Any person whose

income and resources have been deemed to an eligible SSI recipient shall likewise not be included in the household unit unless that person is applying for benefits under this chapter.

5. Any person in (a)1 and 2 above shall be included in the household unit even though he or she is in an AFDC-related Medically Needy budget unit in accordance with N.J.A.C. 10:70-3.5. Likewise, any person in (a)1 and 2 above required by N.J.A.C. 10:70-3.5 to be included in an AFDC-related Medically Needy budget unit, shall be included in that budget unit even if he or she is included in a household unit under the provisions of this section. Any aged, blind, or disabled person eligible under the provisions of this chapter or who is eligible for Medically Needy (or pending spend-down) will not be included in the household unit of a pregnant woman or child.

6. A spouse shall not be included in the household unit of an aged, blind, or disabled individual if the spouse is himself or herself in the household unit of an eligible pregnant woman or child under the provisions of this chapter, or is in the budget unit of an eligible AFDC-related Medically Needy case (including eligible pending spend-down). Note: Resources of a spouse of an aged, blind, or disabled individual will be deemed to that individual in accordance with N.J.A.C. 10:72-4.5 even though the spouse is not in the household unit.

Emergency Amendment, R.1988 d.96, effective February 2, 1988 (expired April 2, 1988).

See: 20 N.J.R. 548(a).

Substantially amended.

Adopted Concurrent Proposal, R.1988 d.212, effective May 16, 1988.

See: 20 N.J.R. 548(a), 20 N.J.R. 1103(a).

Amended by R.1995 d. 539, effective October 16, 1995.

See: 27 N.J.R. 2527(a), 27 N.J.R. 3956(a).

### 10:72-3.6 Third party liability

Program applicants and recipients are required to identify to the county welfare agency 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 recipient.

### 10:72-3.7 Persons sanctioned under AFDC rules

Persons who are ineligible for AFDC due to the imposition of a sanction of ineligibility for a factor of AFDC eligibility that does not apply in Medicaid (such as noncooperation with work registration or WIN requirements) shall have eligibility determined under this chapter without regard to the sanction. (For persons ineligible for AFDC due to a period of ineligibility imposed as a result of the receipt of lump sum income, see N.J.A.C. 10:72-4.3(c)).

### 10:72-3.8 Application for other benefits

(a) As a condition of eligibility for the Medicaid program, applicants and recipients 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 recipients must avail themselves of any health insurance coverage available to the household unit at no cost, such as coverage provided by an employer at no cost.

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

#### Case Notes

Petitioner's income caused ineligibility for Medicaid benefits. L.H. v. DMAHS, 93 N.J.A.R.2d (DMA) 107.

### 10:72-3.9 Inmates of public institutions

(a) Any person who is an inmate of a public institution is ineligible for the Medicaid program.

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

## SUBCHAPTER 4. FINANCIAL ELIGIBILITY

### 10:72-4.1 Income eligibility limits

(a) Income limits for Medicaid for aged, blind, and disabled persons (except for specified low-income Medicare beneficiaries), as well as children six years of age or older covered under the provisions of this chapter will be based on 100 percent of the poverty income guidelines as defined by the U.S. Department of Health and Human Services in accordance with Sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35). The monthly income standard will be 1/12 of the annual poverty income guideline rounded down to the next whole dollar amount for household unit sizes of one and two for aged, blind, and disabled individuals and for the appropriate family size for children aged six years or over. The annual revision to the Federal poverty income guideline will be effective for purposes of this section with the first day of the year for which the poverty income guideline is promulgated.

(b) Effective with the first month of coverage, January 1, 1993, income limits for specified low-income Medicare beneficiaries shall be based on 110 percent of the poverty income guidelines as defined by the U.S. Department of Health and Human Services in accordance with Sections 1902(a)(10)(E)iii of the Social Security Act, 42 U.S.C. 1396a. Effective January 1, 1995, the income limits will be set at 120 percent of the Federal poverty level.

(c) Income limits for children aged one through five years covered under the provisions of this chapter shall be based on 133 percent of the poverty income guideline as defined by the Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35). The monthly income standard will be one-twelfth of 133 percent of the annual poverty income guideline rounded down to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline will be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

(d) Income limits for pregnant women and children under the age of one year covered under the provisions of this chapter shall be based on 185 percent of the poverty income guideline as defined by the Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35). The monthly income standard will be one-twelfth of 185 percent of the annual poverty income guideline rounded down to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline will be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

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

1. If a pregnant woman is determined to be income eligible during any month prior to the end of her pregnancy, she, if otherwise eligible, will continue eligible without regard to changes in the household unit's income for the term of her pregnancy, including the 60-day period beginning with the last day of the pregnancy whether or not the pregnancy results in a live birth. If the income change results from the addition of a new household member, the new income is not considered through the 60-day period beginning with the last day of the pregnancy.

i. The child resulting from the pregnancy will be eligible for Medicaid without regard to changes in the household unit's income for a period of not less than 60 days and up to a period of one year, so long as the mother remains eligible for Medicaid, or would remain eligible if pregnant, and the child remains in the mother's custody.

ii. A pregnant woman who, during the course of the pregnancy, was eligible for and received AFDC, Medicaid Special, or Medicaid for the Unborn is deemed to have met the income requirements of this chapter.