

CHAPTER 78**NJ FAMILYCARE****Authority**

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SUBCHAPTER 1. INTRODUCTION**10:78-1.1 Program outline**

(a) NJ FamilyCare is a broad term used to describe a State subsidized health insurance program. This chapter contains the criteria for NJ FamilyCare eligibility for certain uninsured parents, caretakers and children not eligible under the provisions of N.J.A.C. 10:69 and 10:79, as well as certain uninsured single individuals and couples without dependent children not eligible under the provisions of N.J.A.C. 10:90. FamilyCare also provides subsidized health insurance to those legal immigrants who are lawfully admitted for permanent residence who meet all other qualifications under the provisions of N.J.A.C. 10:69, 10:72 and 10:79, but for the Federal immigrant residency restrictions.

(b) Because the eligibility criteria established by the rules in this chapter are more liberal than those applicable under AFDC-related Medicaid and SSI-related Medicaid, parents, caretakers, children, single adults and couples without dependent children who are losing Medicaid eligibility because

of financial reasons should be evaluated for FamilyCare eligibility under the provisions of this chapter.

1. Individuals financially ineligible for Medicaid under the provisions of N.J.A.C. 10:71, 10:72 or 10:69 and who are income ineligible for FamilyCare under the provisions of this chapter shall be evaluated for eligibility as Medically Needy under the provisions of N.J.A.C. 10:70.

2. Immigrant infants and children not eligible under the provisions of N.J.A.C. 10:49, 10:71, 10:72, 10:69 or 10:79 should be evaluated for NJ FamilyCare eligibility under the provisions of this chapter.

(c) Eligibility under the provisions of this chapter shall be limited to those individuals not otherwise eligible for Medicaid or NJ KidCare, including:

1. Parents and caretakers of children under the age of 19;
2. Pregnant women whose income is over 185 percent of the Federal poverty line;
3. Immigrant pregnant women lawfully admitted for permanent residence who would be eligible for Medicaid but for Federal immigrant residency restrictions;
4. Single individuals and couples without dependent children; and
5. Children under the age of 21.

(d) Persons found eligible for NJ FamilyCare will receive services as set forth in N.J.A.C. 10:78-7.1, Scope of services.

10:78-1.2 Purpose

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

1. Set forth eligibility criteria for the NJ FamilyCare program; and
2. Specify the rights and responsibilities of program applicants and beneficiaries.

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

(c) The director of the eligibility determination agency shall assign copies of this chapter to administrative staff, all staff responsible for the determination of NJ FamilyCare eligibility, social services staff as appropriate and shall ensure that each staff member is thoroughly familiar with its requirements in order to apply the policies and procedures consistently.

(d) The Division of Medical Assistance and Health Services shall issue amendments to this chapter as they are promulgated in accordance with New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(e) At least one administrative copy of all obsolete pages of this chapter shall be maintained by the eligibility determination agency.

(f) This chapter is a public document. All copies in use shall be updated accurately as amendments are issued. The chapter is available as follows:

1. Copies are available in the State offices of the Division of Medical Assistance and Health Services and in each eligibility determination agency for examination and review during regular office hours.

2. Specific requirements necessary for an applicant or beneficiary or his or her representative to determine whether a grievance review is to be requested or to prepare for a grievance review shall be provided to such persons without charge.

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

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

5. A current up-to-date copy of this chapter 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.

10:78-1.3 Administrative organization

The NJ FamilyCare program is under the supervision of the Division of Medical Assistance and Health Services.

10:78-1.4 Principles of administration

(a) The following principles of administration apply in the NJ FamilyCare program.

1. Opportunity to make application shall be as follows:

i. Any individual who believes he or she is eligible shall be afforded an opportunity to make application (or reapplication) for the NJ FamilyCare program without delay.

2. The primary source of information requirements shall be as follows:

i. Program applicants or beneficiaries shall be the primary source of information concerning program eligibility; and

ii. The eligibility determination agency shall, when necessary, in the process of determining eligibility, use secondary sources of information with the knowledge and consent of the applicant or eligible person.

iii. Forward promptly to the receiving agency, copies of any other material mutually identified as necessary for case administration; and

iv. Notify the receiving agency if there will be a delay in providing any of the case material.

3. The receiving agency shall:

i. Communicate promptly with the individual upon receipt of the case material;

ii. Immediately notify the agency of origin, in writing, of the date the initial case material was received;

iii. Review eligibility for the case. If questions regarding case eligibility exist because of information provided by the agency of origin, that agency shall be consulted for resolution of the issues;

iv. Accept responsibility for the case effective with the next month if the initial case material has been received before the 10th of the month;

v. Accept responsibility for the case for the second month after the month of receipt of initial case material when such material is received on or after the 10th of the month;

vi. Update the Eligibility File, as necessary, including entry of a new case number. If the case continues to be eligible for NJ FamilyCare in the receiving agency, there shall be no interruption of entitlement. If the case is determined ineligible for NJ FamilyCare in the receiving agency, eligibility shall be terminated, subject to timely and adequate notice, and the previously eligible person terminated on the Eligibility File;

vii. Notify the agency of origin of the date eligibility for NJ FamilyCare will begin or will be terminated in the receiving agency; and

viii. Issue a NJ FamilyCare identification card with the new number if necessary.

10:78-2.6 Redetermination of eligibility

(a) Eligibility for NJ FamilyCare under this chapter shall be redetermined no later than 12 months following the month of initial eligibility or the last redetermination, unless eligibility is being redetermined in accordance with N.J.A.C. 10:90. (See N.J.A.C. 10:78-4.5.)

(b) The eligibility determination agency shall reassess program eligibility as follows:

1. When indicated based upon previous information obtained by the eligibility determination agency about anticipated change in the case situation or when additional information is needed to ascertain income eligibility for the program; and

2. Promptly after information is obtained by the eligibility determination agency which indicates changes in the case circumstances that may affect program eligibility.

10:78-2.7 Post-application beneficiary responsibilities

Upon a determination of eligibility for the NJ FamilyCare program, beneficiaries have the ongoing responsibility to report changes in family circumstances and for the provision of information as set forth at N.J.A.C. 10:78-2.1(c). At any time that the eligibility determination agency lacks sufficient information, including that information which is available from other programs or data sources, to confirm continuing program eligibility because of the unwillingness of an eligible person to provide necessary information, the agency shall commence action to terminate the case.

SUBCHAPTER 3. NONFINANCIAL ELIGIBILITY

10:78-3.1 General provisions

(a) Eligibility for the NJ FamilyCare program shall be established in relation to each requirement of the NJ FamilyCare program to provide a valid basis for the granting or denying of NJ FamilyCare benefits.

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

10:78-3.2 Citizenship

(a) In order to be eligible for the NJ FamilyCare program, an individual shall be a citizen of the United States, an alien lawfully admitted for permanent residence, or an alien who can be classified as an eligible alien in accordance with this chapter.

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

(b) The following aliens, regardless of the date of entry into the United States, if they otherwise meet the eligibility criteria, are entitled to NJ FamilyCare benefits:

1. An alien lawfully admitted for permanent residence;

2. A refugee admitted pursuant to section 207 of the Immigration and Nationality Act;

3. An asylee admitted pursuant to section 208 of the Immigration and Nationality Act;

4. An alien whose deportation has been withheld pursuant to section 243(h) of the Immigration and Nationality Act;

5. An alien who has been granted parole for at least one year by the Immigration and Naturalization Service pursuant to section 212(d)(5) of the Immigration and Nationality Act;

6. An alien who has been granted conditional entry pursuant to section 203(a)(7) of the immigration law in effect prior to April 1, 1980;

7. An alien who is granted status as a Cuban or Haitian entrant as defined by section 501(e) of the Refugee Education Assistance Act of 1980;

8. An American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act apply;

9. A member of an Indian tribe as defined in section 4(e) of the Indian Self Determination and Education Assistance Act;

10. An alien who is admitted to the United States as an Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988;

11. An alien who is honorably discharged or who is on active duty in the United States Armed Forces and his or her spouse and the unmarried dependent children of the alien or spouse; and

12. Certain legal aliens who are victims of domestic violence and when there is a substantial connection between the battery or cruelty suffered by an alien and his or her need for NJ FamilyCare benefits, subject to certain conditions described below:

i. The alien has been battered or subjected to extreme cruelty in the United States by a spouse or a parent.

ii. The alien has been battered or subjected to extreme cruelty in the United States by a member of the spouse's or parent's family residing in the same household of the alien and the spouse or parent acquiesced to such battery or cruelty.

iii. The alien's child has been battered or subjected to extreme cruelty in the United States by the spouse or the parent of the alien (without the active participation of the alien in the battery or cruelty).

iv. The alien's child has been battered or subjected to extreme cruelty in the United States by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent acquiesced to and the alien did not actively take part in such battery or cruelty.

v. In addition to the conditions described in (b)12i through iv above, if the individual responsible for the battery or cruelty continues to reside in the same household as the individual who was subjected to such battery or cruelty, then the alien shall be ineligible for full NJ FamilyCare benefits.

vi. The eligibility determination agency shall apply the definitions "battery" and "extreme cruelty" and the standards for determining whether a substantial connection exists between the battery or cruelty and the need for NJ FamilyCare as issued by the Attorney General of the United States under his or her sole and unreviewable discretion, in accordance with 8 U.S.C. § 1641.

(c) Persons claiming to be eligible aliens shall provide the eligibility determination agency with documentation of alien status.

1. If an applicant presents an expired INS document or is unable to present any document demonstrating his or her immigration status, the eligibility determination agency shall refer the applicant to the local INS district office to obtain evidence of status. If, however, the applicant provides an alien registration number, but no documentation, the eligibility determination agency shall file INS Form G-845 along with the alien registration number with the local INS district office to verify status.

2. The following sets forth acceptable documentation for eligible aliens:

i. Lawful Permanent Resident—INS Form I-551, or for recent arrivals, a temporary I-551 stamp in a foreign passport or on Form I-94.

ii. Refugee—INS Form I-94 annotated with stamp showing entry as refugee under section 207 of the Immigration and Nationality Act and date of 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 NJ FamilyCare 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, Forms 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 Forms 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—a membership card or other tribal document showing membership in tribe is acceptable documentation.

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 AN6, AM7, or AM8.

3. For aliens who entered the United States on or after August 22, 1996, 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 eligibility determination agency 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 eligibility determination agency shall ask the alien to present Form I-94. If that form is not available, the eligibility determination agency 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 eligibility determination agency shall contact the INS by submitting a Form G-845, attaching a copy of the document presented.

4. For aliens who present themselves as on active duty or honorably discharged from the United States Armed Forces, the following shall 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.

(d) As a condition of eligibility, all applicants for NJ FamilyCare shall sign a declaration under penalty of perjury that they are citizens of the United States or aliens in a satisfactory immigration status. In the case of a child or incompetent applicant, another individual on the applicant's behalf shall complete the same written declaration under penalty of perjury.

10:78-3.3 State residency

(a) In order to be eligible for the NJ FamilyCare program, an individual shall 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 indefinite period for purposes other than a temporary visit, he or she ceases to be eligible to receive NJ FamilyCare from this State.

2. When an individual enters this State in order to receive medical care and applies for NJ FamilyCare 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 NJ FamilyCare program. It is the responsibility of the eligibility determination 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; and

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 eligibility determination agency is satisfied that the indi-

vidual has become a resident of this State, NJ FamilyCare eligibility may be established.

10:78-3.4 Beneficiaries

(a) The following persons who meet all eligibility criteria of this chapter and are not eligible to receive Medicaid or NJ KidCare under current provisions are eligible for NJ FamilyCare benefits:

1. Parents and caretakers of dependent children under the age of 19 whose gross family income does not exceed 200 percent of the Federal Poverty level (see N.J.A.C. 10:78-4);

2. Single adults or couples without dependent children whose gross family income does not exceed 100 percent of the Federal Poverty level (see N.J.A.C. 10:78-4).

i. A couple shall be defined as a man and a woman who are legally married, or who have been determined to be a couple by the Social Security Administration, or who are living together in the same household and presenting themselves to the community in which they live as husband and wife;

3. Pregnant women of any age during the term of a medically verified pregnancy whose gross family income does not exceed 200 percent of the Federal Poverty level.

i. A pregnant woman who is determined eligible under the criteria of this chapter shall, 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. Her eligibility as a pregnant woman shall end on the last day of the month in which the 60-day period ends;

4. Individuals under the age of 21 lawfully admitted for permanent residence and who qualify under the provisions in N.J.A.C. 10:69 or 10:79 but for Federal immigration residency restrictions;

5. Any 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 NJ FamilyCare, or would remain eligible if pregnant, whether or not application has been made, if the child lives with his or her mother.

i. Notwithstanding (a)5 above, any child resulting from the pregnancy shall be eligible for NJ FamilyCare, if not otherwise eligible for Medicaid or NJ KidCare, 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 NJ FamilyCare, or would remain eligible if pregnant, and the child remains in the mother's custody; and

6. Any individual receiving NJ FamilyCare under the provisions of this chapter who is receiving inpatient services covered by NJ FamilyCare shall continue to be eligible for FamilyCare until the end of the stay for which the inpatient services are furnished, notwithstanding any other provision of this chapter.

10:78-3.5 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 beneficiary, shall be considered members of the household unit:

1. In the case of a parent or caretaker:

i. The parent or caretaker;

ii. The spouse of the parent or caretaker;

iii. The parent or caretaker's natural or adoptive children under the age of 21;

iv. The blood-related siblings (including those of half-blood) of the parent or caretaker'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 single adult who does not meet the definition of dependent child under N.J.A.C. 10:69, the single adult only;

3. In the case of the couple without dependent children, the couple only;

4. In the case of a child who does not qualify for NJ KidCare Plan A because of Federal immigrant residency restriction or health insurance (see N.J.A.C. 10:79):

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 household, the child's stepparent;

5. In the case of a child who does not qualify for NJ KidCare Plans B, C, or D because of alien residency restrictions (see N.J.A.C. 10:79):

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;

iv. The natural or adoptive father of any child(ren) in the household unit; or

v. The stepparent if the stepparent is married to the natural parent; and

6. 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.

10:78-3.6 Third party liability and other health insurance

(a) Program applicants and beneficiaries are required to identify to the eligibility determination 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 beneficiary.

(b) For the purposes of this section, the terms "health insurance" or "group health plan" do not include:

1. Student coverage which is defined as a limited coverage policy covering injuries sustained during school or school-sponsored activities;
2. Accident-only coverage (including death and dismemberment);
3. Disability income insurance;
4. Credit insurance;
5. Liability insurance, and coverage issued as a supplement to liability insurance, including automobile insurance;
6. Worker's compensation or similar insurance;
7. Personal injury protection coverage in automobile insurance;
8. Long-term care insurance;
9. Dental-only and vision-only coverage; and
10. Hospital indemnity or other fixed dollar indemnity insurance if the benefits of such insurance are provided under a separate policy, contract or certificate, and, there is no coordination or integration of the benefits with a group health plan or other health insurance.

(c) An applicant is not eligible for NJ FamilyCare if he or she:

1. Is currently covered under a group health plan, Medicare, Medicaid or NJ KidCare; or
2. Has been covered under a group health plan or Medicare at any time during the six month period preced-

ing the date of application for NJ FamilyCare; except that coverage which has lapsed within the six month period due to the expiration of an applicant's continuation rights under the Consolidated Omnibus Budget Reconciliation Act (COBRA) or other continuation rights available under State law shall not preclude an applicant from being eligible for NJ FamilyCare. An applicant who has lost coverage under an employer's plan will also not be subject to the six month period if the applicant becomes unemployed through no fault of his or her own. In addition, an applicant may voluntarily terminate coverage under COBRA, or any other health insurance purchased through the individual market, in order to be considered for NJ FamilyCare eligibility.

- i. The exceptions noted in (b)2 above with respect to COBRA and purchases in the individual market shall not apply to children in families with income greater than 200 percent of the Federal poverty level.

(d) The provisions of (b)1 and 2 above shall not apply to those parents, caretakers and children who would qualify for AFDC related Medicaid or NJ KidCare Plan A but for Federal immigration residency restrictions.

10:78-3.7 Persons sanctioned

Persons who would be ineligible for AFDC-related Medicaid using the rules in existence as of July 16, 1996 or due to the imposition of a sanction of ineligibility for a TANF eligibility factor that does not apply to NJ FamilyCare (such as noncooperation with work registration) shall have eligibility determined under this chapter without regard to the sanction. Persons other than children and pregnant women sanctioned for non-cooperation of medical support under provisions of N.J.A.C. 10:69-10.28 shall be subject to the same sanction under NJ FamilyCare (for persons ineligible for AFDC-related Medicaid due to a period of ineligibility imposed as a result of the receipt of lump sum income, see N.J.A.C. 10:78-4.3(c)).

10:78-3.8 Application for other benefits

(a) As a condition of eligibility for the NJ FamilyCare 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 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. TANF, Supplemental Security Income (SSI), or Work First New Jersey/General Assistance are excluded.

10:78-3.9 Inmates of public institutions

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

(b) Any person who is incarcerated in a Federal, State, or local correction facility (such as a prison, jail, detention center, or reformatory) shall not be eligible for the NJ FamilyCare program.

SUBCHAPTER 4. FINANCIAL ELIGIBILITY
10:78-4.1 Income eligibility limits

(a) Income limits for NJ FamilyCare for parents and caretakers of dependent children covered under the provisions of this chapter shall be based on 200 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). See 42 U.S.C. § 9902(2). The monthly income standard shall be $\frac{1}{2}$ of the annual poverty income guideline rounded down to the next whole dollar amount for household unit sizes. The annual revision to the Federal poverty income guideline shall be effective, for purposes of this section, with the first day of the calendar year for which the poverty income guideline is promulgated.

(b) Income limits for single adults and couples without dependent children covered under the provisions of this chapter shall be based on 100 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 shall be $\frac{1}{2}$ of 100 percent of the annual poverty income guideline rounded down to the next whole dollar amount for each household size of one and two. The annual revision to the Federal poverty income guideline shall be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

(c) Income limits for NJ FamilyCare for pregnant women covered under the provisions of this chapter shall be based on 200 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 shall be $\frac{1}{2}$ of the annual poverty income guideline rounded down to the next whole dollar amount for household unit sizes. The annual revision to the Federal poverty income guideline shall be effective for purposes of this section with the first day of the year for which the poverty income guideline is promulgated.

(d) Income limits for NJ FamilyCare for children under the age of 21 who would qualify for Medicaid Special under the provisions of N.J.A.C. 10:69, but for Federal immigration residency restrictions, shall be as specified in N.J.A.C. 10:69.

(e) Income limits for NJ FamilyCare for children under the age of 19 who would qualify for NJ KidCare but for Federal immigration residency restrictions shall be covered under the provisions of this chapter up to 350 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). See 42 U.S.C. § 9902(2). The monthly income standard shall be $\frac{1}{2}$ of the annual poverty income guideline rounded down to the next whole dollar amount for household unit sizes. The annual revision to the Federal poverty income guideline shall be effective for purposes of this section with the first day of the year for which the poverty income guideline is promulgated.

(f) In order to be eligible for NJ FamilyCare benefits under the provisions of this chapter, monthly household income (as determined by this chapter) shall 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, shall continue to be 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. Any child resulting from the pregnancy shall be eligible for NJ FamilyCare, if not otherwise eligible for Medicaid or NJ KidCare, 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 NJ FamilyCare, or would remain eligible if pregnant, and the child remains in the mother's custody.

2. With the exception in (e)1 above, income eligibility exists for each month in which the household unit's income is equal to or less than the income limits.

10:78-4.2 Prospective budgeting of income

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

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

10:78-4.3 Countable income

(a) Except as specified below, countable income shall include the income of all members of the household unit as determined at N.J.A.C. 10:78-3.5(a), except that:

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

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

3. Earned income of a child who is a full or part-time student as defined in N.J.A.C. 10:69-10.15 shall be counted in the household income.

i. For those individuals who would qualify for AFDC related Medicaid or NJ KidCare Plan A except for alien residency restriction, earned income of a child who is a full or part-time student as defined at N.J.A.C. 10:69-10.15 shall not be counted; and

4. All wages paid by the Census Bureau for temporary employment related to Census 2000 activities shall be excluded from earned income.

(b) Income for purposes of determining eligibility for NJ FamilyCare shall be determined as follows:

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

2. For wage earners, income shall be calculated based on gross income reported in the month immediately preceding application for NJ FamilyCare.

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

determine monthly gross income. Other income should also have the same methodology applied to determine monthly income.

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

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

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

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

2. Once established, the period of ineligibility may be reduced only in accordance with the AFDC provisions for shortening a period of ineligibility as found at N.J.A.C. 10:69-10.23. The basis for a determination to shorten the period of ineligibility shall be fully documented in the case record.

(d) Any person who received AFDC-related Medicaid and became ineligible for such assistance because of a period of ineligibility imposed as a result of the provisions of N.J.A.C. 10:69-10.23 may establish eligibility under the provisions of this chapter. The amount of the lump sum used to determine the original period of ineligibility shall be divided by the applicable income eligibility limit to determine the period of ineligibility for NJ FamilyCare under this chapter. If that period has already expired, eligibility for benefits under this chapter may be established so long as all other eligibility criteria are met.

(e) The parents of an infant and the spouse of a pregnant woman are legally responsible relatives to infants and pregnant women applying for or eligible for benefits under the provisions of this chapter. When a legally responsible relative resides in the same household, his and/or her income is considered in the determination of eligibility and no further action is required. When a legally responsible relative does not reside in the same household, the eligibility determina-

tion agency shall pursue support from that relative in accordance with the provisions of N.J.A.C. 10:69-10.

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

10:78-4.4 Income eligibility for single adults and couples without dependent children

(a) Before applying the NJ FamilyCare eligibility test, the eligibility determination agency staff shall evaluate, or make referrals, as appropriate, to determine eligibility for other medical coverage, including, without limitation, programs for the aged, blind and disabled, and Medicaid Special.

(b) When a single adult or couple without dependent children is determined not to be eligible for WFNJ/GA, the eligibility determination agency shall continue to evaluate possible eligibility for NJ FamilyCare or refer the application to the appropriate agency. Eligibility shall exist when the single adult or couple without dependent children meets the following financial criteria:

1. The gross income of an eligible single adult or couple without dependent children shall be no greater than 100 percent of the poverty level for the applicable family unit size, one or two, at the time the individual applies or reapplies for coverage, or when the case is reopened.

i. If one member of a couple is currently enrolled in a Medicaid program other than the Medically Needy program, that person's gross income shall not be counted in determining the eligibility of the other member of the couple for NJ FamilyCare.

ii. For those individuals or couples without dependent children whose gross income is equal to or less than 50 percent of the Federal poverty level, the determination of eligibility shall be made by the county board of social services of the county in which they reside. For those individuals and couples without dependent children whose gross income is above 50 percent of the Federal poverty level, eligibility shall be determined by the county board of social services or the Statewide eligibility determination agency.

(c) Those single adults and couples without dependent children who are determined eligible for NJ FamilyCare and whose income falls at or below 50 percent of the poverty level shall receive the NJ FamilyCare "Plan A" service package; these individuals shall receive fee-for-service until enrollment in a managed care plan. Those whose income is above 50 percent, but less than 100 percent, of the poverty level shall receive the NJ FamilyCare Plan "D" service package. The particular scope of services under each of these plans is described at N.J.A.C. 10:78-7.1. Long term care services shall not be available in the NJ FamilyCare Plan "D" service package. Long term care services shall be available in the NJ FamilyCare Plan "A" service package, with restrictions as specified at N.J.A.C. 10:78-7.1(a).

(d) Except as specified under the presumptive eligibility rules (N.J.A.C. 10:78-5) of this chapter:

1. The effective initial eligibility date shall be the first day of the month of the application date, if the individual was eligible on the application date.

i. If the applicant was not eligible on the application date, but was found to be eligible on any date other than the application date, the effective initial eligibility date shall be the first day of the month in which eligibility began.

10:78-4.5 Redetermination of eligibility for single adults and couples without dependent children

(a) Once enrollment is completed for single adults and couples without dependent children, those family units shall be subject to verification of continuing eligibility for NJ FamilyCare. The same test outlined at N.J.A.C. 10:78-3.1 shall be applied in determining whether the gross income remains no greater than 100 percent of the poverty level.

(b) All wages paid by the Census Bureau for temporary employment related to Census 2000 activities shall be excluded from earned income.

(c) If, as a result of any eligibility determination or redetermination, a single adult or couple without dependent children is found to be ineligible for NJ FamilyCare, the eligibility determination agency shall evaluate the case for possible eligibility for other programs and shall make direct arrangements or referrals, as appropriate, to enroll these individuals in other programs for which they may be eligible.

(d) An eligibility redetermination shall occur 12 months following the date of the previous determination or redetermination for each single adult or couple without dependent children initially determined to be eligible for NJ FamilyCare. This redetermination shall be conducted by the eligibility determination agency responsible for the case at the time the redetermination is required.

(e) For those individuals who are receiving benefits under Work First New Jersey/General Assistance, the redetermination cycle shall follow the schedule set forth in N.J.A.C. 10:90.

10:78-4.6 Resource eligibility

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

SUBCHAPTER 5. PRESUMPTIVE ELIGIBILITY

10:78-5.1 General presumptive eligibility information

(a) The presumptive eligibility determination makes it possible for individuals to receive medical services from an acute care hospital or from a Federally qualified health center (FQHC), together with related pharmacy services, for a temporary period on a fee-for-service basis while the eligibility determination agency processes an application for NJ FamilyCare. Presumptive eligibility continues until a formal eligibility determination is reached as follows:

1. The period of presumptive eligibility shall begin on the date the hospital or FQHC staff determines that, based on information provided by the applicant, the individual meets the eligibility requirements and standards of this subchapter, except that the presumptive eligibility period shall begin on September 1, 2000 for applicants determined during September, 2000.

2. An individual shall be limited to a single period of approved presumptive eligibility, beginning with the month in which the presumptive determination is made and expiring at the end of the subsequent month. The Division may extend this period on a monthly basis until the NJ FamilyCare application is approved or denied, provided that the applicant fully cooperates in the process during the presumptive eligibility period. The application shall be denied if the applicant fails to file an application with the applicable eligibility determination agency, on the last day of the month subsequent to the month in which the applicant was determined presumptively eligible.

3. During the presumptive eligibility period, services shall be limited to hospital and Federally qualified health center services and related pharmacy prescription benefits.

4. An applicant denied coverage under these presumptive eligibility rules, or whose application is denied by the Division, shall be evaluated for coverage under the charity care program (P.L. 1992, c.160).

10:78-5.2 Requirements for presumptive eligibility determination entities

(a) A qualified NJ FamilyCare presumptive eligibility entity shall first be a NJ Medicaid provider and shall be:

1. An acute care hospital; or
2. A Federally qualified health center (FQHC).

(b) An entity as described in (a) above which seeks status as a qualified NJ FamilyCare presumptive eligibility entity shall apply to the Division of Medical Assistance and Health Services and shall be approved as a presumptive eligibility determination agency upon completion of training of the entity by the Division of Medical Assistance and Health

Services regarding the rules in this chapter and the operation of the NJ FamilyCare program.

(c) The Division of Medical Assistance and Health Services shall monitor the presumptive eligibility determinations made by presumptive eligibility determination entities. If the review discloses a pattern of incorrect presumptive eligibility determinations or failure to adhere to the requirements contained in this chapter, the Division shall initiate corrective action, including, but not limited to, consultation and retraining. Continued incorrect presumptive eligibility determinations or failure to adhere to procedural requirements shall result in the Division revoking approval for that entity to make presumptive eligibility determinations.

10:78-5.3 Presumptive eligibility processing performed by the presumptive eligibility determination entity

(a) From preliminary information provided by the applicant, the approved presumptive eligibility determination entity shall determine if the applicant meets the eligibility criteria of this section. The approving presumptive eligibility determination entity shall obtain sufficient information from the applicant to complete the certification of presumptive eligibility. For purposes of the presumptive eligibility determination, the approved presumptive eligibility determination entity shall request only that information necessary to determine the applicant's presumptive eligibility. The approved presumptive eligibility determination entity shall make the determination of eligibility based solely on information obtained in the interview and shall not require any verification or documentation of the presumptive eligibility beneficiary's statements.

(b) For any applicant determined presumptively eligible, the approved presumptive eligibility determination entity shall:

1. Complete and sign the certification of presumptive eligibility and forward the original certification of presumptive eligibility to the Division of Medical Assistance and Health Services within two working days of the determination;

2. Forward a copy of the certification and the referral, if appropriate, to the eligibility determination agency or county board of social services, at the applicant's option, except as required by N.J.A.C. 10:78-4.4(b)1i;

3. Inform the applicant to contact the appropriate eligibility determination agency either by mailing an application to the Statewide eligibility determination agency or county board of social services, or by arranging for a personal interview with the county board of social services in order to complete the application process;

4. Give the presumptively eligible beneficiary a copy of both the certificate and the referral, if completed; and

5. Advise the applicant, in writing, of the address and telephone number of the eligibility determination agency

that the applicant chose, or which was identified in (b)2 above.

(c) Any applicant for whom the approved presumptive eligibility determination entity is unable to determine presumptive eligibility, or who is ineligible under the criteria and standards of this subchapter, shall be referred to the appropriate eligibility determination agency for evaluation of eligibility for other Medicaid programs. The address and telephone number of the appropriate eligibility determination agency shall be provided, in writing, to the applicant.

10:78-5.4 Presumptive eligibility process performed by the Division of Medical Assistance and Health Services

(a) Upon receipt of a properly completed certificate from the approved presumptive eligibility determination entity, Division staff shall:

1. Assign a NJ FamilyCare presumptive eligibility number;
2. Create an eligibility record on the Medicaid status file;
3. Issue a NJ FamilyCare Eligibility Identification Card; and
4. Notify the approved presumptive eligibility determination agency and the appropriate county board of social services or Statewide eligibility determination agency of the presumptive eligibility identification number assigned to the beneficiary.

10:78-5.5 Presumptive eligibility processing performed by the eligibility determination agency

(a) Upon receiving the certification of presumptive eligibility and a referral, if completed, from the presumptive eligibility determination entity, the eligibility determination agency shall check the Medicaid Eligibility File for existing eligibility. If the applicant has existing eligibility in another program, the eligibility determination agency shall notify the presumptive eligibility determination entity. No further action shall be required by the eligibility determination agency.

(b) If the applicant does not have current eligibility, the eligibility determination agency shall arrive at a disposition within the presumptive eligibility period.

1. If the time period specified in N.J.A.C. 10:78-4.1(a)2 is exceeded, the eligibility determination agency shall notify the Division of Medical Assistance and Health Services of the delay. The Division shall continue the applicant's presumptive eligibility until a final determination is made.

2. The eligibility determination agency shall also provide the applicant written notification of the specific reason(s) for the delay, prior to the expiration of the presumptive eligibility period in accordance with N.J.A.C. 10:78-4.1(a)2.

(c) In the case of a presumptively eligible beneficiary who is determined ineligible for NJ FamilyCare within the presumptive eligibility period, eligibility shall terminate on the date of the eligibility determination. If the applicant is determined ineligible for any other Medicaid program, the eligibility determination agency shall provide a written notice of, and the reasons for, such denial, as set forth in N.J.A.C. 10:78-9.1.

(d) Children who would qualify for Medicaid or NJ Kid-Care except for the Federal immigrant residency restriction shall receive presumptive eligibility services under the provisions of N.J.A.C. 10:79.

10:78-5.6 Responsibility of the applicant

The applicant shall contact the eligibility determination agency during the presumptive eligibility period by mailing an application to the Statewide eligibility determination agency or the county board of social services or arranging a personal interview with the county board of social services to complete the application process. As part of the eligibility determination process for NJ FamilyCare, the applicant shall assist the eligibility determination agency in securing evidence that verifies eligibility.

10:78-5.7 Notification and grievance review rights

(a) For a presumptively eligible person who is subsequently determined ineligible for NJ FamilyCare benefits:

1. The eligibility determination agency shall not be required to provide either timely or adequate notice for the end of the presumptive eligibility period. The presumptively eligible beneficiary shall not have any right to a grievance review based on the termination of presumptive eligibility.

2. The eligibility determination agency shall provide the applicant with a notice of denial. The presumptively eligible beneficiary shall have the right to apply for a grievance review based on the denial of the application.

(b) For a presumptively eligible person whose eligibility for NJ FamilyCare is not determined within the presumptive eligibility period, the eligibility determination agency shall provide the applicant with written notification before the presumptive eligibility period expires, setting forth the specific reasons for the delay in the application processing. The presumptively eligible beneficiary shall be entitled to a grievance review based on the eligibility determination agency's failure to determine the applicant's eligibility or ineligibility within the application processing period.

(c) A person denied presumptive eligibility by an approved presumptive eligibility determination entity shall not be entitled to adequate notice of that determination and shall not be entitled to a grievance review on that action. The denial of presumptive eligibility shall not affect the applicant's right to apply for NJ FamilyCare in order to receive a formal eligibility determination.

10:78-5.8 Limitation on number of presumptive eligibility periods

All beneficiaries of presumptive eligibility who apply for presumptive eligibility benefits for NJ FamilyCare shall be limited to one continuous presumptive eligibility period. The provisions of this section shall expire on September 1, 2002.

10:78-5.9 Hospital-specific payment caps for presumptive eligibility

(a) Throughout the two year period in which presumptive eligibility shall be determined by hospitals, the Director shall establish hospital-specific caps in the amount of direct fee-for-service payments by DMAHS to hospitals for serving presumptively eligibles. The hospital-specific caps for each State fiscal year are subject to revision by the Director, based on availability of funds and the success in enrollment into managed care plans.

(b) Payments to hospitals for uninsured cases determined presumptively eligible for NJ FamilyCare by a hospital that ultimately are determined ineligible shall be recovered by DMAHS. That case shall be converted to charity care, provided all requirements for charity care participation are met.

**SUBCHAPTER 6. ELIGIBILITY
DETERMINATION AGENCY
ADMINISTRATIVE REQUIREMENTS**

10:78-6.1 Notice of the eligibility determination agency decision

(a) The eligibility determination agency shall promptly notify any applicant for, or beneficiary of, the NJ FamilyCare program in writing of any agency decision affecting the applicant or beneficiary. When a decision relates to any adverse action which may entitle a beneficiary to a grievance review, the action shall not be implemented until at least 10 days after the mailing of the notice (see (e) below for exceptions to the 10-day notice requirement).

1. For notices of action adverse to a beneficiary, the date of mailing of the notice shall appear on the notice.

2. Notices of any eligibility determination agency action shall contain the name, address, and telephone number of the legal services agency serving that county.

3. In the case of an applicant or beneficiary who cannot be located, the notice shall be mailed to his or her last known address.

(b) All notices of agency decision shall state, in clear and simple language, the nature of the agency decision and an accurate and factual legal basis for the decision.

1. All notices of the agency decision shall include an explanation of the right to a grievance review.

2. All notices of agency decisions adverse to the applicant or recipient shall include the complete citation and title of the rule(s) upon which the agency decision is based.

(c) All notices of denial or termination shall include an explicit statement of the reason for program ineligibility and (except in the case of the death of an applicant or beneficiary) shall advise of the right to reapply whenever the applicant or beneficiary believes that circumstances have changed such that the reason for program ineligibility no longer exist.

(d) When the processing of an application shall be delayed beyond the standards for disposition of an application as set forth in N.J.A.C. 10:78-2.1(d), notice shall be mailed prior to the expiration of the disposition period notifying the applicant of the delay and the reasons for the delay.

(e) The 10-day notice requirement for actions adverse to a program beneficiary need not be adhered to when:

1. The eligibility determination agency has factual information confirming the death of a beneficiary;

2. The eligibility determination agency receives a clear written statement, signed by the beneficiary, that he or she no longer wishes to receive program benefits, or which gives information indicating a change in circumstances which requires a termination or reduction in benefits, and the beneficiary has indicated in writing that he or she understands that termination or reduction in benefits shall be the consequence of supplying such information;

3. The beneficiary's whereabouts are unknown and agency mail directed to him or her has been returned by the postal service indicating no forwarding address;

4. The beneficiary has been accepted for public or medical assistance in another state and that fact has been confirmed by the eligibility determination agency; or

5. A beneficiary child has been removed from the home as a result of a judicial determination or voluntarily placed in foster care by his or her legal guardian.

10:78-6.2 Case records

(a) The purpose of the case record is to provide a complete documentary record of eligibility determination agency actions and the reasons therefor.

(b) The case record shall include:

1. A record of all eligibility determination agency actions and decisions relating to the case, as well as documentary evidence relating to such actions and decisions, including application forms;

2. All forms relating to financial eligibility; and

3. All case-related correspondence, memorandum, and documents except those required by law or regulation to be maintained elsewhere.

(c) No case record, or part thereof, shall be removed from its file location without a record identifying the person who has custody of it.

(d) No case record, or part thereof, shall be removed from the eligibility determination agency offices except upon the specific authorization of the agency director, deputy director, or other person specifically designated by the agency director to authorize such removal.

(e) All case records shall be filed in a secure and fire-resistant location.

(c) Individuals who would be eligible for AFDC-related Medicaid or NJ KidCare and who are subject to the Federal immigration residency restriction shall receive services and shall be subject to any applicable premium contribution based on income eligibility, under the provisions of N.J.A.C. 10:69 or 10:79.

(d) Except as noted in (c) above, NJ FamilyCare beneficiaries shall receive services through managed care organizations operating under a contract with the Department of Human Services. Certain single adults and couples without dependent children whose gross income is less than or equal to 50 percent of the Federal poverty level may be eligible to receive NJ FamilyCare services on a fee-for-service basis until such time as they become active enrollees of a managed care organization. Certain single adults and couples without dependent children whose gross income is more than 50 percent, but not more than 100 percent, of the Federal poverty level will be enrolled in a conventional managed care program.

(e) NJ FamilyCare beneficiaries whose gross income, as adjusted for the size of the family unit, exceeds 150 per cent of the Federal poverty level shall be responsible for a monthly premium of \$25.00 for the first adult, \$10.00 for the second eligible adult in the household unit, and a copayment established under contract between the Department of Human Services and managed care organizations administering services to this population. Enrollment for these beneficiaries shall commence after their first premium payment has been received by the Statewide eligibility determination agency. No other NJ FamilyCare beneficiary will be responsible for a premium payment or a copayment.

(f) Drugs used exclusively to treat AIDS and HIV shall not be included in the FamilyCare services packages, but shall be made available to FamilyCare beneficiaries through the ADDP program in accordance with N.J.A.C. 8:61-2.

SUBCHAPTER 7. SERVICES UNDER NJ FAMILYCARE

10:78-7.1 Scope of services

(a) The NJ FamilyCare "Plan A" service package shall contain those services described at N.J.A.C. 10:49-5.2, except that long term care services shall be restricted to individuals who would qualify for programs for the aged, blind and disabled under N.J.A.C. 10:71 or 10:72, but for Federal immigration residency restrictions and/or categorical requirements.

(b) The NJ FamilyCare "Plan D" service package shall contain those services described at N.J.A.C. 10:49-5.7, except that long term care services shall not be provided. Those FamilyCare Plan D beneficiaries whose income is above 150 percent of the Federal poverty line shall be responsible for copayments for services received, in accordance with the provisions of this chapter.

SUBCHAPTER 8. BENEFICIARY RIGHTS AND RESPONSIBILITIES

10:78-8.1 Grievance reviews

(a) All NJ FamilyCare applicants and beneficiaries shall be afforded the opportunity for a grievance review.

1. Those agency actions which adversely affect an applicant or beneficiary and may be grieved shall include, but shall not be limited to:

- i. Determination of household composition;
- ii. Earned and unearned income calculations; and
- iii. Interpretation of residency, citizenship and age requirements.

(b) A grievance shall not be considered for those circumstances in which eligibility is precluded by Federal or State statute. These circumstances include, but are not limited to: income standard, age requirement, and citizenship requirements. A grievance shall not be considered for non-payment of premiums.

(c) An applicant shall submit a description of the grievance to the agency in writing within 20 days of the date of the adverse action notice. The agency shall notify the applicant or beneficiary of its decision on the matter, specifying the reasons for the decision, within 60 days of the receipt of the complete documentation of the grievance.

(d) The grievance shall be heard by a panel comprised of State staff, who will make recommendations to the DMAHS Director. Within 60 days of receipt of the appeal, the DMAHS Director shall issue a disposition. The final agency decision is subject to judicial review in the Appellate Division.

(e) As a first step in the grievance process, the Division shall initiate an informal dispute resolution process upon receipt of the grievance request and prior to the grievance board hearing the case. The informal dispute resolution process shall include reviewing the grievance, researching the issue involved, and may include contact with the individual filing the grievance. The intent of the informal dispute resolution process is to try and resolve the grievance prior to the grievance board hearing.

(f) The agency shall retain all correspondence and documentation relating to the grievance in the applicant's or beneficiary's file.

10:78-8.2 Fair hearing

No applicant or beneficiary of the NJ FamilyCare program shall be entitled to a fair hearing as a result of adverse agency action; however, nothing in this chapter shall prevent an applicant or beneficiary from requesting a fair hearing to which they may otherwise be entitled under the provisions of any other law, rule, or regulation.

10:78-8.3 Post-application responsibilities

Once determined eligible for NJ FamilyCare, the applicant shall have the on-going responsibility for reporting to the eligibility determination agency any changes in family circumstances and for providing information as delineated at N.J.A.C. 10:78-2.7. The applicant shall provide additional information as requested by the eligibility determination agency. At any time that the eligibility determination agency lacks sufficient information to confirm continuing program eligibility because of the unwillingness of the applicant or beneficiary to provide necessary information, the agency shall commence action to terminate the case and pursue recovery when warranted.

SUBCHAPTER 9. PREMIUM ASSISTANCE PROGRAM (RESERVED)

SUBCHAPTER 10. FRAUD AND ABUSE UNDER NJ FAMILYCARE

10:78-10.1 Termination of eligibility for good cause for fraud and abuse

(a) Subject to the limitations contained in 42 U.S.C. § 1320a-7b(a), "Criminal Penalties for Acts Involving Federal Health Care Programs," any violation of (b) below shall result in the issuance of a Notice of Proposed Termination of the processing of the applicant's application, or of the beneficiary's eligibility for NJ FamilyCare. An individual receiving a Notice of Proposed Termination may request a grievance review.

(b) Subject to the limitations contained in 42 U.S.C. § 1320a-7b(a), cause for termination exists when a NJ FamilyCare applicant or beneficiary:

1. Knowingly or intentionally makes or causes to be made false statements or misrepresentations of material fact in any application or reapplication for benefits under NJ FamilyCare;
2. Knowingly or intentionally makes or causes to be made false statements, misrepresentations of material fact, or alterations on any NJ FamilyCare claim, eligibility card, or other document issued by or on behalf of the Division;
3. Intentionally misuses or abuses NJ FamilyCare benefits;
4. Knowingly or intentionally converts all or part of NJ FamilyCare benefits to a use other than the individual's own legitimate use and benefit;
5. Gives, loans, or sells an eligibility card to anyone for use by an individual or individuals other than the eligible person or persons for whom the card was issued;
6. Engages in forgery or attempted forgery involving eligible services and/or claims for such services;
7. Engages in a course of conduct or performs an act deemed improper or abusive of the NJ FamilyCare program following notification that this conduct should cease; or
8. Fails to cooperate in a NJ FamilyCare investigation.

(c) Subject to the limitations contained in 42 U.S.C. § 1320a-7b(a), the existence of a cause for termination described in (b) above may be established by:

1. A judgment of conviction for a crime, disorderly persons offense, or petty disorderly persons offense;

2. A judgment or order of either a court of competent jurisdiction or an administrative agency; or
3. A preponderance of the evidence.

10:78-10.2 Applications for readmission subsequent to termination of eligibility, or of applications for determination of eligibility

(a) The terminated individual, or anyone with authority to act on his or her behalf, may apply to the Director for readmission to the NJ FamilyCare program no earlier than one year from the date of the final agency decision terminating the applicant's application process or the beneficiary's eligibility.

(b) The Director shall approve or deny such an application in accordance with the provisions of this chapter.

(c) An individual whose application for readmission has been denied may request a grievance review on the denial, and/or may submit another application to the Director no earlier than two years from the date of the final agency decision denying readmission.

10:78-10.3 Applicability

N.J.A.C. 10:78-10.1(a) and 10.2 shall apply only to NJ FamilyCare applicants and beneficiaries whose eligibility has been terminated for the reasons set forth in N.J.A.C. 10:78-10.1(b) and shall not apply to termination due to ineligibility initiated under N.J.A.C. 10:78-2 through 4.