

CHAPTER 79**NJ KIDCARE****Authority**

N.J.S.A. 30:4D-6; 30:4D-7; 30:4D-12; 42 C.F.R. 440.50; P.L. 1997, c.272; Title XIX and Title XXI of the Social Security Act; 42 U.S.C §§ 1612, 1613, 1396a(a)(10)(A)(ii), 1396d, 1397aa, 1397bb, 1397cc, 1397ee and 1397jj.

Source and Effective Date

R.1998 d.426, effective July 24, 1998.
See: 30 N.J.R. 713(a), 30 N.J.R. 3034(a).

Executive Order No. 66(1978) Expiration Date

Chapter 79, NJ KidCare, expires on July 24, 2003.

Chapter Historical Note

Chapter 79, NJ KidCare, was adopted as new rules by R.1998 d.116, effective January 30, 1998 (operative February 1, 1998; to expire July 31, 1998). See: 30 N.J.R. 713(a). The concurrent proposal for the adoption of Chapter 79 was adopted as R.1998 d.426, effective July 24, 1998, with changes effective August 17, 1998. See: 30 N.J.R. 713(a), 30 N.J.R. 3034(a)

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SUBCHAPTER 1. INTRODUCTION**10:79-1.1 Purpose and scope**

(a) NJ KidCare is a program administered by the Division of Medical Assistance and Health Services, Department of Human Services, to provide plan-defined health care benefits to certain children.

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

1. Set forth eligibility criteria for the NJ KidCare program;
2. Specify the rights and responsibilities of program applicants and eligible persons; and
3. Describe the administration of the program.

(c) 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 losing AFDC-related eligibility because of financial reasons should be evaluated under the provisions of this chapter for the possibility of NJ KidCare eligibility.

(d) Children eligible under this chapter are eligible for NJ KidCare-Plan A, Plan B, or Plan C services which are set forth in N.J.A.C. 10:49-5.

(e) Plans B and C are not Federal entitlement programs. Enrollment and expenditures shall be monitored closely. Enrollment shall be stopped when total expenditures are projected to equal the available funding level. If that point is reached, any additional applicants shall be placed on a waiting list, with preference determined based on date of enrollment and income.

(f) Persons financially ineligible for Medicaid under the provisions of N.J.A.C. 10:71, 10:72, 10:81 and 10:82 and who are income ineligible for NJ KidCare under the provisions of this chapter shall be evaluated for eligibility as Medically Needy under the provisions of N.J.A.C. 10:70.

(g) Children eligible under this chapter are eligible for NJ KidCare—Plan A services which are described in N.J.A.C. 10:49-5. The NJ KidCare—Plan A benefit program is a means tested Federal entitlement program.

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

Inserted new (d) and (e); and recodified former (d) and (e) as (f) and (g).

10:79-1.2 Definitions

Words and terms used in this chapter shall have the meanings specified below, unless specifically defined otherwise in this chapter, or context clearly indicates otherwise.

“Caretaker relative” means the legally responsible adult or adults residing with the children for whom the application for NJ KidCare is being made.

“Child” is an individual from birth through the age of 18 who is otherwise not eligible for Medicaid pursuant to N.J.A.C. 10:71, 10:72, 10:80 or 10:81.

“DMAHS” means Division of Medical Assistance and Health Services.

“Eligibility determination agency” means an entity, including, but not limited to, a public or private agency, either governmental, non-profit, or for profit, with which the Division of Medical Assistance and Health Services has a contract or agreement to perform some or all of the eligibility-related functions for NJ KidCare.

“Eligibility for coverage” means a child would be covered under a health insurance policy if an application had been made on the child’s behalf.

“Governing unit” means any state, municipal, or local authority, including school boards, water and sewage authorities, as well as any state university and college system that is required or authorized by statute to provide a group health plan for active or retired employees.

“Group health plan” means an employee welfare benefit plan, whether the group health plan is self-funded or insured by a carrier that covers services for the diagnosis, cure, mitigation, treatment, or prevention of disease, or other problems in the structure or function of the body, and for transportation primarily for and essential to the provision of such medical care.

“Health Access New Jersey” means the subsidized insurance program authorized pursuant to N.J.S.A. 26:2H-18.65, and rules promulgated pursuant thereto (N.J.A.C. 8:91), which may also be referred to as the Access Program.

“Health insurance” means benefits or services provided for the diagnosis, cure, mitigation, treatment, or prevention of disease or other problems with the structure or function of the body, and transportation primarily for and essential to the provision of such medical care, provided pursuant to the terms of a contract issued to an individual or group health plan by a carrier or other “third party” within the meaning of N.J.S.A. 30:4D-3m.

“Health joint insurance fund” means a fund for the provision of health care services or benefits authorized in accordance with N.J.S.A. 40A:10-36 et seq. (Joint Insurance), and N.J.A.C. 11:15-3 (Joint Insurance Funds for Local Governmental Units Providing Group Health and Term Life Insurance Benefits), regardless of whether the benefits and services are self-funded by the participants or purchased under a contract of health insurance.

“NJ KidCare” means the program administered by the Division of Medical Assistance and Health Services, which provides health care benefits to certain children under the authority of N.J.S.A. 30:4D et seq. and P.L. 1997, c.272.

“Personal contribution to care” means a payment, similar to a copayment, which is a responsibility incurred by the enrollee for the cost of certain services as specified in N.J.A.C. 10:49-9.

“Sponsoring adult” means an individual 18 or older who may assist in making an application for NJ KidCare children.

“Third party liability” means any third party that is liable to pay part or all of the medical costs of the child. This includes, but is not limited to, medical insurance, tort and no-fault auto insurance (PIP) payments.

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

Inserted “Personal contribution to care”.

SUBCHAPTER 2. CASE PROCESSING

10:79-2.1 Application

(a) Applications for NJ KidCare benefits can be obtained from various locations or by calling 1-800-701-0710. Applications for Plan A benefits can be forwarded to the CWA in the county in which the applicant resides or to any other eligibility determination agencies designated by the Division of Medical Assistance and Health Services. Applications for Plan B and C shall be forwarded to PO Box 4818, Trenton, N.J. 08650-4818. The application as well as any addenda to that form as prescribed by the Division of Medical Assistance and Health Services, should be completed by the sponsoring adult of a child for whom NJ KidCare is sought; or by an authorized agent of the child; or by the child if the child is an emancipated individual.

1. A sponsoring adult is defined as:

- i. A parent;
- ii. A caretaker relative;
- iii. Other relatives by blood or marriage;
- iv. A staff member of a public or private welfare or social service agency of which the child for whom assistance is sought, is a client and who has been designated by the agency to so act;
- v. An attorney or physician of the person seeking NJ KidCare benefits; or
- vi. A staff member of an institution or facility in which the individual is receiving care and who has been designated by the institution or facility to so act.

2. A legal guardian shall be recognized as an authorized agent to execute an application on behalf of any individual.

(b) The eligibility determination agency, under policies and procedures established by the Division of Medical Assistance and Health Services, has the direct responsibility in the application process to:

1. Inform the sponsoring adult or applicants of the purpose of and the eligibility requirements for the NJ KidCare program, including their rights and responsibilities;
2. Receive applications and review them for completeness, consistency, and reasonableness;
3. Assist the sponsoring adult or program applicant in exploring eligibility for program benefits;
4. Make known to the sponsoring adult or program applicant the appropriate resources and services both within the agency and in the community; and
5. Assure the prompt and accurate submission of eligibility data to the NJ KidCare Eligibility File for eligible children and prompt notification to the sponsoring adult

or ineligible program applicant of the reason for their ineligibility.

(c) As part of the application process, a sponsoring adult or applicant for NJ KidCare has the responsibility to:

1. Complete, with the assistance of the eligibility determination agency as required, any forms required as part of the application process; and
2. Assist the eligibility determination agency in securing evidence that verifies the statements regarding eligibility.

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

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

In (a), inserted a third sentence.

10:79-2.2 Interview

The eligibility determination agency may, at the request of the sponsoring adult or applicant, conduct a personal face-to-face interview with the applicant, sponsoring adult, or the authorized agents as part of the process of determining program eligibility.

10:79-2.3 Application processing

(a) The Statewide eligibility determination agency shall screen all mail-in and walk-in applications against the existing Medicaid eligibility file. Applications which involve family members who are already enrolled in the Medicaid program will be forwarded to the applicable county welfare agency for inclusion in the existing case as appropriate. The county welfare agencies are required to refer any child found not eligible for Medicaid or any child losing eligibility for Medicaid or NJ KidCare-Plan A to the NJ KidCare-Plan B and C program. The CWA should process all applications mailed or forwarded to them or all walk-ins for NJ KidCare-Plan A if the child's family income appears to meet the income standards.

(b) The eligibility determination agency is required to verify all factors related to eligibility for the NJ KidCare program. Factors subject to verification include:

1. Birth date: The birth date of any child for whom benefits are sought must be verified;
2. Citizenship: When a child's U.S. citizenship is questionable, citizenship must be verified;
3. Alien status: If the child is not a citizen, the alien status must be verified;
4. Household composition: The eligibility determination agency must verify the household composition in order to ascertain which persons will be included in the determination of eligibility for NJ KidCare benefits;
5. Social Security number: The Social Security number must be verified;
6. Eligibility for or coverage under other health insurance; and

7. The eligibility determination agency must verify all sources of income of any person whose income must be counted in the determination of program eligibility. While resources are not a factor of eligibility for benefits for children under this chapter, resources must be identified and verified to determine if income is derived from the resources.

(c) The eligibility determination agency shall use documentary evidence as the primary source of verification. Documentary evidence is written confirmation of the family's circumstances. It is the responsibility of the sponsoring adult or applicant to obtain or to assist the eligibility determination agency in obtaining any required documentation.

(d) In circumstances in which the documentary evidence is questionable or is not available, the eligibility determination agency may use collateral contact to confirm the family's circumstances. A collateral contact is a verbal confirmation of a family's circumstances by a person outside the family. In order to be acceptable as verification, a collateral contact must be in a position to provide accurate information about the family and the circumstance in question.

(e) In the absence of credible verification of all eligibility factors, eligibility for the NJ KidCare program may not be established.

(f) For any application for NJ KidCare benefits under the provisions of this chapter, the eligibility determination agency must accomplish disposition of the application as soon as all factors of eligibility are met and verified but not later than 30 days from the date of application (or from the date of the inquiry form PA-1C, if applicable). Exceptions to the timeliness standard appear in (f)2 below.

1. "Disposition of the application" means the official determination by the eligibility determination agency of eligibility or ineligibility of the applicant(s) for NJ KidCare.

2. Disposition of the application may exceed the applicable processing standard when substantially reliable evidence of eligibility or entitlement for benefits is lacking at the end of the processing period. In such circumstances, the application may be continued in pending status. The eligibility determination agency shall fully document in the case record the circumstances of the delayed application processing. The processing standard may be exceeded for any of the following:

i. Circumstances wholly within the control of the applicant;

ii. A determination by the eligibility determination agency, when evidence of eligibility or entitlement is incomplete or inconclusive, to afford the applicant additional time to provide evidence of eligibility before final action on the application;

iii. An administrative or other emergency that could not reasonably have been avoided; or

iv. Circumstances wholly beyond the control of both the applicant and the eligibility determination agency.

3. When disposition of the application is delayed beyond the processing standard, the eligibility determination agency shall provide the applicant written notification prior to the expiration of the processing period setting forth the specific reasons for the delay.

4. Each eligibility determination agency director shall establish appropriate operational controls to expedite the processing of applications and to assure maximum compliance with the processing standard.

i. The eligibility determination agency shall maintain control records which identify all pending applications which have exceeded the processing standard and the reason therefor. The record shall be adequate to make possible the preparation of reports of such information as may be requested by the Division of Medical Assistance and Health Services.

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

1. Approved: The applicant has been determined eligible for NJ KidCare;

2. Denied: The applicant has been determined ineligible for NJ KidCare;

3. Dismissed: A decision by the eligibility determination agency that the application process need not be completed because:

i. The child has died (the application process must be completed if there are unpaid medical bills for covered services in the retroactive coverage period or subsequent to program application);

ii. The child cannot be located;

iii. The application was registered in error; or

iv. The child has moved out of the State during the application process and there are no unpaid bills for the time period beginning with the retroactive eligibility period up to the date of relocation; and

4. Withdrawn: The sponsoring adult or applicant requests that eligibility for the NJ KidCare program be no longer considered.

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

In (a), inserted a third sentence.

10:79-2.4 Application processing for the unborn—NJ KidCare—Plan C

(a) The eligibility determination agency may accept and process an application for an unborn child in the last trimester of the pregnant woman's term, but whose income is greater than 185 percent, but no greater than 200 percent of the Federal poverty level.

(b) Eligibility should be processed utilizing information that is projected to be effective at the time of the birth of the child.

(c) At the time of the application, the pregnant woman should select the unborn child's HMO coverage, and provide the appropriate premium.

(d) The pregnant woman shall notify both the eligibility determination agency and the selected HMO of the birth of the child within 10 calendar days of the birth. Failure to report the birth, select the HMO, if not already selected, and pay the premium, if not yet paid, within 10 calendar days of the birth shall negate the original application, and the applicant for the newborn shall have to refile a new application with verification of eligibility reprocessed before eligibility can occur for the newborn. In the instance where a new application must be processed, the eligibility rules in this subchapter through N.J.A.C. 10:79-4 are effective.

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

Former N.J.A.C. 10:79-2.4, Date of initial eligibility, recodified to N.J.A.C. 10:79-2.5.

10:79-2.5 Date of initial eligibility

(a) Eligibility under NJ KidCare-Plan A is effective back to the first day of the month of application provided that all eligibility requirements are met in that month. If eligibility requirements are not met during the month of application, a future eligibility date will be established as of the first day of the month the beneficiary meets all eligibility requirements.

(b) Eligibility under Plan B or C is established with the first date of enrollment with an health maintenance organization (HMO).

1. Exception: For newborns, as indicated in N.J.A.C. 10:79-2.4, there is eligibility for fee-for-service Plan C services from the date of birth until enrollment of the child into the HMO, if all the requirements of N.J.A.C. 10:79-2.4 are met.

Recodified from N.J.A.C. 10:79-2.4 and amended by R.1998 d.154, effective February 27, 1998 (operative March 1, 1998; to expire August 31, 1998).

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

Added (b). Former N.J.A.C. 10:79-2.5, Retroactive eligibility, recodified to N.J.A.C. 10:79-2.6.

10:79-2.6 Retroactive eligibility—Plan A only

(a) Retroactive eligibility is available to cover unpaid medical bills for three months prior to the date of application if the requirements are met in each of the three months. Retroactive eligibility shall not be available for any period prior to the start of the program. For the purposes of this chapter, the start of the program for children eligible pursuant to N.J.A.C. 10:79-3.4(a)2, whose income is no more than 133 percent, is February 1, 1998.

(b) If the applicant for NJ KidCare—Plan A benefits has unpaid medical bills from the retroactive eligibility period, the eligibility determination agency shall assist the applicant with applying for payment of unpaid medical bills. Retroactive eligibility shall not be available for any period prior to the start of the program.

(c) There is no retroactive eligibility coverage for children eligible for Plan B or C.

Recodified from N.J.A.C. 10:79-2.5 and amended by R.1998 d.154, effective February 27, 1998 (operative March 1, 1998; to expire August 31, 1998).

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

Added (c). Former N.J.A.C. 10:79-2.6, Redetermination of eligibility, recodified to N.J.A.C. 10:79-2.7.

10:79-2.7 Redetermination of eligibility

(a) Eligibility for NJ KidCare under this chapter shall be redetermined, with the completion of a redetermination form, as follows:

1. Eligibility for NJ KidCare—Plan A must be redetermined no later than six months following the month of initial eligibility or the last redetermination.

(b) Subsequent to the initial application, verification is required for only those factors of eligibility which are subject to change or for those factors for which the original verification has become questionable.

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

1. When required on the basis of information the eligibility determination agency has obtained previously about anticipated change in any factors affecting the family 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 that may affect program eligibility.

Recodified from N.J.A.C. 10:79-2.6 by R.1998 d.154, effective February 27, 1998 (operative March 1, 1998; to expire August 31, 1998).

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

Former N.J.A.C. 10:79-2.7, Case transfer between CWAs, recodified to N.J.A.C. 10:79-2.8.

10:79-2.8 Case transfer between CWA's

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

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

2. Eligibility for NJ KidCare-Plan B and C must be redetermined every 12 months.

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

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

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

- i. Complete the eligibility determination process;
- ii. If determined eligible for the NJ KidCare—Plan A program, accrete the eligible person(s) to the NJ KidCare Eligibility File with the correct effective date of NJ KidCare—Plan A program eligibility and the new address in the receiving county; and
- iii. If case is determined eligible, within five working days of that determination, transfer the case record material to the receiving county in accordance with (d)1i through iv below.

2. The receiving county has the responsibility to:

- i. Communicate promptly with individual upon the receipt of the case material to advise of continued program entitlement; and
- ii. Immediately notify the county of origin, in writing, of the date the case material was received.

(d) For cases which are determined eligible for the NJ KidCare—Plan A program:

1. The county of origin has the responsibility to:

- i. Transfer, within five working days from the date it is notified of the actual move, a copy of pertinent material to the receiving county. Such material shall include, at a minimum, a copy of the first application and most recent application form (including all verification), Social Security number(s), and the new address in the receiving county;

ii. Send the above case material, with a cover letter specifying that the case is being transferred and requesting written acknowledgment of receipt;

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

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

2. The receiving county shall have the responsibility to:

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

ii. Immediately notify the county 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 county of origin, that county shall be consulted for resolution of the issues;

iv. Accept responsibility for the case (provided application to transfer has been made) 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 (provided application to transfer has been made) 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 NJ KidCare Eligibility File, as necessary, including entry of a new case number. If the case is determined eligible for NJ KidCare—Plan A in the receiving county, there shall be no interruption of entitlement. If the case is determined ineligible for NJ KidCare—Plan A in the receiving county, eligibility shall be terminated, subject to timely and adequate notice, and the previously eligible person terminated on the NJ KidCare Eligibility File;

vii. Notify the county of origin of the date eligibility for NJ KidCare—Plan A will begin or will be terminated in the receiving county; and

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

Recodified from N.J.A.C. 10:79-2.7 and amended by R.1998 d.154, effective February 27, 1998 (operative March 1, 1998; to expire August 31, 1998).

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

In (a), added 2. Former N.J.A.C. 10:79-2.8, Case transfer from State approved eligibility determination agency, recodified to N.J.A.C. 10:79-2.9.

10:79-2.9 Case transfer from State approved eligibility determination agency

(a) When an individual's eligibility transfers from one State approved eligibility determination agency to another, responsibility for the case shall be transferred in a manner so as not to adversely affect the rights of any individual to program entitlement.

1. For individuals who, because of an initial screening, it is determined that the eligibility determination agency must transfer the application to the appropriate agency, the agency of origin has the responsibility to:

- i. Transfer, within five working days from the date of the initial screening, a copy of the application form including all verification; and
- ii. Send the above materials, a cover letter specifying that the application case is being transferred and requesting written or verbal acknowledgment of receipt;

2. For individuals for whom a determination has been made, when it is determined that because of a change in circumstances the eligibility determination agency must transfer the case, the agency of origin has the responsibility to:

- i. Transfer, within five working days from the date of the report of a change in circumstances, a copy of pertinent material to the appropriate agency. Such material shall include, at a minimum, a copy of the first application and most recent application form including all verification;

- ii. Send the above case material, with a cover letter specifying that the case is being transferred and requesting written acknowledgment of receipt;

- 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 have the responsibility to:

- 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 (provided application to transfer has been made) 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 (provided application to transfer has been made) 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 NJ KidCare Eligibility File, as necessary, including entry of a new case number. If the case is determined eligible for NJ KidCare in the receiving agency, there shall be no interruption of entitlement.

If the case is determined ineligible for NJ KidCare in the receiving agency, eligibility shall be terminated, subject to timely and adequate notice, and the previously eligible person terminated on the NJ KidCare Eligibility File;

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

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

Recodified from N.J.A.C. 10:79-2.7 by R.1998 d.154, effective February 27, 1998 (operative March 1, 1998; to expire August 31, 1998). See: 30 N.J.R. 1060(a).

SUBCHAPTER 3. NONFINANCIAL ELIGIBILITY FACTORS

10:79-3.1 General provisions

(a) Eligibility for the NJ KidCare program must be established in relation to each requirement of the NJ KidCare program.

(b) The applicant's or the sponsoring adult's statements regarding the child or children's 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.

10:79-3.2 Citizenship

(a) In order to be eligible for the NJ KidCare program, an individual must be a citizen of the United States, or 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, if present in the United States prior to August 22, 1996, and if otherwise meeting the eligibility criteria, are entitled to full NJ KidCare 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 and Haitian entrant as defined in 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 KidCare 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 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 NJ KidCare 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 KidCare as issued by the Attorney General of the United States under his or her sole and unreviewable discretion.

(c) The following aliens entering the United States on or after August 22, 1996, and if otherwise meeting the eligibility criteria, are entitled to NJ KidCare benefits:

1. An alien lawfully admitted for permanent residence but only after having been present in the United States for five years;

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 but only after the alien has been present in the United States for five years;

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 but only after the alien has been present in the United States for five years;

7. An alien who is granted status as a Cuban and Haitian entrant pursuant to 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 with the United States Armed Forces and his or her spouse and the unmarried dependent children of the alien or spouse; and

12. Certain aliens who are victims of domestic violence as specified in (b)12 above, but only after the alien has been present in the United States for five years.

(d) (Reserved)

(e) Any alien who is not an eligible alien as specified in (b) and (c) above, is ineligible for NJ KidCare benefits. However, any such alien may, if a resident of New Jersey and if he or she meets all other NJ KidCare—Plan A eligibility requirements, be entitled to coverage for the treatment of an emergency medical condition only.

(f) Persons claiming to be citizens and eligible aliens must provide the eligibility determination agency with documentation of citizenship or alien status.

(g) As a condition of eligibility, all applicants for NJ KidCare (except for those applying solely for services related to the treatment of an emergency medical condition) must sign a declaration under penalty of perjury that they are a citizen of the United States or an alien in a satisfactory immigration status. In the case of a child or incompetent applicant, another individual on the applicant's behalf must complete the same written declaration under penalty of perjury.

1. The following are acceptable documentation of United States citizenship:

- i. Birth certificate;
- ii. Religious record of birth recorded in the United States or its territories within three months of birth. The document must show either the date of birth or the individual's age at the time the record was created;
- iii. United States passport (not including limited passports which are issued for periods of less than five years);
- iv. Report of Birth Abroad of a Citizen of the U.S. (Form FS-240);
- v. U.S. Citizen I.D. Card (INS Form-197), Naturalization Certificate (INS Forms N-550 or N-570);
- vi. Certificate of Citizenship (INS Forms N-560 or N-561);
- vii. Northern Mariana Identification card (issued by the INS to a collectively naturalized citizen of the United States who was born in the United States before November 3, 1986);
- viii. American Indian Card with a classification code "KIC" (issued by the INS to identify U.S. citizen members of the Texas Band of Kickapoos); or,
- ix. Contemporaneous hospital record of birth in one of the 50 states, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam (on or after April 10, 1899), the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island, or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in any of these jurisdictions).

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

i. 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.

ii. 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.

iii. Refugees—INS Form I-94 annotated with stamp showing entry as refugee under section 207 of the Immigration and Nationalization Act and date of entry into the United States; INS Forms 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 KidCare 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."

iv. 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."

v. 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 Forms I-688B annotated "274a. 12(a)(10)" or I-766 annotated "A10."

vi. 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.

vii. 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."

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

ix. 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.

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

xi. 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 subject to the five-year waiting period before eligibility for NJ KidCare can be established, the date of entry into the United States shall be determined as follows:

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

10:79-3.3 State residency

(a) In order to be eligible for the NJ KidCare program, the applicant must be a resident of the State of New Jersey. The term "resident" shall be interpreted to mean a caretaker adult with whom the child is residing is living in the State voluntarily and not for a temporary purpose, that is, with no intention of presently removing therefrom.

1. If the caretaker adult leaves New Jersey with the child or the applicant with the intent to establish permanent residence elsewhere, or for an indefinite period for purposes other than a temporary visit, the child or applicant ceases to be eligible to receive NJ KidCare from this State.

2. When the caretaker relative of a child or the applicant enters the State in order to receive medical care and applies for NJ KidCare 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 child/applicant ineligible for the NJ KidCare 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 caretaker relative or applicant to remain permanently in this State;

iii. Whether there is objective evidence that the caretaker relative or applicant child 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 caretaker relative or applicant previously resided recognizes him or her as having continuing eligibility under that state's Medicaid or Title XXI children's health assistance 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 caretaker relative or applicant has become a resident of this State, NJ KidCare eligibility may be established.

10:79-3.4 Eligible children

(a) The following children who meet all eligibility criteria of this chapter are eligible for NJ KidCare benefits:

1. Children born after September 30, 1983; or

2. A child not otherwise eligible under (a)1 above who has not attained the age of 19.

(b) Any child receiving NJ KidCare benefits under the provisions of this chapter who but for the age limits in (a)1 above would be eligible for NJ KidCare under the provisions of this chapter and who is receiving inpatient services covered by NJ KidCare at the time he or she reaches the age limit, will continue to be eligible for NJ KidCare until the end of the stay for which the inpatient services are furnished.

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

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

In (b), substituted a reference to NJ KidCare for a reference to NJ KidCare-Plan A.

10:79-3.5 Household unit for NJ KidCare—Plan A

(a) For NJ KidCare—Plan 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. For 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 sponsored relative or the applicant, the child’s stepparent. If the sponsored relative or 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, and the child’s spouse, if applicable.

(b) Any person who is a recipient of TANF or SSI or who would have been eligible for AFDC using the rules in existence as of June 16, 1996 will not be included in the household unit. Any person whose income and resources have been deemed to be an eligible SSI beneficiary shall likewise not be included in the household unit unless that person is applying for benefits under this chapter.

(c) Any person in (a)1 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 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.

10:79-3.6 Household unit for NJ KidCare—Plan B and C

(a) For Plan B or C, 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 as members of the household unit:

1. The child;
2. The child’s natural or adoptive parents;
3. The blood-related siblings (including those of half-blood) and adopted siblings under age 21;

4. The natural or adoptive father of any children in the household unit;

5. The step-parent, if the step-parent is married to the natural parent; and

6. The legal custodian of a child under age 18.

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

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

10:79-3.7 Third party liability

(a) Program applicants and beneficiaries are required to identify to the eligibility determination agency and 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) Any sponsoring adult or applicant who applies for NJ KidCare who is eligible pursuant to N.J.A.C. 10:79-3.4(a)1, by virtue of the application for benefits, is deemed to have assigned to the Commissioner of the Department of Human Services any rights to support for the applicant for the purpose of medical care as determined by a court or administrative order and any rights to payment for care from any third party. Sponsoring adults, program applicants and beneficiaries are required to cooperate in the identification of and the obtainment of any such rights.

(c) The eligibility determination agency shall advise sponsoring adults, program applicants and beneficiaries of the terms of the assignment and the consequences thereto.

(d) The eligibility determination agency shall require that the sponsoring adult pursue any coverage for health care services available through a group health plan for which the child is eligible that is noncontributory or otherwise results in no premium contribution cost to the household unit.

10:79-3.8 Other health insurance coverage eligibility rules

(a) For the purposes of this chapter, the term “health insurance” does not include:

1. Student coverage which is defined as a limited coverage policy which covers injuries sustained while the student is engaged in 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. Workers’ compensation or similar insurance;
7. Personal injury protection coverage in automobile insurance;

8. Long-term care insurance;
9. Dental-only and vision-only coverage;
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; and
11. Coverage under Medicare.

(b) With respect to a child determined eligible for NJ KidCare—Plan A, who meets the requirements listed below, other health insurance coverage shall not preclude that child from enrolling under NJ KidCare—Plan A.

1. A child who has other health insurance may be eligible for NJ KidCare—Plan A, if:
 - i. The family income does not exceed 100 percent of the Federal poverty level; and
 - ii. The child was born after September 30, 1983.

(c) With respect to a child who does not meet the requirements of (b) above, a child shall be precluded from NJ KidCare-Plan A eligibility if:

1. The child is currently covered under a group health plan;
2. The child is currently covered under any other health insurance plan; or
3. The child is covered or is eligible for coverage under a group health plan or otherwise under a group health plan sponsored or self-funded by a governing unit.

(d) Eligibility for a coverage under a health insurance policy which is not readily accessible to the child shall not preclude the child from eligibility for NJ KidCare-Plan A.

1. In the case of coverage under an absent parent's policy, not readily accessible means a plan defined coverage network, where the network is not accessible with 45 minutes travel time of the child's residency.
2. In the case where the coverage is available under an absent parent's policy, the custodial parent shall be allowed to show good cause why the coverage is not available. Good cause may not be, but is not limited to, concern of physical or emotional abuse.

(e) With respect to a child who does not meet the requirements of (b) above, a child shall be precluded from NJ KidCare-Plans B and C eligibility if:

1. The child is covered or is eligible for coverage under a non-contributory group health plan or otherwise under a group health plan resulting in no premium contribution cost to the household unit within 12 months prior to the date of application for NJ KidCare-Plans B and C;

2. The child is currently covered or was covered under any other health insurance plan within 12 months prior to the date of application for NJ KidCare-Plans B and C; or

3. The child is covered or otherwise is eligible for coverage under a group health plan sponsored or self-funded by a government unit.

(f) Exceptions to (e) above are listed below:

1. Coverage under a contract for health insurance obtained as an enrollee or family member of an enrollee, or participant in Health Access New Jersey shall not preclude a child from being eligible for NJ KidCare-Plans B and C.

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

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

4. The child was covered by Medicaid.

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

5. Coverage or eligibility for coverage, as applicable, under a group health benefits plan, whether sponsored through a governing entity or private employer, for the 12 month period shall not be used to preclude the child's eligibility for NJ KidCare-Plans B and C when:

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

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

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

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

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

Rewrote the section.

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

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

10:79-3.10 Application for other benefits

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

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

10:79-3.11 Inmates of public institutions

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

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

SUBCHAPTER 4. FINANCIAL ELIGIBILITY

10:79-4.1 Income eligibility limits

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

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

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

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

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

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

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

Rewrote the section.

10:79-4.2 Prospective budgeting of income

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

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

10:79-4.3 Countable income—Plan A

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

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

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

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

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

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

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

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

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

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

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

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

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

In (a), added "For purposes of Plan A eligibility," at the beginning.

10:79-4.4 Countable income—Plans B or C

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

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

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

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

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

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

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

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

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

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

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

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

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

10:79-4.5 Resource eligibility

Children seeking NJ KidCare benefits under the provisions of this chapter are eligible without regard to the value of the household unit's resources. The eligibility determination agency shall inquire about the household unit's re-

sources only in order to establish income that may result from the household unit's resources.

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

SUBCHAPTER 5. ADMINISTRATION

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

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

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

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

Added a second sentence.

(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.

SUBCHAPTER 6. BENEFICIARY RIGHTS AND RESPONSIBILITIES

10:79-6.1 Notice of the eligibility determination agency decision—Plan A

(a) The eligibility determination agency shall promptly notify any applicant for, or beneficiary of, the NJ KidCare-Plan A 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 fair hearing, the action may 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 must appear on the notice.

2. Notices of any eligibility determination agency action must 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 fair hearing.

2. Notices of agency decisions adverse to the applicant or beneficiary shall include the citation and title of the regulations 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) 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 will be delayed beyond the standards for disposition of an application as set forth in N.J.A.C. 10:79-2.1(d), notice shall be mailed prior to the expiration of the disposition period notifying the applicant of the delay and reasons for it.

(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 emancipated child, or the caretaker relative 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 emancipated child, or the caretaker relative has indicated in writing that he or she understands that this must 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 the 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.

10:79-6.2 Fair hearings

(a) It is the right of every applicant for or beneficiary of the NJ KidCare-Plan A program to be afforded the opportunity for a fair hearing in the manner set forth in N.J.A.C. 10:49-51 et seq., including, when applicable, continuation of NJ KidCare-Plan A benefits pending the results of the fair hearing.

(b) Any request for a fair hearing shall be forwarded to the Division of Medical Assistance and Health Services, Office of the Legal and Regulatory Liaison, PO Box 712, Trenton, New Jersey 08625-0712.

10:79-6.3 Notice of the Statewide determination agency decision—Plan B and C

(a) The Statewide eligibility determination agency shall promptly notify any applicant for, or beneficiary of, the NJ KidCare-Plan B and C 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 an appeal, the action may not be implemented until at least 30 days after the mailing of the notice (see (e) below for exceptions to the ten-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. 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 basis for the decision.

1. All notices of the agency decision shall include an explanation of the grievance process.

2. Notices of agency decisions adverse to the applicant or beneficiary shall include the citation and title of the regulations 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) 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 exists.

(d) The 30-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 emancipated child, or caretaker relative, 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 emancipated child, or caretaker relative, has indicated in writing that he or she understands that this must 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.

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

10:79-6.4 Post-application client responsibilities

Upon a determination of eligibility for the NJ KidCare program, the sponsoring adult or applicant has the on-going responsibility for the reporting of changes in family circumstances and for the provision of information as delineated at N.J.A.C. 10:79-2.1(c). Further, as requested by the eligibility determination agency, additional information must be provided. At any time that the eligibility determination agency lacks sufficient information to confirm continuing program eligibility because of the unwillingness of the sponsoring adult or sponsoring adults to provide necessary information, the agency shall commence action to terminate the case and pursue recovery when warranted.

10:79-6.5 Grievances and appeals for NJ KidCare-Plan B and C

(a) It is the right of every applicant for, or beneficiary of, NJ KidCare-Plan B or C, to be afforded the opportunity for a grievance review in the manner established in the policies and procedures set forth below. The notification of the right to a grievance review shall be incorporated in or attached to each adverse action notice and shall include explanation on how to request a grievance. The applicant or beneficiary shall be provided 30 days notice before any adverse action is implemented. Appropriate complaints and grievances regarding NJ KidCare should be referred to:

NJ KidCare
PO Box 4818
Trenton, N.J. 08650-4818

(b) In situations where a beneficiary is denied medical services to which he or she feels that he or she is entitled, and those services are considered fee-for-service under the NJ KidCare-Plan B and C, a request for a hearing and a brief explanation of the situation should likewise be sent to the above address.

(c) In a situation where a beneficiary is denied services through the health maintenance organization (HMO) provider, the beneficiary should be referred to the HMO's complaint and /or grievance system.

(d) For those cases involving termination for program fraud and abuse, the applicant shall have the right to an administrative law hearing as indicated at N.J.A.C. 10:79-7.

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

10:79-6.6 Right to a grievance review—Plans B and C

(a) Those agency actions which adversely affect an applicant or beneficiary and may be grieved include, but are not limited to: determination of household composition, earned and unearned income calculations, and interpretation of residency, citizenship and age requirements.

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

(c) An applicant must 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) This 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 final agency decision, which 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. This process shall include reviewing the grievance, researching the issue involved, and may include contact with the individual filing the grievance. The intent of this 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.

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

10:79-6.7 Premiums

(a) For children in families with income above 150 percent and at or below 200 percent of the Federal poverty level, a monthly premium shall be required. There shall be a single dollar premium of \$15.00 per month per family that applies to all families, regardless of income and regardless of the number of children in the family.

(b) Families shall be billed in advance of the coverage month. Failure to submit the full contribution shall result in termination of coverage for the month following the coverage month that the premium has not been received by the NJ KidCare program.

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

10:79-6.8 Personal contribution to care (copayment)— Plan C

(a) For children in families with income above 150 percent of the Federal poverty limit, personal contribution to care shall be required.

(b) Personal contribution to care for managed care services are effective upon date of enrollment.

(c) A personal contribution to care of \$5.00 per visit/service shall be charged for practitioner visits (physician, nurse midwife, nurse practitioner, clinics, podiatrists, dentist, chiropractors, optometrist, psychologists) and outpatient hospital or clinic visits. There is a \$10.00 personal contribution to care for use of the emergency room, which does not result in an inpatient hospital stay. Personal contribution to care for prescription drugs will be \$1.00 for generics and \$5.00 for brand name drugs.

1. A personal contribution to care shall not apply to substance abuse services, including practitioner visits, outpatient or clinic visits; or well-child visits, in accordance with the schedule recommended by the American Academy of Pediatrics; lead screening and treatment; age-appropriate immunizations; preventive dental services; prenatal care; and family planning visits.

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

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

10:79-6.9 Limitation on cost-sharing—Plan C

(a) There shall be a family limit on cost-sharing equal to five percent of household income for Plan C beneficiaries. Cost-sharing means the premium payments and the personal contribution to care.

(b) The cost-sharing limit shall be calculated annually starting with the date of initial enrollment of any children in the family or the annual reenrollment date. For ease of administration, the annual premium shall be calculated by the Statewide eligibility determination agency and used to reduce the family cost from the first day of enrollment.

(c) Once the limits have been met, the Statewide eligibility determination agency shall issue a certification indicating that the Plan C member has met their cost share limit, and the provider shall not collect a personal contribution to care until further notice.

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

SUBCHAPTER 7. NJ KIDCARE BENEFICIARY FRAUD AND ABUSE POLICIES

Authority

P.L. 1997, c.272, and Title XXI of the Social Security Act; (42 U.S.C. §§ 1397aa, 1397bb, 1397cc and 13997j); Section 1902(a)(10)(A)(ii) of the Act (42 U.S.C. § 1396a(a)(10)(A)(ii)); and Section 1905 of the Act (42 U.S.C. § 1396d).

Source and Effective Date

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

10:79-7.1 Termination of eligibility for good cause for fraud and abuse

(a) Any violation of (b) below by an applicant, beneficiary, caretaker relative or sponsoring adult may result in the termination of the applicant's or beneficiary's eligibility from NJ KidCare—Plan B and C. An individual receiving a Notice of Proposed Termination issued by the Director of the Division may request, within 20 days of the date of the Notice, an administrative law hearing before the Office of Administrative Law. The Notice shall be dated at least 20 days prior to the end of the month in which the termination is effective. Failure to request a hearing within this time limit shall result in automatic termination of benefits. Until such time as a final agency decision is issued by the Director as a result of such a hearing which terminates an individual from NJ KidCare—Plan B or C, the individual shall remain eligible for such benefits, unless the Director determines and states in the Notice of Proposed Termination that temporary suspension of benefits prior to a hearing is necessary to protect the integrity of the NJ KidCare—Plan B and C program and/or the health, safety or welfare of other NJ KidCare—Plan B and C beneficiaries.

(b) The following grounds shall constitute good cause for termination:

1. Knowingly or intentionally making or causing to be made false statements or misrepresentations of material fact in any application or reapplication for benefits under NJ KidCare-Plan B or C;

2. Knowingly or intentionally making or causing to be made false statements, misrepresentations of material fact, or alterations on any NJ KidCare-Plan B or C program claim form, eligibility card, or other document issued by or on behalf of the Division;

3. Intentionally misusing or abusing NJ KidCare-Plan B or C program benefits;

4. Knowingly or intentionally converting all or part of NJ KidCare-Plan B or C program benefits to a use other than the individual's own legitimate use and benefit;

5. Giving, loaning, or selling 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. Forgery or attempted forgery involving eligible services and/or claim forms for such services;

7. Engaging in a course of conduct or performing an act deemed improper or abusive of the NJ KidCare program following notification that this conduct should cease; or

8. Failure to cooperate in a NJ KidCare investigation.

(c) The existence of a cause for termination described in (b) above may be established by a judgment of conviction for a crime, disorderly persons offense, or petty disorderly persons offense; a judgment or order of either a court of competent jurisdiction or an administrative agency; or by a preponderance of the evidence.

10:79-7.2 Applications for readmission subsequent to termination of eligibility

After at least one year has elapsed from the date of the final agency decision terminating the eligibility of an applicant or beneficiary of NJ KidCare-Plan B or Plan C for good cause, the terminated individual, or anyone with authority to act on his or her behalf, may apply to the Director for readmission to the NJ KidCare-Plan B or Plan C program. The Director has full discretion to approve or deny such an application. Any individual whose application for readmission has been denied may request an administrative law hearing on the denial, and/or may submit another application to the Director when at least two years have elapsed from the date of the final agency decision denying readmission.

10:79-7.3 Applicability

N.J.A.C. 10:79-7.1 and 7.2 shall apply only to applicants for and beneficiaries of NJ KidCare-Plan B and Plan C benefits, and shall not be applicable to termination due to ineligibility initiated under N.J.A.C. 10:79-2 through 4.