

**CHAPTER 79**

**NJ FAMILYCARE—CHILDREN’S PROGRAM**

**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.2004 d.42, effective December 23, 2003.  
See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 79, NJ FamilyCare—Children’s Program, expires on June 21, 2009. See: 41 N.J.R. 945(a).

**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)

Subchapter 7, NJ Kidcare Beneficiary Fraud and Abuse Policies, was adopted as 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 8, Presumptive Eligibility for NJ Kidcare Plan, A, B, and C, was adopted R.2000 d.266, effective July 3, 2000. See: 32 N.J.R. 159(a), 32 N.J.R. 2493(a).

Chapter 79, NJ FamilyCare—Children’s Program, was readopted as R.2004 d.42, effective December 23, 2003. See: Source and Effective Date. See, also, section annotations.

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## SUBCHAPTER 1. INTRODUCTION

**10:79-1.1 Purpose and scope**

(a) NJ FamilyCare–Children’s Program 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 FamilyCare–Children’s 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 FamilyCare–Children’s Program eligibility.

(d) Children eligible under this chapter are eligible for NJ FamilyCare–Children’s Program–Plan A, Plan B, Plan C or Plan D services which are set forth in N.J.A.C. 10:49-5. NJ FamilyCare–Children’s Program–Plan A is a means-tested Federal entitlement program.

(e) Plans B, C and D 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. 10:69, 10:71 and 10:72 and who are income ineligible for NJ FamilyCare–Children’s Program under the provisions of this chapter shall be evaluated for eligibility as Medically Needy under the provisions of N.J.A.C. 10:70.

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).

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998.  
See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.  
Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

In (d) and (e), inserted references to Plan D.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (d), added the last sentence; in (f), amended the N.J.A.C. references; deleted (g); substituted references to the NJ FamilyCare–Children’s Program for references to NJ KidCare throughout.

**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 the context clearly indicates otherwise.

“Authorized agent” means a parent, guardian, caretaker or any other individual 18 or older who has sufficient information to assist in making an application for NJ FamilyCare–Children’s Program children, including:

1. 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 act as the child’s agent;
2. An attorney or physician of the person seeking NJ FamilyCare–Children’s Program benefits;
3. 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; or
4. A legal guardian.

“Caretaker” or “caretaker adult” means the responsible adult or adults residing with the child or children for whom the application or redetermination for NJ FamilyCare–Children’s Program is being made. This term does not impose a blood relationship to the caregiver as a prerequisite for applying for services on behalf of a child.

“Child” is an individual from birth through the age of 18 who is otherwise not eligible for Medicaid pursuant to N.J.A.C. 10:69, 10:71 or 10:72.

“Copayment” means a specified dollar amount required to be paid by or on behalf of the beneficiary in connection with benefits as specified in N.J.A.C. 10:49-9.

“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 FamilyCare–Children’s Program.

“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 FamilyCare-Children's Program" 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.

"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".  
Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998.  
See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

Inserted "Copayment".

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

Added "Authorized agent"; rewrote "Caretaker" or "caretaker adult"; in "Child", amended the N.J.A.C. references; deleted "Sponsoring adult".

## SUBCHAPTER 2. CASE PROCESSING

### 10:79-2.1 Application

(a) Applications for NJ FamilyCare-Children's Program benefits can be obtained from various locations by calling 1-800-701-0710. Applications for Plan A benefits can be forwarded to the CBOSS 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, C and D shall be forwarded to PO Box 4818, Trenton, N.J. 08650-4818. Applications for NJ FamilyCare-Children's Program can be mailed to the CBOSS or to the eligibility determination agency. 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 authorized agent of the child; or by the child if the child is an emancipated 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 authorized agent or applicants of the purpose of and the eligibility requirements for the NJ FamilyCare-Children's Program, including their rights and responsibilities;
2. Receive applications and review them for completeness, consistency, and reasonableness;
3. Assist the authorized agent or program applicant in exploring eligibility for program benefits;
4. Make known to the authorized agent 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 FamilyCare-Children's Program Eligibility File for eligible children and prompt notification to the authorized agent or ineligible program applicant of the reason for their ineligibility.

(c) As part of the application process, an authorized agent or applicant for NJ FamilyCare-Children's Program 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.

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998.

See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

In (a), inserted a reference to Plan D in the introductory paragraph.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), inserted the third sentence in the introductory paragraph and deleted 1 and 2; in (b) and (c), substituted references to authorized agents for references to sponsoring adults throughout.

### 10:79-2.2 Interview

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

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

Deleted "sponsoring adult," following "applicant."

### 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 shall be forwarded to the applicable eligibility determination agency for inclusion in the existing case as appropriate. The eligibility determination agencies are required to refer any child found not eligible for Medicaid or any child losing eligibility for Medicaid or NJ FamilyCare-Children's Program-Plan A to the NJ FamilyCare-Children's Program-Plan B, C and D program. The CBOSS should process all applications mailed or forwarded to them or all walk-ins for NJ FamilyCare-Children's Program-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 FamilyCare-Children's Program. Factors subject to verification include:

1. Birth date: The birth date of any child for whom benefits are sought must be provided. If there is a discrepancy between the age reported by the applicant and the age appearing on the Medicaid record, and the discrepancy affects eligibility or categorical requirement, then documentation shall be requested;

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 FamilyCare-Children's Program benefits;

5. Social security number: The social security number must be provided. Verification shall be required when subsequent information indicates a problem with the social security number;

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 authorized agent 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 FamilyCare-Children's Program may not be established.

(f) For any application for NJ FamilyCare-Children's Program 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 FamilyCare-Children's Program.

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 documented by the eligibility determination agency 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 FamilyCare-Children's Program;
- 2. Denied: The applicant has been determined ineligible for NJ FamilyCare-Children's Program;
- 3. Dismissed: A decision by the eligibility determination agency that the application process need not be completed because:
  - i. The child has died except that:
    - (1) 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 if applicable (Plan A only);

- 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 for Plan A only; and

4. Withdrawn: The authorized agent or applicant requests in writing or by telephone that eligibility for the NJ FamilyCare-Children's 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.

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998.

See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

In (a), inserted a reference to Plan D.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), substituted references to eligibility determination for county welfare throughout; in (b), rewrote 1 and 5; rewrote (g).

#### 10:79-2.4 Application processing for the unborn NJ FamilyCare-Children's Program-Plan C and Plan D

(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 200 percent, but not greater than 350 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.

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998. See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 with changes, effective September 21, 1998.

Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

In (a), substituted a reference to 350 percent for a reference to 200 percent.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(a).

In (a), substituted "greater than 200 percent, but not greater than 350 percent" for "greater than 185 percent, but no greater than 350 percent".

### 10:79-2.5 Date of initial eligibility

(a) Eligibility under NJ FamilyCare-Children's Program-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, C or D is established with the first date of enrollment with a 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 and Plan D 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.

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998.

See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

In (b)1, inserted a reference to Plan D.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

### 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 all or any 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 not more than 133 percent of the Federal poverty level, is February 1, 1998.

(b) If the applicant for NJ FamilyCare-Children's Program-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 NJ FamilyCare-Children's Program-Plan B, C or D.

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.

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998.

See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

In (c), added a reference to Plan D.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), substituted "all or any" for "each" preceding "of the three months" in the first sentence and substituted "whose income is not more than 133 percent of the Federal poverty level, is February 1, 1998" for "whose income is no more than 133 percent, is February 1, 1998".

### 10:79-2.7 Redetermination of eligibility

(a) Eligibility for NJ FamilyCare-Children's Program under this chapter shall be redetermined, with the completion of a redetermination form, as indicated in (a)1 and 2 below. The redetermination form may be mailed. A face-to-face interview is not required.

1. Eligibility for NJ FamilyCare-Children's Program-Plan A must be redetermined no later than 12 months following the month of initial eligibility or the last redetermination.

2. Eligibility for NJ FamilyCare-Children's Program-Plan B, C or D must be redetermined every 12 months.

(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.

(d) No case shall be terminated before evaluating for continued eligibility using data available from other sources, such as the Food Stamp or WorkFirst New Jersey Programs.

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.

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998. See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 with changes, effective September 21, 1998.

Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

In (a)2, inserted a reference to Plan D.

Amended by R.2001 d.190, effective June 4, 2001.

See: 33 N.J.R. 358(a), 33 N.J.R. 1918(c).

In (a), substituted "indicated in (a)1 and 2 below." for "follows;" and added the second sentence in the introductory paragraph, and substituted "12" for "six" following "no later than" in (a)1.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

Added (d).

#### **10:79-2.8 Case transfer between eligibility determination agencies**

(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.

(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 FamilyCare-Children's Program 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 FamilyCare-Children's Program-Plan A program, accrete the eligible person(s) to the NJ FamilyCare-Children's Program Eligibility File with the correct effective date of NJ FamilyCare-Children's Program-Plan A program eligibility and the new address in the receiving county;

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; and

iv. If ineligible, the eligibility determination agency shall send an appropriate notice of ineligibility to the applicant within 30 days.

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 FamilyCare-Children's Program-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 FamilyCare-Children's Program Eligibility File, as necessary, including entry of a new case number. If the case is determined eligible for NJ FamilyCare-Children's Program-Plan A in the receiving

ing county, there shall be no interruption of entitlement. If the case is determined ineligible for NJ FamilyCare-Children's Program-Plan A in the receiving county, eligibility shall be terminated, subject to timely and adequate notice, the previously eligible person shall be terminated on the NJ FamilyCare-Children's Program Eligibility File and the eligibility determination agency shall send an appropriate notice of ineligibility to the applicant within 30 days;

vii. Notify the county of origin of the date eligibility for NJ FamilyCare-Children's Program-Plan A will begin or will be terminated in the receiving county; and

viii. Issue a NJ FamilyCare-Children's Program 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.

Adopted concurrent proposal. R.1998 d.487, effective August 28, 1998. See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 with changes, effective September 21, 1998.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (c), added iv; in (d), rewrote 2vi.

#### **10:79-2.9 Case transfer from one State approved eligibility determination agency to another**

(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 file 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 FamilyCare-Children's Program Eligibility File, as necessary, including entry of a new case number. If the case is determined eligible for NJ FamilyCare-Children's Program in the receiving agency, there shall be no interruption of entitlement. If the case is determined ineligible for NJ FamilyCare-Children's Program in the receiving agency, eligibility shall be terminated, subject to timely and adequate notice, and the previously eligible person shall be terminated on the NJ FamilyCare-Children's Program Eligibility File and the eligibility determination agency shall send an appropriate notice of ineligibility to the applicant within 30 days;

vii. Notify the agency of origin of the date eligibility for NJ FamilyCare-Children's Program will begin or will be terminated in the receiving agency;

viii. Issue a NJ FamilyCare-Children's Program identification card with the new number if necessary;

ix. Request premium payment required; and

x. Assist in the selection of a managed care organization (HMO), as needed.

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).



Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998.  
See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), substituted "file" for "application case" preceding "is being transferred" in lii, rewrote 3vi and added 3ix and 3x.

### 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 authorized agent'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.

Amended by R.2004 d.42, effective January 20, 2004.  
See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

#### 10:79-3.2 Citizenship

(a) In order to be eligible for the NJ FamilyCare-Children's 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 FamilyCare-Children's Program 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 FamilyCare-Children's Program 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 FamilyCare-Children's Program benefits.

vi. The eligibility determination agency shall apply the definitions "battery" and "extreme cruelty" and the standards for determining whether a substantial connec-

tion exists between the battery or cruelty and the need for NJ FamilyCare-Children's Program 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 FamilyCare-Children's Program 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 FamilyCare-Children's Program benefits. However, any such alien may, if a resident of New Jersey and if he or she meets all other NJ FamilyCare-Children's Program-Plan A eligibility requirements, be entitled to coverage for the treatment of an emergency medical condition only.

(f) Persons claiming to be naturalized 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 FamilyCare-Children's Program (except for those applying solely for services related to the treatment of an emergency medical condition) shall declare whether or not 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 shall declare whether or not they are citizens of the United States or an alien in a satisfactory immigration status.

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 FamilyCare-Children's Program 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 AM6, AM7 or AM8.

3. For aliens subject to the five-year waiting period before eligibility for NJ FamilyCare-Children's Program 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 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 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.

Amended by R.2004 d.42, effective January 20, 2004.  
See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (f), inserted "naturalized" preceding "citizens"; in (g), rewrote the introductory paragraph, substituted "AM6" for "AN6" in 2xi, and substituted "eligibility determination" for "county welfare" preceding "agency" in 3i.

**10:79-3.3 State residency**

(a) In order to be eligible for the NJ FamilyCare-Children's Program, the applicant/child must be a resident of the State of New Jersey. The term "resident" shall be interpreted to mean an applicant who 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 FamilyCare-Children's Program from this State.

2. When the authorized agent of a child or the applicant enters the State in order to receive medical care and applies for NJ FamilyCare-Children's Program 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 FamilyCare-Children's 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 authorized agent or applicant to remain permanently in this State;

iii. Whether there is objective evidence that the authorized agent 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 authorized agent or applicant previously resided recognizes him or her as having continuing eligibility under the 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 factors in this subsection, the eligibility determination agency is satisfied that the authorized agent or applicant child has become a resident of this State, NJ FamilyCare-Children's Program eligibility may be established as long as all other eligibility criteria are met.

Amended by R.2004 d.42, effective January 20, 2004.  
See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), substituted "an applicant who" for "a caretaker adult with whom the child is residing" following "interpreted to mean" in the introductory paragraph and rewrote 3.

**10:79-3.4 Eligible children**

(a) A child who meets all eligibility criteria of this chapter shall be eligible for NJ FamilyCare-Children's Program benefits, as follows:

1. A child who has not attained the age of 19.

(b) Any child receiving NJ FamilyCare-Children's Program benefits under the provisions of this chapter who but for the age limits in (a)1 above would be eligible NJ FamilyCare-Children's Program under the provisions of this chapter and who is receiving inpatient services covered by NJ FamilyCare-Children's Program 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.

Adopted concurrent proposal. R.1998 d.487, effective August 28, 1998.  
See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

Rewrote (a).

**10:79-3.5 Household unit for NJ FamilyCare-Children's Program-Plan A**

(a) For NJ FamilyCare-Children's Program-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 authorized agent or the applicant, the child's stepparent, whether or not there is a common child. 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 July 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.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), rewrote the first sentence of 1iv; in (b), substituted "July 16, 1996" for "June 16, 1996".

### 10:79-3.6 Household unit for NJ FamilyCare-Children's Program-Plan B, C and D

(a) For Plan B, C or D, 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; and
5. The stepparent, if the stepparent is married to the natural parent and his or her children residing in the household.

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).

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998.

See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

In (a), inserted a reference to Plan D in the introductory paragraph.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), rewrote 5 and deleted 6.

### 10:79-3.7 Third party liability

(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) Any authorized agent or applicant who applies for NJ FamilyCare-Children's Program 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 for Human Services any rights to support for the applicant for the purpose of medical care as deter-

mined by a court or administrative order and any rights to payment for care from any third party. Authorized agents, 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 authorized agents, program applicants and beneficiaries of the terms of the assignment and the consequences thereto.

(d) The eligibility determination agency shall require the authorized agent to 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.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), substituted "any" for "and" preceding "third party"; in (d), deleted "that" following "agency shall require".

### 10:79-3.8 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. An insurance plan in which the child's lifetime total cap has been reached;
11. 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
12. Coverage under Medicare.

(b) With respect to a child determined eligible for NJ FamilyCare-Children's Program-Plan A, who meets the requirements listed below, other health insurance coverage



shall not preclude that child from enrolling under NJ FamilyCare-Children's Program-Plan A.

1. A child who has other health insurance may be eligible for NJ FamilyCare-Children's Program-Plan A, if:

i. The child is age six or over and family income does not exceed 100 percent of the Federal poverty level;

ii. The child is age six or over and family income does not exceed the AFDC standard after disregards; or

iii. The child is under the age of six and the family income does not exceed 133 percent of the Federal Poverty Level (FPL).

(c) With respect to a child who does not meet the requirements of (b) above, a child shall be precluded from NJ FamilyCare-Children's Program-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 government 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 FamilyCare-Children's Program-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 include, but shall not be 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 FamilyCare-Children's Program-Plans B, C or D 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 six months prior to the date of application for NJ FamilyCare-Children's Program-Plans B, C or D;

2. The child is currently covered or was covered under any other health insurance plan within six months prior to the date of application for NJ FamilyCare-Children's Program-Plans B, C and D; 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 participating in Health Access New Jersey shall not preclude a child from being eligible for NJ FamilyCare-Children's Program-Plans B, C and D.

2. Coverage under a government funded, non-employee based health insurance program which is targeted for low-income uninsured shall not preclude a child from being eligible for NJ FamilyCare-Children's Program-Plans B, C and D.

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 FamilyCare-Children's Program-Plans B, C and D, 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 only from participation in the NJ FamilyCare-Children's Program-Plan D for six months from the date of COBRA termination.

4. A child who is eligible for Medically Needy with an unmet "spend-down" liability. This unmet "spend-down" liability shall not preclude a child from being eligible for NJ FamilyCare-Children's Program-Plans B, C and D.

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 six month period shall not be used to preclude the child's eligibility for NJ FamilyCare-Children's Program-Plans B, C and D 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.

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998.

See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 with changes, effective September 21, 1998.

Amended by R.1999 d.190, effective June 21, 1999.

See: 31 N.J.R. 517(a), 31 N.J.R. 1613(a).

In (e) and (f), substituted references to six months for references to 12 months.

Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

In (e) and (f), inserted references to Plan D throughout; and in (e)1 and 2 and (f)5, substituted references to six months for references to 12 months.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), added a new 10 and recodified former 10 and 11 as 11 and 12; rewrote (b); in (c), substituted "government" for "governing" preceding "unit" in 3; in (d), substituted "include, but shall not be" for "not be, but is not" preceding "limited to" in 2; in (f), rewrote 3 and 4.

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

Persons who are ineligible for TANF or would have been ineligible for AFDC-related Medicaid 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 FamilyCare-Children's Program (such as noncooperation with work registration) shall have eligibility determined under this chapter without regard to the sanction. (For persons ineligible for TANF or 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. 10:79-4.3(c)).

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

Inserted references to AFDC-related Medicaid throughout.

### **10:79-3.10 Application for other benefits**

(a) As a condition of eligibility for the NJ FamilyCare-Children's Program, authorized agents 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.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

### **10:79-3.11 Inmates of public institutions**

(a) Any child who is an inmate of a public institution is ineligible for the NJ FamilyCare-Children's 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 FamilyCare-Children's Program.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

## **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 FamilyCare-Children's Program-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 672(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 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.

(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 up to the next whole dollar amount for each household size. 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.

(d) Income limits for children through 18 years covered under the provisions of this chapter for Plan D shall be no greater than 350 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). Net income limits shall be no greater than 200 percent of the poverty income guideline after the application of disregards as defined at N.J.A.C. 10:79-4.4(c). The monthly income standard will be one-twelfth of 350 percent of the annual poverty income guideline rounded up to the next whole dollar amount for household size. The annual revision to the Federal poverty income guideline will be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

(e) In order to be eligible for NJ FamilyCare-Children's Program 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) through (d) above.

(f) 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.

Adopted concurrent proposal. R.1998 d.487, effective August 28, 1998. See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

Inserted a new (d); recodified former (d) and (e) as (e) and (f); and in the new (e), substituted a reference to (a) through (d) for a reference to (a).

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (b), (c) and (d), substituted "up" for "down" preceding "to the next whole dollar amount".

#### 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. 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. To establish the best estimate, the one-month period immediately preceding the date of application or redetermination shall be used.

2. In the case of irregular payments, more than one month of income may be used.

3. All applicants should be screened against the State wage/disability/unemployment databases.

4. Documentation of income may be pursued if a crossmatch of any of these databases produces significant undisclosed income.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), rewrote the first sentence and added the last sentence in 1, and added 2 through 4.

#### 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 the rules applicable to income in the AFDC-C program (see N.J.A.C. 10:69).

1. The maximum income limits as provided for at N.J.A.C. 10:69-10.3 do not apply.

2. Neither the \$30.00 nor the one-third disregard of earned income at N.J.A.C. 10:69-10.13(c) apply.

3. The deeming of stepparent income at N.J.A.C. 10:69-10.33(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. 10:69-10.43 shall not apply.

5. Wages paid by the U.S. Census Bureau for temporary employment related to Census 2000 activities shall not be considered household income.

(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, in accordance with N.J.A.C. 10:79-4.1. The result will be the number of months the eligible members of the household unit shall be ineligible to receive NJ FamilyCare-Children's Program 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(a)5. The basis for a determination to shorten a period of ineligibility shall be fully documented in the case record.

(c) 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 at N.J.A.C. 10:79-4.1 to determine the period of ineligibility for NJ FamilyCare-Children's Program 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. 10:69-5.9.

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.

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

Amended 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. Adopted concurrent proposal. R.1998 d.487, effective August 28, 1998.

See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

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

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

Added (c).

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), substituted "the rules" for "regulations" preceding "applicable" in the introductory paragraph, added 5 and amended the N.J.A.C. references throughout; in (b), inserted ", in accordance with N.J.A.C. 10:79-4.1" following "household" in the first sentence of the introductory paragraph and amended the N.J.A.C. reference in 2; in (c) rewrote the first sentence and added the N.J.A.C. reference in the second sentence; in (d), amended the N.J.A.C. reference in the introductory paragraph.

#### 10:79-4.4 Countable income Plans B, C and D

(a) For purposes of Plan B, C or D 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 student as defined in N.J.A.C. 10:69-10.3 shall be counted in the household income.

4. Wages paid by the U.S. Census Bureau for temporary employment related to Census 2000 activities shall not be considered household income.

(b) Income for purposes of determining eligibility for the NJ FamilyCare-Children's Program-Plans B, C or D 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. The best estimate of income shall be based on an average of the household unit's income. 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. To establish the best estimate, the full one-month period immediately preceding the date of application or redetermination shall be used.

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) For purposes of Plan D eligibility, the amount of gross income greater than 200 percent and not in excess of 350 percent of the Federal poverty level shall be subject to disregard.

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

(e) 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 FamilyCare–Children’s Program 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(a)5. The basis for a determination to shorten the period of ineligibility shall be fully documented in the case record.

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.

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998.

See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

In (a) and (b), inserted references to Plan D; and added (c).

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

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

Added (d).

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), rewrote 3 and added 4; in (b), rewrote 2; added (e).

#### Case Notes

Adopting Initial Decision’s conclusion that student loans were not includable as income for purposes of determining petitioner’s Medicaid eligibility under the NJ FamilyCare program; a loan is a liability, not income, and including student loans as income defeats the purpose of the student loan program, as well as the underlying spirit and intent of assisting impoverished individuals (adopting with clarification 2007 N.J. AGEN LEXIS 188). K.F. v. DMAHS, OAL Dkt. No. HMA 12115-06, 2007 N.J. AGEN LEXIS 329, Final Decision (March 15, 2007).

#### 10:79-4.5 Resource eligibility

Children seeking NJ FamilyCare–Children’s Program 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.

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).

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998.

See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

### SUBCHAPTER 5. ADMINISTRATION

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

Financial eligibility for the NJ FamilyCare–Children’s 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 FamilyCare–Children’s Program—Plans B, C and D 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.

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998.

See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

Inserted a reference to Plan D.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

#### 10:79-5.2 Administration principles—availability of program rules

(a) 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–Children’s Program eligibility for children, and to social service staff as appropriate and shall ensure that each staff member is thoroughly familiar with its requirements in order to apply the policy and procedures consistently.

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

1. At least one administrative copy of all obsolete pages of this chapter must be maintained by the eligibility determination agency.

(c) This chapter is a public document. All copies in use must be updated accurately as revisions 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 policy material necessary for an applicant or beneficiary or his or her representative to determine whether a fair hearing is to be requested or to prepare for a

fair hearing shall be provided to such persons without charge.

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

4. Welfare, social service, and other nonprofit organizations will 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.

Amended by R.2004 d.42, effective January 20, 2004.  
See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

### 10:79-5.3 Principles of administration—general

(a) The following principles of administration apply in the NJ FamilyCare-Children's Program.

1. Any authorized agent or emancipated child who believes the applicant may be eligible shall be afforded an opportunity to make application (or reapplication) for the NJ FamilyCare-Children's Program without delay.

2. The authorized agent or the emancipated child is the primary source of information concerning program eligibility. 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.

3. There shall be strict adherence to law and complete conformity with rules and administrative policy. Requirements other than those established by law or rule shall not be imposed as a condition of receiving assistance under the NJ FamilyCare-Children's Program.

Amended by R.2004 d.42, effective January 20, 2004.  
See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

### 10:79-5.4 Confidentiality of information

(a) No member, officer, or employee of the eligibility determination agency shall produce or disclose any confidential information to any person except as authorized below in this section.

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

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

2. The eligibility determination agency may disclose information concerning an applicant or eligible person to persons and agencies directly related to the administration of the NJ FamilyCare-Children's Program. Persons and agencies directly related to program administration are those who are properly authorized to be involved in the following:

- i. The establishment of eligibility;
- ii. The determination of the amount and scope of medical assistance;
- iii. The provision of services for beneficiaries; and
- iv. The conduct or assisting in the conduct of an investigation, prosecution, or civil or criminal proceeding related to the NJ FamilyCare-Children's Program.

3. The eligibility determination agency may release information whenever the applicant or eligible person waives confidentiality, but only to the extent authorized by the waiver.

4. If a court issues a subpoena for a case record or any other confidential information or for any agency representative to testify concerning an applicant or eligible person, the eligibility determination agency shall make a statement substantially as follows:

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

5. In no instance is it intended that any officer or employee of the eligibility determination agency place himself or herself in contempt of court through the refusal to follow orders of the court. In any instance of a subpoena for case record information or for agency testimony, a complete report of the disposition of the court's request shall be entered into the case record.

6. Pertinent information and records may be released in conjunction with any administrative hearing conducted by the Office of Administrative Law regarding action or inaction of the eligibility determination agency affecting an applicant's or eligible person's eligibility or entitlement under the NJ FamilyCare-Children's Program.

Amended by R.2004 d.42, effective January 20, 2004.  
See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

**10:79-5.5 Material distributed to NJ FamilyCare-Children's Program applicants or eligible persons**

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

1. Directly relate to the administration of the NJ FamilyCare-Children's Program;
2. Have no political implications;
3. Contain names only of individuals directly connected with the administration of the NJ FamilyCare-Children's Program; and
4. Identify those individuals only in their capacity with the State or the eligibility determination agency.

(b) The eligibility determination agency shall not distribute materials such as "holiday" greetings, general public announcements, partisan voting information, or alien registration notices.

(c) The eligibility determination agency may distribute materials directly related to the health and welfare of program applicants and eligible persons, such as announcements of free medical examinations, availability of surplus food, and consumer protection information.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (b), inserted "partisan" preceding "voting information".

**10:79-5.6 Nondiscrimination**

(a) Title VI of the Federal Civil Rights Act of 1964 (Pub. L. 88-352), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 70b) and the Americans with Disabilities Act, Pub. L. 101-336, codified as 42 U.S.C. §§ 12101 et seq. prohibits discrimination on the ground of race, color, national origin, or handicap in the administration of any program for which Federal funds are received. Strict compliance with the provisions of these Acts and any regulations based thereon is required as a condition to receive Federal funds for the assistance programs administered by the eligibility determination agencies. These principles apply to the NJ FamilyCare-Children's Program in New Jersey.

1. The eligibility determination agency shall inform all staff members of their obligations in regard to the Civil Rights Act of 1964 (Pub. L. 88-352), section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA), Pub. L. 101-336, codified as 42 U.S.C. §§ 12101 et seq.

2. All persons seeking medical assistance shall be informed of Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA), Pub. L. 101-336, codified as 42 U.S.C. §§ 12101 et seq.

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

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

5. The eligibility determination agency shall afford full cooperation in the investigation of complaints of discrimination as may be requested by the Federal Department of Health and Human Services, the State Division of Medical Assistance and Health Services, or the State Division of Civil Rights.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), substituted "eligibility determination" for "county welfare" preceding "agencies" in the introductory paragraph, and rewrote 1 and 2.

**10:79-5.7 Case records**

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

(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.

## 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 FamilyCare-Children's Program-Plan A 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. 10:79-2.3(f), 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 adult 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 adult 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.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), deleted "program" preceding "in writing" in the introductory paragraph; in (d), amended the N.J.A.C. reference; in (e), substituted "adult" for "relative" following "caretaker" throughout 2.

### 10:79-6.2 Fair hearings

(a) It is the right of every applicant for or beneficiary of the NJ FamilyCare-Children's Program-Plan A program to be afforded the opportunity for a fair hearing in the manner set forth in N.J.A.C. 10:49-10, including, when applicable, continuation NJ FamilyCare-Children's Program-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.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), amended the N.J.A.C. reference.

### 10:79-6.3 Notice of the Statewide determination agency decision—Plans B, C and D

(a) The Statewide eligibility determination agency shall promptly notify any applicant for, or beneficiary of, the NJ FamilyCare-Children's Program-Plan B, C and D 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 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. 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 decisions 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 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 authorized agent, 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 authorized agent, 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).

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998. See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 with changes, effective September 21, 1998.

Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

In (a), inserted a reference to Plan D in the introductory paragraph. Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), substituted references to 10 days for references to 30 days in the introductory paragraph; in (d), substituted "10-day" for "30-day" in the introductory paragraph.

#### 10:79-6.4 Post-application client responsibilities

Upon a determination of eligibility for the NJ FamilyCare-Children's Program, the authorized agent 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 authorized agent or agents to provide necessary information, the agency shall commence action to terminate the case and pursue recovery when warranted.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

#### 10:79-6.5 Grievances and appeals for NJ FamilyCare-Children's Program-Plan B, C and D

(a) It is the right of every applicant for, or beneficiary of, NJ FamilyCare-Children's Program-Plan B, C or D, 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 10 days notice before any adverse action is implemented. Appropriate complaints and grievances regarding NJ FamilyCare-Children's Program should be referred to:

NJ FamilyCare-Children's Program  
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 FamilyCare-Children's Program-Plan B, C and D, 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).

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998.



See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.  
Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

In (a) and (b), inserted references to Plan D.  
Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), substituted "10" for "30" preceding "days".

#### 10:79-6.6 Right to a grievance review-Plans B, C and D

(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).

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998.

See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 with changes, effective September 21, 1998.

Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

#### 10:79-6.7 Premiums

(a) Effective July 1, 2009, for children in families with income above 150 percent and at or below 200 percent of the Federal poverty level eligible for NJ FamilyCare-Children's Program-Plan C, a monthly premium shall be required to be paid as follows:

1. For children, there shall be a premium of \$20.00 per family per month that applies to all families, regardless of the number of children in the family;

2. For parents/caretakers, there shall be a premium of \$33.50 for the first parent/caretaker and \$14.00 for the second parent/caretaker.

(b) Effective July 1, 2009, for children in families with gross income above 200 percent and at or below 250 percent of the Federal poverty level eligible for NJ FamilyCare-Children's Program-Plan D, a monthly premium shall be required. There shall be a single dollar premium of \$40.00 per month per family that applies to all families, regardless of income and regardless of the number of children in the family.

(c) Effective July 1, 2009, for children in families with gross income above 250 percent and at or below 300 percent of the Federal poverty level eligible for NJ FamilyCare-Children's Program-Plan D, a monthly premium shall be required. There shall be a single dollar premium of \$79.00 per month per family that applies to all families, regardless of income and regardless of the number of children in the family.

(d) Effective July 1, 2009, for children in families with gross income above 300 percent and at or below 350 percent of the Federal poverty level eligible for NJ FamilyCare-Children's Program-Plan D, a monthly premium shall be required. There shall be a single dollar premium of \$133.00 per month per family that applies to all families, regardless of income and regardless of the number of children in the family.

(e) 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 FamilyCare-Children's Program.

(f) The premiums required in accordance with (a) through (d) above shall be adjusted each July 1 in accordance with the change in the Consumer Price Index published by the U.S. Department of Labor. The amounts in (a) through (d) above will be revised annually by a notice of administrative change published in the New Jersey Register.

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).

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998.  
See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.  
Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

In (a), inserted "eligible for NJ KidCare-Plan C" following "level" in the first sentence; inserted new (b) through (d); and recodified former (b) as (e).

Special amendment, R.2003 d.98, effective February 1, 2003 (to expire July 24, 2003).

See: 35 N.J.R. 1303(a).

Rewrote the section.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

Administrative changes.

See: 37 N.J.R. 2882(a).

Administrative change and correction.

See: 40 N.J.R. 4817(b).

Administrative change.

See: 41 N.J.R. 2484(b).

#### **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.

(d) No cost sharing shall be imposed on children who are American Indians/Alaska Natives. Proof of Federally recognized AI/AN tribal status shall be provided in the form of a tribal card or letter, in accordance with 42 C.F.R. 36a.16.

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).

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998.

See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

Amended by R.2002 d.371, effective November 18, 2002.

See: 34 N.J.R. 2244(a), 34 N.J.R. 2549(b), 34 N.J.R. 3978(c).

Added (d).

#### **10:79-6.9 Limitation on cost sharing—Plans C and D**

(a) There shall be a family limit on the level of cost-sharing equal to five percent of household income for Plan C and D beneficiaries. Cost-sharing shall include 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 or D member has met their cost share limit, and the provider shall not collect a personal contribution until further notice.

(d) No cost sharing shall be imposed on children who are American Indians/Alaska Natives. Proof of Federally recognized AI/AN tribal status shall be in the form of a tribal card or letter, in accordance with 42 C.F.R. 36a.16.

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).

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998.

See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

Amended by R.2002 d.371, effective November 18, 2002.

See: 34 N.J.R. 2244(a), 34 N.J.R. 2549(b), 34 N.J.R. 3978(c).

Added (d).

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), inserted "the level of" preceding "cost-sharing", "and D" following "Plan C" and substituted "shall include" for "means" preceding "the premium payments"; in (c), added "or D" following "Plan C".

#### **10:79-6.10 Copayments—Plans C and D**

(a) For children in families with gross income above 150 percent of the Federal poverty level who are eligible for NJ FamilyCare—Children's Program—Plans C and D, copayments shall be required.

(b) Copayments shall be effective upon date of enrollment.

(c) Copayments shall be charged in an amount in accordance with N.J.A.C. 10:49-9.1(a) and (c).

(d) No cost sharing shall be imposed on children who are American Indians/Alaska Natives. Proof of Federally recognized AI/AN tribal status shall be provided in the form of a tribal card or letter, in accordance with 42 C.F.R. 36a.16.

New Rule, R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

Amended by R.2002 d.371, effective November 18, 2002.

See: 34 N.J.R. 2244(a), 34 N.J.R. 2549(b), 34 N.J.R. 3978(c).

Added (d).

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

Rewrote (a); in (c), amended the N.J.A.C. reference.

## SUBCHAPTER 7. NJ FAMILYCARE-CHILDREN'S PROGRAM BENEFICIARY FRAUD AND ABUSE POLICIES

### 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 adult or authorized agent may result in the termination of the applicant's or beneficiary's eligibility from NJ FamilyCare-Children's Program-Plan B, C and D. 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 FamilyCare-Children's Program-Plan B, C and D, 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 FamilyCare-Children's Program-Plan B, C and D program and/or the health, safety or welfare of other NJ FamilyCare-Children's Program-Plan B, C and D 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 FamilyCare-Children's Program-Plan B, C or D;
2. Knowingly or intentionally making or causing to be made false statements, misrepresentation of material fact, or alterations on any NJ FamilyCare-Children's Program-Plan B, C and D program claim form, eligibility card, or other document issued by or on behalf of the Division;
3. Intentionally misusing or abusing NJ FamilyCare-Children's Program-Plan B, C or D program benefits;
4. Knowingly or intentionally converting all or part of NJ FamilyCare-Children's Program-Plan B, C or D 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 FamilyCare-

Children's Program following notification that this conduct should cease; or

8. Failure to cooperate in a NJ FamilyCare-Children's Program 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.

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998. See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change. Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

In (a) and (b), inserted references to Plan D throughout.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

### 10:79-7.2 Application 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 FamilyCare-Children's Program-Plan B, C or D 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 FamilyCare-Children's Program-Plan B, C or D. 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.

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998. See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change. Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

Inserted references to Plan D throughout.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

Deleted "program" following "or D" at the end of the first sentence.

### 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 FamilyCare-Children's Program-Plan B, C and D benefits, and shall not be applicable to termination due to ineligibility initiated under N.J.A.C. 10:79-2 through 4.

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998. See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change. Amended by R.1999 d.211, effective July 6, 1999 (operative August 1, 1999).

See: 31 N.J.R. 998(a), 31 N.J.R. 1806(a), 31 N.J.R. 2879(b).

Inserted a reference to Plan D.

Amended by R.2004 d.42, effective January 20, 2004.  
See: 35 N.J.R. 3802(a), 36 N.J.R. 572(a).

**10:79-7.4 Applicability to this chapter of Medicaid provisions relating to fraud and abuse, third party liability and administrative and judicial remedies**

All of the relevant provisions pertaining to fraud and abuse, third party liability, and administrative and judicial remedies which are contained in the following sections of N.J.S.A. 30:4D-1 et seq. and N.J.A.C. 10:49 shall be fully applicable to NJ KidCare: N.J.S.A. 30:4D-6c, 6f, 7h, 7i, 7k, 7l, 7.1, 12, 17(e), 17(f), 17(g), 17(i), 17.1 and 17.2, as well as N.J.A.C. 10:49-3.2, 4.1 through 4.5, 5.5, 6.1(a)3, 7.3, 7.4, 7.5, 9.6 through 9.12, 11.1, 12.1 through 12.7, 13.1, 13.4, 14.2 through 14.6 and 16.5.

New Rule. R.2002 d.318, effective September 16, 2002.  
See: 34 N.J.R. 1787(a), 34 N.J.R. 3273(a).

**SUBCHAPTER 8. PRESUMPTIVE ELIGIBILITY FOR NJ FAMILYCARE-CHILDREN'S PROGRAM-PLAN A, B AND C**

**10:79-8.1 Scope**

This subchapter describes presumptive eligibility for children up to the age of 19 whose family's income is no greater than 200 percent of the Federal Poverty level and who otherwise meet the eligibility requirements for NJ FamilyCare-Children's Program-Plans A, B or C. The presumptive eligibility determination makes it possible for a child or the children in a family to receive NJ FamilyCare-Children's Program-Plan A, B or C medical services on a fee-for-services basis from any NJ FamilyCare-Children's Program fee-for-service participating provider for a temporary period prior to application for NJ FamilyCare-Children's Program benefits and while an application for these benefits is being processed by the county board of social services or the Statewide eligibility determination agency.

Amended by R.2004 d.42, effective January 20, 2004.  
See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

Substituted "NJ Family Care-Children's Program-Plan A, B or C medical services on a fee-for-services basis" for "NJ KidCare-Plan A, B or C services fee-for-services care" in the second sentence.

**10:79-8.2 Period of presumptive eligibility**

(a) The period of presumptive eligibility shall begin on the date an approved presumptive eligibility entity determines that, based on information provided by the family of the presumptively eligible beneficiary, the child(ren) meets the requirements and standards of this chapter.

(b) The period of presumptive eligibility shall terminate:

1. On the date a determination of eligibility or ineligibility for NJ FamilyCare-Children's Program is made; or

2. If the child, or the child's parent, guardian, caretaker or authorized agent fails to file an application with the eligibility determination agency, on the last day of the month subsequent to the month in which the child(ren) was (were) determined presumptively eligible.

Amended by R.2004 d.42, effective January 20, 2004.  
See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), substituted "presumptively eligible" for "presumptive eligibility" preceding "beneficiary".

**10:79-8.3 Presumptive eligibility determination entities**

(a) A qualified presumptive eligibility entity shall be a New Jersey Medicaid provider and:

1. An acute care hospital;
2. A local health department that provides primary care services; or
3. A Federally Qualified Health Center (FQHC).

(b) An eligible entity shall apply to the Division of Medical Assistance and Health Services and shall be approved as a presumptive eligibility determination agency upon training of the entity by the Division of Medical Assistance and Health Services.

(c) The Division of Medical Assistance and Health Services shall monitor the presumptive eligibility determinations made by approved presumptive eligibility determination entities. If the review discloses a pattern of incorrect presumptive eligibility determinations or failure to adhere to requirements, the Division shall initiate corrective action, including, but not limited to, consultation and training. 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.

Amended by R.2004 d.42, effective January 20, 2004.  
See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), inserted "that provides primary care services" following "department" in 2.

**10:79-8.4 Presumptive eligibility processing performed by the presumptive eligibility determination entity**

(a) From preliminary information provided by a child (if appropriate), parent, guardian, caretaker adult, or authorized agent, the approved presumptive eligibility entity shall determine if the child meets the eligibility criteria of this chapter. The approved presumptive eligibility entity shall obtain sufficient information from the child (if appropriate), parent, guardian, caretaker adult, or authorized agent to complete the certification of presumptive eligibility. For purposes of the presumptive eligibility determination, the qualified presumptive eligibility determination entity shall request from the child (if appropriate), parent, guardian, caretaker adult, or authorized agent only that information necessary to determine the child's presumptive eligibility or ineligibility. The qualified 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 presumptively eligible beneficiary's statements.

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

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

2. Forward a copy of the completed certification to the county board of social services of the child's county of residence or to the Statewide eligibility determination agency. The choice for the determination agency for NJ FamilyCare-Children's Program-Plan A shall be made by the family. A NJ FamilyCare-Children's Program-Plans B or C application shall be sent to the Statewide eligibility determination agency;

3. Inform the child (if appropriate), parent, guardian, caretaker or authorized agent that they must contact the eligibility determination agency by mailing an application to the Statewide eligibility determination agency or the county board of social services in order to complete the application process for NJ FamilyCare-Children's Program benefits;

4. Give the child (if appropriate) or the authorized agent of the presumptively eligible child a copy of the certification for NJ FamilyCare-Children's Program benefits; and

5. Advise the child (if appropriate), parent, guardian, caretaker, or authorized agent of the presumptively eligible child, in writing, of the address and telephone number of the eligibility determination agency that the certification is being forwarded to.

(c) For any child 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 chapter, the qualified presumptive eligibility determination entity shall refer the child to the county board of social services or to the Statewide eligibility determination agency, as appropriate, for evaluation of potential eligibility for any other Medicaid, Medically Needy or NJ FamilyCare-Children's Program entitlement. The address and telephone number of the appropriate office shall be provided, in writing, to the child (if appropriate), parent, guardian, caretaker, or authorized agent of the child.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

Rewrote the section.

#### 10:79-8.5 Responsibilities of the Division of Medical Assistance and Health Services

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

1. Assign a presumptive eligibility number;

2. Create an eligibility record on the Medicaid Eligibility File;

3. Issue a NJ FamilyCare-Children's Program Eligibility Identification Card; and

4. Notify the approved presumptive eligibility determination entity and the appropriate county board of social services or Statewide eligibility determination agency of the presumptive eligibility identification number assigned to the beneficiary.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

In (a), substituted "certification" for "certificate" in the introductory paragraph and rewrote 4.

#### 10:79-8.6 Responsibilities of the eligibility determination agency

(a) Upon receipt of the certification of presumptive eligibility from the approved presumptive eligibility determination entity, the eligibility determination agency shall check for existing Medicaid, Medically Needy, or NJ FamilyCare-Children's Program eligibility. If the child is receiving Medicaid benefits, Medically Needy benefits, or NJ FamilyCare-Children's Program benefits, no further action shall be required by the county board of social services or the Statewide eligibility determination agency.

(b) If the child is not currently receiving Medicaid, Medically Needy, or NJ FamilyCare-Children's Program benefits, the eligibility determination agency shall, notwithstanding the application disposition standards in N.J.A.C. 10:79-2.3(f), arrive at a case disposition within the presumptive eligibility period.

1. If the time period specified in N.J.A.C. 10:79-8.2(b)2 is exceeded, the presumptive eligibility determination agency shall notify the Division of Medical Assistance and Health Services of any such delay. The Division shall continue the child's presumptive eligibility until a final determination is made.

2. The eligibility determination agency shall also provide the individual applying on the child's behalf with written notification, prior to the expiration of the presumptive eligibility period, of the specific reasons for the delay. (See N.J.A.C. 10:79-8.8 for information regarding the notice and the rights of the applicant to a fair hearing.)

(c) In the case of a presumptively eligible beneficiary who is determined ineligible for NJ FamilyCare-Children's Program within the presumptive eligibility period, the child's eligibility shall terminate on the last day of the presumptive eligibility period. If the child is ineligible for NJ FamilyCare-Children's Program, the eligibility determination agency shall provide a written notice of such denial and the reasons why, as set forth in N.J.A.C. 10:79-6.

Amended by R.2004 d.42, effective January 20, 2004.

See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

Rewrote (a); in (b), amended the N.J.A.C. references in the introductory paragraph and 2; in (c), substituted "last day of the presumptive eligibility period" for "date of the eligibility determination" at the end of the first sentence.



**10:79-8.7 Responsibility of the applicant**

The parent, guardian, caretaker or authorized agent of a presumptively eligible child shall contact the eligibility determination agency by mailing an application to the county board of social services or Statewide eligibility determination agency, as appropriate, during the presumptive eligibility period. As part of the eligibility determination process for NJ FamilyCare-Children's Program, the parent, guardian, caretaker, or authorized agent of a presumptively eligible child shall complete any forms required as a part of the application process, and shall assist the eligibility determination agency in securing evidence that verifies eligibility.

Amended by R.2004 d.42, effective January 20, 2004.  
See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).  
Rewrote the section.

**10:79-8.8 Notification and fair hearing rights**

(a) For a presumptively eligible child who is subsequently determined ineligible for NJ FamilyCare-Children's Program benefits:

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

2. The eligibility determination agency shall provide the child (if appropriate), child's parent, guardian, caretaker or authorized agent a notice of denial of the child's NJ FamilyCare-Children's Program application in accordance with N.J.A.C. 10:79-6. The applicant's rights to a fair hearing or a grievance hearing are also outlined in N.J.A.C. 10:79-6.

(b) For a presumptively eligible child whose eligibility for NJ FamilyCare-Children's Program has not yet been determined within the presumptive eligibility period, in accordance with N.J.A.C. 10:79-2.3(f)3, the eligibility determination agency shall provide the parent, guardian, caretaker or authorized agent of the presumptively eligible child with written notification prior to the expiration of the presumptive eligibility period, setting forth the specific reasons for the delay in the NJ FamilyCare-Children's Program application processing.

(c) A child denied presumptive eligibility by a qualified presumptive eligibility determination entity shall not be entitled to adequate notice of that determination and shall not be entitled to a fair hearing on that action. The denial of presumptive eligibility shall not affect the child's (if appropriate), parent's, guardian's, caretaker adult's, or authorized agent's right to apply for NJ FamilyCare-Children's Program and receive a formal determination of eligibility or ineligibility.

Amended by R.2004 d.42, effective January 20, 2004.  
See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

**10:79-8.9 Scope of services during the presumptive eligibility period**

All presumptively eligible NJ FamilyCare-Children's Program-Plans A, B and C beneficiaries shall be eligible to receive all applicable NJ FamilyCare-Children's Program-Plan A, B and C services listed in N.J.A.C. 10:49-5.2 (for Plan A) and N.J.A.C. 10:49-5.6(a) and (b) (for Plans B and C services) on a fee-for-service basis during the presumptive eligibility period, including the services that are otherwise only available through a managed care organization, except for those services that a managed care organization may be provided as additional services beyond the NJ FamilyCare-Children's Program-Plan A, B or C required services. The provision of the managed care services fee-for-service shall be limited to the presumptive eligibility period.

Amended by R.2004 d.42, effective January 20, 2004.  
See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).

**10:79-8.10 Limitation on number of presumptive eligibility periods**

A child shall be limited to one continuous presumptive eligibility period within a 12-month cycle beginning from the month in which the child initially received presumptive eligibility.

Amended by R.2004 d.42, effective January 20, 2004.  
See: 35 N.J.R. 3802(a), 36 N.J.R. 572(b).  
Rewrote the section.