

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

iv. Whether the state in which the caretaker relative or applicant previously resided recognizes him or her as having continuing eligibility under that state's Medicaid or Title XXI children's health assistance program (or other program providing payment for medical care) of that jurisdiction.

3. If, after full consideration of the above factors, the eligibility determination agency is satisfied that the caretaker relative or applicant has become a resident of this State, NJ KidCare eligibility may be established.

#### 10:79-3.4 Eligible children

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

1. Children born after September 30, 1983; or
2. A child not otherwise eligible under (a)1 above who has not attained the age of 19.

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

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

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

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.

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

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

1. For a child:
  - i. The child;
  - ii. The child's natural or adoptive parents;
  - iii. The child's blood-related (including half-blood) and adoptive siblings under the age of 21; and
  - iv. At the option of the sponsored relative or the applicant, the child's stepparent. If the sponsored relative or applicant elects not to include the stepparent in

the household unit, his or her income will not be included in the determination of eligibility except to the extent that he or she makes it available to the eligible members, and the child's spouse, if applicable.

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

(c) Any person in (a)1 above shall be included in the household unit even though he or she is in an AFDC-related Medically Needy budget unit in accordance with N.J.A.C. 10:70-3.5. Likewise, any person in (a)1 above required by N.J.A.C. 10:70-3.5 to be included in an AFDC-related Medically Needy budget unit, shall be included in that budget unit even if he or she is included in a household unit under the provisions of this section.

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

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

1. The child;
2. The child's natural or adoptive parents;
3. The blood-related siblings (including those of half-blood) and adopted siblings under age 21;
4. The natural or adoptive father of any children in the household unit;
5. The step-parent, if the step-parent is married to the natural parent; and
6. The legal custodian of a child under age 18.

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

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

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.

#### 10:79-3.7 Third party liability

(a) Program applicants and beneficiaries are required to identify to the eligibility determination agency and third party (individual, entity, or program) that is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or beneficiary.

(b) Any sponsoring adult or applicant who applies for NJ KidCare who is eligible pursuant to N.J.A.C. 10:79-3.4(a)1, by virtue of the application for benefits, is deemed to have

assigned to the Commissioner of the Department of Human Services any rights to support for the applicant for the purpose of medical care as determined by a court or administrative order and any rights to payment for care from any third party. Sponsoring adults, program applicants and beneficiaries are required to cooperate in the identification of and the obtainment of any such rights.

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

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

#### 10:79-3.8 Other health insurance coverage eligibility rules

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

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

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

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

ii. The child was born after September 30, 1983.

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

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

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

1. In the case of coverage under an absent parent's policy, not readily accessible means a plan defined coverage network, where the network is not accessible with 45 minutes travel time of the child's residency.

2. In the case where the coverage is available under an absent parent's policy, the custodial parent shall be allowed to show good cause why the coverage is not available. Good cause may not be, but is not limited to, concern of physical or emotional abuse.

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

1. The child is covered or is eligible for coverage under a non-contributory group health plan or otherwise under a group health plan resulting in no premium contribution cost to the household unit within 12 months prior to the date of application for NJ KidCare-Plans B and C;
2. The child is currently covered or was covered under any other health insurance plan within 12 months prior to the date of application for NJ KidCare-Plans B and C; or
3. The child is covered or otherwise is eligible for coverage under a group health plan sponsored or self-funded by a government unit.

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

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

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

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

4. The child was covered by Medicaid.

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

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

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

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

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

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

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

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

Rewrote the section.

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.

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

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

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

(a) As a condition of eligibility for the NJ KidCare program, sponsoring adults on behalf of applicants, appli-

cants, and beneficiaries are required to take all necessary steps to obtain any health insurance, annuities, and disability benefits to which the child is entitled, unless they can show good cause for not doing so.

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

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

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

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

## SUBCHAPTER 4. FINANCIAL ELIGIBILITY

### 10:79-4.1 Income eligibility limits

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

(b) Income limits for children through 18 years covered under the provisions of this chapter for Plan B shall be no greater than 150 percent of the poverty income guideline as defined by the Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35). The monthly income standard will be one-twelfth of 150 percent of the annual poverty income guideline rounded down to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline will be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

(c) Income limits for children through 18 years covered under the provisions of this chapter for Plan C shall be no greater than 200 percent of the poverty income guideline as defined by the Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35). The

monthly income standard will be one-twelfth of 200 percent of the annual poverty income guideline rounded down to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline will be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

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

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

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

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

Rewrote the section.

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.

#### 10:79-4.2 Prospective budgeting of income

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

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

#### 10:79-4.3 Countable income—Plan A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

cessation of the income source after the date of application shall be considered.

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

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

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

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

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.

**10:79-4.5 Resource eligibility**

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

**SUBCHAPTER 5. ADMINISTRATION****10:79-5.1 Eligibility determination agencies—Plans B and C**

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

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

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

Added a second sentence.

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.