

RULES AND REGULATIONS

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 140]

Eligibility Provisions for the Healthy Horizons Program for the Elderly/Disabled

The Department of Public Welfare (Department), by this order, adopts amendments to Chapter 140 (relating to special MA eligibility provisions) to read as set forth in Annex A under the authority of sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)) which, respectively, authorize the Department to promulgate regulations to make the Commonwealth eligible for available Federal funding in joint State and Federal welfare programs, and delegate to the Department the authority to adopt regulations setting rules and standards for eligibility for all welfare programs.

Notice of proposed rulemaking is omitted in accordance with section 204(1)(iv) of the act of July 31, 1968 (P. L. 769, No. 240) (CDL) (45 P. S. § 1204(1)(iv)) and 1 Pa. Code § 7.4(1)(iv) because the administrative regulations relate to Commonwealth grants and benefits. Additionally, notice of proposed rulemaking is omitted for good cause as unnecessary and contrary to the public interest in accordance with section 204(3) of the CDL and 1 Pa. Code § 7.4(3).

The amendments have been implemented as mandated by Federal law (42 U.S.C.A. § 1396a(a)(10)(E)(iii)) through notices of rule change published, respectively, at 23 Pa.B. 494 (January 23, 1993), effective January 1, 1993, and 25 Pa.B. 1916 (May 13, 1995), effective January 1, 1995. No administrative discretion was permitted and the changes benefit low-income elderly and disabled persons. Public comments were solicited and none were received.

Failure to conform State regulations with Federal requirements will seriously jeopardize Federal Financial Participation (FFP) and would be contrary to the public interest. The Federal requirements are very specific, allowing for no alternative means of compliance. Therefore, the Department is required to codify the mandated changes to avoid quality control errors and allow continued receipt of Federal funds. Accordingly, the Department is formalizing the amendments found in Annex A with proposed rulemaking omitted.

Purpose

These amendments add a new benefit group with a new limited benefit to the Healthy Horizons Medical Assistance (MA) Program. Certain low-income Medicare beneficiaries, who by definition are elderly or disabled, are eligible for MA payment of the Medicare Part B premiums as a result of a separate increase in the MA income eligibility limit specifically related to this new limited benefit. These amendments also add a later, additional increase in the income eligibility limit for this new benefit group. Both of these sequential changes were mandated by section 4501 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Pub. L. No. 101—508) (42 U.S.C.A. § 1396a(a)(10)(E)(iii)).

Background

The Sixth Omnibus Budget Reconciliation Act (SOBRA) of 1986 (Pub. L. No. 99-509) contained optional provisions

which permitted states to make Medicaid available for elderly and disabled persons with income up to 100% of the Federal Poverty Income Guidelines (FPIGs) and resources which do not exceed the Supplemental Security Income (SSI) resource standard for the appropriate family size. (In Pennsylvania, Medicaid is known as Medical Assistance). Thereafter, the Medicare Catastrophic Coverage Act (MCCA) of 1988 (Pub. L. No. 100-360) mandated states to provide Medicaid payment of the Medicare Part B premiums, Medicare Part A premiums of individuals enrolled in and paying for the Part A plan, and Part A and B deductibles and coinsurances.

The Department implemented these benefits through the Healthy Horizons Special MA eligibility provisions on January 1, 1989, as a two-part special MA Program to extend the availability for medical care through MA coverage for elderly and disabled persons with income up to 100% of the FPIGs. Under Healthy Horizons, there are two separate programs, namely, the Healthy Horizons Categorically Needy Program implemented under the optional provisions of SOBRA and the Healthy Horizons Medicare Cost-Sharing Program implemented under the mandated MCCA provisions.

The extent of benefit coverage is dependent upon the amount of resources which may not exceed, respectively, either the SSI resource standard or twice the SSI resource standard. The lower resource level applies to the Healthy Horizons Categorically Needy Program which provides full categorically needy MA benefits in addition to payment of Medicare cost-sharing benefits.

The higher resource level applies to the Healthy Horizons Medicare Cost-Sharing Program which pays the Medicare Part A premium if the individual is eligible for or enrolled in Part A, the Medicare Part B premium, and the Medicare Part A and Part B deductibles and coinsurances. Persons who qualify for these Medicare cost-sharing benefits are known as Qualified Medicare Beneficiaries (QMBs) (pronounced Quimbys).

Thereafter, OBRA '90 mandated that, effective January 1, 1993, the states must provide Medicaid payment of the Medicare Part B premiums for Specified Low-Income Medicare Beneficiaries (SLMBs) (pronounced Slimbys). These are persons whose income is more than 100%, but does not exceed 110% of the FPIGs and whose resources are not more than twice the SSI resource standard. The payment of the Medicare Part B premium is the only benefit provided, unless the SLMB individual is also eligible for another program.

OBRA '90 also mandated that, effective January 1, 1995, states must increase the income eligibility limit for SLMB benefits to 120% of the FPIGs.

Need for the Regulations

OBRA '90 expands the income eligibility limit for a portion of Medicare cost-sharing benefits for persons who are elderly or disabled. The expansion of the allowable maximum income for eligibility for payment of the Medicare Part B premiums will result in more low-income persons who are elderly or disabled qualifying for this benefit. Payment of these premiums will give this segment of the population more income to spend on other basic needs to help improve their quality of life.

Summary of the Amendments

Section 140.201 (relating to policy on Healthy Horizons)—A new subsection (d) has been added to describe

the Department's participation in the limited Medicare Cost-Sharing Program for persons who are designated as SLMBs and are eligible for payment of the Medicare Part B premiums. Existing subsection (d) has been relettered as (e) and technical clarifying changes have been made to subsection (b).

Section 140.202 (relating to definitions)—Because of the addition of this new SLMB benefit group, the Medicare Cost-Sharing Program is now a two-tier income level eligibility program providing two separate levels of benefits. Accordingly, a definition has been added for SLMBs.

Section 140.221(1)(ii) (relating to conditions of eligibility)—A technical correction has been made to reflect the current chapter number for MA residence provisions, which have been codified separately from the cash residence provisions subsequent to the publication of the original Healthy Horizons regulations. Accordingly, the reference to Chapter 147 has been changed to Chapter 148.

Section 140.231 (relating to income eligibility limitations)—This section has been revised to now have separate subsections (a) and (b) in order to reflect the new two-tier income eligibility levels for the different Medicare Cost-Sharing benefit packages under the Healthy Horizons provisions.

Section 140.301 (relating to resource eligibility limitations)—Technical, clarifying changes have been made to reflect the two-tier benefit levels of the Medicare Cost-Sharing Program.

Section 140.331 (relating to benefit coverage)—A new subsection (c) has been added in order to distinguish the Healthy Horizons SLMB Medicare Cost-Sharing Program, which provides persons who qualify as SLMBs with the sole benefit of payment of the Medicare Part B premium, from the Healthy Horizons QMB Medicare Cost-Sharing Program, which provides payment of premiums, deductibles and coinsurances for Part A and Part B. Existing subsection (c) is relettered as (d).

Section 140.332 (relating to category designation)—A new subsection (d) has been added to designate the category and program status codes by which SLMB individuals are identified.

Section 140.335 (relating to retroactive eligibility)—Subsection (b) has been revised to clarify that, unlike the QMB Medicare Cost-Sharing Program which does not have retroactive coverage, eligibility for the SLMB Medicare Cost-Sharing Program may be retroactive for up to 3 months.

Affected Persons and Organizations

These amendments will affect persons who are elderly or disabled and who are applying for or receiving MA benefits and whose income is within these new limits.

Accomplishments/Benefits

These amendments will have a positive impact on low-income elderly and disabled persons.

Fiscal Impact

Cost to the Commonwealth: The Department will pay the Medicare Part B premium for SLMBs whose income does not exceed 110% of the FPIGs, effective January 1, 1993. Effective January 1, 1995, the Healthy Horizons Cost-Sharing Program has increased to include persons whose income does not exceed 120% of the FPIGs. The fiscal impact of these provisions is estimated at \$7.617 million (\$3.482 million in State funds) during Fiscal Year 1995—1996.

Cost to the private sector: There is no additional cost to the private sector.

Paperwork Requirements

These amendments require no additional forms or reports.

Effective Date

The effective date of these amendments is retroactive to January 1, 1993, for the SLMB Medicare Cost-Sharing Program for persons whose income does not exceed 110% of the FPIGs, and retroactive to January 1, 1995, for persons whose income does not exceed 120% of the FPIGs.

Sunset Date

No sunset date is applicable. The Department continuously reviews the MA Program and regulations through the Federally monitored quality control process. The Federal Health Care Financing Administration (HCFA) staff conduct audits periodically on specific aspects of the MA Program.

Public Comments

Although these amendments are being adopted without prior notice, interested persons are invited to submit their written comments to Patricia H. O'Neal, Director, Bureau of Policy, Department of Public Welfare, Room 431, Health and Welfare Building, P. O. Box 2675, Harrisburg, PA 17120, (717) 787-4081, within 30 days from the date of this publication in the *Pennsylvania Bulletin* for consideration by the Department.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users), or may use a Department of Public Welfare TDD by calling (717) 787-3616. Persons who require an alternative format should contact India Wood at (717) 783-2212.

Regulatory Review Act

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of these amendments with proposed rulemaking omitted on February 21, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. On the same date, these amendments were submitted to the Office of the Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-1—732-506). In accordance with section 5(c) of the Regulatory Review Act, these amendments were approved by the Committees on March 12, 1996, and were approved by IRRC on March 21, 1996.

Findings

The Department finds that:

(1) Public notice of intention to adopt the administrative regulations adopted by this order is omitted in accordance with section 204(1)(iv) of the CDL and 1 Pa. Code § 7.4(1)(iv) because the administrative regulations relate to Commonwealth grants and benefits. Additionally, notice of proposed rulemaking is omitted for good cause as unnecessary and contrary to the public interest in accordance with section 204(3) of the CDL and 1 Pa. Code § 7.4(3).

(2) The adoption of the amendments in the manner provided in this order is necessary and appropriate for the administration and enforcement of the Public Welfare Code.

Order

The Department, acting under the Public Welfare Code orders that:

(a) The regulations of the Department, 55 Pa. Code Chapter 140, are amended by amending §§ 140.201, 140.202, 140.221, 140.231, 140.301, 140.331, 140.332 and 140.335 to read as set forth in Annex A to this order.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin* and apply retroactively to January 1, 1993, for the SLMB Medicare Cost-Sharing Program for persons whose income does not exceed 110% of the FPIGs, and retroactively to January 1, 1995, for persons whose income does not exceed 120% of the FPIGs.

FEATHER O. HOUSTON,
Secretary

Fiscal Note: 14-433. (1) General Fund; (2) Implementing Year 1992-93 is \$1,615,000; (3) 1st Succeeding Year 1993-94 is \$3,100,000; 2nd Succeeding Year 1994-95 is \$3,263,000; 3rd Succeeding Year 1995-96 is \$3,482,000; 4th Succeeding Year 1996-97 is \$3,738,000; 5th Succeeding Year 1997-98 is \$3,922,000; (4) FY 1994-95 \$722,422,000; FY 1993-94 \$623,050,000; FY 1992-93 \$594,642,000; (7) MA—outpatient; (8) recommends adoption. This regulatory action, mandated by the Federal Omnibus Budget Reconciliation Act of 1990 (OBRA 90), has been previously implemented through Notices of Rule Change (NORCs). The additional costs for 1995-96 have been included in the Department's rebudget estimates.

Annex A**TITLE 55. PUBLIC WELFARE****PART II. PUBLIC ASSISTANCE MANUAL****Subpart C. ELIGIBILITY REQUIREMENTS****CHAPTER 140. SPECIAL MA ELIGIBILITY PROVISIONS****Subchapter B. ELIGIBILITY PROVISIONS FOR THE HEALTHY HORIZONS PROGRAM FOR THE ELDERLY/DISABLED GENERAL PROVISIONS****§ 140.201. Policy on Healthy Horizons.**

(a) The Department provides MA under the Healthy Horizons Categorically Needy Program to elderly/disabled persons who are otherwise eligible with family income up to 100% of the current Federal Income Poverty Guidelines and resources not exceeding the SSI resource standard for the appropriate family size.

(b) The Department participates in QMB Medicare cost-sharing only under the Healthy Horizons Medicare Cost-Sharing Program for qualified Medicare beneficiaries with family income up to 100% of the current Federal Poverty Income Guidelines and resources not exceeding twice the SSI resource standard for the appropriate family size.

(c) The Department also participates in the Medicare Cost-Sharing for qualified Medicare beneficiaries found eligible for benefits under the Healthy Horizons Categorically Needy Program.

(d) The Department participates in SLMB Medicare Cost-Sharing only under the Healthy Horizons Medicare Cost-Sharing Program for SLMBs with family income which on or after January 1, 1995, is more than 100% but does not exceed 120% of the current Federal Poverty Income Guidelines and resources not exceeding twice the SSI resource standard for the appropriate family size. Prior to January 1, 1995, for calendar years 1993 and 1994, family income shall be more than 100%, but may not exceed 110% of the applicable Federal Poverty Income Guidelines and resources may not exceed twice the SSI resource standard for the appropriate family size.

(e) MA is provided under the program which is most advantageous for the client based on individual circumstances. Eligibility for MA benefits under both the NMP-MA and MNO-MA Programs is also explored.

§ 140.202. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Applicant/recipient—A person who is applying for, or receiving, benefits under the Healthy Horizons Program.

Calendar quarter—A period of 3 full calendar months beginning with January, April, July or October.

Countable net income—Income counted in determining income eligibility for Healthy Horizons, less appropriate exemptions, deductions and disregards.

Earned income—Money or other compensation received in return for services rendered.

Infrequent income—Income that is received not more than once in a calendar quarter.

Irregular income—Income that is not subject to scheduling or is unpredictable.

Legal guardian—A person who is court appointed as the legal guardian.

Personal property—Privately owned possessions which are not real property. The term includes cash, bank accounts, stocks, bonds, mortgages, cash value of life insurance policies, household furnishings, personal effects, motor vehicles, boats and Federal, State and local tax refunds.

QMB—Qualified Medicare beneficiary—An individual who is entitled to, or voluntarily enrolled in, Medicare hospital insurance under Part A.

Real property—Land, buildings, mobile homes and improvements thereto.

SLMB—Specified low-income Medicare beneficiary—An individual who meets the eligibility requirements for QMB status except for income in excess of the QMB income limit, but not exceeding the limits specified in § 140.231 (relating to income eligibility limitations).

SSI—Supplemental Security Income—The benefit amount paid to an eligible person or to an eligible person and the eligible spouse under Title XVI of the Social Security Act (42 U.S.C.A. §§ 1381—1383c).

Spouse—A person who is married to another by legal ceremony or by common-law.

ELIGIBILITY REQUIREMENTS**§ 140.221. Conditions of eligibility.**

Eligibility for MA under the Healthy Horizons Program is based on the following:

(1) An individual shall meet the following eligibility requirements:

- (i) Chapters 125 and 127 (relating to application process; and reserved).
- (ii) Chapter 148 (relating to residence).
- (iii) Chapter 149 (relating to citizenship and alienage).
- (iv) Chapter 155 (relating to enumeration).
- (v) Chapter 178 (relating to resource provisions for categorically NMP-MA and MNO-MA).
- (vi) Chapter 255 (relating to restitution).
- (vii) Chapter 257 (relating to reimbursement).

(2) Under the Healthy Horizons Categorically Needy Program, an individual shall also meet one of the following criteria:

- (i) Be 65 years of age or older.
- (ii) Be a disabled person who is receiving Social Security Disability benefits or disability benefits based on SSI disability criteria at § 141.71 (relating to policy).
- (iii) Be a disabled person who meets the disability requirements of § 141.71.

(3) Under the Healthy Horizons Medicare Cost-Sharing Program, an individual shall also be a qualified Medicare beneficiary.

INCOME REQUIREMENTS

§ 140.231. Income eligibility limitations.

(a) For the Healthy Horizons Categorically Needy and Healthy Horizons QMB Cost-Sharing Programs, net family income after applicable deductions and disregards cannot exceed 100% of the current Department of Health and Human Services Annual Update of Federal Poverty Income Guidelines for the appropriate family size.

(b) For the Healthy Horizons SLMB Cost-Sharing Program, on or after January 1, 1995, net income after applicable deductions and disregards shall be more than 100% of the current Department of Health and Human Services annual update of Federal Poverty Income Guidelines for the appropriate family size but may not exceed 120%. Prior to January 1, 1995, for calendar years 1993 and 1994, net income after applicable deductions and disregards shall be more than 100% of the applicable Department of Health and Human Services Annual Update of Federal Poverty Income Guidelines for the appropriate family size, but cannot exceed 110%.

RESOURCE REQUIREMENTS

§ 140.301. Resource eligibility limitations.

(a) An applicant/recipient is resource eligible for the Healthy Horizons Categorically Needy Program if his total resources considered in accordance with Chapter 178, Subchapters A and B (relating to general provisions for MA resources common to all categories of MA; and aged, blind and disabled categories of MA), do not exceed the SSI resource standard for the appropriate family size.

(b) An applicant/recipient is resource eligible for both the SLMB and QMB Healthy Horizons Medicare Cost-Sharing Programs if total resources considered under Chapter 178, Subchapters A and B do not exceed twice the SSI resource standard for the appropriate family size.

BENEFIT COVERAGE

§ 140.331. Benefit coverage.

(a) The Department will provide the following under the Healthy Horizons Categorically Needy Program:

- (1) Full categorically needy benefits.
- (2) Qualified Medicare beneficiaries are also eligible for the following:
 - (i) Buy-in of the Medicare Part A premium if the individual is enrolled in Medicare Part A and paying the Part A premium.
 - (ii) Buy-in of the Medicare Part B premium.
 - (iii) Payment of the Medicare Part A and Part B deductibles and coinsurances. The combined Medicare and Medicaid payment will not exceed the Department's Medicaid fee for the service provided.

(b) The Department will provide the following under the QMB Healthy Horizons Medicare Cost-Sharing Program:

- (1) Buy-in of the Medicare Part A premium if the individual is enrolled in Medicare Part A and paying the Part A premium.
- (2) Buy-in of the Medicare Part B premium.
- (3) Payment of the Medicare Part A and Part B deductibles and coinsurances. The combined Medicare and Medicaid payment will not exceed the Department's Medicaid fee for the services provided.

(c) Under the Healthy Horizons SLMB Medicare Cost-Sharing Program, the Department will provide buy-in of only the Medicare Part B premium if the individual is enrolled in or eligible for Medicare Part A.

(d) The Department will pay the Medicare Part A premium, if appropriate, and the Medicare Part B premium beginning with the month following the month in which the applicant is determined eligible.

§ 140.332. Category designation.

(a) Elderly/disabled persons who are eligible to receive Healthy Horizons Categorically Needy benefits are designated as "PS" category and are identified by the appropriate program status code.

(b) Elderly persons who are eligible for Medicare Cost-Sharing only are designated as "PG" category.

(c) Disabled persons who are eligible for Medicare Cost-Sharing only are designated as "PL" category.

(d) Elderly disabled persons who are eligible for SLMB Medicare Cost-Sharing are designated as TA/TJ category and the appropriate program status code.

§ 140.335. Retroactive eligibility.

(a) The earliest possible date for retroactive Healthy Horizons Categorically Needy benefits to begin is the first day of the third month preceding the month of application. The period of eligibility for retroactive Healthy Horizons Categorically Needy benefits begins the first day of the month in which the first medical service was incurred if the applicant was otherwise eligible during that month.

(b) There is no retroactive coverage under the Healthy Horizons QMB Medicare Cost-Sharing Program, but eligibility for the SLMB Medicare Cost-Sharing Program may be retroactive for up to 3 months.

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