

RULES AND REGULATIONS

Title 22—EDUCATION

DEPARTMENT OF EDUCATION

[22 PA. CODE CH. 701]

Nurse Aide Applicant Criminal History Record Information

The Department of Education (Department) adopts Chapter 701 (relating to nurse aide training program applicant criminal history record information) to read as set forth in Annex A under the Nurse Aide Resident Abuse Prevention Training Act (act) (63 P. S. §§ 671—680).

Purpose and Requirements

The process of developing Chapter 701 was undertaken in accordance with section 6 of the act (63 P. S. § 676), which directs the Department to promulgate regulations necessary to carry out the criminal history record information requirements and ensure compliance with the act. Section 6(2) of the act further requires that the regulations provide for the confidentiality of criminal history record information.

Comments and Responses

Comments were received from the House Education Committee on August 31, 1998, the Senate Education Committee on September 1, 1998, and the Independent Regulatory Review Commission (IRRC) on September 21, 1998. Public comments were received from five Statewide health associations, two Statewide education associations and one nurse aide training facility.

Section 701.1. Definitions—Clarity.

Two commentators suggested that language be more clear for the “nurse aide” definition. The Department accepts the definition as stated in the act. IRRC and a commentator recommended some changes in wording to clarify § 701.1 and to be consistent with wording throughout the regulations. The Department agreed to make these changes in its final-form regulations.

Section 701.2. Compliance—Need for Rule and Clarity.

IRRC questioned the need to include the compliance statement in § 701.2. The Department agreed that this is not necessary on final-form rulemaking, but has included the statement as part of the Preamble’s purpose and requirements.

Section 701.11. Submission of Criminal History Record Information (CHRI) report—Legislative Intent.

Some commentators suggested that secondary school students be exempted from the CHRI reports. They noted that CHRI reports do not show criminal offenses unless the student is convicted as an adult and completing the report would be a financial and paperwork burden imposed on school districts by § 701.11. IRRC and the Senate Education Committee agreed with the proposed regulations as written. The Department does not have the statutory authority to provide exemptions through regulations. Therefore, the Department has not made this change on the final-form rulemaking.

Section 701.11. Submission of CHRI Report—Consistency with Statute and Clarity.

A commentator recommended a 30-day grace period for receiving CHRI reports. The intent of the law is to have

reports reviewed before the program begins to prevent a person convicted of offenses stated in the act from entering the program. The Department will leave § 701.11 as proposed. However, IRRC recommended some changes in wording to clarify § 701.11. The Department agreed to make these changes in § 701.11.

IRRC, the Senate Committee and some commentators recommended that the residency requirements be changed to agree with the residency requirements in the Older Adults Protective Services Act (35 P. S. §§ 10225.101—10225.708). The Department accepts their recommendation and the residency requirements are changed on the final-form rulemaking.

One commentator recommended that the CHRI report be completed by the Pennsylvania State Police (PSP) and the Federal Bureau of Investigation (FBI) for residents of less than 2 years. The FBI CHRI report is a Nationwide report and includes offenses on the PSP database. The Department believes the language as proposed is sufficient and no change will be made on the final-form rulemaking.

Section 701.11(1). Receipt of CHRI Report by Facility—Need for Rule and Clarity.

IRRC, the House and Senate Committees and some commentators recommended changes in wording (omit a phrase and clarify a word) be made in § 701.11(1). The Department agreed and these have been made on the final-form rulemaking.

Section 701.11(2). Submission of CHRI Report—Need for Rule and Reasonableness.

IRRC recommended that the applicant, who has resided in this Commonwealth less than the required residency time, obtain its FBI CHRI report directly from the FBI. The law is very explicit in charging the Department to enforce the provision of the act; and it is an FBI policy that applicants do not directly contact their agency to obtain CHRI reports. Furthermore, the Department is consistent with established procedures set forth in similar statutes and regulations, namely Act 34 (clearance for teachers). The Department has retained § 701.11(2) as originally proposed. In addition, recently passed act of May 12, 1999 (P. L. 63, No. 5) has specifically given the Department authority to do background checks on the applicants.

Section 701.12(1). Receipt of CHRI report by facility—Need for Reasonableness.

A commentator recommended that the position title and not the designated representative be responsible for receipt of the CHRI report. The Department leaves the language as stated.

Subsection 701.12(3)(i). Receipt of CHRI report by facility—Consistency with Statute and Clarity.

IRRC and a commentator recommended that flexibility be given to allow applicants to submit originals or copies of their CHRI reports. The Department agreed and changes have been made on the final-form rulemaking.

Section 701.15. Confidentiality of Information—Reasonableness and Clarity.

IRRC, the House and Senate Committees, and commentators suggested that two separate policies included unnecessary wording and are not needed. The Department agreed and the changes have been made on the final-form rulemaking.

Section 701.16. Violations—Reasonableness and Clarity.

One commentator recommended that the penalty be on the facility and not the designated representative. It is the intent of the law that the representative and not the facility be held in compliance. The Department has retained the regulation as proposed.

The Department added an additional paragraph to provide clarity to § 701.16 as it relates to § 701.12(i).

The Senate Committee expressed concern that two numbering systems for the proposed regulations were used. The numbering system for the proposed regulations were delivered to the Senate Committee on July 7, 1998 and were published at 28 Pa.B. 3412 (July 18, 1998). The Department recognizes that it is in the purview of the Legislative Reference Bureau to make changes and has used their numbering system in the final-form rule-making.

Fiscal Impact and Paperwork Requirements

The amendments have a fiscal impact upon this Commonwealth at the State level. During the first full year, the State Police project their fiscal impact at \$31,940. This includes staffing and equipment. The Department may need to hire additional clerical assistance for the FBI criminal background checks. This is estimated at \$14,028 for the first year. The regulations would have no fiscal impact upon the local entities. The regulations impose no new significant paperwork requirements beyond those required by the act. However, the Department will need to readjust the length of time for monitoring each nurse aide training program in order to review the criminal history record information for all enrolled nurse aide students.

Effective Date

These final-form regulations take effect on the date of publication in the *Pennsylvania Bulletin*.

Sunset Date

The effectiveness of proposed Chapter 701 will be reviewed by the Department every 4 years. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 18, 1998, the Department submitted a copy of the notice of proposed rulemaking, published at 28 Pa.B. 3412, to IRRC and to the Chairpersons of the House and Senate Committees on Education for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received as well as other documentation. In preparing these final-form regulations, the Department has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), these final-form regulations were approved by the Senate Education Committee on June 5, 2000, and the House Education Committee on June 7, 2000 and were approved by IRRC on June 22, 2000, in accordance with section 5(c) of the Regulatory Review Act.

Contact Person

The official responsible for information on the Department's process of promulgating these final-form regulations is Jane M. Acri, Vocational Services Supervisor,

Bureau of Vocational-Technical Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 783-6867.

Findings

The Department finds that:

(1) Public notice of the intention to adopt these regulations was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated there under in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The adoption of the regulations in the manner provided by this order is necessary and appropriate for administration of the authorizing statute.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 22 Pa. Code Chapter 701, are amended by adding §§ 701.1, 701.11—701.16 and 701.21 to read as set forth in Annex A.

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

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

(d) This order is effective upon final publication in the *Pennsylvania Bulletin*.

EUGENE W. HICKOK,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 30 Pa.B. 3534 (July 8, 2000)).

Fiscal Note: Fiscal Note 6-262 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 22. EDUCATION

PART XIX. CRIMINAL HISTORY RECORD INFORMATION

CHAPTER 701. NURSE AIDE TRAINING PROGRAM APPLICANT CRIMINAL HISTORY RECORD INFORMATION

GENERAL

Sec.
701.01. Definitions.

RESPONSIBILITIES OF FACILITIES AND DESIGNATION REPRESENTATIVE

701.11. Submission of CHRI report.
701.12. Receipt and review of CHRI report by facility.
701.13. Nonacceptance of certain applicants.
701.14. Notification to applicant regarding CHRI report.
701.15. Confidentiality of information.
701.16. Violations.

RESPONSIBILITIES OF THE DEPARTMENT

701.21. Responsibilities of the Department.

GENERAL

§ 701.1. Definitions.

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

Act—The Nurse Aide Resident Abuse Prevention Training Act (63 P. S. §§ 671—680).

Applicant—An individual applying for admission into a program.

CHRI—Criminal History Record Information—A report of criminal history from the State Police or a statement that its central repository contains no information; or a report of criminal history from the Federal Bureau of Investigation, or a statement that its files contain no information.

Department—The Department of Education of the Commonwealth.

Enrollment—Approval of an applicant for admission in a program.

Facility—An institution or agency that sponsors a program.

Nurse aide—An individual providing nursing or nursing-related services to residents in a nursing facility or skilled nursing facility. The term does not include an individual who is a licensed health professional or an individual who volunteers to provide the services without monetary compensation.

Program—The State approved nurse aide training program.

RESPONSIBILITIES OF FACILITIES AND DESIGNATED REPRESENTATIVE

§ 701.11. Submission of CHRI report.

The facility shall require an applicant to submit a CHRI report, which was obtained in the preceding 1-year period, prior to enrolling as a nurse aide student into the program, according to one of the following:

(1) The facility shall require all applicants who have resided in this Commonwealth for a minimum of 2 full years prior to their dates of application to obtain a CHRI report from the State Police.

(2) The facility shall require all applicants who have resided in this Commonwealth less than 2 full years prior to their dates of application to obtain a CHRI report from the Federal Bureau of Investigation by contacting the Department for the required form.

§ 701.12. Receipt and review of CHRI report by facility.

In receiving and reviewing CHRI reports, the facility shall do the following:

(1) The facility administrator shall designate in writing the appropriate facility representative, to review the CHRI report for enrollment eligibility and maintain a copy of the designation in the facility's file.

(2) The facility's designated representative shall receive the applicant's original CHRI report or a copy thereof.

(3) The facility's designated representative shall review the CHRI report in the following manner:

- (i) Sign and date a copy of the CHRI report.
- (ii) Review the CHRI report for the offenses listed in § 701.13 (relating to nonacceptance of certain applicants).
- (iii) Place the signed and dated copy of the CHRI report in a specific file for all CHRI reports.

§ 701.13. Nonacceptance of certain applicants.

The facility and its designated representative may not enroll a nurse aide applicant whose CHRI report indicates the applicant has been convicted of any of the following offenses:

(1) An offense designated as a felony under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144).

(2) An offense under one or more of the following provisions of 18 Pa.C.S. (relating to crimes and offenses):

- (i) Chapter 25 (relating to criminal homicide).
 - (ii) Section 2702 (relating to aggravated assault).
 - (iii) Section 2901 (relating to kidnapping).
 - (iv) Section 2902 (relating to unlawful restraint).
 - (v) Section 3121 (relating to rape).
 - (vi) Section 3122.1 (relating to statutory sexual assault).
 - (vii) Section 3123 (relating to involuntary deviate sexual intercourse).
 - (viii) Section 3124.1 (relating to sexual assault).
 - (ix) Section 3125 (relating to aggravated indecent assault).
 - (x) Section 3126 (relating to indecent assault).
 - (xi) Section 3127 (relating to indecent exposure).
 - (xii) Section 3301 (relating to arson and related offenses).
 - (xiii) Section 3502 (relating to burglary).
 - (xiv) Section 3701 (relating to robbery).
 - (xv) A felony offense under Chapter 39 (relating to theft and related offenses) or two or more misdemeanors under Chapter 39.
 - (xvi) Section 4101 (relating to forgery).
 - (xvii) Section 4114 (relating to securing execution of documents by deception).
 - (xviii) Section 4302 (relating to incest).
 - (xix) Section 4303 (relating to concealing death of child).
 - (xx) Section 4304 (relating to endangering welfare of children).
 - (xxi) Section 4305 (relating to dealing in infant children).
 - (xxii) Section 4952 (relating to intimidation of witnesses or victims).
 - (xxiii) Section 4953 (relating to retaliation against witness or victim).
 - (xxiv) A felony offense under section 5902(b) (relating to prostitution and related offenses).
 - (xxv) Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).
 - (xxvi) Section 6301 (relating to corruption of minors).
 - (xxvii) Section 6312 (relating to sexual abuse of children).
- (3) A Federal or out-of-State offense similar in nature to those crimes listed under paragraph (1) or (2).

§ 701.14. Notification to applicant regarding CHRI report.

The facility shall notify the applicant in writing which is clear and understandable, if the decision not to admit the applicant is based in whole or in part on the CHRI report.

§ 701.15. Confidentiality of information.

The facility shall establish a policy that ensures the confidentiality of the CHRI report by placing it in a locked file cabinet or similar storage area and ensuring that the CHRI report is not available to anyone who is not directly involved in evaluating the applications for enrollment into the program, except State and Federal personnel who monitor the program.

§ 701.16. Violations.

(a) An individual who is responsible for reviewing and approving applications for enrollment into the program (that is, the facility's designated representative) and who willfully fails to comply with § 701.12(2) and (3) or § 701.13 (relating to receipt and review of the CHRI report by facility; and nonacceptance of certain applicants) shall be subject to a civil penalty as provided for in § 701.21 (relating to responsibilities of the Department).

(b) A facility administrator who willfully fails to comply with § 701.12(1) shall be subject to a civil penalty as provided in § 701.21.

RESPONSIBILITIES OF THE DEPARTMENT

§ 701.21. Responsibilities of the Department.

(a) The Department will determine compliance violations.

(b) As part of the routine monitoring of facilities, the Department's monitoring staff will record the name of the designated facility representative and review the facility's files of all nurse aide students who are enrolled in the program after July 29, 2000.

(c) The Department will receive and investigate complaints which allege violations of the act or this chapter.

(d) Based upon the information gathered as part of its routine monitoring or its investigation of a complaint, the Department may hold a hearing to determine violations of § 701.16 (relating to violations).

(1) The procedures for the hearing will conform to 2 Pa.C.S. (relating to administrative law and procedure).

(2) After the hearing, the Department may assess a civil penalty of not more than \$2,500 per violation.

[Pa.B. Doc. No. 00-1276. Filed for public inspection July 28, 2000, 9:00 a.m.]

emit (PTE) for VOCs are 25 tons per year or greater. The compliance deadline for the presumptive RACT requirements does not apply to wood furniture manufacturing operations that have obtained EPA-approved SIP revisions for case-by-case RACT prior to June 10, 2000. Major VOC-emitting wood furniture manufacturing operations will no longer be subject to the RACT requirements in §§ 129.91—129.95 (relating to stationary sources of NO_x and VOCs) because the EPA has now issued a CTG for the control of VOC emissions from wood furniture manufacturing operations (61 FR 25223 (May 20, 1996)). Therefore, the Department will withdraw any case-by-case RACT determination that has not been EPA-approved as a SIP revision by June 10, 2000.

[Pa.B. Doc. No. 00-00-1027. Filed for public inspection June 9, 2000, 9:00 a.m.]

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 101, 125, 133, 141, 145, 166, 175, 177, 178, 181 AND 183]

Public Assistance

The Department of Public Welfare (Department), by this order, adopts the final-form rulemaking 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)).

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) (45 P. S. § 1204(1)(iv)), known as the Commonwealth Documents Law (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 (45 P. S. § 1204(3)) and 1 Pa. Code § 7.4(3).

The amendments, except for the amendment pertaining to allowable medical expense income deductions, are a result of Federal and State statutory mandates allowing for no administrative discretion. These amendments, except the amendment pertaining to allowable medical expense income deductions, have been implemented through Notices of Rule Change (NORCs) published at 24 Pa.B. 4425 (August 27, 1994), effective September 1, 1994; 25 Pa.B. 2762 (July 8, 1995), effective July 1, 1995; 26 Pa.B. 2865 (June 15, 1996), effective June 17, 1996; and 27 Pa.B. 1092 (March 1, 1997), effective March 3, 1997. Additionally, these amendments include a discretionary provision which benefits applicants and recipients and was implemented through a NORC published at 23 Pa.B. 3433 (July 17, 1993), effective July 17, 1993.

The amendment pertaining to allowable medical expense income deductions is a result of section 1902(a)(17) of the Social Security Act (42 U.S.C.A. § 1396a(a)(17)(D)), as clarified by the Health Care Financing Administration (HCFA), which defines what states may use as allowable medical expense income deductions when determining eligibility for Federally-funded categories of Medically Needy Only (MNO)-Medical Assistance (MA). This amendment applies to the Federally-funded categories of MNO-MA and will also be applied to the General Assist-

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121, 129 AND 139]

[Correction]

Surface Coating Processes (RBI # 4)

An error occurred in the preamble to this document which appeared at 30 Pa.B. 2995, 2997 (June 10, 2000). A compliance date in § 129.101 (relating to general provisions and applicability), was printed incorrectly. The correct date for compliance is June 11, 2001. The correct version of the paragraph in question is as follows:

Subsection (b) requires the owners or operators of wood furniture manufacturing operations to comply with the requirements of §§ 129.101—129.107 by June 11, 2001, if the actual emissions or potential to

ance (GA)-related MNO-MA category. This amendment was implemented on February 1, 1999, through written procedural instructions.

These amendments conform State regulations with State statute, reduce State costs, streamline the GA program and ensure that needy individuals of this Commonwealth are assisted in their efforts to become self-sufficient in accordance with legislation enacted by the General Assembly.

Purpose

The purpose of these amendments is to incorporate eligibility requirements for GA, GA-related MA, Federal Temporary Assistance for Needy Families (TANF—which replaced the Aid to Families With Dependent Children [AFDC] Program), TANF-related MA and MNO-MA. These amendments are mandated by State and Federal law as discussed in the following section.

Background

The act of June 16, 1994 (P. L. 319, No. 49) (Act 49) amended the Public Welfare Code by making significant changes to the GA Program that had been largely untouched by reform measures since the passage in 1982 of Act 1982-75 (Act 75). Act 75 introduced time-limited cash grants and a distinction between Transitionally Needy (TN-employable) and Chronically Needy (CN) GA recipients. Act 49 reduced the eligibility period for TN benefits, imposed a 60-day residency requirement on TN and CN clients, tightened eligibility requirements under the CN component and reduced MA services available to both TN and CN clients. The legislative mandates of Act 49 were implemented effective September 1, 1994, through a NORC published at 24 Pa.B. 4425 (August 27, 1994). Effective December 9, 1997, the Department stopped applying the 60-day durational residency requirement for GA (62 P. S. § 432.4(a)) added by section 6 of Act 49. The United States District Court for the Western District of Pennsylvania, in the case of *Warrick et al. v. Snider et al.*, C.A. No. 94-1634, U.S.D.C., W.D., Pa., ruled that section 432.4(a) of the Public Welfare Code (62 P. S. § 432.4(a)) is unconstitutional. See 2 F. Supp. 2d 720. That decision was affirmed by the U. S. Court of Appeals for the Third Circuit, at C.A. No. 98-3010, August 17, 1999. See 191 F.3d 446. Consequently, no regulations will be promulgated to implement the 60-day residency portion of 62 P. S. § 432.4(a).

The act of June 30, 1995 (P. L. 129, No. 20) (Act 20) further amended the Public Welfare Code by eliminating the TN component of the GA Program and deleting or replacing references to the CN component with the phrase "General Assistance" as applicable. Categorical eligibility for the GA program is now determined using criteria formerly referred to as CN criteria. These provisions were implemented through a NORC published at 25 Pa.B. 2762 (July 8, 1995) effective July 1, 1995.

Thereafter, the act of May 16, 1996 (P. L. 175, No. 35) (Act 35) again amended the Public Welfare Code by further tightening GA eligibility criteria. These provisions were implemented through a NORC effective June 17, 1996 published at 26 Pa.B. 2865 (June 15, 1996). Act 35 also imposed a 12-month residency requirement on GA and a 90-day residency requirement on MA applicants and redefined categorical eligibility for the GA-related MNO Program. Based upon the advice of the Attorney General of Pennsylvania, the Department is not implementing the Act 35 12-month durational residency requirement for GA (62 P. S. § 432.4(a)), added by section 11 of Act 35, the 90-day durational residency requirement

for MA (62 P. S. § 442.1(a)(1), added by section 15 of Act 35), and the prohibition against granting assistance to noncitizens (62 P. S. § 432.22), added by section 14.1 of Act 35), and will not be promulgating regulations to implement these provisions.

In addition to the State welfare reform acts, Federal welfare reform under Title I of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. No. 104-193) (PRWORA) was enacted on August 22, 1996. PRWORA eliminated the AFDC Program under Part A of Title IV of the Social Security Act, established the TANF Program (42 U.S.C.A. §§ 601—619) and mandated the implementation of the TANF requirements no later than July 1, 1997. Although the TANF Program replaces the AFDC Program, most of the rules and procedures under which the Department administered AFDC, including those for the Job Opportunities and Basic Skills (JOBS) Training Program, will continue in effect as part of the new TANF Program.

This rulemaking contains only the provision of PRWORA that changes the name of the Federal cash assistance program from AFDC to TANF. That change was implemented through a NORC published at 27 Pa.B. 1092 (March 1, 1997) effective March 3, 1997. The remaining provisions of PRWORA will be promulgated at a later date under a separate rulemaking package. All references to AFDC found within 55 Pa. Code, Handbooks, Bulletins or NORCs published in the *Pennsylvania Bulletin* are to be read and considered as applicable to TANF or to a TANF applicant or recipient, unless doing so would be inconsistent with the TANF State Plan published at 27 Pa.B. 342 (January 18, 1997) effective March 3, 1997, the TANF NORC or with this rulemaking.

In addition to the legislative mandates, this rulemaking contains a requirement beneficial to applicants and recipients which was implemented effective July 17, 1993 through the NORC published at 23 Pa.B. 3433 (July 17, 1993). Verification requirements for disability were revised to permit the acceptance of physical or mental disability determinations based on documentation provided by sources such as the Social Security Administration, the Department of Veterans Affairs or the Department's Medical Review Team (MRT), in addition to the Department's standard verification forms. This revision was not mandated by State or Federal legislation but is included in this rulemaking since it relates to the sections of the *Pennsylvania Code* amended by Acts 49 and 35.

In addition to the changes announced in the NORCs, the Department is amending § 181.14 that defines an allowable medical expense income deduction when determining eligibility for MNO-MA. A clarification through instructions to Departmental staff was issued on February 1, 1999, expanding allowable medical expense income deductions. By request of the Independent Regulatory Review Commission (IRRC), this regulation was amended to support the clarification that had been issued. Medical and remedial expenses paid by a public program on behalf of an individual are allowable deductions from income when determining eligibility for MNO-MA. The public program must be wholly financed by funds from the State or political subdivision. Political subdivision includes, but is not limited to, township, county or district. Medical expenses paid by a public program that receives Federal funds are not permissible deductions from income. This regulation is beneficial to applicants/recipients applying for, or receiving, MNO-MA.

Need for Rulemaking

The Department is required to comply with Federal and State statutes. This rulemaking is needed for consistency between Department regulations and legislative changes.

Summary of Amendments

This summary of new, revised or deleted requirements is organized according to the act which mandated the requirements and the eligibility group which is affected by them.

I. Act 49

A. The following are nonfinancial eligibility requirements that apply to GA (cash) applicants and recipients:

1. *Section 141.21(r)*—Subsection (r) is added to specify that three or more GA recipients residing together will not receive more cash assistance than a comparable AFDC (now TANF) household with the same number of members. (62 P. S. § 403(b))

2. *Section 141.61(a)(1)(xii)*—Subparagraph (xii) is revised to specify that a person refusing to apply for or cooperate in establishing eligibility for AFDC (now TANF) for himself or for a child in his care will not be eligible for GA. (62 P. S. § 432.8)

3. *Section 141.61(a)(1)(xiv)*—Subparagraph (xiv) is added to specify that an applicant who terminates a job without good cause is ineligible for GA until 30 days after the job termination. (62 P. S. § 403(f))

4. *Section 141.61(d)(2)*—Paragraph (2) is amended to specify that GA recipients are eligible, at a minimum, for MNO-MA benefits plus coverage for prescribed medications. There are GA cash recipients who are eligible to receive additional MA benefits. The Department receives Federal funding for the MA benefits received by these recipients. These recipients include children under age 21, pregnant women, migrants, refugees eligible for MA up to 8 months from date of entry into the United States, repatriated nationals and persons who have applied for or are referred to the Social Security Administration for Social Security or Supplemental Security Income disability benefits.

B. The following are nonfinancial eligibility requirements that apply to TANF and GA (cash) applicants and recipients:

1. *Section 177.21(a)(11)*—Paragraph (11) is added to specify that a savings account established in a bank or other financial institution and restricted for payment of educational expenses is not considered in determining eligibility. The moneys deposited and the interest earned are exempt as long as the account is designated for educational expenses. Funds withdrawn from the restricted account and used for purposes other than educational expenses will be added to the total resources of the budget group to determine eligibility in the month of withdrawal and subsequent months. (62 P. S. § 408(2))

2. *Section 177.21(a)(12)*—Paragraph (12) is added to specify that a savings account established under the Tuition Account Program and bonds purchased under the Tuition Account Program and College Savings Bond Act (24 P. S. §§ 6901.101—6901.509) are not considered in determining eligibility. (62 P. S. § 408(2))

Note: These exemptions were implemented in the TANF program effective March 3, 1997. When Act 49 was enacted in 1994, the TANF Block Grant Program was not yet in place. These exemptions could not be applied to AFDC, TANF's predecessor program, without a Federal waiver which the Commonwealth did not receive. The

Department is including these TANF provisions in this pre-TANF regulation upon the recommendation of IRRC.

C. The following are nonfinancial eligibility requirements that apply to persons who qualify for GA (cash) or GA-related Nonmoney Payment (NMP) MA:

1. *Section 141.61(d)(1)(ii)*—The original provision of subparagraph (ii) is deleted and new language is added to specify that parents residing in a two-parent household with their child who is under 18 years of age are eligible for GA or GA-related NMP-MA. Eligibility under this criterion does not apply if the child qualifies for AFDC (now TANF). Both parents as well as the child must be included in the application for GA benefits. (62 P. S. § 432(3)(i)(B))

Note: The provisions of this subparagraph became effective September 1, 1994, but were superseded by a requirement of Act 35 that permits parents residing with their child to receive GA only if the child is under age 13 unless the child is disabled. (See III.D.1., the section relating to GA cash and GA-related MA Program requirements, § 141.61(d)(1)(ii).) The provision of Act 35 became effective June 17, 1996. The language in Annex A reflects current requirements.

2. *Section 141.61(d)(1)(vi)*—The original provision of subparagraph (vi) is deleted and new language is added to specify that a pregnant woman whose pregnancy is medically verified and who has been determined ineligible for AFDC (now TANF) is eligible for GA. (62 P. S. § 432(3)(i)(F))

3. *Section 141.61(d)(1)(vii)*—The original provision of subparagraph (vii) is deleted and new language is added to specify that victims of domestic violence are eligible for GA or GA-related NMP-MA. The individual must be receiving protective services as defined in this section. Eligibility for GA under this criterion is limited to 9 months over the recipient's lifetime. (62 P. S. § 432(3)(i)(G))

D. The following are requirements that apply to persons who are eligible for GA (cash) or GA-related NMP-MA under modified criteria:

1. *Section 141.61(d)(1)(i)*—Subparagraph (i) is revised to specify that a child who is under age 18 or is age 18-20 is eligible for GA if the child does not qualify for AFDC (now TANF) and is attending a secondary or equivalent vocational or technical school full-time and is expected to graduate or complete the program before reaching age 21. (62 P. S. § 432(3)(i)(A))

2. *Section 141.61(d)(1)(iii)*—Throughout subparagraph (iii) the term "handicap" is replaced by the term "disability" as used in Act 49. The term "disability" is also used throughout the Federal Americans with Disabilities Act.

3. *Section 141.61(d)(1)(iii)(B)(II)*—Subclause (II) is added to specify that a person whose disability is established by the Social Security Administration or a person with a 50% or more disability as established by the Department of Veteran's Affairs (DVA) is eligible for GA or GA-related NMP-MA.

4. *Section 141.61(d)(1)(iii)(D)*—Clause (D) is added to clarify that a person who has been assessed by a physician or psychologist as having a verified disability that temporarily or permanently precludes any gainful employment is eligible for GA or GA-related NMP-MA. Eligibility for GA under this criterion is not contingent upon participation in a drug or alcohol treatment pro-

gram as long as the person remains disabled after the substance abuse is successfully treated. (62 P. S. § 432(3)(i)(C))

5. *Section 141.61(d)(1)(iii)(E)*—Clause (E) is added to clarify that persons who have a verified disability solely related to substance abuse that prevents any employment are eligible for GA or GA-related NMP-MA. Eligibility is contingent upon accepting and participating in an available treatment program. (71 P. S. § 1690.109(d))

6. *Section 141.61(d)(1)(iv)*—Subparagraph (iv) was revised under Act 49 to specify that nonparental caretakers of children under age 18 may be eligible for GA or GA-related NMP-MA. Act 49 added a provision that the child or disabled person for whom care is provided must reside in the home with the caretaker. (62 P. S. § 432(3)(i)(D))

Note: The provisions of this subparagraph became effective September 1, 1994, but were superseded by a requirement of Act 35 that permits nonparental caretakers of a child to receive GA only if the child is under age 13 and there is no other person in the home capable of providing the care without the need for GA. (See III.D.4., the section relating to GA cash and GA-related MA program requirements, §§ 141.61(d)(1)(iv) and 141.71.) The Act 35 provision became effective June 17, 1996. The language in Annex A incorporates all of these changes.

7. *Section 141.61(d)(1)(v)*—Subparagraph (v) was revised under Act 49 to clarify that a person receiving active treatment for substance abuse in a program administered by an agency of the Federal government is eligible for GA or GA-related NMP-MA. Eligibility under this criterion continues to be limited to 9 months in a person's lifetime. (62 P. S. § 432(3)(i)(E))

Note: The provisions of this subparagraph became effective September 1, 1994, but were superseded by a requirement of Act 35 that permits a person undergoing active treatment in an approved drug or alcohol treatment facility to receive GA only if the treatment precludes any form of employment. (See III.D.5., the section relating to GA cash and GA-related MA program requirements, §§ 141.61(d)(1)(v) and 141.71.) The Act 35 provision became effective June 17, 1996. The language in Annex A reflects current requirements.

8. *Section 141.61(d)*—Under Act 49, the period of eligibility for TN assistance was reduced to 60 days in a 24-month period. (62 P. S. § 432(3)(iii))

Note: The provisions of this paragraph which became effective July 1, 1994, were subsequently superseded by a requirement of Act 20 that eliminated the TN component of the GA Program and deleted references to TN and CN within the Public Welfare Code. (See II., the section labeled Act 20.) The Act 20 provision became effective July 1, 1995.

9. *Sections 145.63(c)(1), (3)(ii) and 145.64(b)(1)*—These sections are revised to specify that the age limit for a student attending secondary school is changed from under age 19 to under age 21. (62 P. S. § 432(3)(i)(A))

10. *Section 166.23(c)(2)*—Paragraph (2) is revised to delete the prohibition against assigning an individual 45 years of age or older to a Community Work Experience Program project.

E. The following nonfinancial requirements no longer apply as a basis for eligibility and these provisions are being deleted:

1. A person 45 years of age or older is no longer eligible for GA or GA-related NMP-MA on the basis of age. This language is deleted from § 141.61(d)(1)(ii).

2. A person who is employed 30 or more hours per week whose earned income after deductions is below the monthly assistance grant level is no longer eligible for GA. This language is deleted from § 141.61(d)(1)(vi).

3. A person who is ineligible for Unemployment Compensation (UC) and whose income falls below the assistance grant level as the result of a natural disaster is no longer eligible for GA under this criterion. This language is deleted from § 141.61(d)(1)(vii).

4. A person who maintained full-time employment defined as at least 30 hours per week for a verified minimum of 48 months out of the 8 years prior to application and has exhausted his UC benefits is no longer eligible for GA. Section 141.61(d)(1)(viii) is therefore deleted.

5. Recipients who did not meet CN criteria were permitted to receive CN assistance from April 8, 1982, through December 31, 1982. Since this provision became obsolete effective January 1, 1983, § 141.61(d)(1)(ix) is deleted.

F. For GA-related MA, the following provisions are changed:

1. *Section 141.71(c)(2)* is revised to clarify the level of MA benefits associated with the receipt of GA cash assistance. Children under age 21, pregnant women, migrants, refugees eligible for MA up to 8 months from date of entry into the United States, repatriated nationals and persons who have applied for or are referred to the Social Security Administration for Social Security or Supplement Security Income disability benefits qualify for additional MA benefits under Federally-funded MA, if otherwise eligible.

2. *Section 141.81(c)(3)(v)(A)* is revised to clarify the categories of MA that qualify for Federally-funded MA and specify persons who may be eligible for MNO-MA under the TD category.

3. *Section 178.11(4)(i) and (6)* is revised to clarify the category of MA eligibility for children and GA eligibles who do not receive cash assistance.

4. *Sections 178.11(7), 178.12(7), 181.41(4)(i), 181.41(7) and 181.42(8)* are revised to reflect the change in eligibility conditions, the age limits and type of MA coverage provided under Act 49.

Note: The provisions of §§ 178.11(7), 178.12(7), 181.41(7) and 181.42(8) which became effective September 1, 1994, were superseded by changes to these provisions in Act 20 which was effective July 1, 1995. (See II., the section labeled Act 20. The language in Annex A reflects current requirements.

G. For GA-related MA, the following eligibility criterion is added:

• *Section 178.165*—An education savings account established in a financial institution and specifically designated for payment of educational expenses is disregarded in determining eligibility. A savings account established under the Tuition Account Program and bonds purchased under the Tuition Account Program and College Savings Bond Act are also disregarded in determining eligibility.

II. Act 20

A. The following sections are revised to reflect the elimination of the GA-TN component, the elimination of references to the CN component and elimination of references to the now obsolete GA-TN-related MA categories:

1. *Sections 133.23(a)(2)(ii)(L), 141.61(a)(1), (d), (d)(1), (d)(1)(ii), (d)(1)(v) and 141.71(c)(2)*—References to TN and CN are deleted.

2. *Sections 141.61(d)(1)(iii)(C)(I) and (II)*—Subclauses (I) and (II) are deleted because the TN program is eliminated and there is no longer a distinction between CN and TN recipients. Persons now eligible for GA on the basis of disability are not referred to the Employment and Training Program.

3. *Section 141.61(d)(2)*—This paragraph is deleted because the TN program is eliminated.

4. *Section 141.61(d)(3)*—Paragraph (3) is deleted because parents and children who qualify for GA are no longer designated TN and CN recipients.

5. *Section 178.11(7)*—Paragraph (7) is deleted because it described a person eligible for the TN component of GA which is eliminated.

6. *Section 178.12(7)*—Paragraph (7) is rescinded and the section has been renumbered because it described a person eligible for the TN component of GA which is eliminated.

7. *Section 181.1(d)(1) and (2)*—References to the PK and TK (TN-related) categories are deleted because the TN component of GA is eliminated.

8. *Section 181.2*—The definitions of PK and TK categories are deleted because the TN component is eliminated.

9. *Section 181.41(6)*—The reference to PK category is deleted because the TN component of GA is eliminated.

10. *Sections 181.41(7) and 181.42(8)*—These paragraphs are deleted because they described persons eligible for the TN component of GA which is eliminated.

III. *Act 35*

A. The following requirements, enacted under Act 35 and permitted by PRWORA, apply to the TANF Program, and GA cash and related NMP-MA programs:

1. *Sections 125.21(b)(1), 125.24(c)(1) and (7)(v), 181.11(a) and 183.104a(a)(3)*—The provisions of these sections are revised to specify that initial authorization of assistance will occur when all factors of eligibility are verified unless verification is pending from a third party and the client has cooperated in the verification attempt or unless certification of cooperation is pending with the domestic relations section of the Court of Common Pleas. Initial authorization of cash assistance will not be delayed more than 30 days after application. If the applicant establishes eligibility, assistance will be authorized effective with the date that all conditions of eligibility are verified. (62 P. S. § 432.19)

Note: The NORC published at 26 Pa.B. 2865 (June 15, 1996) incorrectly identified § 125.74 as a section that would incorporate the previous requirement specified. It has been incorporated into § 181.11.

2. *Sections 177.2 and 183.2*—These sections are revised to amend the definition of budget group to read “one or more related or unrelated individuals who occupy a common residence or would occupy a common residence if they were not homeless and whose needs and eligibility are considered together in determining eligibility for cash assistance under one category of assistance.” This revised definition essentially copies the statutory definition of assistance group which was added to section 402 of the Public Welfare Code under Act 35. (62 P. S. § 402)

B. The following requirements apply to the TANF and GA cash assistance programs:

- *Section 141.21(s) and (t)*—Subsections (s) and (t) are added to specify that an applicant or recipient of AFDC (now TANF) or GA who has been convicted of violating section 481(a) of the Public Welfare Code (62 P. S. § 481(a)), that is, has been convicted of securing or attempting to secure, or aiding or abetting or attempting to aid or abet any person in securing cash assistance, MA or Federal food stamps by means of a willfully false statement or misrepresentation, or by impersonation or by willfully failing to disclose a material fact regarding eligibility either prior to, or at the time of, or subsequent to the application for assistance, a crime commonly referred to as welfare fraud, is ineligible for cash assistance for 6 months from the date of a first conviction, for 12 months from the date of a second conviction, and permanently from the date of a third conviction. (62 P. S. § 481(f))

C. The following requirement applies to the GA cash assistance program:

- *Section 175.23(d)*—Subsection (d) is added to specify that cash assistance granted shall be reduced by amounts obtained by cashing an assistance check at a gambling casino, racetrack, bingo hall or other establishment that derives more than 50% of its gross revenues from gambling. (62 P. S. § 434)

Note: The NORC published at 26 Pa.B. 2865 (June 15, 1996) provided an incorrect citation (§ 175.24(f)) for this requirement. The citation is correct as specified previously.

D. The following requirements apply to the GA cash and the GA-related MA programs:

1. *Section 141.61(d)(1)(ii)*—Subparagraph (ii) is revised to specify that persons eligible for GA and GA-related NMP-MA include persons who are parents residing in a two-parent household with their child who is under 13 years of age or their child under age 21 who has a verified disability. The requirement supersedes the provision of Act 49 which permitted two parents residing in a household with their child who was under age 18 to receive GA. (62 P. S. § 432(3)(i)(B))

2. *Section 141.61(d)(1)(iii)*—Subparagraph (iii) is revised to specify that a person who has been assessed by a physician or psychologist as having a verified physical or mental disability which causes a permanent or temporary disability that precludes gainful employment shall provide verification of the disability in a form prescribed by the Department and completed by a physician or psychologist. The verification of the physical or mental disability shall be based on acceptable clinical and laboratory diagnostic techniques rather than a statement of symptoms by the applicant or recipient. (62 P. S. § 432(3)(i)(C))

3. *Section 141.61(d)(1)(iii)(F)*—Clause (F) is added to specify that an applicant or recipient who has a verified mental or physical disability which is temporary must seek and comply with appropriate treatment as a condition of eligibility. (62 P. S. § 432(3)(i)(C))

4. *Sections 141.61(d)(1)(iv) and 141.71*—These sections are revised to specify that persons eligible for GA and GA-related NMP-MA include the nonparental caretaker of a child under 13 years of age. Assistance will not be granted to a person under this criterion if there is

another adult in the household who is capable of providing the care without GA being required. This requirement supersedes the provision of Act 49 which allowed nonparental caretakers of children under age 18 to receive GA. (62 P. S. § 432(3)(i)(D))

5. *Sections 141.61(d)(1)(v) and 141.71*—These sections are revised to specify that a person undergoing active treatment for substance abuse in an approved drug or alcohol treatment program qualifies for GA or GA-related NMP-MA only if the treatment precludes the person from engaging in employment. The 9-month lifetime limitation remains unchanged. This requirement supersedes the provision of Act 49 which allowed a person undergoing active treatment for substance abuse to receive GA regardless of whether the treatment precluded the person from engaging in gainful employment. (62 P. S. § 432(3)(i)(E))

E. The following requirements apply to the MA program:

1. *Section 141.81(a)(1)*—Paragraph (1) is revised to specify that a person applying for MNO-MA shall meet the standards of both financial and nonfinancial eligibility. Additional revisions are made as editorial corrections and do not reflect a change in the policy. (62 P. S. § 442.1(a)(2)).

Note: The NORC published at 26 Pa.B. 2865 (June 15, 1996) provided an incorrect citation (§ 125.74) for this requirement. The citation is correct as previously specified.

2. *Section 141.81(c)(3)(ii)(C)*—Clause (c) is revised to add a pregnant woman as a person who may be eligible for MNO-MA under the TC category. (62 P. S. § 442.1(a)(3)(ii)(E))

3. *Section 141.81(c)(3)(iv)*—Subparagraph (iv) is revised to specify that a person with a disability who is receiving Social Security disability benefits, who has been referred to the Social Security Administration for a determination of eligibility for Supplemental Security Income disability benefits or who is under review for disability by the Department based upon Social Security disability criteria, may be eligible for MNO-MA under the TJ category. (62 P. S. § 442.1(a)(3)(ii)(F))

4. *Section 141.81(c)(3)(v)*—Subparagraph (v) is revised to specify that a person who is a custodial parent of a dependent child under age 21, a person age 59 or older, or a person who is employed 100 hours per month earning at least the minimum wage, may be eligible for MNO-MA under the TD category. (62 P. S. § 442.1(a)(3)(ii)(B), (C) and (G))

5. *Sections 181.1(b) and 181.12*—This section and subsection are revised to specify that in determining eligibility for retroactive MNO-MA, income received or expected to be received in a 6-month period is used, even if the person requests MA coverage for less than 6 months. The 6-month period can include both retroactive and prospective months. Medical coverage can continue as long as the need exists, but no longer than the consecutive 6-month period from which income is counted. (62 P. S. § 442.1(c))

IV. *PRWORA*

1. *Section 101.1* is revised to incorporate references to the Federal TANF program that replaced the AFDC program and to include a statement that most of the rules that were in effect under the AFDC program remain in effect under TANF.

V. *Federal Legislation—42 U.S.C.A. § 1396a(a)(17)(D)*

1. *Section 181.12(c)(2)* is revised to amend the cross reference to include the addition of medical and remedial expenses paid by a public program as allowable medical expense income deductions when determining eligibility for retroactive MNO-MA.

2. *Sections 181.14(d)(3), (e)(6) and (7)*—These paragraphs are revised to expand allowable medical expense income deductions when needed for a determination of eligibility for MNO-MA. Individuals may qualify for MNO-MA without the deduction of medical expenses if total net countable income does not exceed the MNO-MA income limit. If the net income exceeds the limit, allowable medical expenses may be used as deductions to spend down the income that exceeds the limit. Allowable medical expenses include expenses incurred by an applicant who is liable to pay the expense. Medical expenses paid by a third party are not deductible from an individual's income. However, section 1902(a)(17) of the Social Security Act (42 U.S.C.A. § 1396a(a)(17)), as clarified by HCFA, permits states to expand the definition of allowable medical expense income deductions. Therefore, these revisions allow medical and remedial expenses paid by a public program funded by a state or political subdivision on behalf of an individual as allowable medical expense income deductions. The public program may not be financed in whole or in part by Federal funds. This is the sole exception to the requirement that medical expenses paid by a third party are not permissible deductions from income.

Affected Individuals and Organizations

This rulemaking affects applicants and recipients of TANF, GA and MA. Providers of medical and psychological services are also affected due to the reduction or termination of compensable services under certain GA-related MA programs as well as the more stringent verification requirements imposed on persons who state that they are either temporarily or permanently disabled.

Accomplishments/Benefits

Implementation of the regulations by various NORCs has had the effect of bringing regulations into compliance with State law, reducing State costs, streamlining the GA program and ensuring that needy individuals of this Commonwealth are assisted in their efforts to become self-sufficient in accordance with legislation enacted by the General Assembly.

Fiscal Impact

Commonwealth:

The savings for the current year include \$111.178 million for Act 49; \$28.136 million for Act 20; and \$214.679 million for Act 35. These estimates reflect prior year budget projections. This is due to an inability to separately identify the effect of changes which have been implemented in prior years.

Public Sector:

There will be no costs or savings incurred by the public sector.

Private Sector:

There will be no costs or savings incurred by the private sector.

Paperwork Requirements

Revisions to the GA disability requirements under Act 35 precipitated the development of the following forms:

- PA 1663—Employability Assessment Form
- PA 1664—Employability Reassessment Form
- PA 1671—Health Sustaining Medication Assessment Form
- PA 1672—Drug and Alcohol Treatment Information Form

Effective Date

The effective date of the provisions found in §§ 141.21, 141.61, 141.71, 141.81, 145.63, 145.64, 166.23, 177.21, 178.11, 178.12, 178.165, 181.41 and 181.42, as amended by Act 49, when published as final-form rulemaking in the *Pennsylvania Bulletin* are retroactive to September 1, 1994. The effective date of the savings for education exemption found in § 177.21, applicable to the TANF program, is retroactive to March 3, 1997.

The effective date of the regulations found in §§ 133.23, 141.61, 141.71, 178.11, 178.12, 181.1, 181.2, 181.41 and 181.42, as amended by Act 20, is retroactive to July 1, 1995.

The effective date of the regulations found in §§ 125.21, 125.24, 141.21, 141.61, 141.71, 141.81, 175.23, 177.2, 181.1, 181.11, 181.12 and 183.2 and the Statement of Policy found in § 183.104a, as amended by Act 35, is retroactive to June 17, 1996.

The effective date of the regulation found in § 101.1, as amended by PRWORA, is retroactive to March 3, 1997.

The effective date of the disability verification provision under § 141.61(d)(iii)(B)(II) is retroactive to July 17, 1993; and the expansion of allowable medical expense income deductions found in §§ 181.12 and 181.14 is retroactive to February 1, 1999.

Sunset Date

There is no sunset date. The Department conducts periodic reviews of the GA Program in accordance with section 403(e) of the Public Welfare Code. TANF and MA regulations are also reviewed through the Department's Quality Control and Corrective Action review process.

Public Comments

Although these amendments are being adopted without prior notice, interested persons are invited to submit their written comments within 30 days from the date of this publication for consideration by the Department as to whether the regulations should be revised. Comments should be sent to the Department of Public Welfare, Edward Zogby, Director, Bureau of Policy, Room 431, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-4081.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (Voice users).

Regulatory Review Act

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on May 17, 2000, the Department submitted a copy of these final-omitted regulations 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, the final-omitted regulations were submitted to the Office of the Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

In accordance with section 5.1(d) of the Regulatory Review Act, these final-form regulations were deemed

approved by the Committees on July 3, 2000. These final-form regulations were approved by IRRC on July 13, 2000.

Findings

The Department finds that:

(1) Public notice of intention to adopt the administrative regulations by this order is omitted because the regulations relate to Commonwealth grants and benefits and is unnecessary and contrary to public interest under section 204(1)(iv) and (3) of CDL and the regulations thereunder, 1 Pa. Code §§ 7.4(1)(iv) and (3).

(2) The adoption of these 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:

(a) The regulations of the Department, 55 Pa. Code Chapters 101, 125, 133, 141, 145, 166, 175, 177, 178, 181 and 183, are amended by amending §§ 101.1, 101.2, 125.21, 125.24, 133.23, 141.21, 141.61, 141.71, 141.81, 145.63, 145.64, 166.23, 175.23, 177.2, 177.21, 178.11, 178.12, 181.1, 181.2, 181.11, 181.12, 181.14, 181.41, 181.42, 183.2 and 183.104a and by adding § 178.165 to read as set forth in Annex A with ellipses referring to the existing text of the regulations.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of the 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* as follows: The effective date of the regulations found in §§ 141.21, 141.61, 141.71, 141.81, 145.63, 145.64, 166.23, 177.21, 178.11, 178.12, 178.165, 181.41 and 181.42, as amended by Act 49, when published as final rulemaking in the *Pennsylvania Bulletin* are retroactive to September 1, 1994. The effective date of the savings for education exemption found in § 177.21, applicable to the TANF program, is retroactive to March 3, 1997. The effective date of the regulations found in §§ 133.23, 141.61, 141.71, 178.11, 178.12, 181.1, 181.2, 181.41 and 181.42, as amended by Act 20, is retroactive to July 1, 1995. The effective date of the regulations found in §§ 125.21, 125.24, 141.21, 141.61, 141.71, 141.81, 175.23, 177.2, 181.1, 181.11, 181.12 and 183.2 and the Statement of Policy found in § 183.104a, as amended by Act 35, is retroactive to June 17, 1996. The effective date of the regulation found in § 101.1, as amended by PRWORA, is retroactive to March 3, 1997. The effective date of the disability verification provision under § 141.61(d)(iii)(B)(II) is retroactive to July 17, 1993; and the expansion of allowable medical expense income deductions found in §§ 181.12 and 181.14 is retroactive to February 1, 1999.

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 30 Pa.B. 3872 (July 29, 2000).)

Fiscal Note: 14-467. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart A. ASSISTANCE POLICIES AND PROCEDURES

CHAPTER 101. GENERAL PROVISIONS

§ 101.1. Policy.

(a) Scope. The policies, procedures and standards for determining eligibility, the amount of the grant and for making payments for all types of assistance administered by the Department are included in this part. The types of assistance are TANF, General Assistance and State Blind Pension. Social services in Public Assistance, medical care, including nursing home care, burial and employment are also included.

(1) Although the TANF Program replaces the AFDC Program, most of the rules and procedures under which the Department administered AFDC, including those for the job opportunities and Basic Skills (JOBS) Training Program, will continue in effect as part of the new TANF Program.

(2) The references to AFDC found within this title are to be read and considered as applicable to the TANF Program or to a TANF applicant or recipient, unless doing so would be inconsistent with the TANF requirements or with this section.

* * * * *

(d) Purpose of TANF. TANF has the following purposes:

(1) TANF is intended to provide money for dependent children who are in need because support from the usual source, parents, is not available. The money will be provided so that these children may live in family homes with their own parents, or with certain relatives who take the place of parents. Thus, it is the purpose of the TANF Program to prevent a child from being forced to be away from his own family for economic reasons alone. TANF recognizes the importance to a child of his own home and family relationships.

(2) TANF is a time-limited money payment to an adult on behalf of children because the program recognizes the child needs an adult to look after him. The parents are the persons who have the right and obligation to rear, care for, support and make major decisions for the child. Usually, it is a parent who applies for assistance. Which ever one applies, both share responsibility for the child, and the other parent should, if possible and advisable, have some part in the decision on going through with an application for assistance. For parents who are living together, this means a joint application. For other parents, this means clarifying the role of the absent parent in support and care of the child.

* * * * *

§ 101.2. Definitions.

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

* * * * *

AFDC—The Aid to Families with Dependent Children Program, replaced by the TANF Program effective March 3, 1997.

* * * * *

TANF—The Temporary Assistance for Needy Families Program.

* * * * *

Subpart B. INTAKE AND REDETERMINATION

CHAPTER 125. THE APPLICATION PROCESS

AFDC/GA PROVISIONS FOR THE APPLICATION PROCESS

§ 125.21. Policy.

* * * * *

(b) Verification. Conditions of eligibility, need, which includes need for special need allowances, and resource items will be verified at the application interview and prior to authorizing cash assistance and at the time of each redetermination, complete or partial, as specified in Chapter 133 (relating to redetermining eligibility).

(1) If necessary verification is pending from a third party including certification of cooperation from the Domestic Relations Section of the Court of Common Pleas and the client has cooperated in the verification attempt, initial authorization of cash assistance will not be delayed more than 30-calendar days from the date of receipt of a completed, signed application.

* * * * *

§ 125.24. Procedures.

* * * * *

(c) The application interview. The application interview shall be held within 13-calendar days of the date the CAO receives the application. The interview will be conducted in accordance with the following principles:

(1) The facts necessary for a decision on eligibility are assembled at the application interview. The maximum lapse of time between the receipt of a completed, signed application and authorization of the first assistance payment or other disposition of the application will be 30-calendar days. In accordance with section 432.19 of the Public Welfare Code (62 P. S. § 432.19), an application will not be denied for lack of verification if the applicant has cooperated in seeking verification which is pending from a third party including certification of cooperation with the Domestic Relations Section.

* * * * *

(7) The application interview shall conform with the following:

* * * * *

(v) A decision concerning the applicant's eligibility shall be made without delay based on the verification factors and information provided by the applicant. A decision on eligibility shall be made within 30-calendar days of the receipt of an application. In accordance with section 432.19 of the Public Welfare Code (62 P. S. § 432.19), assistance may not be denied for lack of verification if the applicant has cooperated in seeking verification which is pending from a third party including certification of cooperation from the Domestic Relations Section.

* * * * *

**CHAPTER 133. REDETERMINING ELIGIBILITY
REDETERMINING ELIGIBILITY PROVISIONS FOR
TANF/GA**

§ 133.23. Requirements.

(a) *Reapplication.* A reapplication or complete redetermination of eligibility shall conform with the following:

* * * * *

(2) *Items subject to review.* A redetermination shall conform with the following:

* * * * *

(ii) In the redetermination of eligibility, the worker shall make a finding as to whether the client who is the payment name wants assistance to continue, what plans the client may have or be developing for self-support or self-care and when the plans may mature. This redetermination shall include at least one interview with the person who is the payment name for the budget group. If the client wants assistance continued, the worker shall redetermine those eligibility factors which are subject to change. The redetermination shall include a review of the need and resource items and verification of items subject to change:

* * * * *

(L) Criteria that establish GA categorical eligibility.

* * * * *

Subpart C. ELIGIBILITY REQUIREMENTS

**CHAPTER 141. GENERAL ELIGIBILITY
PROVISIONS**

ELIGIBILITY PROVISIONS FOR TANF/GA

§ 141.21. Policy.

* * * * *

(r) Neither the income eligibility limits nor the cash benefits for three or more GA recipients residing in the same household may exceed the limits for a TANF budget group with the same number of recipients. The term "household" is defined as a common residence and does not include single-room occupancy residences, rooming houses, shelters for the homeless, nonprofit residential programs or personal care home facilities receiving charitable or government funds including funds from Federal, State or local units.

(s) An applicant or recipient of GA who has been convicted of violating section 481(a) of the Public Welfare Code (62 P. S. § 481(a)), that is, has been convicted of securing or attempting to secure, or aiding or abetting or attempting to aid or abet any person in securing GA, TANF, MA or Federal food stamps by means of a willful false statement or misrepresentation, or by impersonation or by willfully failing to disclose a material fact regarding eligibility either prior to or at the time of, or subsequent to the application for assistance is ineligible for GA as follows:

- (1) For 6 months from the date of first conviction.
- (2) For 12 months from the date of a second conviction.
- (3) Permanently from the date of a third conviction.

(t) An applicant or recipient of TANF who has been convicted of violating section 481(a) of the Public Welfare Code, that is, has been convicted of securing TANF by means of a willful false statement or misrepresentation, or by impersonation or by willfully failing to disclose a material fact regarding eligibility either prior to or at the

time of, or subsequent to the application for TANF or GA is ineligible for TANF and GA as follows:

- (1) For 6 months from the date of first conviction.
- (2) For 12 months from the date of a second conviction.
- (3) Permanently from the date of a third conviction.

ELIGIBILITY PROVISIONS FOR GA

§ 141.61. Policy.

(a) *Conditions of eligibility.* The following relates to eligibility for GA:

(1) A person is eligible for GA under the requirements established in subsection (d) and if the appropriate eligibility conditions in the following chapters are met:

* * * * *

(xii) Furthermore, eligibility for GA requires that the person be ineligible for TANF because of failure to meet TANF definitive conditions. An applicant or recipient who does not meet a definitive condition for TANF solely because of a refusal to establish eligibility for TANF is ineligible for GA. A person meeting definitive conditions but ineligible for TANF because of income, resources or participation in a strike is not eligible for GA. A person who refuses without good cause to cooperate in establishing paternity or support as required in the TANF program is not eligible for GA.

* * * * *

(xiv) A GA cash assistance applicant is ineligible for 30 days after the termination of employment if the applicant voluntarily terminates the employment without good cause. Good cause includes the circumstances beyond a person's control specified § 165.52(a) (relating to good cause).

* * * * *

(d) *Determining GA categorical eligibility.* An applicant for, or recipient of, GA is determined to be eligible in accordance with the following:

(1) A person is eligible to receive GA for an indeterminate period due to medical, social or related circumstances. Persons who may qualify for GA are limited to the following:

(i) A child who is under age 18; or who is 18 through 20 years of age and is attending a secondary or equivalent vocational or technical school full-time and may reasonably be expected to complete the program before reaching 21 years of age. Age, school enrollment and attendance shall be verified.

(ii) Parents residing in a two-parent household with their child who is under 13 years of age or their child who is under 21 years of age and who has a disability. The age, residence and disability (if applicable) of the child shall be verified. Both parents as well as the child shall be included in the application. If the family is ineligible under this provision, either parent or child may qualify under another criterion.

(iii) A person who has been assessed by a physician or psychologist as having a temporary or permanent disability which precludes him from working in any gainful employment. The following conditions apply:

(A) Documentation which demonstrates the relationship between the disability and the inability to work shall be provided by the client during the application interview for cash assistance or, in the case of recipients, within 30-calendar days after the date of the redetermination.

(B) With the exception of documentation under subclause (II), documentation shall be on a form provided by the Department and completed by a physician or a psychologist.

(I) The CAO's medical consultant may be used in those cases that the IMU worker is unable to establish the inability to work based on the disability.

(II) The verification may also be provided by sources including, but not limited to, the SSA indicating approval for disability benefits or on a disability determination of 50% or greater made by the Department of Veterans Affairs (DVA). A medical certification of disability provided by the Department's Medical Review Team (MRT) is also acceptable documentation of illness or disability. Documentation from sources other than the SSA, DVA or MRT is also acceptable if it clearly states the relationship between the disability and the person's employability. In addition, this documentation shall be less than 6 months old at the time of application or redetermination unless the condition to which it refers is permanent or chronic. The verification of physical or mental disability shall be based on acceptable clinical and laboratory diagnostic techniques rather than a statement of symptoms by the applicant or recipient.

(C) An applicant or recipient who claims a physical or mental disability which temporarily or permanently precludes the applicant or recipient from any gainful employment but who does not have the documentation at the application or within 30 days of the redetermination interview shall be determined ineligible for GA until the documentation is presented to the CAO. The CAO shall determine eligibility for the MNO Program to cover the cost of the employability assessment only for persons who allege eligibility based on a physical or mental disability. Reasonable accommodations to assist a person to secure documentation during this period shall be provided to a person who is prevented from cooperating due to a physical or mental disability.

(D) A person who has a serious physical or mental disability which prevents employment and which is documented in accordance with this subparagraph may be authorized as GA even if the person is undergoing active treatment or has undergone treatment for substance abuse in a drug or alcohol treatment program. Eligibility for GA on the basis of having a serious physical or mental disability is not contingent upon participation in a drug or alcohol treatment program as long as the person remains disabled after the substance abuse is successfully treated.

(E) A person who has a disability solely related to substance abuse that prevents employment and which has been documented in accordance with this subparagraph may be authorized as GA. Eligibility for GA on this basis is contingent upon accepting and participating in available drug or alcohol treatment services.

(F) An applicant or recipient who has a verified physical or mental disability which is temporary shall seek appropriate treatment as a condition of eligibility.

(iv) A nonparental caretaker of a child under 13 years of age or a caretaker of an individual who is ill or disabled. The caretaker shall reside with the individual for whom he provides care and his presence must be required. A caretaker's presence in the home will not be considered as required if there is another person in the home who is able to provide the care without the need for GA. The caretaker shall provide documentation of the age of the child or the illness or disability of the individual needing care.

(v) A person who is undergoing active treatment for substance abuse in a drug or alcohol treatment program licensed or approved by the Department of Health or administered by an agency of the Federal government as long as the treatment precludes the person from engaging in any form of employment. Eligibility under this criterion is limited to a maximum of 9 months in the lifetime of the person regardless of whether or not treatment is continuing upon expiration of the 9-month time limit.

(vi) A pregnant woman whose pregnancy has been medically verified and who is ineligible for TANF.

(vii) A person who is a victim of domestic violence or another abusive living situation and is receiving protective services. It is not necessary that the service be continuous or rendered on a daily, weekly or monthly basis. Eligibility under this criterion is limited to a maximum of 9 months in the lifetime of the person, regardless of whether or not protective services are continuing upon expiration of the 9-month time limit. The person shall verify that the person is receiving one of the following protective services, or is involved in one of the following activities:

(A) Residing in an emergency shelter or emergency housing for abused persons.

(B) Receiving supportive counseling from a professional counseling source.

(C) Receiving social services to prevent further potential abuse.

(D) Receiving social services necessary to enable the person to remain in his own home.

(E) Filing of assault or battery or other charges with a law enforcement agency related to seeking protection from the abuser.

(F) Obtaining a restraining order or peace bond against the abuser.

(G) Receiving services from any branch of government (including the courts or the police) or agency meant to counsel or protect the individual from abuse. Information provided by or on behalf of a victim of abuse is confidential and subject to Chapter 105 (relating to safeguarding information).

(2) GA recipients are eligible for the MNO level of benefits. In addition, these persons receive coverage for prescribed medications. GA recipients eligible for Federally-funded MA receive additional benefits under the MA Program. Children under age 21, pregnant women, migrants, refugees eligible for MA up to 8 months from date of entry into the United States, as specified in 45 CFR 400.90 (relating to basis and scope), repatriated nationals and persons who have applied for or been referred to the SSA for Social Security or SSI disability benefits qualify for Federally-funded MA.

ELIGIBILITY PROVISIONS FOR MA FOR THE CATEGORICALLY NEEDY

§ 141.71. Policy.

* * * * *

(c) *Money payment recipients.* The following persons will be eligible for MA services provided the recipient does not have resources such as medical insurance or governmental benefits that cover the costs of the services at MA standards:

* * * * *

(2) Persons who meet the definitive conditions of TANF, GA or SBP. GA persons, who are not eligible for Federally-funded MA and who are eligible to receive a cash payment are entitled to MNO level of benefits if otherwise eligible. In addition, these persons receive coverage for prescribed medications. GA-related MA recipients eligible for Federally-funded MA receive additional benefits under the MA Program. Children under 21 years of age, pregnant women, migrants, refugees eligible for MA up to 8 months from date of entry into the United States, as specified in 45 CFR 400.90 (relating to basis and scope), repatriated nationals and persons who have applied for or been referred to the SSA for Social Security or SSI Disability benefits qualify for Federally-funded MA.

* * * * *

(g) *PD (Categorically Needy NMP-GA) requirements.* The policy and procedures in § 141.61 apply. A person who does not receive a cash payment and who is not eligible for Federally-funded MA as described in subsection (c)(2) is entitled to the MNO level of benefits if otherwise eligible. In addition, these persons receive coverage for prescribed medications.

ELIGIBILITY PROVISIONS FOR MNO-MA

§ 141.81. Eligibility policy for MNO.

(a) *Conditions of eligibility.*

(1) To be eligible for MNO-MA, the person shall comply with the following:

(i) Meet financial and nonfinancial eligibility standards established by the Department and approved by the Governor and the appropriate conditions of eligibility set forth in the following chapters or sections:

- (A) Chapter 147 (relating to residence).
- (B) Chapter 149 (relating to citizenship and alienage).
- (C) Chapter 161 (relating to persons in institutions).
- (D) Chapters 177—179 and 181.
- (E) Chapter 183 (relating to income).
- (F) Section 175.84 (relating to procedures).
- (G) Section 175.73(b) (relating to requirements).

(2) To be eligible for MA, the person shall supply evidence, as required, of the following factors:

- (i) Chapter 145 (relating to age).
- (ii) Dependent children (subsection (c)(3)(ii)).
- (iii) Blind (subsection (c)(3)(iii)).
- (iv) Permanent and total disability (subsection (c)(3)(iv)).

(3) To be eligible for MA, the person shall provide other information as is requested by the Department (subsection (b)).

(4) To be eligible for MA, the person shall sign forms.

* * * * *

(c) *Other eligibility conditions and categories.* Other eligibility conditions and categories are as follows:

* * * * *

(3) The categories of MA and the eligibility conditions for them are set forth as follows. A decision that the client does not meet the definitive conditions for old age, dependent children, blind or permanent and total disability must be supported in the case record.

* * * * *

(ii) *Dependent Child Category (TC).* A parent will be considered incapacitated during the period institutional medical care, hospital-home care or nursing services in the home are received. The suffix "E" will be added to the category symbols, such as TCE, to identify migrant worker applicant groups with children who are eligible for emergency MA services. This category applies to the following:

* * * * *

(C) Pregnant women.

* * * * *

(iv) *Permanent and total disability category (TJ).* This category applies to a person 18 years of age or older but under 65 who is permanently and totally disabled, a person with a disability who is receiving Social Security disability benefits who has been referred to the SSA for a determination of eligibility for SSI disability benefits or a person under review for a disability by the Department based upon Social Security disability criteria. For MA purposes, a person will be considered permanently and totally disabled under the following circumstances:

* * * * *

(v) *General Category (TD).* Category TD will be treated as follows:

(A) This category is financed by Commonwealth funds only. It applies to persons who do not meet the conditions for the Federally-aided categories of MA (TA, TC, TB, TD (migrants or refugees), TU or TJ) and meet one of the following conditions:

(I) A custodial parent of a dependent child under 21 years of age.

(II) A person 59 years of age or older.

(III) A person who verifies employment of at least 100 hours per month earning at least the minimum wage. For persons whose eligibility is based upon the work requirement, past, present and continuing employment will be evaluated to determine compliance with the 100 hours per month requirement. If an episode of illness or injury is the reason for the interruption of work and it is verified that 100 hours per month employment will resume subsequent to recovery from that illness or injury, the applicant will be considered to have met the work requirement.

* * * * *

**CHAPTER 145. AGE
GA AGE PROVISIONS**

§ 145.63. Requirements.

* * * * *

(c) *Attending school or training.* The following will constitute GA age requirements for youths attending school or training:

(1) A youth under 21 years of age will be considered to have met the requirements of attending secondary school or an equivalent course of vocational training full time, if he is enrolled in a program of supervised education or vocational training approved by the authorities of the school district or by the Department of Education of the Commonwealth. The program may be part of the regular school program, or one especially arranged for the individual youth's educational or vocational needs and approved by the school authorities. A vocational training course may be a course established under section 2508.3 of the Public School Code of 1949 (24 P. S. § 25-2508.3), a

program under the Economic Opportunity Act (42 U.S.C.A. §§ 2991—2996l), or an organized training program under recognized sponsorship with a specified vocational training objective, for example, apprenticeships or training arrangements sponsored by business or industrial firms.

* * * * *

(3) GA payment will be made for the following:

* * * * *

(ii) The month the youth completes or discontinues secondary school or equivalent vocational or technical school before age 21. The date the secondary school or equivalent vocational or technical school records show the youth ended his full-time status as a student or trainee will be the date of his completion or discontinuance of secondary school or an equivalent vocational or technical school.

§ 145.64. Procedures.

* * * * *

(b) *Attending school or training.* The procedure for school or training attendance will be as follows:

(1) Certification by the school of enrollment in and attendance at a secondary school or equivalent vocational or technical school is required within the fiscal month in which the youth has his 18th birthday. After the initial certification for a youth attending a secondary or equivalent vocational or technical school, attendance will be redetermined in March, June, September and December until the youth reaches age 21. A partial redetermination will be made if there is any indication that he may no longer be enrolled as a full-time student.

* * * * *

CHAPTER 166. EMPLOYMENT AND COMMUNITY WORK EXPERIENCE PROGRAM

§ 166.23. Requirements.

* * * * *

(c) *Community work experience program.* Requirements for the Community Work Experience Program (CWEP) will be as follows:

* * * * *

(2) *Project assignment.* The EU may refer any nonexempt member of a TANF or GA unit to a project assignment at any time, including the following persons:

* * * * *

Subpart D. DETERMINATION OF NEED AND AMOUNT OF ASSISTANCE

CHAPTER 175. ALLOWANCES AND BENEFITS ALLOWANCES AND BENEFITS PROVISIONS FOR TANF/GA

§ 175.23. Requirements.

* * * * *

(e) *Grant reduction.* The family size allowance, plus special need allowance, shall be reduced by the amounts obtained by cashing an assistance check at a gambling casino, racetrack, bingo hall or other establishment that derives more than 50% of its gross revenues from gambling.

* * * * *

CHAPTER 177. RESOURCES

GENERAL RESOURCE PROVISIONS FOR TANF/GA

§ 177.2. Definitions.

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

* * * * *

Budget group—One or more related or unrelated individuals who occupy a common residence or would occupy a common residence if they were not homeless and whose needs are considered together in determining eligibility for cash assistance under one category of assistance.

* * * * *

TREATMENT OF RESOURCES

§ 177.21. Personal property.

(a) *Applicants and recipients.* For an applicant and recipient, the following personal property is not counted in determining eligibility:

* * * * *

(11) An educational savings account established by an individual at a bank or other financial institution to pay for tuition, books and incidental expenses related to attendance at a vocational school, community college, college or university. The account shall be clearly identified as having been established for or restricted to payment of educational expenses.

(i) The savings account, its ownership, the account balance and the fact that the account is restricted for payment of educational expenses shall be verified by written documentation. Documentation may include, but is not limited to, a copy of the passbook or a copy of the current account statement from the bank or other financial institution.

(ii) Monies deposited in an account plus interest earned on the account shall be exempt in determining eligibility as long as the funds remain on deposit.

(iii) Monies withdrawn to pay for educational expenses are exempt. Documentation shall be provided that verifies the expenses were incurred.

(iv) Monies withdrawn from an educational savings account that are used for a purpose unrelated to education shall be added to the budget group's resource amount and used to determine eligibility beginning with the date of withdrawal.

(12) Savings accounts established and bonds purchased under the Tuition Account Program and College Savings Bond Act (24 P. S. §§ 6901.101—6901.509).

* * * * *

CHAPTER 178. RESOURCE PROVISIONS FOR CATEGORICALLY NMP-MA AND MNO-MA

Subchapter A. GENERAL PROVISIONS FOR MA RESOURCES COMMON TO ALL CATEGORIES OF MA

CATEGORIES OF MA

§ 178.11. Categories of NMP-MA.

NMP-MA applicants/recipients shall meet the resource requirements of the category of NMP-MA for which they are eligible. The following explains the different NMP-MA categories:

* * * * *

(4) The PC category is a TANF-related category and designates an NMP person who is one of the following:

(i) A person under 21 years of age, regardless of school attendance, emancipation or marital status.

* * * * *

(6) The PD category is a GA-related category and designates an NMP person who is 21 years of age or older and under 65 years of age, who meets the eligibility requirements for GA and who chooses to receive only MA.

§ 178.12. Categories of MNO-MA.

MNO-MA applicants/recipients shall meet the resource requirements of the category of MNO-MA for which they are eligible. The following explains the different MNO-MA categories:

(1) The TA category designates an MNO person who is 65 years of age or older. This category is an SSI-related category.

(2) The TJ category designates an MNO person who meets the eligibility conditions as a disabled person. This category is an SSI-related category.

(3) The TM category designates an MNO person who meets the eligibility conditions as a blind person. This category is an SSI-related category.

(4) The TB category designates an MNO person who receives a SBP.

(5) The TC category is an AFDC-related category and designates an MNO person who is one of the following:

(i) A person under 21 years of age, regardless of school attendance, emancipation or marital status.

(ii) A person 21 years of age or older and under 65 years of age who meets the requirements of a specified relative under § 151.42 (relating to definitions) and is responsible for the care and control of a dependent child. For purposes of determining if the person 21 years of age or older and under 65 years of age is a specified relative, a dependent child, including the child who is receiving SSI, is a child under 18 years of age or under 19 years of age if the child is a full-time student in secondary school or the equivalent level of a vocational or technical school and reasonably expected to complete the program before reaching 19 years of age, and who meets the deprivation of support conditions under § 153.43(a)—(c) (relating to AFDC deprivation of support or care requirements).

(iii) A pregnant woman 21 years of age or older who is a member of a two parent household which does not meet the unemployed principal wage earner definition in § 153.44(d) (relating to procedures).

(6) The TU category is an AFDC-related category and designates an MNO person who is one of the following:

(i) The parents in a two parent household that includes a dependent child as defined in paragraph (5)(ii) and an unemployed principal wage earner as defined in § 153.44(d).

(ii) A pregnant woman who is 21 years of age or older, with no other children, in a two parent household with an unemployed principal wage earner as defined in § 153.44(d).

(7) The TD category is a GA-related category and designates an MNO person who does not meet the requirements for another category of MNO.

Subchapter C. TANF-RELATED AND GA-RELATED CATEGORIES OF MA

ADDITIONAL RESOURCE EXCLUSIONS FOR GA CATEGORIES OF MA

§ 178.165. Educational savings accounts.

(a) For GA categories of MA, an educational savings account established by an individual at a bank or other financial institution to pay for tuition, books and incidental expenses related to attendance at a vocational school, community college, college or university is not counted in determining eligibility.

(1) The account shall be clearly identified as having been established for or restricted to payment of educational expenses.

(2) The savings account, its ownership, the account balance and the fact that the account is restricted for payment of educational expenses shall be verified by written documentation. Documentation may include, but is not limited to, a copy of the passbook or a copy of a current account statement from the bank or other financial institution.

(3) Moneys deposited in an account plus interest earned on the account shall be exempt in determining eligibility for GA as long as the funds remain on deposit.

(4) Moneys withdrawn to pay for educational expenses are exempt. Documentation shall be provided that verifies the expenses were incurred.

(5) Moneys withdrawn from an educational savings account that are used for a purpose unrelated to education shall be added to the budget group's resource amount and used to determine eligibility beginning with the date of withdrawal.

(b) For GA categories of MA, savings accounts established and bonds purchased under the Tuition Account Program and College Savings Bond Act (24 P. S. §§ 6901.101—6901.509) are not counted in determining eligibility.

CHAPTER 181. INCOME PROVISIONS FOR CATEGORICALLY NEEDY NMP-MA AND MNO-MA

Subchapter A. GENERAL PROVISIONS FOR MA INCOME COMMON TO ALL CATEGORIES OF MA

GENERAL PROVISIONS FOR MA INCOME

§ 181.1. General policy on MA income common to all categories of MA.

* * * * *

(b) In determining income eligibility for MNO-MA, the total amount of income available to the applicants/recipients in a consecutive 6-calendar month period is used. In determining income eligibility for retroactive eligibility coverage for MNO-MA, the total amount of income available to the applicants/recipients in the combined retroactive and prospective period, consecutive 6-calendar month period, is used. The combined period can be less than 6 months only if the applicant/recipient is deceased.

* * * * *

(d) As a condition of eligibility for MA, an applicant/recipient shall take necessary steps to obtain and make available potential sources of income available to him, such as, but not limited to, benefits under retirement, unemployment compensation, workers compensation,

State or county retirement and disability benefits, veterans benefits, union pensions and employer's pensions and annuities.

(1) An applicant, except a PD or TD applicant—see §§ 181.41 and 181.42 (relating to categories of NMP-MA; and categories of MNO-MA)—or a recipient who, without good cause, fails to cooperate in an effort to establish eligibility for SSI, Retirement, Survivors and Disability Insurance (RSDI), or another potential benefit is ineligible for MA until the applicant complies with the cooperation requirement.

(2) A PD or TD applicant—see §§ 181.41 and 181.42—who, without good cause, fails to cooperate in establishing eligibility for a potential benefit is ineligible for MA for a minimum of 60 calendar days. Ineligibility for MA continues after the minimum of 60 calendar days until the applicant complies with the cooperation requirement.

* * * * *

§ 181.2. Definitions.

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

Applicant/recipient—A person who is applying for, or receiving, MA or a group of related persons who are living together and who choose to apply for, or receive, MA as one group.

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

Community spouse—The spouse living at home who has a spouse who had lived at home but is now an institutionalized spouse.

Countable net income—Income counted in determining income eligibility for MA, which is actual and deemed income less appropriate exemptions, deductions and disregards.

Deemed income—Income which is attributed to the applicant/recipient whether or not the income is actually received.

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

Full-time employment—Employment which averages at least 30 hours per week in a calendar month.

IRC—Internal Revenue Code (26 U.S.C.A. §§ 1—1043).

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

Institutionalized spouse—The spouse who is receiving skilled care, heavy care/intermediate services or intermediate care in a nursing facility or other medical institution, including services in an ICF/MR facility, for a period likely to last for at least 30 consecutive days.

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

LRR—Legally Responsible Relative—The spouse of a person, or the natural or adoptive parent of a child under 21 years of age.

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

MCCA—The Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360, 102 Stat. 602) (July 1, 1988).

NFC—Nursing Facility Care—Skilled care, heavy care/intermediate services or intermediate care in a nursing facility or other medical institution.

Nonrecurring income—Income that is received in a single payment and not expected to continue.

Parent—The natural or adoptive father or mother of a child under 21 years of age.

Part-time employment—Employment which averages less than 30 hours per week in a calendar month.

Personal property—Privately-owned possessions. The term includes, but is not limited to, 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. The term does not include real property.

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

Restricted income—Income limited by the payer for the use of a specified person.

SSI—Supplemental Security Income—The benefit amount paid to an eligible person or to an eligible person and his eligible spouse under Title XIV 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.

Unearned income—Money or other compensation received for which a service is not rendered.

CONTINUING AND RETROACTIVE ELIGIBILITY PROVISIONS FOR ALL CATEGORIES OF MA

§ 181.11. Continuing eligibility.

(a) Eligibility for continuing MA benefits begins with the date eligibility is established or the date of application, if the applicant/recipient is otherwise eligible.

(1) If the applicant is ineligible in the month of application, eligibility begins with the first day of the following month if the applicant is eligible beginning from the first day of that month.

(2) Authorization of MA benefits in the GA-related NMP category begins when all eligibility factors are verified, verification is received from a third party or the client has cooperated in the verification attempt and the applicant/recipient is otherwise eligible.

* * * * *

§ 181.12. Retroactive eligibility.

(a) The earliest possible date for retroactive MA benefits to begin is the first day of the third month preceding the month of application.

(1) The period of eligibility for retroactive MA benefits under NMP-MA begins with the first day of the month in the retroactive period in which the first medical service was incurred, if the applicant was otherwise eligible during that month.

(2) The period of eligibility for retroactive MA benefits under MNO-MA begins with the first day of the month in the retroactive period in which the first medical service was incurred, if the applicant was otherwise eligible during that month.

* * * * *

(c) For MNO-MA categories, income eligibility for retroactive MA benefits exists if one of the following applies:

(1) The applicant's/recipient's countable net income in the combined retroactive/prospective period, less medical

expenses is equal to, or less than, the appropriate MNO-MA 6-month period income limits in Appendix F.

(2) The applicant's/recipient's countable net income in the combined retroactive/prospective period, less medical expenses is equal to, or less than, the appropriate MNO-MA 6-month period income limits in Appendix F. Unpaid medical expenses that are not subject to payment by a third-party, which remain the legal obligation of the applicant/recipient, and are not to be paid for under the MA Program once MA is authorized and paid medical expenses, are deducted from the countable net income in the combined retroactive/prospective period as provided under § 181.14(e)(1)–(6) (relating to eligibility under MNO-MA spend-down). This includes medical expenses incurred before the retroactive period.

§ 181.14. Eligibility under MNO-MA spend-down.

* * * * *

(d) Deductible medical expenses include:

* * * * *

(3) Medical and remedial expenses paid by a public program if the following apply:

(i) The public program is not financed in whole or in part by Federal funds.

(ii) The expenses are wholly financed by the State or a subdivision of the State, for example, county or municipality.

(iii) The expenses have been paid in the month of application, or any month in the retroactive period, or a combination of both, for which the individual is applying.

(iv) The expenses have not been previously used as a deduction in the determination of eligibility for a prior authorization of MA.

(e) Medical expenses meeting the requirements in subsection (d) are deducted from the countable net income in the following order:

* * * * *

(6) Medical and remedial expenses paid by a public program meeting the requirements in subsection (d)(3).

(7) For an applicant/recipient receiving skilled nursing care or intermediate care, the projected cost of his care, for a period not to exceed 6 months, at the private rate for the appropriate level of care anticipated to be received by the applicant/recipient in the skilled nursing or intermediate care facility.

CATEGORIES OF MA

§ 181.41. Categories of NMP-MA.

An NMP-MA applicant/recipient shall meet the income requirements of the category of NMP-MA for which the applicant/recipient is eligible. The following explains the different NMP-MA categories:

* * * * *

(4) The PC category is a TANF-related category and designates an NMP person who is one of the following:

(i) A person under 21 years of age, regardless of school attendance, emancipation or marital status.

* * * * *

(6) The PD category is a GA-related category and designates an NMP person who is 21 years of age or older and under 65 years of age, who meets the GA eligibility requirements and who chooses to receive only NMP-MA.

§ 181.42. Categories of MNO-MA.

An MNO-MA applicant/recipient shall meet the income requirements of the category of MNO-MA for which the applicant/recipient is eligible. The following explains the different MNO-MA categories:

(1) The TA category designates an MNO person who is 65 years of age or older. This category is an SSI-related category.

(2) The TJ category designates an MNO person who meets the eligibility conditions as a disabled person. This category is an SSI-related category.

(3) The TM category designates an MNO person who meets the eligibility conditions as a blind person. This category is an SSI-related category.

(4) The TB category designates an MNO person who receives a SBP.

(5) The TC category is an AFDC-related category and designates an MNO person who is one of the following:

(i) A person under 21 years of age, regardless of school attendance, emancipation or marital status.

(ii) A person 21 years of age or older and under 65 years of age who meets the requirements of a specified relative under § 151.42 (relating to definitions) and is responsible for the care and control of a dependent child. For purposes of determining if the person 21 years of age or older and under 65 years of age is a specified relative, a dependent child, including the child who is receiving SSI, is a child under 18 years of age or under 19 years of age if the child is a full-time student in secondary school or the equivalent level of a vocational or technical school and reasonably expected to complete the program before reaching 19 years of age, and who meets the deprivation of support conditions under § 153.43(a)–(c) (relating to AFDC deprivation of support or care requirements).

(iii) A pregnant woman 21 years of age or older who is a member of a two parent household which does not meet the unemployed principal wage earner definition in § 153.44(d) (relating to procedures).

(6) The TU category is an AFDC-related category and designates an MNO person who is one of the following:

(i) The parents in a two parent household that includes a dependent child as defined in paragraph (5)(ii) and an unemployed principal wage earner as defined in § 153.44(d).

(ii) A pregnant woman who is 21 years of age or older, with no other children, in a two parent household with an unemployed principal wage earner as defined in § 153.44(d).

(7) The TD category is a GA-related category and designates an MNO person who does not meet the requirements for another category of MA.

CHAPTER 183. INCOME

INCOME PROVISIONS FOR TANF/GA

§ 183.2. Definitions.

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

* * * * *

Budget group—One or more related or unrelated individuals who occupy a common residence or would occupy a common residence if they were not homeless and whose needs and eligibility are considered together in determining eligibility for cash assistance under one category of assistance.

* * * * *

MONTHLY ASSISTANCE PAYMENT DETERMINATION

§ 183.104a. Additions to or deletions from a budget group—statement of policy.

(a) *Cash assistance.*

* * * * *

(3) In addition to removing persons promptly in accordance with established deadlines, the CAO shall ensure that persons are authorized initially or added to existing budget groups as quickly as possible. Consistent with the requirements of Chapters 125 and 133 (relating to the application process; and redetermining eligibility), a person shall receive eligibility determinations no later than 30 days from the date of receipt of a completed, signed Common Application Form (CAF). The procedures to be followed when an applicant requests removal from an existing budget group and authorization of assistance in his own name; or from a person who wishes to add someone to his budget group are as follows:

* * * * *

[Pa.B. Doc. No. 00-1277. Filed for public inspection July 28, 2000, 9:00 a.m.]

**DEPARTMENT OF PUBLIC WELFARE
[55 PA. CODE CH. 3800]**

Notice of Delay of the Implementation Date of §§ 3800.187 and 3800.188 Relating to Administration and Medications Administration Training

The Department of Public Welfare (Department) is announcing its intent to delay the implementation date of §§ 3800.187 and 3800.188 in Chapter 3800 (relating to child residential and day treatment facilities) regarding medications administration training of nonmedical staff persons.

The Department previously mandated the implementation of these requirements effective June 26, 2000. The Department hereby extends the implementation date until July 1, 2001. This extension is necessary to give training providers sufficient opportunity to develop a program that will fully comply with the Statement of Policy as specified in the Office of Children, Youth and Families' Bulletin # 3800-99-01, issued December 31, 1999, § 3800.188a (relating to medications administration training). The extension will also provide time for train-

ing providers to effectively implement the approved Medications Administration Training program.

All other aspects of Chapter 3800 remain the same.

FEATHER O. HOUSTOUN,
Secretary

Fiscal Note: 14-NOT-253. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 00-1278. Filed for public inspection July 28, 2000, 9:00 a.m.]

Title 67—TRANSPORTATION

**DEPARTMENT OF TRANSPORTATION
[67 PA. CODE CH. 175]**

Effective Date of Bus Exhaust System Regulations

The Department of Transportation (Department), acting through its Vehicle Inspection Division (Division), has reached agreement with bus transportation providers and manufacturers on the implementation of regulations governing the discharge location of exhaust systems on buses registered in this Commonwealth.

Under the authority given to the Department in the Vehicle Code, 75 Pa.C.S. §§ 4103, 4521 and 6103, the Department is charged with promulgating regulations establishing vehicle equipment standards. The sections affected by this notice were originally published at 28 Pa.B. 5670, 5684 (November 14, 1998) to be effective May 13, 1999. However, after reviewing concerns expressed by bus companies as to the difficulty of retrofitting hundreds of operating buses in a 6-month period, the Department postponed the effective date of these provisions indefinitely pending further investigation and discussion.

The Department, after consultation with the pupil transportation community, has determined that an effective date of August 1, 2001, for §§ 175.105(b)(5)(ii) and (iii) and 175.110(d)(6)(viii)(B) and (C) will provide sufficient time for all operating buses to be retrofitted with compliant exhaust systems. Therefore, the Department, by this notice, orders that the effective date of §§ 175.105(b)(5)(ii) and (iii) and 175.110(d)(6)(viii)(B) and (C) shall be August 1, 2001.

Anyone with questions or comments concerning this notice should contact the Department. The point of contact is Vehicle Inspection Division, Pennsylvania Department of Transportation, 1101 South Front Street, 4th Floor, Harrisburg, PA 17104, John Munafo, Division Manager (717) 787-3184, Kris Singer, Program Manager (717) 787-2895.

BRADLEY L. MALLORY,
Secretary

[Pa.B. Doc. No. 00-1279. Filed for public inspection July 28, 2000, 9:00 a.m.]