

# PROPOSED RULEMAKING

## DEPARTMENT OF PUBLIC WELFARE

### [55 PA. CODE CH. 140] Special MA Eligibility Provisions

The Department of Public Welfare (Department), under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)) and section 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act (42 U.S.C.A. § 1396a(a)(10)(A)(ii)(XVIII)) (Title XIX), proposes to amend Chapter 140 (relating to special MA eligibility provisions) to read as set forth in Annex A. Title XIX of the Social Security Act provides states with the option to expand their Medicaid programs to include uninsured women who are diagnosed with and found to need treatment for either breast or cervical cancer, or a precancerous condition of the breast or cervix.

#### *Purpose*

The purpose of this proposed rulemaking is to take advantage of a Federal option of the Breast and Cervical Cancer Prevention and Treatment (BCCPT) Act of 2000 (Pub. L. No. 106-354) that permits states to provide Medicaid coverage to uninsured women under 65 years of age who have been screened for breast or cervical cancer through the Centers for Disease Control and Prevention's (CDC) National Breast and Cervical Cancer Early Detection Program (NBCCEDP), and diagnosed and found to need treatment for either breast or cervical cancer, or a precancerous condition of the breast or cervix.

Consistent with the Federal enabling legislation, providers and facilities funded in full or in part by the CDC permit screening of women only. Breast cancer is the most common form of cancer diagnosed among women in this Commonwealth and the second most common cause of cancer deaths for women in this Commonwealth ([www.health.state.pa.us/stats](http://www.health.state.pa.us/stats)). Cervical cancer, while less common than breast cancer, is one of the most successfully treatable cancers, if detected at an early stage ([www.health.state.pa.us/stats](http://www.health.state.pa.us/stats)).

The BCCPT amended Title XIX of the Social Security Act. This proposed rulemaking affords states the option of providing Medical Assistance to eligible women who were screened for, diagnosed with and found to need treatment for breast or cervical cancer, or a precancerous condition of the breast or cervix. The Commonwealth has elected this option and published a Notice of Intent to implement the BCCPT at 31 Pa.B. 115 (January 5, 2002). The Commonwealth's State Plan Amendment to provide Medicaid benefits under the BCCPT to uninsured women screened and diagnosed with breast or cervical cancer, or a precancerous condition of the breast or cervix, was approved on February 15, 2002, by the Centers for Medicare and Medicaid Services. The Department of Health (DOH) is the designated screening entity for the BCCPT.

Under Federal law, the DOH must agree that low-income women will be given priority in the provision of services. See 42 U.S.C.A. § 300n(a). Under its grant agreement with the NBCCEDP, the DOH HealthyWoman Project provides breast and cervical cancer screening for uninsured women who are under 65 years of age and

have a household income below 250% of the Federal Poverty Income Guidelines (FPIG). Prior to the implementation of the BCCPT in January 2002, there were no consistent avenues available to fund the ongoing treatment needs of low-income, uninsured women who were screened and diagnosed with breast or cervical cancer.

#### *Need for the Proposed Rulemaking*

The proposed rulemaking is needed to establish the BCCPT, which will provide full Medicaid coverage to eligible women under 65 years of age who are diagnosed with breast or cervical cancer, or a precancerous condition of the breast or cervix, and who have no insurance coverage or have insurance that does not cover treatment of breast or cervical cancer. These women may have gone without necessary treatment or may have sought treatment without the means to pay for the care received. The proposed rulemaking is part of the continuum of efforts by the Commonwealth to ensure detection, prevention and treatment of breast and cervical cancer, or a precancerous condition of the breast or cervix, among low-income, uninsured women.

#### *Requirements*

The Department is proposing to add a new Subchapter D (relating to categorically needy breast and cervical cancer prevention and treatment program for qualified women) that explains the requirements for Medicaid eligibility under the BCCPT.

Eligibility for the HealthyWoman Project will be determined by the DOH based on information provided at the time of enrollment into the screening program. Eligibility for full Medicaid coverage will be determined based on both the information provided at the time of enrollment into the HealthyWoman Project and the provider's diagnosis of breast or cervical cancer, or a precancerous condition of the breast or cervix.

To become eligible for the BCCPT, a woman must go to the DOH HealthyWoman Project site, complete a BCCPT application and undergo screening for breast and cervical cancer. If cancer is detected, the woman is referred for further testing to confirm the diagnosis. If further testing confirms the need for treatment, the HealthyWoman Project forwards the completed the BCCPT application, which includes the provider's diagnosis and the need for treatment, to the County Assistance Office (CAO). If the woman meets all of the eligibility criteria, the CAO worker authorizes Medicaid for her.

A woman determined eligible under the BCCPT is entitled to full Medicaid benefits. Therefore, in addition to receiving the treatment needed for her identified breast or cervical cancer, or a precancerous condition of the breast or cervix, the woman will also have access to the full range of treatment and preventive health care available under the Medicaid Program.

Following is a summary of specific proposed regulatory amendments:

1. Section 140.601 (relating to policy on Medicaid for women with breast or cervical cancer). This section is proposed to establish the general policy for women under categorically needy the BCCPT.
2. Section 140.602 (relating to definitions). The Department is proposing to define specific terms relating

"BCCPT—Breast and Cervical Cancer Prevention and Treatment Program," "CDC—Centers for Disease Control and Prevention," "NBCCEDP—National Breast and Cervical Cancer Early Detection Program" and "uninsured."

3. Section 140.621 (relating to conditions of eligibility). This section is proposed to establish the eligibility factors under the BCCPT.

4. Sections 140.631—140.633 (relating to income, resources and verification). New § 140.631 is proposed to explain that there are no income limits under the BCCPT except those necessary to be eligible for screening by the CDC's NBCCEDP. New § 140.632 is proposed to explain that there are no resource requirements under the BCCPT. New § 140.633 is proposed to establish the verification requirements for the BCCPT.

5. Sections 140.641 and 140.642 (relating to complete redetermination and partial redetermination). These new sections are proposed to establish the redetermination and partial redetermination requirements for the BCCPT.

6. Section 140.651 (relating to benefit coverage). A new section is proposed to explain Medicaid coverage for services.

7. Section 140.661 (relating to eligibility begin date). A new section is proposed to establish the eligibility begin date under the BCCPT.

8. Section 140.671 (relating to retroactive eligibility). A new section is proposed to establish retroactive eligibility under the BCCPT.

9. Section 140.681 (relating to reporting of changes). A new section is proposed to establish the reporting requirements under the BCCPT.

10. Section 140.691 (relating to appeal and fair hearing). A new section is proposed to explain the woman's right to an appeal and fair hearing under the BCCPT.

#### *Affected Individuals and Organizations*

This proposed rulemaking gives priority to low-income (under 250% FPIG), uninsured women under 65 years of age, who are screened by the Commonwealth's CDC NBCCEDP and subsequently diagnosed with breast or cervical cancer, or a precancerous condition of the breast or cervix. The Commonwealth's CDC NBCCEDP is administered through the DOH HealthyWoman Project.

There are approximately 11,600 women diagnosed with breast and cervical cancer each year in this Commonwealth ([www.health.state.pa.us/stats](http://www.health.state.pa.us/stats)). Census data was used to estimate the total number of the 11,600 women who are under 65 years of age and have income levels between 100% and 250% of the FPIG. The result of this analysis indicated that there are an additional 1,109 women who may be eligible for Medicaid each year under this option.

#### *Accomplishments/Benefits*

The Commonwealth may see a reduction in its premature mortality rates from breast and cervical cancer as a result of screening, early diagnosis and treatment. Health care providers may see a reduction in the incidence of uncompensated care for uninsured women who require treatment for breast and cervical cancer.

There has been no consistent avenue available to fund ongoing treatment needs of low-income, uninsured women diagnosed with breast or cervical cancer, or a precancerous condition of the breast or cervix. As a result, many women have gone without necessary treatment that may

prevent or cure their illness. This option will provide low-income, uninsured women with Medicaid coverage that will enable them to seek necessary treatment, thereby decreasing the incidence of uncompensated care and this Commonwealth's cancer mortality rate.

#### *Fiscal Impact*

##### *Commonwealth*

The annual cost of this new program for Fiscal Year 2002-2003 was \$3.954 million (\$1.254 million in State funds). The projected costs for Fiscal Year 2003-2004 are \$7.281 million (\$2.307 million in State funds) and for Fiscal Year 2004-2005, \$9.332 million (\$3 million in State funds).

The Insurance Department may realize a savings since some women determined eligible for the BCCPT may have been eligible for medical coverage under the adult Basic Program administered by the Insurance Department and funded by tobacco settlement funds.

##### *Public Sector*

No other government entity will incur any costs or realize any savings.

##### *Private Sector*

Private hospitals and physicians who treat uninsured women with breast or cervical cancer, or a precancerous condition of the breast or cervix, may be compensated for services rendered.

##### *General Public*

Low-income (under 250% FPIG), uninsured women who may have otherwise incurred personal debt will realize a savings.

#### *Paperwork Requirements*

New application forms were created exclusively for use with BCCPT: the PA 600B—for applications; the PA 600BP—for partial redeterminations; and the PA 600BR—for annual redeterminations. These forms have been in use since the start of the BCCPT. Each form provides instructions for use by the applicant or recipient and provider. The Department has not received any adverse comments regarding these forms.

The BCCPT Program application, Form PA 600B, is a two-part application used by the HealthyWoman Project and the CAO to determine eligibility for the BCCPT. Part A of the application is completed at the DOH HealthyWoman Project screening site and contains the HealthyWoman Project enrollment, consent for release of information and the BCCPT rights and responsibilities. Part B of the application is completed by the applicant, the medical provider and the CAO. Use of a single form to document demographic information needed by both programs for an eligibility determination will reduce additional paperwork for providers, applicants and the Department.

The BCCPT Program Partial Renewal, Form PA 600BP, is completed at a partial redetermination of eligibility for women whose treatment for breast or cervical cancer is expected to last less than 12 months. The recipient, the medical provider and the CAO complete this form at the end of the initial length of treatment.

The BCCPT Form PA 600BR is completed every 12 months when continued eligibility for the BCCPT is reviewed. The recipient, the medical provider, the Office of Medical Assistance Programs and the CAO complete this form.

*Effective Date*

This proposed rulemaking will, upon adoption, be effective retroactively to January 1, 2002.

*Sunset Date*

There is no sunset date.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to the Department of Public Welfare, Office of Income Maintenance, Edward J. Zogby, Director, Bureau of Policy, Room 431 Health and Welfare Building, Harrisburg, PA 17120, (717) 787-4081 within 30-calendar days after the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Persons with a disability who require an auxiliary aid or service may submit comments by using the AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

*Regulatory Review Act*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 16, 2004, the Department

submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has any comments, recommendations or objections to any portion of the proposed rulemaking, it may notify the Department and the Committees within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review by the Department, the General Assembly and the Governor, of any comments, recommendations or objections raised, prior to final-form publication of the regulation.

ESTELLE B. RICHMAN,  
*Secretary*

**Fiscal Note:** 14-490. (1) General Fund;

	<i>Outpatient</i>	<i>Inpatient</i>	<i>Long Term Care</i>
(2) Implementing Year 2001-02 is	\$121,000	\$41,000	\$-0-
(3) 1st Succeeding Year 2002-03 is	\$898,000	\$353,000	\$3,000
2nd Succeeding Year 2003-04 is	\$1,663,000	\$639,000	\$5,000
3rd Succeeding Year 2004-05 is	\$2,188,000	\$805,000	\$7,000
4th Succeeding Year 2005-06 is	\$2,609,000	\$920,000	\$8,000
5th Succeeding Year 2006-07 is	\$2,884,000	\$975,000	\$9,000
(4) 2000-01 Program—	\$668,586,000	\$418,707,000	\$722,565,000
1999-00 Program—	\$622,669,000	\$392,528,000	\$693,625,000
1998-99 Program—	\$695,935,000	\$453,594,000	\$721,631,000

(7) MA—Outpatient, MA—Inpatient and MA Long-Term Care; (8) recommends adoption. Fiscal Year 2001-02 and 2002-03 costs reflect actual paid claims for this program which was implemented in January of 2002. Fiscal Year 2003-04 and 2004-05 costs are included in the respective general appropriation acts.

**Annex A**

**TITLE 55. PUBLIC WELFARE**

**PART II. PUBLIC ASSISTANCE MANUAL**

**Subpart C. ELIGIBILITY REQUIREMENTS**

**CHAPTER 140. SPECIAL MA ELIGIBILITY PROVISIONS**

**Subchapter D. THE CATEGORICALLY NEEDY BREAST AND CERVICAL CANCER PREVENTION AND TREATMENT PROGRAM FOR QUALIFIED WOMEN**

**GENERAL PROVISIONS**

- Sec. 140.601. Policy on Medicaid for women with breast or cervical cancer.
- 140.602. Definitions.

**ELIGIBILITY**

- 140.621. Conditions of eligibility.

**INCOME, RESOURCES AND VERIFICATION**

- 140.631. Income eligibility limitations.
- 140.632. Resource eligibility limitations.
- 140.633. Verification requirements.

**REDETERMINATION AND PARTIAL REDETERMINATION**

- 140.641. Complete redetermination.
- 140.642. Partial redetermination.

**BENEFIT COVERAGE**

- 140.651. Benefit coverage.
- 140.652. Eligibility begin date.
- 140.671. Retroactive eligibility.

**REPORTING**

- 140.681. Reporting of changes.

**RIGHT TO APPEAL AND FAIR HEARING**

- 140.691. Appeal and fair hearing.

**GENERAL PROVISIONS**

**§ 140.601. Policy on Medicaid for women with breast or cervical cancer.**

The Department provides full Medicaid benefits to uninsured women, under 65 years of age, who have been screened and diagnosed with breast or cervical cancer, or a precancerous condition of the breast or cervix, who are eligible under the Commonwealth's categorically needy BCCPT Program.

**§ 140.602. Definitions.**

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

*BCCPT—Breast and Cervical Cancer Prevention and Treatment*—A Federally-funded Medicaid option that provides full Medicaid benefits to uninsured women under 65 years of age, screened, diagnosed and in need of treatment for breast or cervical cancer, or a precancerous condition of the breast or cervix. These women have been identified through an entity funded in full or in part by CDC.

*CDC—Centers for Disease Control and Prevention*—The lead Federal agency for protecting the health and safety of people at home and abroad by applying disease prevention and control.

*NBCCEDP—National Breast and Cervical Cancer Early Detection Program*—A program established by Congress under the Breast and Cervical Cancer Mortality Act of 1990 (Pub. L. No. 101-354, 104 Stat. 409) which authorizes the CDC to promote breast and cervical cancer screening and to pay for screening services for eligible individuals.

*Uninsured*—Having no creditable coverage as the term is used under the Health Insurance Portability and Accountability Act (HIPAA) (section 2701(c) of the Public Health Service Act (42 U.S.C.A. § 300gg(c)).

**ELIGIBILITY****§ 140.621. Conditions of eligibility.**

Eligibility for Medicaid under BCCPT is based on the following:

(1) A woman shall meet the following eligibility requirements:

- (i) Chapter 125 (relating to application process).
- (ii) Chapter 148 (relating to residence).
- (iii) Chapter 149 (relating to citizenship and alienage).
- (iv) Chapter 155 (relating to enumeration).
- (v) Chapter 255 (relating to restitution).
- (vi) Chapter 257 (relating to reimbursement).

(2) Under categorically needy BCCPT, a woman shall:

- (i) Be under 65 years of age.
- (ii) Be screened under the CDC's NBCCEDP and diagnosed with either breast or cervical cancer, or a precancerous condition of the breast or cervix, and need treatment for either breast or cervical cancer, or a precancerous condition of the breast or cervix.
- (iii) Be uninsured.
- (iv) Be ineligible for any other categorically needy Medicaid program.

**INCOME, RESOURCES AND VERIFICATION****§ 140.631. Income eligibility limitations.**

There are no income limits when determining eligibility under the BCCPT except those necessary to be eligible for screening by the CDC's NBCCEDP.

**§ 140.632. Resource eligibility limitations.**

There are no resource limits when determining eligibility under the BCCPT.

**§ 140.633. Verification requirements.**

(a) Under the BCCPT, the following verification is required:

(1) Verification that the woman was screened for breast or cervical cancer, or a precancerous condition of the breast or cervix, by a provider or facility funded in full or in part by the CDC under its NBCCEDP, and diagnosed and found to need treatment for either breast or cervical cancer, or a precancerous condition of the breast or cervix. Verification of the continued need for treatment must be provided at each partial and complete redetermination.

(2) Verification that the woman is a United States citizen or qualified alien.

(3) Verification that the woman is under 65 years of age.

(4) Verification that the woman is a resident of this Commonwealth.

(5) Verification that the woman is uninsured.

(b) The verification specified in subsection (a) must be provided on a form established by the Department.

**REDETERMINATION AND PARTIAL REDETERMINATION****§ 140.641. Complete redetermination.**

(a) A complete redetermination is required at least every 12 months for women who continue to require treatment for either breast or cervical cancer, or a precancerous condition of the breast or cervix.

(b) For Categorically Needy BCCPT Program for qualified women, the redetermination/reapplication requirements in Chapter 133 (relating to redetermining eligibility) apply.

**§ 140.642. Partial redetermination.**

(a) A partial redetermination is required at the end of the initial length of treatment for a woman whose initial length of treatment is expected to last less than 12 months. The initial length of treatment is based on the diagnosing or treating physician's attestation regarding the woman's diagnosis.

(b) For Categorically Needy BCCPT Program for qualified women, the partial redetermination requirements in Chapter 133 (relating to redetermining eligibility) apply.

**BENEFIT COVERAGE****§ 140.651. Benefit coverage.**

The Department will provide full Medicaid coverage for a woman determined eligible under the BCCPT.

**§ 140.661. Eligibility begin date.**

The eligibility begin date is the date the woman is diagnosed with breast or cervical cancer, or a precancerous condition of the breast or cervix, but not prior to January 1, 2002.

**§ 140.671. Retroactive eligibility.**

The earliest possible date for retroactive BCCPT benefits to begin is the first day of the third month preceding the month of application, but not prior to January 1, 2002. The period of eligibility for retroactive BCCPT benefits begins the first day of the month in which the first medical service was incurred if the applicant was otherwise eligible during that month.

REPORTING

§ 140.681. Reporting of changes.

The recipient shall report changes in circumstances that would affect eligibility for participation in the BCCPT within 10 days from the date of the change.

RIGHT TO APPEAL AND FAIR HEARING

§ 140.691. Appeal and fair hearing.

The applicant or recipient is entitled to the appeal and fair hearing rights under Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings).

[Pa.B. Doc. No. 04-2106. Filed for public inspection November 24, 2004, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 65]

Permit Agents

The Department of Transportation (Department), under 75 Pa.C.S. §§ 6103, 6142 and 6145 (relating to promulgation of rules and regulations by department; reciprocity agreements, arrangements and declarations; proportional registration of fleet vehicles) proposes to amend Chapter 65 (relating to permit agents), to read as set forth in Annex A.

Purpose of this Chapter

The purpose of Chapter 65 is to establish rules governing the qualifications and duties of designated agents for the issuance of trip permits, hunter permits and telegrams of authority under Chapter 63 (relating to proportional registration of fleet vehicles).

Purpose of this Proposed Rulemaking

The purpose of this proposed rulemaking is to clarify the definition of "telegram of authority" and to extend the term of the telegram of authority. Currently, the regulations provide that a telegram of authority authorizes the use of a Commonwealth-based fleet vehicle under temporary registration for 30 days. Recent proposed changes to Chapter 63 propose to extend the period of temporary registration under a telegram of authority to 60 days. The purpose of this proposed rulemaking is to conform the definition of "telegram of authority" to the definition in the proposed amendment to Chapter 63.

Persons and Entities Affected

This proposed rulemaking will affect permit agents designated to issue trip permits, hunter permits and telegrams of authority under Chapter 63.

Fiscal Impact

This proposed rulemaking will not require any additional expenditure by the Bureau of Motor Vehicles or the permit agents.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of this proposed rulemaking, on November 15, 2004, to the

Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final-form publication of the rulemaking, by the Department, the General Assembly and the Governor of comments recommendation or objections.

Sunset Date

The Department is not establishing a sunset date for the regulation, as this regulation is needed to administer 75 Pa.C.S. (relating to Vehicle Code). The Department will continue to closely monitor this regulation for its effectiveness.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Kurt Myers, Director, Bureau of Motor Vehicles, 1101 S. Front St., Harrisburg, PA 17104, within 30 days of publication of this notice in the Pennsylvania Bulletin.

Contact Person

The contact person for this proposed rulemaking is Joseph Centurione, Manager, Customer Service Division, Bureau of Motor Vehicles, 1101 S. Front Street, Harrisburg, PA 17104, (717) 787-2780.

ALLEN D. BIEHLER, P. E., Secretary

Fiscal Note: 18-399. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE III. REGISTRATION

CHAPTER 65. PERMIT AGENTS

§ 65.2. Definitions.

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

\* \* \* \* \*

Telegram of authority—A temporary registration transmitted by a wire service authorizing the operation of a Commonwealth based vehicle for [ 30 ] 60 days while application for a change in fleet registration is being processed by the Bureau.

\* \* \* \* \*

[Pa.B. Doc. No. 04-2107. Filed for public inspection November 24, 2004, 9:00 a.m.]