

# RULES AND REGULATIONS

## Title 55—PUBLIC WELFARE

### DEPARTMENT OF PUBLIC WELFARE

#### [55 PA. CODE CH. 140]

#### Special MA Eligibility Provisions

The Department of Public Welfare (Department), under the authority of sections 201(2), 403(b), 447(c) and 454 of the Public Welfare Code (code) (62 P. S. §§ 201(2), 403(b), 447(c) and 454), as amended by the act of July 7, 2005 (P. L. 177, No. 42) (Act 42), adds Subchapter D (relating to eligibility provisions under the Medicaid for children with special needs category) to read as set forth in Annex A.

#### *Omission of Proposed Rulemaking*

Act 42 amended the code and added several new provisions. Specifically, Act 42 amended section 447 of the code and added section 454 of the code. Section 447 of the code was amended to provide that custodial parents of a dependent child under 18 years of age who is disabled as defined by section 1614 of the Social Security Act (42 U.S.C.A. § 1382c) and who is not receiving benefits under Title XVI of the Social Security Act (42 U.S.C.A. §§ 1381—1383f) shall be required to verify their income as a condition of eligibility of the child. Section 454 of the code provides that the Department promulgate final-omitted regulations to establish premium requirements for disabled children whose family income is above 200% of the Federal Poverty Income Guidelines (FPIG). The basis for the final-omitted regulations is 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), which authorizes an agency to omit or modify notice of proposed rulemaking when the regulation relates to Commonwealth grants or benefits. In addition, section 454 of the code expressly exempts the Department's regulations from review under the Regulatory Review Act (71 P. S. §§ 745.1—745.15) and from review by the Attorney General under section 205 of the CDL (45 P. S. § 1205) and section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732-204(b)).

The Department is adopting this final-omitted rulemaking in accordance with section 454 of the code because the regulations pertain to premium requirements for disabled children whose family income is above 200% of the FPIG.

#### *Purpose*

The purpose of this final-omitted rulemaking is to amend the current regulations in Chapter 140 (relating to special MA eligibility provisions) to codify regulations for children with disabilities who qualify for Medicaid under the Children with Special Needs Category. This includes the custodial parent's income verification requirement and the premium requirement, as enacted in sections 5 and 6 of Act 42 (amending section 447 of the code and adding section 454 to the code).

#### *Background*

Medicaid is a means-tested Federal and State-funded program designed to provide health care benefits to individuals with limited income and resources. The Federal government provides a baseline of what eligibility groups must be covered and what services must be provided for states to receive Federal Financial Participa-

tion. States may choose to expand eligibility to include additional groups. The Commonwealth has exercised various options to use less restrictive methodologies to determine eligibility for Medicaid. This Commonwealth has some of the most liberal eligibility standards in the country.

Currently, this Commonwealth is the only state that allows a child with a disability to be eligible for Medicaid without considering the parent's income, child support or Social Security benefits received by the child. Under Federal law, states have the option to cover children with physical and mental disabilities if the child needs an institutional level of care but can receive that care at home. This option was authorized by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. No. 97-248). Twenty states have elected the TEFRA option. In this Commonwealth, there is a special category of Medicaid for children with special needs. To receive benefits in this category a child must meet the level of disability established by the Social Security Administration (SSA). This level of disability does not require the need for an institutional level of care. Other states exclude the parent's income only when determining the child's eligibility for Medicaid under a TEFRA option. No other state has an eligibility category comparable to the Commonwealth's Medicaid for Children with Special Needs Category. This year the Commonwealth will spend almost \$400 million to serve over 38,000 children with special needs. It is estimated that more than 4,000 of these families have incomes that exceed \$100,000 per year. In comparison, on average most other states have between 2,000 and 4,000 TEFRA children.

Act 42 requires the Department to verify income of the custodial parent of the child with a disability who is applying for or receiving Medicaid. Additionally, the legislation authorizes the Department to collect a premium from these families if the custodial parent's income is above 200% of the FPIG. A request for a waiver under section 1115 of the Social Security Act (42 U.S.C.A. § 1315) was submitted to the Federal government, allowing the Department to collect a premium for these children. The waiver is required because Federal law does not otherwise allow states to collect premiums for children who are determined Medicaid eligible.

#### *Requirements*

The following is a summary of specific provisions in the final-omitted rulemaking:

1. *Section 140.601 (relating to policy).* The Department describes the policy that enables a child under 18 years of age with a disability meeting the SSA's definition of "disability" to qualify for Medicaid without considering parental income. This includes the requirement that the eligibility provisions for the Healthy Horizons Program for the elderly and disabled apply to this child unless specifically stated to the contrary.

2. *Section 140.602 (relating to definitions).* The Department defines "applicant" or "recipient," "child," "custodial parent" and "family size."

3. *Section 140.603 (relating to conditions of MA eligibility).* The Department describes the eligibility requirements that a child with special needs shall meet to qualify for Medicaid. The Department establishes the verification requirements for verification of the custodial parent's income as a condition of eligibility.

4. *Section 140.604 (relating to premiums).* The Department describes the requirements for verification of the custodial parent's income for the child with the disability and the payment of a premium requirement for a child to qualify for Medicaid. The premium amount is based on the income of the custodial parent and family size.

*Affected Individuals and Organizations*

This final-omitted rulemaking applies to applicants and recipients and the custodial parents of these applicants and recipients who apply for or receive Medicaid benefits under these special provisions. The changes to require a premium and verification of income of the custodial parent will affect individuals who do not pay the premium or fail to report or verify income.

*Accomplishments and Benefits*

This final-omitted rulemaking implements sections 447(c) and 454 of Act 42. A premium is required for the family whose income exceeds 200% of the FPIG. This limited change to the eligibility requirements to receive Medicaid, along with other cost-cutting changes enacted by Act 42, will enable the Department to preserve vital benefits to the greatest number of MA recipients in a fiscally responsible and cost-effective manner.

*Fiscal Impact*

The Department estimates the Fiscal Year 2005-2006 savings to be \$13.015 million (\$5.813 million in State funds) with annualized savings of \$26.764 million (\$12.130 million in State funds) estimated in Fiscal Year 2006-2007.

*Paperwork Requirements*

The reporting and verification of income of the custodial parent of a child under 18 years of age with a disability will be required.

*Public Comment*

Although these regulations are being adopted as a final-omitted rulemaking, interested persons are invited to submit written comments, suggestions or objections to Edward J. Zogby, Director, Bureau of Policy, Room 431, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-4081. Comments will be reviewed and considered for any subsequent revision of the regulations.

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 454 of the code, this final-omitted rulemaking is not subject to review under the Regulatory Review Act.

*Findings*

The Department finds that:

(1) Notice of proposed rulemaking is omitted in accordance with section 204(1)(iv) of the CDL and 1 Pa. Code § 7.4(1)(iv) because the regulation relates to Commonwealth grants and benefits.

(2) Adoption of this final-omitted rulemaking in the manner provided by this order is necessary and appropriate for the administration and enforcement of the code.

*Order*

The Department, acting under the code, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapter 140, are amended by adding §§ 140.601—140.604 and Appendix B to read as set forth in Annex A.

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

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

(d) Upon receipt of written notification that the United States Department of Health and Human Services has granted the waiver requested by the Department under section 1115 of the Social Security Act, the Department will publish notice thereof in the *Pennsylvania Bulletin*. The regulations adopted by this order become effective 30 days after receipt of the Federal waiver.

ESTELLE B. RICHMAN,  
*Secretary*

**Fiscal Note:** 14-502. No fiscal impact; (8) recommends adoption. Implementation of this final-omitted rulemaking will generate savings to the General Fund beginning in Fiscal Year 2005-2006 of \$5.813 million. Savings for Fiscal Year 2006-2007 are estimated at \$12.130 million.

**Annex A**

**TITLE 55. PUBLIC WELFARE**

**PART II. PUBLIC ASSISTANCE MANUAL**

**Subpart C. ELIGIBILITY REQUIREMENTS**

**CHAPTER 140. SPECIAL MA ELIGIBILITY PROVISIONS**

**Subchapter D. ELIGIBILITY PROVISIONS UNDER THE MEDICAID FOR CHILDREN WITH SPECIAL NEEDS CATEGORY**

**GENERAL ELIGIBILITY PROVISIONS**

Sec.	
140.601.	Policy.
140.602.	Definitions.
140.603.	Conditions of MA eligibility.
140.604.	Premiums.

**§ 140.601. Policy.**

(a) A child who meets the disability criteria as defined by section 1614 of the Social Security Act (42 U.S.C.A. § 1382c) and who is not receiving benefits under Title XVI of the Social Security Act (42 U.S.C.A. §§ 1381—1383f), may qualify for MA benefits under this subchapter. MA will be provided in the Medicaid for Children with Special Needs Category only if the child does not qualify in any other category of MA.

(b) Unless there is a provision to the contrary in this subchapter, Subchapter B (relating to eligibility provisions for the healthy horizons program for the elderly/disabled) applies.

**§ 140.602. Definitions.**

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

*Applicant or recipient*—A child who meets the eligibility conditions of this subchapter.

*Child*—An individual under 18 years of age.

*Custodial parent*—The natural or adoptive mother or father living with an applicant or recipient.

*Family size*—Includes custodial parent, step-parent, applicant or recipient, siblings of the applicant or recipient and other dependents of the custodial parents listed on the custodial parent's Federal Income Tax Return of the previous calendar year.

**§ 140.603. Conditions of MA eligibility.**

(a) An applicant or recipient shall meet the eligibility provisions of Subchapter B (relating to eligibility provisions for the healthy horizons program for the elderly/disabled) except the following types of income are not counted:

- (1) Court-ordered child support.
- (2) Retirement, Survivor's, Disability Insurance (RSDI) benefits received from the Social Security Administration by the applicant or recipient.
- (b) The applicant or recipient shall meet the following eligibility provisions:
  - (1) Chapter 125 (relating to application process).
  - (2) Chapter 148 (relating to MA residence provisions for categorically needy NMP-MA and MNO-MA).
  - (3) Chapter 150 (relating to citizenship and alienage provisions for categorically needy NMP-MA and MNO-MA).
  - (4) Chapter 155 (relating to enumeration).
  - (5) Chapter 255 (relating to restitution).
- (c) The custodial parent shall report and verify earned and unearned income and allowable medical and dental expense deductions specified in § 140.604(b) (relating to premiums).

(1) The verification of income is limited to the custodial parent's Federal Income Tax Return listing the reported adjusted gross income of the previous calendar year.

(2) The verification of allowable medical and dental expenses is limited to those medical and dental expenses that were not reimbursed and that the custodial parent deducted on the Federal Income Tax Return of the previous calendar year.

(3) If the Federal Income Tax Return of the previous calendar year is not available or there is a decrease in income from the previous calendar year, any of the following items may be used to verify current income:

- (i) Pay stubs.
- (ii) Pay envelopes.
- (iii) Statement by the employer.
- (iv) Other documentary proof of the income of the custodial parent.

(d) An applicant or recipient is ineligible for MA if the custodial parent does not report or verify earned or unearned income.

**§ 140.604. Premiums.**

(a) *Eligibility.* An applicant or recipient who meets the eligibility conditions specified in § 140.603 (relating to conditions of MA eligibility) shall be eligible for MA upon receipt of payment of a premium, if any, established by the Department under subsection (b).

(b) *Calculation of premium.*

(1) The custodial parent shall report and verify earned and unearned income and allowable medical and dental expenses.

(2) If the custodial parent's total gross adjusted earned and unearned income is greater than 200% of the Federal Poverty Income Guidelines, the custodial parent's income is considered in calculation of the premium.

(3) The medical and dental expenses reported on the custodial parent's Federal Income Tax Return of the previous calendar year are allowable deductions from the income of the custodial parent as specified in paragraph (2).

(i) The verification of income is limited to the custodial parent's Federal Income Tax Return listing the reported adjusted gross income of the previous calendar year.

(ii) If the Federal Income Tax Return of the previous calendar year is not available or there is a decrease in income from the previous calendar year, any of the following items may be used to verify current income:

- (A) Pay stubs.
- (B) Pay envelopes.
- (C) Statement by employer.
- (D) Other documentary proof of the income of the custodial parent.

(iii) The verification of allowable medical and dental expenses is limited to those medical and dental expenses that were not reimbursed and that the custodial parent deducted on the Federal Income Tax Return of the previous calendar year.

(4) The amount of the premium is based on income that is considered as specified in paragraph (2) less allowable medical and dental expenses specified in paragraph (3) and the family size.

(5) The premium is determined under Appendix B (relating to Medicaid for Children with Special Needs Monthly Premium Chart).

(6) Revisions to the premium amounts will be published as a notice in the *Pennsylvania Bulletin* for codification in Appendix B.

(7) The premium is established for a 12-month period.

(8) There is one premium per family.

(9) The premium can be lowered during the 12-month period if the custodial parent reports and verifies a decrease in income or an increase in family size.

(c) *Notice.* The Department will provide a written notice of a requirement for a premium or a change in a premium. The Department will provide an advance written notice at least 10 days before the date of a premium increase or requirement of a premium.

(d) *Premium payment or hardship waiver.*

(1) The premium payment is due on or before the last day of the calendar month. The premium is considered overdue when payment of the premium is not received by the last day of the calendar month.

(2) An advance written notice to discontinue MA for the recipient will be issued if the overdue premium payment is not received within 45 days of the day the payment was due.

(3) The premium payment may be waived if the requirement to pay a premium will result in an undue hardship for the custodial parent.

## APPENDIX B

## MEDICAID FOR CHILDREN WITH SPECIAL NEEDS MONTHLY PREMIUM CHART

Family Size								
Parents Annual Income At least—Less Than	2	3	4	5	6	7	8	Each Additional member
\$0-\$39,999.99	NO PREMIUM IF INCOME BELOW 200% FPIG							
\$40-\$49,999.99	\$30	\$29	\$27	\$26	\$24	\$0	\$0	\$0
\$50-\$59,999.99	\$40	\$38	\$36	\$34	\$33	\$31	\$0	\$0
\$60-\$69,999.99	\$50	\$48	\$45	\$43	\$41	\$39	\$37	\$0
\$70-\$79,999.99	\$60	\$57	\$54	\$51	\$49	\$46	\$43	\$0
\$80-\$89,999.99	\$75	\$71	\$68	\$64	\$61	\$58	\$55	(-\$3)
\$90-\$99,999.99	\$100	\$95	\$90	\$86	\$81	\$77	\$73	(-\$4)
\$100-\$109,999.99	\$150	\$143	\$135	\$129	\$122	\$116	\$111	(-\$5)
\$110-\$119,999.99	\$200	\$190	\$181	\$171	\$163	\$155	\$148	(-\$7)
\$120-\$129,999.99	\$250	\$238	\$226	\$214	\$204	\$193	\$185	(-\$8)
\$130-\$139,999.99	\$300	\$285	\$271	\$257	\$244	\$232	\$222	(-\$10)
\$140-\$149,999.99	\$350	\$333	\$316	\$300	\$285	\$271	\$259	(-\$12)
\$150-\$159,999.99	\$400	\$380	\$361	\$343	\$326	\$310	\$297	(-\$13)
\$160-\$169,999.99	\$475	\$451	\$429	\$407	\$387	\$368	\$352	(-\$16)
\$170-\$179,999.99	\$600	\$570	\$542	\$514	\$489	\$464	\$442	(-\$22)
\$180-\$189,999.99	\$675	\$641	\$609	\$579	\$550	\$522	\$497	(-\$25)
\$190-\$199,999.99	\$800	\$760	\$722	\$686	\$652	\$619	\$588	(-\$31)
\$200-\$249,999.99	\$925	\$879	\$835	\$793	\$753	\$716	\$679	(-\$37)
\$250-\$299,999.99	\$1,000	\$950	\$903	\$857	\$815	\$774	\$739	(-\$35)
\$300-\$349,999.99	\$1,000	\$950	\$903	\$857	\$815	\$774	\$739	(-\$35)
\$350-\$399,999.99	\$1,000	\$950	\$903	\$857	\$815	\$774	\$739	(-\$35)
\$400-\$449,999.00	\$1,000	\$950	\$903	\$857	\$815	\$774	\$739	(-\$35)
\$450-\$499,999.99	\$1,000	\$950	\$903	\$857	\$815	\$774	\$739	(-\$35)
\$500,000 +	\$1,000	\$950	\$903	\$857	\$815	\$774	\$739	(-\$35)

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