

CHAPTER 75-02-02.2
CHILDREN'S HEALTH INSURANCE PROGRAM

SECTION 1. Section 75-02-02.2-12 is amended as follows:

75-02-02.2-12. Income considerations.

1. All income that is actually available must be considered. Income is actually available when it is at the disposal of an applicant, recipient, or responsible relative when the applicant, recipient, or responsible relative has a legal interest in a liquidated sum and has the legal ability to make the sum available; or when the applicant, recipient, or responsible relative has the lawful power to make the income available or to cause the income to be made available.
2. It is presumed that all parental income is actually available to a child under twenty-one years of age. This presumption may be rebutted by a showing that the child is:
 - a. Living independently; or
 - b. Living with a parent who is separated from the child's other parent, with or without court order, if the parents did not separate for the purpose of securing plan coverage.
3. As a condition of eligibility, an applicant, recipient, and financially responsible relative must take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits to which they are entitled unless they can show good cause for not doing so. Annuities, pensions, retirement, and disability benefits include veterans' compensation and pensions; old-age, survivors, and disability insurance benefits; railroad retirement benefits; and unemployment compensation.
 - a. Good cause under this section exists if receipt of the annuity, pension, retirement, or disability benefit would result in a loss of health insurance coverage. Good cause must be documented in the case file.
 - b. Application for needs-based payments such as social security supplemental security income benefits or temporary aid to needy families benefits cannot be imposed as a condition of eligibility.
4. The financial responsibility of any individual for any other member of the plan unit will be limited to the responsibility of spouse for spouse and parents for children under age twenty-one or under age eighteen if the child is disabled. Such responsibility is imposed as a condition of plan eligibility. Except as otherwise provided in this section, the income of the spouse and parents is considered available even if that income is not actually contributed. Natural and adoptive parents, but not stepparents, are treated as parents.
5. Income may be received weekly, biweekly, monthly, intermittently, or annually. A monthly income amount must be computed by the department or county agency regardless of how often income is received.
6. The following types of income must be disregarded in determining eligibility for plan coverage:
 - a. Supplemental security income benefits provided by the social security administration.
 - b. Income disregards in section 75-02-02.1-38.2.

7. a. In determining ownership of income from a document, income must be considered available to each individual as provided in the document or in the absence of a specific provision in the document:
 - (1) Income shall be considered available only to the individual if payment of the income was made solely to that individual; and
 - (2) Income shall be considered available to each individual in proportion to the individual's interest if payment of income is made to more than one individual.
 - b. One-half of income shall be considered available to each spouse in the case of income available to a married couple in which there is no document establishing ownership otherwise.
 - c. Except in the case of income from a trust, the rules for determining ownership of income are superseded to the extent that the applicant or recipient can establish that the ownership interests are otherwise than as provided in subsection 6.
8. To determine the appropriate income level for a plan unit:
 - a. The size of the household is increased by one for each unborn child of a household member;
 - b. A child who is away at school is not treated as living independently, but is allowed a separate income level for one in addition to the income level applicable for the family unit remaining at home;
 - c. A child who is living outside of the parental home but who is not living independently; or a spouse who is temporarily living outside of the home to attend training or college, to secure medical treatment, because of temporary work relocation required by an employer, or for other reasons beyond the control of the spouse, is allowed a separate income level. This does not apply to situations in which an individual simply decides to live separately;
 - d. An individual in a specialized facility is allowed a separate income level for one during all full calendar months in which the individual resides in the facility;
 - e. An individual in a nursing facility is allowed a separate income level for one; and
 - f. A recipient of home and community-based services is allowed a separate income level for one.
 9. ~~In order for~~ For a child to be eligible for plan coverage, the income remaining after allowing the appropriate disregards and deductions must be equal to or below ~~one hundred forty percent of the federal poverty line~~ the income level set by the department in accordance with state law and federal authorization, and must be based on the size of the household unless. ~~If federal children's health insurance program funding decreases in which case,~~ the department may decrease the income eligibility limit to accommodate the decrease in federal funding.

History: Effective October 1, 1999; amended effective April 1, 2002; August 1, 2005; April 1, 2008; October 1, 2008.

General Authority: NDCC 50-29

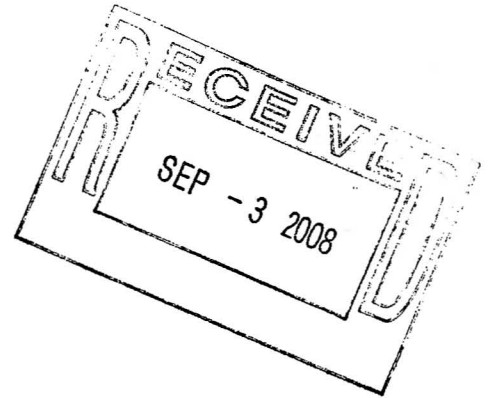
Law Implemented: NDCC 50-29-02; 50-29-04; 42 USC 1397aa et seq.



— State of —
North Dakota

Office of the Governor

John Hoeven
Governor



August 29, 2008

Carol Olson
Executive Director
Department of Human Services
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0250

Dear Carol,

On August 28, 2008, I received your request for approval of emergency rulemaking to increase reimbursement under the State Children's Health Insurance Program ("SCHIP") up to and including 150% of poverty.

I have reviewed the request pursuant to N.D.C.C. § 28-32-03(2) and find that emergency rulemaking is necessary to implement the additional appropriations in House Bill 1463 to increase reimbursement rates for SCHIP effective October 1, 2008.

Sincerely,

A handwritten signature in black ink, appearing to be "John Hoeven".

John Hoeven
Governor

34:38:58



Legal Advisory Unit

Fax (701) 328-2173
Legal (701) 328-2311
Appeals (701) 328-2311
ND Relay TTY (800) 366-6888

John Hoeven, Governor
Carol K. Olson, Executive Director

September 2, 2008

RE: Proposed Amendments to N.D. Admin. Code Chapter 75-02-02.2
Children's Health Insurance Program

TO WHOM IT MAY CONCERN:

The Department of Human Services is proposing amendments to N.D. Admin. Code Chapter 75-02-02.2, Children's Health Insurance Program. The department has adopted procedures to assure public input into the formulation of such rules prior to adoption.

In conformity with those procedures, we are providing you with a copy of the proposed rules and are requesting that you provide any written data, views, or arguments no later than 5:00 p.m. on October 20, 2008.

The department has scheduled an oral hearing on October 8, 2008. Further information concerning the public hearing is included in the attached notice of proposed rulemaking and public hearing.

Your participation is welcomed, as are your suggestions. Please send all written data, views, or arguments to: Rules Administrator, Department of Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Bismarck, ND 58505-0250.

Sincerely,

A handwritten signature in black ink that reads "Carol K. Olson". The signature is written in a cursive style.

Carol K. Olson,
Executive Director

CKO/ca

Attachments

Cc: John Walstad, Legislative Council
Curtis Volesky, Medical Assistance