

<h1 style="text-align: center;">Regulatory Analysis Form</h1>		This space for use by IRRC 99 JUL 14 AM 11:11 REVIEW COMPLETION	
		IRRC Number: <u>1872</u>	
(1) Agency Department of Public Welfare Office of Income Maintenance Bureau of Policy Division of Health Services			
(2) I.D. Number (Governor's Office Use) 14-421			
(3) Short Title Lump Sum			
(4) PA Code Cite 55 Pa. Code Chapters 140 and 181		(5) Agency Contacts & Telephone Numbers Primary Contact: Edward J. Zogby 787-4081 Secondary Contact: George L. Hoover 772-7809	
(6) Type of Rulemaking (check one) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. <p>These final regulations amend the eligibility provisions for the Healthy Horizons Program for the Elderly/Disabled in Chapter 140, Subchapter B, at §140.291(c) and (d) and the Medical Assistance (MA) regulations in Chapter 181, Subchapter A, General Provisions for MA Income Common to All Categories of MA, at §181.31(d). Current regulations state that a lump sum is treated as a resource unless it is beneficial to the client to treat it as income. These final regulations require that when a lump sum has been treated as income in the month of receipt, for purposes of MA eligibility, any balance of the lump sum remaining in subsequent months is treated as a resource. This change does not affect Supplemental Security Income (SSI)-related, Temporary Assistance for Needy Families (TANF)-related or General Assistance (GA)-related applicants/recipients comprised of a family with children under 21 years of age living in the household. Resources are excluded for these groups. This regulation provides that a client who chooses to treat a lump sum as income is no worse off or better off under this regulation change than another client who chooses to treat lump sum as a resource from the time it was received, pursuant to §§140.291(b) and 181.31(b). MA income and resource eligibility rules are patterned after the rules for the corresponding TANF and SSI Cash Assistance Programs.</p> <p>Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193 (PRWORA), enacted on August 22, 1996, eliminated the Aid to Families with Dependent Children (AFDC) program and replaced it with the Federal TANF program. MA eligibility for children and their families are still based on AFDC rules. The references to AFDC-related MA rules are still correct.</p>			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. Title XIX of the Social Security Act, 42 U.S.C. §1396a(a)(17) and 42 U.S.C. §1396a(r)(2); Public Welfare Code, 62 P.S. §403(b).			

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Title XIX of the Social Security Act (42 U.S.C. §1396a(a)(17)) requires that we have an income and resource methodology. 42 U.S.C. §1396a(r)(2) provides that this methodology may be less restrictive than the cash methodology but may not be more restrictive.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The change in the treatment of a lump sum will result in a savings of State dollars. These regulations will permit the denial of MA eligibility for MA applicants and the termination of MA eligibility for MA recipients who have a balance of a lump sum remaining which exceeds allowable resource limits. These individuals have available resources which can be used to meet their medical and other living needs. These regulations will treat MA applicants/recipients with excess resources resulting from a lump sum the same as applicants and recipients whose resources exceed the limits for any other reason.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Not applicable.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

These amendments are intended to establish equitable treatment between clients who have excess resources because of a lump sum and clients who have excess resources for any other reason.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

Individuals with excess resources will remain ineligible for MA until their resources meet the limits for MA eligibility.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All MA applicants and recipients who are living in the community or receiving institutional care and who receive a lump sum will be affected by the regulation change with the exception of SSI-related, TANF-related, and GA-related applicants/recipients comprised of a family with children under 21 years of age living in the household. Resources are excluded for these groups.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Proposed regulations were published at 28 Pa.B. 1531 (March 28, 1998). Public comments were solicited but none were received.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Not applicable.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Not applicable.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The purpose of this regulation is to change the treatment of a lump sum payment when determining eligibility for Medical Assistance (MA). This change will require that any balance remaining of a lump sum that has been treated as income in the initial calendar month of MA eligibility determination is treated as a resource in subsequent months. Currently, regulations permit individuals who receive sizable lump sum to qualify for MA after one month of MA ineligibility as the remaining amount of the lump sum is excluded as a resource. This change applies to all categories of MA including Healthy Horizons.

These regulatory changes will become effective upon publication in the Pennsylvania Bulletin as final rulemaking. Eleven months' savings of \$0.536 million (\$0.248 million in State funds) are anticipated for Fiscal Year 1999-2000. For Fiscal Year 2000-2001, annualized savings are estimated in the amount of \$0.585 million (\$0.270 million in State funds).

Alan Rafferty

APR 13 1999

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

(Dollar Amounts In Thousands)

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:						
Regulated Community						
Local Government						
State Government	\$0	(\$248)	(\$270)	(\$270)	(\$270)	(\$270)
Total Savings	\$0	(\$248)	(\$270)	(\$270)	(\$270)	(\$270)
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(20a) Explain how the estimates listed above were derived.

The estimate is based on the approximate number of recipients who would become ineligible for MA as a result of this change in the treatment of a lump sum multiplied by the average monthly medical assistance expenditures multiplied by the estimated length of time to re-establish eligibility (5 months).

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.
(Dollar Amounts in Thousands)

Program	FY -3	FY -2	FY -1	Current FY
MA-Long Term Care – STATE	\$648,550	\$591,910	\$617,252	\$738,340

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

These regulations will treat MA applicants/recipients with excess resources resulting from a lump sum payment the same as applicants and recipients whose resources exceed the limits for any other reason.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Nonregulatory alternatives were not considered. This change was not mandated by statute and is more restrictive than present policy so rulemaking was the only alternative.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

One alternative would be to continue to exclude any remaining balance of a lump sum that had been considered income in the calendar month the lump sum was received. The Department rejected this alternative since it allows an individual with a sizable balance of a lump sum to qualify for MA after only one month of MA ineligibility. These regulations will provide equitable treatment for all applicants and recipients who have countable resources that exceed the MA limit for any reason.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Pennsylvania's regulations are comparable with other states' requirements. New Jersey and Maryland treat lump sum as income. The lump sum is added to other available income to arrive at the number of months of ineligibility for medical assistance. Ohio treats lump sum as income in the month received and as a resource in the subsequent month. If the lump sum exceeds the resource limitation, the excess resource amount is equally divided as an available resource for the number of persons in the medical assistance group to arrive at the number of months of ineligibility. MA is authorized when the lump sum is spent. There are no restrictions on how the lump sum has to be spent.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

These regulations will not change existing reporting, record keeping, or other paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation is effective upon publication as final rulemaking in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

These regulations will be reviewed through the Department's Quality Control and Corrective Action review process which are monitored by the Federal Department of Health and Human Services.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

RECEIVED
99 JUL 14 AM 11:11

LEGISLATIVE REFERENCE BUREAU
REVIEW DIVISION

1872

DO NOT WRITE IN THIS SPACE

4/24/99

Copy below is hereby approved as to form and legality. Attorney General

BY: _____
(Deputy Attorney General)

Date of Approval

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

DEPARTMENT OF PUBLIC WELFARE
(Agency)

LEGAL COUNSEL: Jean E. Graybill

DOCUMENT/FISCAL NOTE NO. 14-421

(DPW-OIM-02-92-003)

DATE OF ADOPTION: _____
BY: [Signature]

TITLE: SECRETARY OF PUBLIC WELFARE
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

BY: [Signature]

7/1/99
Date of Approval

(Deputy General Counsel)
~~Chief Counsel, Independent Agency~~
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING
DEPARTMENT OF PUBLIC WELFARE
OFFICE OF INCOME MAINTENANCE
Bureau of Policy
[55 Pa. Code Chapter 140 (Subchapter B)]
Eligibility Provisions for the Healthy Horizons
Program for the Elderly/Disabled
[55 Pa. Code Chapter 181]
Medical Assistance Income

STATUTORY AUTHORITY

The Department of Public Welfare, by this Order, adopts the regulation set forth in Annex A under the authority of the Public Welfare Code, Act of June 13, 1967, (P.L. 31, No. 21), (62 P.S. §201(2)).

The proposed regulation was published in 28 Pa.B. 1531 on March 28, 1998. No comments were received and there are no changes to the published regulation.

PURPOSE

The purpose of this amendment is to change how the receipt of a lump sum is treated when determining eligibility for Medical Assistance (MA) in Chapters 140, Subchapter B and 181 (relating to eligibility provisions for the healthy horizons program for the elderly/disabled; and income provisions for categorically needy NMP-MA and MNO-MA). Current regulations state that a lump sum is treated as a resource unless it is beneficial to the client to treat it as income. This change will require that when a lump sum has been treated as income in the month of receipt, any balance remaining in subsequent months will be treated as a resource. This change applies to all categories of MA, including Healthy Horizons. This change provides that a client who chooses to treat a lump sum as income is no worse off under this regulation change than another client who chooses to treat a lump sum as a resource from the time it was received.

BACKGROUND

Effective November 1, 1988, the Department adopted final regulations patterned after the rules for the corresponding Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI) Cash Assistance Programs except for the treatment of lump sum. The current TANF Cash Assistance Program replaced the Aid to Families with Dependent Children (AFDC) program. Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193 (PRWORA), enacted on August 22, 1996, eliminated the AFDC program and replaced it with the Federal TANF program. The TANF Cash Assistance Program treats lump sum under a special lump sum rule which provides for a period of ineligibility. The SSI Cash Assistance Program treats a lump sum as a resource. The disparity of treatment of a lump sum in the cash assistance programs led to the flexibility in the treatment of a lump sum for the MA Program. The individual currently has the choice of treating a lump sum as a resource, unless it is more financially helpful to the individual to have it treated as income. If the lump sum is counted as income, any balance of the lump sum remaining in subsequent months is not considered a resource under existing regulations.

As a result of this flexibility, the regulations provide a special resource exclusion for the remaining lump sum. The exclusion enables an individual to continue to receive MA benefits even though resources, including funds remaining from the lump sum, may be substantially in excess of the resource limit. Due to the fact that individuals with

substantial lump sum benefits are being determined eligible for MA, even if there is a balance of the lump sum remaining which exceeds the MA resource limits, the Department is revising the regulations to specify that lump sum payments retained beyond the month of receipt are treated as a resource. An individual still has the choice of deciding whether to have the lump sum treated as a resource or as income in the month of receipt. However, any portion remaining in subsequent months will be treated as a resource along with all other countable resources subject to the maximum MA resource limit.

NEED FOR REGULATION

These regulations are needed to establish equitable treatment between clients who have excess resources because of a lump sum and clients who have excess resources for any other reason, by changing the requirements for the treatment of lump sum income in Chapters 140, Subchapter B and 181.

SUMMARY

Treatment of lump sum payment (§§140.291(c), (d) and (d)(3))

The revision to this section counts as a resource the balance of the lump sum remaining subsequent to the calendar month in which the lump sum is received and is counted as income for the applicant/recipient of the Healthy Horizons Program. The

content of subsection (d) is no longer applicable. The contents of the old (d)(1) and (2) are moved to (c)(1) and (2). The old paragraph (d)(3) is the revised subsection (d).

Treatment of the lump sum payment (§181.31(d))

The revision to this section counts as a resource the balance of the lump sum remaining subsequent to the calendar month in which the lump sum is received and is counted as income. This applies to an applicant/recipient of SSI-related and General Assistance (GA)-related categories of the Categorically Needy Nonmoney Payment (NMP) and Medically Needy Only (MNO) MA Programs.

AFFECTED PERSONS AND ORGANIZATIONS

This amendment affects all applicants and recipients of MA, living in the community or residing in an institution, who receive a lump sum.

ACCOMPLISHMENTS/BENEFITS

This amendment will change how the balance of a lump sum remaining subsequent to the month of receipt is treated. The change would treat as a resource the balance of a lump sum remaining subsequent to the month it was received and

treated as income for MA eligibility purposes. This change denies MA eligibility for those individuals with a sizeable balance of a lump sum after only one month of MA ineligibility. These individuals could qualify for MA once their resources and income are within allowable limits.

PUBLIC COMMENT

Written comments, suggestions and objections were solicited within a 30-day period after the publication date. No comments were received.

FISCAL IMPACT

Commonwealth

It is anticipated that implementation of these regulations will result in savings to the Commonwealth during Fiscal Year 1997-1998 of approximately \$0.182 million (\$0.086 million in State funds). Annual savings for Fiscal Year 1998-1999 are estimated in the amount of \$0.276 million (\$0.130 million in State funds).

Private Sector

There are no anticipated costs for the private sector.

PAPERWORK REQUIREMENTS

This amendment does not require additional forms or reports.

EFFECTIVE DATE

The regulation is effective upon publication as final rulemaking in the *Pennsylvania Bulletin*.

SUNSET DATE

No sunset date is applicable. The Department continuously reviews the MA Program and regulations through the Federally-monitored Quality Control process. Also, the Federal Health Care Financing Administration staff conducts audits periodically on specific aspects of the MA Program.

REGULATORY REVIEW ACT

Under §5(a) of the Regulatory Review Act (71 P.S. §§745.1-745.15), the agency submitted a copy of the Notice of Proposed Rulemaking published at 28 Pa.B. 1531 on March 28, 1998 to the Independent Regulatory Review Commission and to the Chairmen of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for review and comment. In compliance with §5(b.1), the agency also provided the Commission and the Committees with copies of all comments received, as well as other documentation.

The agency prepared the final form regulations with no comments received from the Commission, the Committees or the public.

This final form regulation was approved by the Committees on _____ and was approved by the IRR Commission on _____ in accordance with §5(c) of the Act.

The Department of Public Welfare finds:

- a) The public notice of intention to adopt the administrative regulation amended by this Order has been duly given pursuant to §§201 and 202 of the Commonwealth Documents Law (45 P.S. §§1201 and 1202) and the regulations thereunder, 1 Pa. Code §§7.1 and 7.2.

- b) That the adoption of this regulation in the manner provided in this Order is necessary and appropriate for the administration and enforcement of the Public Welfare Code.

The Department of Public Welfare acting pursuant to the Public Welfare Code orders:

- a) The regulations of the Department of Public Welfare are amended to read as published at 28 Pa.B. 1531 on March 28, 1998.
- b) The Secretary of the Department of Public Welfare shall submit this Order and the regulation to the Attorney General and General Counsel for approval as to legality and form as required by law.
- c) The Secretary of the Department of Public Welfare shall duly certify this Order and the regulation and deposit them with the Legislative Reference Bureau as required by law.
- d) This Order shall take effect upon publication in the *Pennsylvania Bulletin*.

cc: Legislative Reference Bureau

ANNEX A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart C. ELIGIBILITY REQUIREMENTS

CHAPTER 140. SPECIAL MA ELIGIBILITY PROVISIONS

Subchapter B. ELIGIBILITY PROVISIONS FOR THE HEALTHY
HORIZONS PROGRAM FOR THE ELDERLY/DISABLED

TREATMENT OF LUMP SUM [PAYMENTS] PAYMENT

140.291. Treatment of lump sum [payments] PAYMENT.

(c) If the lump sum is treated as income, it is counted as income in the calendar month received.

[(d) A balance remaining of the lump sum payment subsequent to the calendar month the lump sum payment was received and counted as income is not considered a resource to the applicant/recipient.]

(1) [Earned] AN EARNED lump sum [payments] such as delayed wages, bonuses and EITC [are] IS treated as earned income and [are] IS added to other earned income received in the calendar month. The deductions listed under §140.282 (relating to deductions from earned income) are applied to determine countable net earned income.

(2) [Unearned] AN UNEARNED lump sum [payments] such as cash prizes, cash lottery winnings, life insurance benefits, cash inheritances and personal injury [are] IS treated as unearned income and [are] IS added to other unearned income received in the calendar month. The deductions listed under §140.281 (relating to deductions from unearned income) are applied to determine countable net unearned income.

[(3)] (d) The balance [remaining] of the lump sum [payment] REMAINING subsequent to the calendar month the lump sum [payment] was received and counted as [earned income or unearned] income as described in subsection (c) is [not] considered a resource to the applicant/recipient or the spouse of the applicant/recipient.

* * * * *

Subpart D. DETERMINATION OF NEED AND AMOUNT OF ASSISTANCE

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

TREATMENT OF LUMP SUM PAYMENT COMMON TO ALL
CATEGORIES OF MA

181.31. Treatment of lump sum **PAYMENT**.

(d) The balance [remaining] of the lump sum [payment] **REMAINING** subsequent to the calendar month the lump sum [payment] was received and counted as [earned or unearned] income as described in subsection (c) is [not] considered a resource to the applicant/recipient.

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 14-421

SUBJECT: Eligibility Provisions for the Health Horizons Program for the Elderly/Disabled; Medical Assistance Income

AGENCY: DEPARTMENT OF PUBLIC WELFARE

99 JUL 16 AM 11:11
REGULATORY REVIEW COMMISSION

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
7/14/99	<i>Conrad Shefferson</i>	HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES
7/14/99	<i>Karen Shaffer</i>	
7-14-99	<i>Debbie Eaton</i>	SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE
7/14/99	<i>Debra Shy</i>	
7/14/99	<i>Ken C. Brown</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU