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Regulatory Analysis Form

<p>(1) Agency</p> <p>Department of Public Welfare Office of Income Maintenance Bureau of Policy Division of Health Services</p>	<p>This space for use by IRRC</p> <p>INDEPENDENT REGULATORY REVIEW COMMISSION</p>
<p>(2) I.D. Number (Governor's Office Use) ¹⁴⁻⁴⁹⁰</p>	<p>IRRC Number: 2449</p>
<p>(3) Short Title</p> <p>Breast and Cervical Cancer Prevention and Treatment (BCCPT) Program</p>	
<p>(4) PA Code Cite</p> <p>55 Pa.Code Chapter 140</p>	<p>(5) Agency Contacts & Telephone Numbers</p> <p>Primary Contact: Edward J. Zogby 787-4081</p> <p>Secondary Contact: Trudy L. Johnson 772-7809</p>
<p>(6) Type of Rule Making (Check One)</p> <p><input type="checkbox"/> Proposed Rule Making</p> <p><input checked="" type="checkbox"/> Final Order Adopting Regulation</p> <p><input type="checkbox"/> Final Order, Proposed Rule Making Omitted</p>	<p>(7) Is a 120-Day Emergency Certification Attached? (To be used only for emergency-certified regulations.)</p> <p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes: By the Attorney General</p> <p><input type="checkbox"/> Yes: By the Governor</p>
<p>(8) Briefly explain the regulation in clear and nontechnical language.</p> <p>The purpose of this final-form rulemaking is to take advantage of a Federal option of the Breast and Cervical Cancer Prevention and Treatment (BCCPT) Act of 2000 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 pre-cancerous condition of the breast or cervix.</p>	
<p>(9) State the statutory authority for the regulation and any relevant state or federal court decisions.</p> <p>§§ 201(2) and 403(b) of the Public Welfare Code (P.L. 31, No. 21) (62 P.S. §§ 201(2) and 403(b)).</p> <p>Title XIX of the Social Security Act, § 1902(a)(10)(A)(ii)(XVIII) (42 U.S.C.A. § 1396a(a)(10)(A)(ii)(XVIII)).</p>	

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(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.

Although Federal law does not mandate this final-form rulemaking, it does provide for a state to elect to implement this option under the Medicaid Program. Pennsylvania elected to implement BCCPT effective January 1, 2002.

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

Breast cancer is the most common form of cancer diagnosed among women in Pennsylvania and the second most common cause of cancer deaths for women in Pennsylvania. Cervical cancer, while less common than breast cancer, is one of the most successfully treated cancers if detected at an early stage. The Department of Health's (DOH) HealthyWoman Project, through its grant from the NBCCEDP, 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). Under Federal law, the DOH must agree that low-income women will be given priority in the provision of services. (42 U.S.C.A. § 300n(a)). Prior to implementation of BCCPT, 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. This final-form rulemaking provides full Medical Assistance benefits to eligible women who are diagnosed with breast or cervical cancer, or a pre-cancerous condition of the breast or cervix. BCCPT is part of a continuum of efforts by Pennsylvania to ensure the detection, prevention and treatment of breast and cervical cancer, or a pre-cancerous condition of the breast or cervix, among low-income, uninsured women.

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

Women who are diagnosed with breast or cervical cancer, or a pre-cancerous condition of the breast or cervix, may forgo necessary treatment due to lack of insurance coverage and inability to pay. Providing low-cost or no-cost treatment for breast and cervical cancer, or a pre-cancerous condition of the breast or cervix, to low-income, uninsured women may decrease the mortality rate for this population.

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

It is estimated that 1,109 women will be eligible for this program annually. Women under 65 years of age who are uninsured or lack creditable coverage, whose income is below 250% of the FPIG and who require treatment for breast or cervical cancer, or a pre-cancerous condition of the breast or cervix will benefit from this final-form rulemaking.

(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.)

No one will be adversely affected as this final-form rulemaking provides necessary health care coverage to women diagnosed with either breast or cervical cancer, or a pre-cancerous condition of the breast or cervix.

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(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.)

Women seeking BCCPT benefits will be required to meet the eligibility criteria.

There are approximately 11,600 women diagnosed with breast and cervical cancer each year in Pennsylvania. 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.

(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.

The proposed rulemaking was shared with the Medical Assistance Advisory Committee, the Income Maintenance Advisory Committee and the Consumer Subcommittee for their review and comments. All three committees applauded the Department for its effort to provide Medicaid benefits to low-income, uninsured women in need of treatment for breast or cervical cancer.

(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 that may be required.

Not applicable.

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

Not applicable.

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(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 that may be required.

Actual costs for this program were as follows: Fiscal Year 2001-2002 \$0.544 million (\$0.173 million in State funds); Fiscal Year 2002-2003 \$4.256 million (\$1.350 million in State funds); Fiscal Year 2003-2004 \$7.389 million (\$2.457 million in State funds); Fiscal year 2004-2005 \$11.724 million (\$3.825 million in State funds); Fiscal Year 2005-2006 \$12.751 million (\$4.085 million in State funds).

The Department estimates the cost in Fiscal Year 2006-2007 for the program to be \$15.780 (\$5.020 million in State funds).

Linda S. Seaberg 1-19-07

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(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)

	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
SAVINGS:						
Regulated Community						
Local Government						
State Government						
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:						
Regulated Community						
Local Government						
State Government	\$5,020	\$6,556	\$7,703	\$8,627	\$9,664	\$10,830
Total Costs	\$5,020	\$6,556	\$7,703	\$8,627	\$9,664	\$10,830
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.

This program was implemented January 1, 2002. The amounts noted above are based on the Fiscal Year 2005-2006 actual inpatient and outpatient cost per eligible inflated to the current fiscal year and subsequent outyears.

The cost estimate for Fiscal Year 2006-2007 is based on estimated eligibles expected to utilize medical assistance and average Medicaid costs for women with breast, cervical cancer and pre-cancerous conditions of the breast or cervix. The Fiscal Year 2006-2007 estimate is based on a projected average monthly eligibles of 1,046.

	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
MA-Inpatient	\$998	\$1,260	\$1,430	\$1,546	\$1,672	\$1,809
MA-Outpatient	\$4,022	\$5,296	\$6,273	\$7,081	\$7,992	\$9,021

Linda A. Buckley 1-19-07

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(20b) Provide the past three years expenditure history for programs affected by the regulation.

(Dollar Amounts In Thousands)

Program	FY 2002-2003	FY 2003-2004	FY 2004-2005	FY 2005-2006
MA-Inpatient	\$407,104	\$411,042	\$531,875	\$474,693
MA-Outpatient	\$516,832	\$677,979	\$842,991	\$945,950

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

There has been no consistent avenue available to fund the ongoing treatment needs of low-income, uninsured women diagnosed with breast or cervical cancer, or a pre-cancerous condition of the breast or cervix. As such, many individuals have gone without necessary treatment that would prevent or cure their illness. This option will provide uninsured, low-income individuals with health care coverage that will enable them to seek necessary treatment; thereby, decreasing the incidence of uncompensated care on Pennsylvania's cancer mortality rate.

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

The Department considered forgoing this Medical Assistance option, but recognized that the option would allow Pennsylvania to continue its current efforts to reduce the incidence of breast and cervical cancer.

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

No alternative regulatory schemes were considered.

(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 provisions in this final-form rulemaking are more stringent than Federal standards.

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

No, the final-form rulemaking will not put Pennsylvania at a competitive disadvantage with other states. Washington and Virginia implemented BCCPT on July 1, 2001 via amendments to their state plans. South Carolina implemented BCCPT on October 1, 2001 via an amendment to its state plan. All three states received Federal approval of their state plan amendments. Pennsylvania implemented BCCPT on January 1, 2002 and received approval to the State Plan Amendment on February 15, 2002 from the Centers for Medicare and Medicaid Services.

(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 other State agency regulations are affected by this final-form rulemaking.

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

No public hearings or informational meetings are planned. The proposed rulemaking was shared with the Consumer Subcommittee, Medical Assistance Advisory Committee and the Income Maintenance Advisory Committee. If necessary, future meetings will be held with these groups.

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

New application forms were created 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 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.

(Continued on separate page designated as page 8A of 8)

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

This final-form rulemaking provides additional health services to low-income, uninsured women.

(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 effective date of this final-form rulemaking is retroactive to January 1, 2002.

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

This final-form rulemaking will be reviewed through the Department's Quality Control and Corrective Action review process, which is monitored by the Federal Centers for Medicare and Medicaid Services.

(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.

(Cont'd.)

PA 600B - The Breast and Cervical Cancer Prevention and Treatment Program Application Form - A two-part application used by the HealthyWoman Project and the Department to determine eligibility for BCCPT. Part A of the application is completed at the DOH HealthyWoman Project screening site and contains demographic and income information, consent for release of information and BCCPT rights and responsibilities. Part B of the application is completed by the applicant, the medical provider and the Department. 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.

PA 600BP - The Breast and Cervical Cancer Prevention and Treatment Program Partial Renewal Form - 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 Department complete this form.

PA 600BR - The Breast and Cervical Cancer Prevention and Treatment Program Annual Renewal Form - Completed every 12 months when continued eligibility for BCCPT is reviewed. The recipient, the medical provider, the Office of Medical Assistance Programs and the Office of Income Maintenance complete this form.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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REVIEW COMMISSION

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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By: _____ (Deputy Attorney General)</p> <p>_____</p> <p>Date of Approval</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>DEPARTMENT OF PUBLIC WELFARE</u> (Agency)</p> <p>LEGAL COUNSEL: <u>Jean E. Graybill</u></p> <p>DOCUMENT/FISCAL NOTE NO. <u>14-490</u> (DPW-OIM-12-01-01)</p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u>Stella B. Richman</u></p> <p>TITLE: <u>Secretary of Public Welfare</u> (Executive Officer, Chairman or Secretary)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies</p> <p>BY: <u>Andrew C. Clark</u></p> <p><u>JAN 22 2007</u></p> <p>_____</p> <p>Date of Approval</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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NOTICE OF FINAL-FORM RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

OFFICE OF INCOME MAINTENANCE

[55 Pa.Code Chapter 140]

Special MA Eligibility Provisions

Statutory Authority

The Department of Public Welfare (Department), by this order, adopts the final-form rulemaking set forth in Annex A pursuant to the authority of §§ 201(2) and 403(b) of the Public Welfare Code, Act of June 13, 1967, P.L. 31, No. 21 (62 P.S. §§ 201(2) and 403(b)) and Title XIX of the Social Security Act, § 1902(a)(10)(A)(ii)(XVIII) (42 U.S.C.A. § 1396a(a)(10)(A)(ii)(XVIII)) (relating to state plans for medical assistance). Notice of proposed rulemaking was published at 34 Pa.B. 6335 on November 27, 2004.

Purpose of Regulation

The purpose of this final-form rulemaking is to take advantage of a Federal option in the Breast and Cervical Cancer Prevention and Treatment Act of 2000 (BCCPT Act) (Pub. L. No. 106-354) 42 U.S.C.A. § 1396a(a)(10)(A)(ii)(XVIII) (relating to state plans for medical assistance). This Act permits states to provide Medical Assistance to 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). Such individuals must be diagnosed and found to need treatment for either breast or cervical cancer, or a pre-cancerous condition of the breast or cervix. Coverage is limited to women who are "uninsured" which is defined in § 140.702 (relating to definitions) as lacking "creditable coverage" as that term is defined in the Health Insurance Portability and Accountability Act (HIPAA), (Section 2701(c) of the Public Health Service Act (42

U.S.C.A. § 300gg(c)(1)) (relating to increased portability through limitation on preexisting condition exclusions).

Consistent with the BCCPT Act, providers and facilities funded in full or in part by the CDC are authorized to screen women only. Breast cancer is the most common form of cancer diagnosed among women in Pennsylvania and the second most common cause of cancer deaths for women in the Commonwealth (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).

The BCCPT Act amended Title XIX of the Social Security Act, § 1902(a)(10)(A)(ii)(XVIII) (42 U.S.C.A. § 1396a(a)(10)(A)(ii)(XVIII) (relating to state plans for medical assistance)). Pennsylvania has elected this option and published a notice of intent to implement the Breast and Cervical Cancer Prevention and Treatment Program ("BCCPT Program") at 32 Pa.B. 115 (January 5, 2002). Pennsylvania's State Plan Amendment to provide Medical Assistance under the BCCPT Program to uninsured women screened and diagnosed with breast or cervical cancer, or a pre-cancerous condition of the breast or cervix, was approved on February 15, 2002 by the Centers for Medicare and Medicaid Services (CMS). The Department of Health (DOH) is the designated screening entity for the BCCPT Program.

Under Federal law, the DOH must agree that low-income women will be given priority in the provision of services. (42 U.S.C.A. § 300n(a)(relating to additional required agreements)). 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 Program on January 1, 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.

Affected Individuals and Organizations

The final-form rulemaking affects and benefits women under 65 years of age who are uninsured, who have been screened for breast or cervical cancer through the CDC NBCCEDP, and have been diagnosed and found to need treatment for either breast or cervical cancer, or a pre-cancerous condition of the breast or cervix.

There are approximately 11,600 women diagnosed with breast and cervical cancer each year in the Commonwealth (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 Medical Assistance each year under this option.

Accomplishments and Benefits

The final-form rulemaking will take advantage of a Federal option of the BCCPT Act that permits states to provide Medical Assistance to uninsured women under 65 years of age who have been screened for breast or cervical cancer through the CDC NBCCEDP, and diagnosed and found to need treatment for either breast or cervical cancer, or a pre-cancerous condition of the breast or cervix.

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 pre-cancerous condition of the breast or cervix. As a result, many women may have gone without necessary treatment that may prevent or cure their illness. This option will provide low-income, uninsured women with Medical Assistance that will enable them to seek necessary treatment, thereby decreasing the incidence of uncompensated care and the Commonwealth's cancer mortality rate.

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.

Fiscal Impact

The Pennsylvania Department of Insurance might realize a savings since some women determined eligible for the BCCPT Program might have been otherwise eligible for medical coverage under the adultBasic Program administered by the Department of Insurance and funded by tobacco settlement funds.

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

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 the BCCPT Program: 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 BCCPT Program was commenced. 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 County Assistance Office (CAO) to determine eligibility for the BCCPT Program. Part A of the application is completed at the DOH HealthyWoman Project screening site and contains demographic and income information, consent for release of information, and BCCPT Program 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 of Public Welfare.

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.

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

Additional information relating to the Commonwealth's BCCPT Program can be found in MA Bulletins 99-01-02 and 99-02-06, and Chapter 317 of the Medicaid Eligibility Handbook available on the Department's website (www.dpw.state.pa.us).

The Department includes eligibility information about the DOH HealthyWoman Program on the Department's website. A link to learn more about the DOH HealthyWoman Project, including the 250% income eligibility limit which is updated annually on the DOH website, is included on the Department's website.

Public Comment

Written comments, suggestions and objections regarding the proposed rulemaking were requested within a 30-day period following publication of proposed rulemaking. The Department received letters from the Independent Regulatory Review Commission (IRRC) and two commentators: the Pennsylvania Health Law Project (PHLP) and Community Legal Services, Inc (CLS). In addition to providing comments on the proposed rulemaking, PHLP stated that the BCCPT Program has been invaluable to eligible women in providing coverage for needed treatment of breast or cervical cancer, or a precancerous condition of the breast or cervix. CLS thanked the Department for adopting the BCCPT Program.

The Department has carefully reviewed and considered each suggestion and comment and thanks the commentators.

Discussion of Comments and Major Changes

Following is a summary of the comments received within the public comment period following publication of the proposed rulemaking and the Department's response to those comments.

General - - Regulations

One commentator remarked that limiting the BCCPT Program to women unconstitutionally excludes men with breast cancer.

Response

The BCCPT Act covers individuals who have been screened under the Centers for Disease Control and Prevention breast and cervical cancer early detection program established under Title XV of the Public Health Service Act (42 U.S.C.A. §§ 300k-300n-5), which specifies "women." 42 U.S.C.A. § 1396a(aa)(3). The Department must provide Medical Assistance in accordance with the BCCPT Act (42 U.S.C.A. § 1396a(a)(10)(A)(ii)(XVIII)(relating to state plans for medical assistance)).

General - - Regulations

One commentator believes that limiting the program to women who are screened through the HealthyWoman Project sites creates unnecessary obstacles to accessing the BCCPT Program.

Response

The BCCPT Act specifies eligible women must be screened through the CDC NBCCEDP. CDC NBCCEDP has identified the HealthyWoman Project as the accepted healthcare provider.

General - - Preamble

One commentator recommends referencing sources of information such as Medical Assistance Bulletins 99-01-12 and 99-02-06 and Operations Memorandum OPS011208 in the preamble.

Response

The Department agrees in part. Information included in the Operations Memorandum has been incorporated into Chapter 317 of the Medicaid Eligibility Handbook, which is available at the Department's website (www.dpw.state.pa.us).

Some information included in the non-regulatory documents has been incorporated into the final-form rulemaking. For example, the definition of “Treatment for Breast and Cervical Cancer” has been included in § 140.702 (relating to definitions).

§§ 140.602 Definitions, 140.621(2)(ii) Conditions of Eligibility, and 140.633(1) Verification Requirements. (redesignated as §§ 140.702 Definitions, 140.721(2)(ii) Conditions of Eligibility, and 140.733(i) Verification Requirements)

One commentator expressed concern with the Department’s use of the term “need treatment.” In addition, the IRRC stated that the term should be edited for clarity. The Pennsylvania Health Law Project commented that the phrase ‘need treatment’ should be more clearly defined and it is unclear if this phrase includes taking medication designed to prevent the recurrence of cancer. The PHLP also stated that the regulation may result in different interpretations by different providers, and that “[t]he lack of clear definition has been problematic for consumers trying to access coverage through the BCCPT.”

IRRC noted that MA Bulletin 99-01-12, effective January 1, 2002, includes a definition for “treatment for breast or cervical cancer” and recommends that the Department include this definition in the final-form rulemaking.

Response

The Department concurs with the commentator and the IRRC and has revised the regulation accordingly to include a definition for “treatment for breast or cervical cancer” in § 140.702 (relating to definitions). That definition includes medical services to prevent recurrence.

§ 140.621. Conditions of eligibility. (redesignated as § 140.721)

The IRRC and one commentator stated that the reference to Chapter 149 in § 140.621(1)(iii) (redesignated as § 140.721(1)(iii)) should be edited for clarity and replaced with a reference to Chapter 150 (relating to citizenship and alienage provisions for categorically needy NMP-MA and MNO-MA).

Response

The Department agrees that Chapter 149 is an incorrect reference and replaced the reference to Chapter 149 with a reference to Chapter 150 (relating to citizenship and alienage provisions for categorically needy NMP-MA and MNO-MA).

§ 140.621(2)(iii). Conditions of eligibility. (redesignated as § 140.721(2)(iii))

One commentator suggested that stating that women must be “uninsured” to be eligible misleads the reader. This commentator recommended that language in the regulations pertaining to being “uninsured” as a condition of eligibility should be changed to “having no creditable coverage” and all uses of the word “uninsured” should be deleted.

Response

The Department agrees in part. The BCCPT Act requires that, to be eligible, women “are not otherwise covered under creditable coverage, as defined in section 2701(c) of the Public Health Service Act (42 U.S.C.A. § 300gg(c)(1))” (relating to increased portability through limitation or preexisting condition exclusions). The term “uninsured” is defined in § 140.702 as “Having no creditable coverage as the term is defined 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)(1))).” Because the word “uninsured” has been defined in the regulations to mean “having no creditable coverage”, the word has not been deleted from the final-form rulemaking.

§ 140.621(2)(iv). Conditions of eligibility. (redesignated as § 140.721(2)(iv))

One commentator commented that the regulations should provide an exception that would allow BCCPT Program eligibility for women that were eligible for Medical Assistance for Workers with Disabilities (MAWD). The commentator suggested that the regulation should be changed to limit eligibility to women who are “ineligible for any other categorically needy Medicaid program, except those charging monthly premiums, such as MAWD.”

Response

The Department disagrees. Pennsylvania provides coverage under 1902(a)(10)(a)(ii)(XVIII) of the Social Security Act (42 U.S.C.A. § 1396a) (relating to state plans for medical assistance), which specifies that women must not be otherwise covered under creditable coverage, as defined in HIPAA (Section 2701(c) of the Public Health Service Act (42 U.S.C.A. § 300gg(c)(1)(relating to increased portability through limitation on preexisting condition exclusions).

§ 140.631. Income eligibility limitations. (redesignated as § 140.731)

The IRRC and one commentator recommended that this section should be edited for clarity. The commentator remarked that this section should reference the regulations or guidelines, or both that describe the income eligibility requirements for

the CDC's, NBCCEDP and the HealthyWoman Project. The IRRC remarked that clarity would be improved by specifically identifying or including a cross-reference to where the income limits necessary to be eligible for screening by CDC NBCCEDP can be found and how an individual's income is determined.

Response

The Department disagrees with this request to include CDC NBCCEDP and the HealthyWoman Project income eligibility requirements and guidelines within the regulation. A woman who is income-eligible for the CDC's NBCCEDP meets the income requirements for the BCCPT Program. The Department does not do a separate determination of income eligibility. However, DOH's income eligibility requirements can be found on the Department's website at www.health.state.pa.us.

§ 140.633(a)(2). Verification requirements. (redesignated as § 140.733(a)(2))

One commentator stated that this section should read, "[v]erification that the woman is a United States citizen, a qualified alien, or otherwise PRUCOL as defined in Chapter 150. An applicant applying for BCCPT for an emergency medical condition is not required to verify alien status."

Response

The Department disagrees with the suggested revision. Emergency Medical Assistance and BCCPT are separate programs. Verification that an applicant is a United States citizen or a qualified alien is required for the BCCPT Program as for any other category of Medical Assistance. Permanently Residing Under Color of Law (PRUCOL) is an obsolete term. An individual who is ineligible for BCCPT because of alien status and who has an emergency medical condition may qualify for Medical Assistance for that medical emergency in accordance with 55 Pa.Code § 150.11 (relating to aliens eligible for emergency medical services).

Information relating to the coverage of emergency medical conditions for undocumented aliens was not included in the regulations because it is outside the scope of Chapter 140.

§ 140.641. Redetermination. (redesignated as § 140.741)

One commentator suggested this section should be edited for clarity and for use of consistent language.

Response

The Department agrees with the commentator's suggestion. In § 140.741, the words "for qualified women" have been deleted. The term "Categorically needy" has been replaced with "for all enrolled women." In addition, § 140.742 (relating to partial redetermination) has been revised for clarity and consistency with § 140.741.

*§§ 140.641(b) Complete Redetermination and 140.642(b) Partial Redetermination.
(redesignated as §§ 140.741(b) Complete Redetermination and 140.742(b) Partial
Redetermination)*

One commentator advised that the reference to Chapter 133 (relating to redetermining eligibility general provisions) in these sections is confusing and should be edited for clarity.

Response

The Department concurs and has added a cross-reference to a specific citation in Chapter 133.

§ 140.661. Eligibility begin date. (redesignated as § 140.761)

One commentator stated that this section should reference the section on retroactive eligibility by adding the following sentence to the end of this section: “However, retroactive coverage for services may be available as allowed for by the provisions under § 140.671 dealing with Retroactive Eligibility.”

Response

The Department has adopted this recommendation and a reference to retroactive eligibility has been added to this section. Section 140.671 has been redesignated as § 140.771 (related to retroactive eligibility).

§ 140.681. Reporting of changes. (redesignated as § 140.781)

The IRRC and one commentator commented that this section should be edited for clarity to include, or should reference provisions that include, what changes in circumstances need to be reported and to whom the changes should be reported.

Response

The Department agrees and has revised the text to provide that the recipient shall report changes to the Department that would affect eligibility as set forth in § 140.721 (relating to conditions of eligibility).

§ 140.691. Appeal and fair hearing. (redesignated as § 140.791)

One commentator stated that this section should be revised to add language explaining to which eligibility and service denials the appeal and fair hearing rights do and do not apply. Also, the commentator stated that additional guidance should be added regarding whether and how a woman can appeal HealthyWoman Project eligibility determinations.

Response

The Department disagrees that the HealthyWoman Project appeal and fair hearing information should be added to this regulation. Section 140.791 (relating to appeal and fair hearing) provides that the appeal and fair hearing rights under Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings) apply to eligibility determinations of the Department. This includes eligibility under the BCCPT Program. Appeals of service denials are beyond the scope of this rulemaking.

Regulatory Review Act

Under § 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)),
on **FEB 16 2007** the Department submitted a copy of this regulation 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 compliance with the Regulatory Review Act the Department
also provided the Committees and the IRRC with copies of all public comments
received, as well as other documentation.

In preparing the final-form regulation, the Department reviewed and considered
comments received from the Committees, the IRRC and the public.

In accordance with § 5.1 (j.1) and (j.2) of the Regulatory Review Act, this
regulation was [*deemed*] approved by the Committees on . The
IRRC met on and approved the final-form rulemaking.

In addition to submitting the final-form rulemaking, the Department has provided
the 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.

Order

The Department finds:

- (a) The public notice of intention to adopt the administrative regulation by this Order has been given pursuant to §§ 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202) and the regulations at 1 Pa.Code §§ 7.1 and 7.2.
- (b) That the adoption of this regulation in the manner provided by this Order is necessary and appropriate for the administration and enforcement of the Public Welfare Code.

The Department acting pursuant to the authority of §§ 201(2) and 403(b) of the Public Welfare Code, Act of June 13, 1967, P.L. 31, No. 21 (62 P.S. §§ 201(2) and 403(b)) and Title XIX of the Social Security Act, § 1902(a)(10)(A)(ii)(XVIII) (42 U.S.C.A. § 1396a(a)(10)(A)(ii)(XVIII)) orders:

- (a) The regulation of the Department is adopted to read as set forth in Annex A of this Order.
- (b) The Secretary of the Department shall submit this Order and Annex A to the Offices of General Counsel and Attorney General 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) This order shall take effect upon final publication in the *Pennsylvania Bulletin* retroactive January 1, 2002.

ANNEX A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart C. ELIGIBILITY REQUIREMENTS

CHAPTER 140. SPECIAL MA ELIGIBILITY PROVISIONS

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

GENERAL PROVISIONS

[§ 140.601.] § 140.701. Policy on [Medicaid] Medical Assistance for women with
breast or cervical cancer.

[§ 140.602.] § 140.702. Definitions.

ELIGIBILITY

[§ 140.621.] § 140.721. Conditions of eligibility.

INCOME, RESOURCES AND VERIFICATION

[§ 140.631.] § 140.731. Income eligibility limitations.

[§ 140.632.] § 140.732. Resource eligibility limitations.

[§ 140.633.] § 140.733. Verification requirements.

[REDETERMINATION AND PARTIAL] REDETERMINATION

[§ 140.641.] § 140.741. Complete redetermination.

[§ 140.642.] § 140.742. Partial redetermination.

BENEFIT COVERAGE

[§ 140.651.] § 140.751. Benefit coverage.

[§ 140.652.] § 140.752. Eligibility begin date.

[§ 140.671.] § 140.771. Retroactive eligibility.

REPORTING

[§ 140.681.] § 140.781. Reporting of changes.

RIGHT TO APPEAL AND FAIR HEARING

[§ 140.691.] § 140.791. Appeal and fair hearing.

GENERAL PROVISIONS

[§ 140.601.] § 140.701. Policy on [Medicaid] Medical Assistance for women with breast or cervical cancer.

The Department provides full [Medicaid] Medical Assistance 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.] § 140.702. Definitions.

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

BCCPT Program - Breast and Cervical Cancer Prevention and Treatment

Program - A Federally-funded [Medicaid] option that provides full [Medicaid] Medical Assistance benefits to uninsured women under 65 years of age[,] who have been screened[,] and diagnosed and are 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.

Treatment for Breast and Cervical Cancer - Medical services, which are, or are reasonably expected to provide one of the following:

- (1) Ameliorate the direct effects of breast or cervical cancer.
- (2) Aid in the clinical characterization of breast or cervical cancer,

including testing for the effectiveness of curative treatment but excluding screening for recurrence or new primary cancers.

- (3) Prevent the recurrence of breast or cervical cancer.

Uninsured - Having no "creditable coverage" as the term is defined 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)(1)).

ELIGIBILITY

[§ 140.621.] § 140.721. Conditions of eligibility.

Eligibility for [Medicaid] Medical Assistance under the BCCPT Program 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 MA residence provisions for categorically needy NMP-MA and MNO-MA).
 - (iii) Chapter [149] 150 (relating to citizenship and alienage provisions for categorically needy NMP-MA and MNO-MA).
 - (iv) Chapter 155 (relating to enumeration).
 - (v) Chapter 255 (relating to restitution).
 - (vi) Chapter 257 (relating to reimbursement).

(2) Under [categorically needy] the BCCPT Program, 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 otherwise ineligible for [any other] categorically needy Medicaid [program] as defined in 55 Pa. Code § 1101.21 (relating to definitions).

INCOME, RESOURCES AND VERIFICATION

[§ 140.631.] § 140.731. Income eligibility limitations.

There are no income limits when determining eligibility under the BCCPT Program. [except those necessary] An individual who meets the income limits to be eligible for screening by the CDC's NBCCEDP is income-eligible for the BCCPT Program.

[§ 140.632.] § 140.732. Resource eligibility limitations.

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

[§ 140.633.] § 140.733. Verification requirements.

(a) Under the BCCPT Program, 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 as the term is defined in 8 U.S.C.A. § 1641(b) (relating to definitions).

(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.] § 140.741. 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] the BCCPT Program, [for qualified women,] the [redetermination/reapplication requirements] eligibility factors in [Chapter 133 (relating to redetermining eligibility)] § 133.84(c) (relating to MA redetermining eligibility procedures) apply.

[§ 140.642.] § 140.742. Partial redetermination.

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

(b) For [Categorically Needy] the BCCPT Program [for qualified women], the partial redetermination [requirements] eligibility factors in [Chapter 133] § 133.84(d) (relating to MA redetermining eligibility procedures) apply.

BENEFIT COVERAGE

[§ 140.651.] § 140.751. Benefit coverage.

The Department will provide full [Medicaid] Medical Assistance coverage for a woman determined eligible under the BCCPT Program.

[§ 140.661.] § 140.761. 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. Retroactive BCCPT Program benefits are available under § 140.771 (relating to retroactive eligibility).

[§ 140.671.] § 140.771. Retroactive eligibility.

The earliest possible date for retroactive BCCPT Program 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 Program 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.] § 140.781. Reporting of changes.

The recipient shall report changes [in circumstances] that would affect eligibility for [participation in] the BCCPT Program under § 140.721 (relating to conditions of eligibility) to the Department within 10 days from the date of the change.

RIGHT TO APPEAL AND FAIR HEARING

[§ 140.691.] § 140.791. 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).

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

I.D. NUMBER: 14-490
 SUBJECT: SPECIAL MA ELIGIBILITY PROVISIONS
 AGENCY: DEPARTMENT OF PUBLIC WELFARE

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

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 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2-16-07		HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES
2-16-07		INDEPENDENT REGULATORY REVIEW COMMISSION
X	2/16/07	SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE
X	2/16/07	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)