

TEFRA SUMMARY

What is TEFRA? The **Tax Equity and Fiscal Responsibility Act (TEFRA)** of 1982 is a federal law that allows states to make **Medical Assistance (MA)** available to certain children with disabilities without counting their parent's income.

- No additional services other than the MA benefit set are provided under the TEFRA option, but TEFRA can extend MA eligibility for children who are disabled and would not otherwise have a basis of eligibility.
- If a child needs additional services, they can apply for **Home and Community-Based Services “Waivers”** [NOTE: more information on “Waivers” is included later in this DHS topic packet]

Who is eligible? A child must meet **all** of the following:

1. Child is under age 19 years [NOTE: Beginning at age 18, the person usually doesn't need TEFRA, since parent income is no longer counted if the youth is disabled.]
2. Child lives with at least one biological or adoptive parent
3. Child is certified disabled [by the **State Medical Review Team (SMRT)**]
4. Child requires the level of care provided by:
 - A hospital
 - A nursing home, or
 - An **Intermediate Care Facility for persons with Mental Retardation (ICF/MR)** and related conditions*The cost for home care must not be more than the cost MA would pay for the child's care in an institution.
5. Child's income is under MA limit of 100% of the Federal Poverty Guideline (FPG) for a household size of one. There are no asset limits. Children with incomes over 100% FPG can “spend down” to 75% FPG.

[NOTE: TEFRA is available to noncitizen children as another way to access NMED and EMA services without counting parent's income. For EMA, the child would also need to have a medical emergency.]

How is eligibility determined? The **State Medical Review Team (SMRT)** determines if the child is disabled, and issues a disability certification for 1-4 years, depending on the severity of the child's condition(s). At the end of the certification period, the child must reapply with SMRT. To be certified disabled for TEFRA, the child must meet both **(1) disability** and **(2) level of care criteria**:

1. Disability review:

- Medical, psychological and school records are reviewed to determine if the child's condition(s) meet the disability criteria from the **Social Security Administration (SSA)**. [NOTE: these disability criteria are contained in the “**Tools**” topic packet in this manual under **SSI Medical Evaluation Guidelines-Part B (for children under age 18 yrs.)**]
- SMRT assigns each case to a SMRT Case Manager, who reviews the case and decides if there is enough evidence to make a disability determination. If SMRT needs more evidence, the SMRT Case Manager can assist the client in obtaining the evidence by:
 - Contacting the client directly,
 - Contacting the client's providers and requesting documents.
 - Arranging an appointment for an evaluation, if necessary.*If the client has no coverage, SMRT can authorize payment for an evaluation, including transportation.

2. Level of Care review:

- SMRT determines the level of care using evidence from medical providers, school-based providers, and others.
- Parents' input is also required and is provided by completing a "Children's Disability Worksheet" (DHS #6126). This worksheet allows parents to express their view of their child's condition(s); their child's ability to perform activities of daily living; and their child's behavior at home, at school, and in the community

Can a family appeal a decision that their child does not meet disability criteria? Yes. A fair hearing request must be made orally or in writing within 30 days by telling their county worker or writing to the State Appeals Office at the DHS.

- If the family appeals a recertification denial **within ten days** of receiving the denial notice or before the termination date, TEFRA will continue while the appeal is heard and decided.
- If the family appeals more than 30 days after receiving SMRT's decision, a hearing will be scheduled to decide if there is good reason for requesting the hearing late.
- If the family loses the appeal, they may be asked to repay to MA the child's service costs that were paid during the appeals process.

Is there any cost to the family? Parents may have to pay a **parental fee** based on family size and income. [NOTE: Information on **Parental Fees** is included later in this DHS topic packet]

- Children with disabilities whose family income is within "regular" MA income standards do not need TEFRA.
- It may be better for some families to not apply for TEFRA if the child would be eligible for "regular" MA with a spend-down as the spend-down may be less than the parental fee.

What happens when the TEFRA enrollee turns age 18? An application should be made for Supplemental Security Income (SSI). The youth's MA is left open (as a disabled child ages 18-21) while the SSI determination is pending.

- If SSI determines that the youth is not disabled and the youth continues to live with the parents, MA eligibility would be determined using the "children under 21" basis and the parent income would be counted.

What if a child with a mental illness or a Severe Emotional Disturbance (SED) is not TEFRA eligible? If the child doesn't meet the TEFRA level of care criteria, the child may still be eligible for certain mental health services from their county human services agency.

- If the child has an SED, the child can receive county case management services and other family community support services under the Children's Mental Health Act. This may include crisis placement, help with independent living and parenting skills, day treatment, respite care, and a number of other services.
- If the child has an emotional disturbance (ED), some services, including crisis assistance, may still be available from their county. [NOTE: See **Mental Health** topic packet for more information.]

How do you apply for TEFRA? Contact your county human services (social services) agency and ask to speak with a Developmental Disability Social Worker about TEFRA.

- Complete the MHCP application to determine if there is eligibility for "regular" MA (because it does not require parents to pay a parental fee).
- Provide all required documentation to the county for a SMRT disability determination (unless your child has already been determined disabled by SSA)

[SOURCES: [1] DHS Disability Manual (7-09); [2] MHCP Manual, Sections 03.30.25 and 12.15 (downloaded 7/22/10)].



State Medical Review Team

Medical Assistance – TEFRA Option Required Documentation for Physical Disability

The following information is required to complete your client's **physical disability** determination. Please **do not** submit the case unless all of these items are included.

- Results of a routine physical examination signed by the physician (**no more than 3 months old**) which includes:
 - Current diagnosis
 - Clinical findings – results of physical or mental status exams
 - Laboratory findings, for example:
 - blood pressure
 - blood test results
 - X-rays
 - Required treatments (include type of treatment, who performs it, and if supervised, credentials of supervisor)
 - Current medications
 - Growth data from the past year (height and weight)
- **Reports from any consulting medical specialists.** The report should be no more than 3 months old and include the primary diagnosis, a detailed summary within the areas of specialty of examination. Also include results of any tests, X-rays, or scans that confirm the diagnosis, and treatment and response.
- A **Children's Disability Worksheet** (DHS-6126) to be completed by the parent/guardian.
- If applicable, an **Individual Education Plan** (IEP) or **Individual Family Service Plan** (IFSP) that is current within 1 year, along with the most recent **Team Assessment Summary** (done every three years). For children under school age, submit an **Early Childhood Assessment Summary**.
- If the client receives **ANY** other special services (e.g. speech, physical, or occupational therapy or rehab), please provide updated evaluations and progress notes regarding these activities.
- Discharge summaries from any recent hospitalizations.

If you have any questions concerning this information, please call SMRT at (651) 431-2493 or (800) 235-7396.



State Medical Review Team

Medical Assistance – TEFRA Option Required Documentation for Developmental Disability

The following information is required to complete your client's **developmental disability** determination. Please **do not** submit the case unless all of these items are included.

- Results of a routine physical examination (**no more than 3 months old**) performed by a medical doctor which includes:
 - Current diagnosis
 - Clinical findings – results of physical exams
 - Laboratory findings, for example:
 - blood pressure
 - blood test results
 - X-rays
 - Current medications
- **Reports from any consulting medical specialists.**
- A **Children's Disability Worksheet** (DHS-6126) to be completed by the parent/guardian.
- An **Individual Education Plan** (IEP) or **Individual Family Service Plan** (IFSP) that is current within 1 year, along with the most recent **Team Assessment Summary**. For children under school age, submit an **Early Childhood Assessment Summary**.
- Most recent achievement and IQ scores
- Adaptive behavior rating by both parent and teacher, for example:
 - The Vineland Adaptive Behavior Rating Scale
 - The Battelle Inventory
 - The Childhood Autism Rating ScaleThese documents are most often found in the Team Assessment Summary that comes from the school, but they may also be performed by psychologists or developmental clinics.
- If the client receives **ANY** other special services (e.g. speech, physical, occupational therapy, rehab), please provide updated evaluations/progress notes regarding activities.

If you have any questions concerning this information, please call SMRT at (651) 431-2493 or (800) 235-7396.



State Medical Review Team

Medical Assistance – TEFRA Option Required Documentation for Mental Health Disability

The following information is required to complete your client's **mental health disability** determination. Please **do not** submit the case unless all of these items are included.

- Results of a routine physical examination (**no more than 3 months old**) performed by a medical doctor which includes:
 - Current diagnosis
 - Clinical findings – results of physical or mental status exams
 - Laboratory findings, for example:
 - blood pressure
 - blood test results
 - X-rays
 - Current medications
- **Complete psychiatric/psychological evaluation** (no more than 1 year old) performed by a licensed psychologist or psychiatrist. The evaluation must contain **ALL** of the following:
 - Current life situation and sources of stress, including reasons for referral
 - History of client's current mental health problem, including important developmental incidents, strengths, vulnerabilities (include psychiatric and social history)
 - Current functioning and symptoms related to all diagnoses
 - Indicate if the client has a serious and persistent mental illness
 - Diagnosis on **ALL** 5 axes with GAF scores (no provisional diagnoses)
- **If the evaluation is more than 3 months old or the client's condition has changed, an updated progress report is required, in addition to the complete psychiatric/psychological evaluation. The progress report should include ANY changes in the client's condition (behavior, medication management, change of medication, and/or potential for hospitalization).**
- The most current treatment plan signed by a professional which includes:
 - All medical services being performed (including non-mental health), duration, frequency, and level of professional performing the service
 - Supervision/monitoring – who performs, what times of the day (psychiatric disability requires 24-hour supervision or monitoring)
 - Therapy goals, client progress
- Discharge summaries from any hospitalizations, or day treatment reports
- An **Individual Education Plan (IEP)** that is current within 1 year, along with the most recent **Team Assessment Summary** (performed every 3 years).
- A report from the client's school that that outlines:
 - Grades
 - Behavior in school
 - Most recent achievement scores and intelligence (IQ) test scores
- A **Children's Disability Worksheet** (DHS-6126) to be completed by the parent/guardian.

If you have any questions concerning this information, please call SMRT at (651) 431-2493 or (800) 235-7396.

PARENTAL FEES

For children approved for Medical Assistance (MA) under TEFRA, CAC, CADI, TBI, a DD Waiver or an out-of-home placement, Minnesota law says that parents may have to pay a parental fee to reimburse the state for part of their child's MA (Medical Assistance) costs.

Who has to pay a parental fee?

- All parents with an Adjusted Gross Income (AGI) over 100% of Federal Poverty Guidelines (FPG) will have a fee.
- Parents not living with each other may each have to pay a fee.
- Families with more than one child certified disabled have only one parental fee.

[NOTE: The following parents do **not** have a parental fee: (1) Parent Adjusted Gross Income is less than 100% FPG; or (2) Parental rights have been terminated; or (3) Child on MA is emancipated; or (4) Child receives state or Title IV-E adoption assistance.]

What information is used to determine parental fees? Parental fees are set by the State Legislature (Minn. Statute 252.27). Parental fees begin the first month in which MA-TEFRA is effective or HCBS program services are received. Fees are billed through the month the child turns age 18 yrs. Parental fees can change each fiscal year due to annual changes in the FPG or changes in family AGI or family size.

Information used to calculate a parental fee includes:

- AGI (before taxes) from last year's federal tax return. Do not include stepparent income.
- The amount of MONTHLY court-ordered support paid for the child receiving services.
- Household size. Household size includes the natural and adoptive parents and their dependents who live in their home. The child receiving MA services is included in the household size. Stepparents and stepchildren are not counted.
- Whether the child receiving MA lives in the parent's home.
- Whether the child receiving MA has private health insurance. (Fees will increase if parents can obtain health insurance for their child through an employer at a cost of less than 5 percent of their AGI and they choose not to obtain it.)

What happens if parents fail to send DHS the information needed to determine a parental fee or if they do not pay the parental fee? The child does not lose MA and will not be refused MA services.

- If the parent doesn't send DHS the information to determine the parental fee, they will be charged for the full cost of services provided to the child.
- Legal action may be taken against the parent for not paying parental fees, including, but not limited to, turning the account over for collections, taking parent's state tax refund, and garnishing wages.

What if parents pay more in parental fees than MA pays for cost of the child's care?

- Total amount the parent owes for a fiscal year (July through June) will never be higher than the cost of the services paid by MA and the county for that same year
- Shortly after the fiscal year ends, parents receive a statement comparing the cost of the services MA paid on behalf of their child against the fees they were charged for that year
- If the family paid more in parental fees, overpayment is credited to the next year's parental fees. If the child has turned age 18yr. or is no longer of an MA eligibility type that requires a parental fee, overpayment is refunded to the parents

Can the parental fee be changed? Yes. Parents who have questions about or want to ask for a change in their parental fee should call the Parental Fee Unit at (651) 431-3806, or (800) 657-3751 or (800) 366-2919. The Parental Fee Unit should be notified (preferably in writing) as soon as possible of any of the following changes that occur:

These changes **must** be reported within 30 days:

- Your family size changes (increase or decrease of household members).
- Parents separate and no longer live in the same household. Separate accounts will be set up for each parent and each parent will be responsible for their own fee calculation based on their individual income.
- The child on MA has a change in living arrangement (a child living at home goes into out-of-home placement, or a child in out-of-home placement returns home).
- Family income changes by more than 10% from one month to another.

Other circumstances that **may** change the parental fee:

- Parent obtains or cancels insurance coverage for the child receiving MA.
- Family's past medical expenses paid for the child (not covered by other health insurance or MA) is at least 60% less than the family parental fee.
- The AGI reported on the federal tax form includes capital gains used to purchase a home.
- The AGI reported on the federal tax form is different than the amount of income actually distributed to you, creating a unique financial situation. (Withdrawal of IRA and/or pension fund is not a unique financial situation)
- Family qualifies for a change under a "Variance for Undue Hardship". This can be granted for certain out-of-pocket expenses which are allowable as federal income tax deductions. These expenses include: (1) medical expenses not paid by MA, insurance, or a pre-tax medical account for any member of the household (2) expenditures for adaptations to the home or parent's vehicle necessary to accommodate the disabled child; or (3) casualty losses [NOTE: College education expenses, most new home purchases and clothing/personal expenses are not allowable as hardship deductions]

Can parents appeal the parental fee? Parents have the right to ask for a review or an appeal of their fee. The request must be made in writing within 30 calendar days of the date of the parental fee Determination Order, or within 90 calendar days if parents have good cause for failing to request a hearing within 30 calendar days. Parental fees can't be changed simply because the parent feels they cannot pay it. Minnesota Law does not give authority to either the Financial Operations Division or the Appeals referee to waive the parental fee.

Can parental fees be counted as a deductible medical expense on IRS taxes? Internal Revenue Service (IRS) Code section 213(a) allows itemized deductions for expenses paid for the medical care of the taxpayer, the taxpayer's spouse, or a dependent (if such expenses exceed 7.5% of adjusted gross income). It doesn't matter that the payments (parental fees) are paid to the state versus directly for the medical services. The expenses paid through TEFRA parental fees are clearly medical expenses considered deductible under IRC 213. Parents should contact their tax preparer for specific questions.

Can parental fees be reimbursed through an employer’s flex spending account? Possibly. However, the employer’s flex spending account plan manager determines what expenses can be reimbursed and some do not allow parental fees to be included. The Department of Human Services has NO control over the employer’s flex spending account rules. The 2009 Minnesota Legislature included a change regarding parental fee refunds. If parents pay their parental fee using their employer medical flex spending account, parents may be responsible for paying taxes on the refunded amount (or the amount credited toward next year’s parental fee), since it may be considered taxable income. Parents should contact their tax preparer for specific questions.

ESTIMATING PARENTAL FEES:

A Parental Fees Estimator that will assist in estimating the monthly parental fee while a child is receiving MA TEFRA or Waivered Services is located at the following website: <http://pfestimator.dhs.mn.gov/> The calculated monthly fee is only an estimate and not a legally binding amount. The actual fee will be determined by DHS after receiving a completed questionnaire (DHS-2981) and a copy of applicable federal income tax return. The monthly fee will be recalculated each year to account for changes in the family’s financial situation. Bills can be paid online after being notified of the actual fee. For questions, or help in estimating fees, please contact the parental fee unit at (651)431-3806 or (800) 657-3751.

Parents will need to enter the following information into the estimator to calculate a fee:

- AGI from the previous years federal tax return
- Number of dependents
- Whether the child on MA lives in the home
- Amount, if any, of child support paid that same year for the child receiving MA.
- Whether the child on MA has other private health insurance
- Number of parents living at child’s home

EXAMPLES OF ESTIMATED FEES:

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| <ul style="list-style-type: none"> • AIG of \$50,000 • 2 dependents • Child on MA lives in home • No child support paid • No private insurance • 2 parents living in home • Estimated Monthly Fee \$75.63 | <ul style="list-style-type: none"> • AIG of \$80,000 • 3 dependents • Child on MA lives in home • No child support paid • Yes to other private insurance • 2 parents living in home • Estimated Monthly Fee \$227.50 |
| <ul style="list-style-type: none"> • AIG of \$50,000 • 2 dependents • Child on MA lives in home • No child support paid • No private insurance • 1 parents living in home • Estimated Monthly Fee \$112.37 | <ul style="list-style-type: none"> • AIG of \$100,000 • 2 dependents • Child on MA lives in home • No child support paid • Yes to other private insurance • 2 parents living in home • Estimated Monthly Fee \$516.39 |

[SOURCES: [1]DHS-2977 (4-10); [2] DHS MHCP manual, Section 16.20 (downloaded 8/3/10); [3]Position Statement on Parental Fees (Oct 2008). Arc Minnesota (downloaded 8-3-10)