SENATE, No. 2435

STATE OF NEW JERSEY

216th LEGISLATURE

INTRODUCED OCTOBER 9, 2014

Sponsored by:
Senator RICHARD J. CODEY
District 27 (Essex and Morris)
Senator JOSEPH F. VITALE
District 19 (Middlesex)

Co-Sponsored by:
Senator Stack

SYNOPSIS

Provides Medicaid coverage for advance care planning.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 12/18/2015)

1 **AN ACT** concerning Medicaid coverage for advance care planning
2 and amending P.L.1968, c.413.
3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*
6
7 1. Section 6 of P.L.1968, c.413 (C.30:4D-6) is amended to read
8 as follows:
9 6. a. Subject to the requirements of Title XIX of the federal
10 Social Security Act, the limitations imposed by this act and by the
11 rules and regulations promulgated pursuant thereto, the department
12 shall provide medical assistance to qualified applicants, including
13 authorized services within each of the following classifications:
14 (1) Inpatient hospital services;
15 (2) Outpatient hospital services;
16 (3) Other laboratory and X-ray services;
17 (4) (a) Skilled nursing or intermediate care facility services;
18 (b) Early and periodic screening and diagnosis of individuals
19 who are eligible under the program and are under age 21, to
20 ascertain their physical or mental defects and the health care,
21 treatment, and other measures to correct or ameliorate defects and
22 chronic conditions discovered thereby, as may be provided in
23 regulations of the Secretary of the federal Department of Health and
24 Human Services and approved by the commissioner;
25 (5) Physician's services furnished in the office, the patient's
26 home, a hospital, a skilled nursing, or intermediate care facility or
27 elsewhere.
28 As used in this subsection, "laboratory and X-ray services"
29 includes HIV drug resistance testing, including, but not limited to,
30 genotype assays that have been cleared or approved by the federal
31 Food and Drug Administration, laboratory developed genotype
32 assays, phenotype assays, and other assays using phenotype
33 prediction with genotype comparison, for persons diagnosed with
34 HIV infection or AIDS.
35 b. Subject to the limitations imposed by federal law, by this
36 act, and by the rules and regulations promulgated pursuant thereto,
37 the medical assistance program may be expanded to include
38 authorized services within each of the following classifications:
39 (1) Medical care not included in subsection a.(5) above, or any
40 other type of remedial care recognized under State law, furnished
41 by licensed practitioners within the scope of their practice, as
42 defined by State law;
43 (2) Home health care services;
44 (3) Clinic services;
45 (4) Dental services;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (5) Physical therapy and related services;
2 (6) Prescribed drugs, dentures, and prosthetic devices; and
3 eyeglasses prescribed by a physician skilled in diseases of the eye
4 or by an optometrist, whichever the individual may select;
5 (7) Optometric services;
6 (8) Podiatric services;
7 (9) Chiropractic services;
8 (10) Psychological services;
9 (11) Inpatient psychiatric hospital services for individuals under
10 21 years of age, or under age 22 if they are receiving such services
11 immediately before attaining age 21;
12 (12) Other diagnostic, screening, preventive, and rehabilitative
13 services, and other remedial care;
14 (13) Inpatient hospital services, nursing facility services, and
15 intermediate care facility services for individuals 65 years of age or
16 over in an institution for mental diseases;
17 (14) Intermediate care facility services;
18 (15) Transportation services;
19 (16) Services in connection with the inpatient or outpatient
20 treatment or care of drug abuse, when the treatment is prescribed by
21 a physician and provided in a licensed hospital or in a narcotic and
22 drug abuse treatment center approved by the Department of Health
23 pursuant to P.L.1970, c.334 (C.26:2G-21 et seq.) and whose staff
24 includes a medical director, and limited to those services eligible
25 for federal financial participation under Title XIX of the federal
26 Social Security Act;
27 (17) Any other medical care and any other type of remedial care
28 recognized under State law, specified by the Secretary of the federal
29 Department of Health and Human Services, and approved by the
30 commissioner;
31 (18) Comprehensive maternity care, which may include: the
32 basic number of prenatal and postpartum visits recommended by the
33 American College of Obstetrics and Gynecology; additional
34 prenatal and postpartum visits that are medically necessary;
35 necessary laboratory, nutritional assessment and counseling, health
36 education, personal counseling, managed care, outreach, and
37 follow-up services; treatment of conditions which may complicate
38 pregnancy; and physician or certified nurse-midwife delivery
39 services;
40 (19) Comprehensive pediatric care, which may include:
41 ambulatory, preventive, and primary care health services. The
42 preventive services shall include, at a minimum, the basic number
43 of preventive visits recommended by the American Academy of
44 Pediatrics;
45 (20) Services provided by a hospice which is participating in the
46 Medicare program established pursuant to Title XVIII of the Social
47 Security Act, Pub.L.89-97 (42 U.S.C. s.1395 et seq.). Hospice
48 services shall be provided subject to approval of the Secretary of

1 the federal Department of Health and Human Services for federal
2 reimbursement;
3 (21) Mammograms, subject to approval of the Secretary of the
4 federal Department of Health and Human Services for federal
5 reimbursement, including one baseline mammogram for women
6 who are at least 35 but less than 40 years of age; one mammogram
7 examination every two years or more frequently, if recommended
8 by a physician, for women who are at least 40 but less than 50 years
9 of age; and one mammogram examination every year for women
10 age 50 and over; and
11 (22) Advance care planning, which may include consultation
12 with a health care practitioner in regard to the preparation of
13 advance health care directives, health care powers of attorney, and
14 medical orders for life-sustaining treatment, subject to approval of
15 the Secretary of the federal Department of Health and Human
16 Services for federal reimbursement.
17 c. Payments for the foregoing services, goods, and supplies
18 furnished pursuant to this act shall be made to the extent authorized
19 by this act, the rules and regulations promulgated pursuant thereto
20 and, where applicable, subject to the agreement of insurance
21 provided for under this act. The payments shall constitute payment
22 in full to the provider on behalf of the recipient. Every provider
23 making a claim for payment pursuant to this act shall certify in
24 writing on the claim submitted that no additional amount will be
25 charged to the recipient, the recipient's family, the recipient's
26 representative or others on the recipient's behalf for the services,
27 goods, and supplies furnished pursuant to this act.
28 No provider whose claim for payment pursuant to this act has
29 been denied because the services, goods, or supplies were
30 determined to be medically unnecessary shall seek reimbursement
31 from the recipient, his family, his representative or others on his
32 behalf for such services, goods, and supplies provided pursuant to
33 this act; provided, however, a provider may seek reimbursement
34 from a recipient for services, goods, or supplies not authorized by
35 this act, if the recipient elected to receive the services, goods or
36 supplies with the knowledge that they were not authorized.
37 d. Any individual eligible for medical assistance (including
38 drugs) may obtain such assistance from any person qualified to
39 perform the service or services required (including an organization
40 which provides such services, or arranges for their availability on a
41 prepayment basis), who undertakes to provide the individual such
42 services.
43 No copayment or other form of cost-sharing shall be imposed on
44 any individual eligible for medical assistance, except as mandated
45 by federal law as a condition of federal financial participation.
46 e. Anything in this act to the contrary notwithstanding, no
47 payments for medical assistance shall be made under this act with
48 respect to care or services for any individual who:

1 (1) Is an inmate of a public institution (except as a patient in a
2 medical institution); provided, however, that an individual who is
3 otherwise eligible may continue to receive services for the month in
4 which he becomes an inmate, should the commissioner determine to
5 expand the scope of Medicaid eligibility to include such an
6 individual, subject to the limitations imposed by federal law and
7 regulations, or
8 (2) Has not attained 65 years of age and who is a patient in an
9 institution for mental diseases, or
10 (3) Is over 21 years of age and who is receiving inpatient
11 psychiatric hospital services in a psychiatric facility; provided,
12 however, that an individual who was receiving such services
13 immediately prior to attaining age 21 may continue to receive such
14 services until the individual reaches age 22. Nothing in this
15 subsection shall prohibit the commissioner from extending medical
16 assistance to all eligible persons receiving inpatient psychiatric
17 services; provided that there is federal financial participation
18 available.
19 f. (1) A third party as defined in section 3 of P.L.1968, c.413
20 (C.30:4D-3) shall not consider a person's eligibility for Medicaid in
21 this or another state when determining the person's eligibility for
22 enrollment or the provision of benefits by that third party.
23 (2) In addition, any provision in a contract of insurance, health
24 benefits plan, or other health care coverage document, will, trust,
25 agreement, court order, or other instrument which reduces or
26 excludes coverage or payment for health care-related goods and
27 services to or for an individual because of that individual's actual or
28 potential eligibility for or receipt of Medicaid benefits shall be null
29 and void, and no payments shall be made under this act as a result
30 of any such provision.
31 (3) Notwithstanding any provision of law to the contrary, the
32 provisions of paragraph (2) of this subsection shall not apply to a
33 trust agreement that is established pursuant to 42 U.S.C.
34 s.1396p(d)(4)(A) or (C) to supplement and augment assistance
35 provided by government entities to a person who is disabled as
36 defined in section 1614(a)(3) of the federal Social Security Act (42
37 U.S.C. s.1382c (a)(3)).
38 g. The following services shall be provided to eligible
39 medically needy individuals as follows:
40 (1) Pregnant women shall be provided prenatal care and delivery
41 services and postpartum care, including the services cited in
42 subsection a.(1), (3), and (5) of this section and subsection b.(1)-
43 (10), (12), (15), and (17) of this section, and nursing facility
44 services cited in subsection b.(13) of this section.
45 (2) Dependent children shall be provided with services cited in
46 subsection a.(3) and (5) of this section and subsection b.(1), (2), (3),
47 (4), (5), (6), (7), (10), (12), (15), and (17) of this section, and
48 nursing facility services cited in subsection b.(13) of this section.

1 (3) Individuals who are 65 years of age or older shall be
2 provided with services cited in subsection a.(3) and (5) of this
3 section and subsection b.(1)-(5), (6) excluding prescribed drugs, (7),
4 (8), (10), (12), (15), and (17) of this section, and nursing facility
5 services cited in subsection b.(13) of this section.
6 (4) Individuals who are blind or disabled shall be provided with
7 services cited in subsection a.(3) and (5) of this section and
8 subsection b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10),
9 (12), (15), and (17) of this section, and nursing facility services
10 cited in subsection b.(13) of this section.
11 (5) (a) Inpatient hospital services, subsection a.(1) of this
12 section, shall only be provided to eligible medically needy
13 individuals, other than pregnant women, if the federal Department
14 of Health and Human Services discontinues the State's waiver to
15 establish inpatient hospital reimbursement rates for the Medicare
16 and Medicaid programs under the authority of section 601(c)(3) of
17 the Social Security Act Amendments of 1983, Pub.L.98-21 (42
18 U.S.C. s.1395ww(c)(5)). Inpatient hospital services may be
19 extended to other eligible medically needy individuals if the federal
20 Department of Health and Human Services directs that these
21 services be included.
22 (b) Outpatient hospital services, subsection a.(2) of this section,
23 shall only be provided to eligible medically needy individuals if the
24 federal Department of Health and Human Services discontinues the
25 State's waiver to establish outpatient hospital reimbursement rates
26 for the Medicare and Medicaid programs under the authority of
27 section 601(c)(3) of the Social Security Amendments of 1983,
28 Pub.L.98-21 (42 U.S.C. s.1395ww(c)(5)). Outpatient hospital
29 services may be extended to all or to certain medically needy
30 individuals if the federal Department of Health and Human Services
31 directs that these services be included. However, the use of
32 outpatient hospital services shall be limited to clinic services and to
33 emergency room services for injuries and significant acute medical
34 conditions.
35 (c) The division shall monitor the use of inpatient and outpatient
36 hospital services by medically needy persons.
37 h. In the case of a qualified disabled and working individual
38 pursuant to section 6408 of Pub.L.101-239 (42 U.S.C. s.1396d), the
39 only medical assistance provided under this act shall be the
40 payment of premiums for Medicare part A under 42 U.S.C.
41 ss.1395i-2 and 1395r.
42 i. In the case of a specified low-income Medicare beneficiary
43 pursuant to 42 U.S.C. s.1396a(a)10(E)iii, the only medical
44 assistance provided under this act shall be the payment of premiums
45 for Medicare part B under 42 U.S.C. s.1395r as provided for in 42
46 U.S.C. s.1396d(p)(3)(A)(ii).
47 j. In the case of a qualified individual pursuant to 42 U.S.C.
48 s.1396a(aa), the only medical assistance provided under this act

shall be payment for authorized services provided during the period in which the individual requires treatment for breast or cervical cancer, in accordance with criteria established by the commissioner.
(cf: P.L.2012, c.17, s.359)

2. The Commissioner of Human Services, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations necessary to implement the provisions of this act.

3. This act shall take effect on the first day of the fourth month next following the date of enactment, but the Commissioner of Human Services may take such anticipatory administrative action in advance thereof, including, but not limited to, the submission of a State plan amendment to the federal Centers for Medicare & Medicaid Services, as may be necessary for the implementation of this act.

STATEMENT

This bill would provide Medicaid coverage for advance care planning services.

Advance care planning is the practice of making explicit written instructions to caregivers, family, and friends on measures for delivering health care and for preserving a person's dignity in the event that the person is unable, because of incapacity, to make those instructions known when needed at a later time. This includes the use of advance health care directives, health care powers of attorney, and medical orders for life-sustaining treatment that can be administered effectively within the health care system.

At least two state Medicaid programs, in Colorado and Oregon, cover advance care planning conversations between physicians and patients. Providing Medicaid reimbursement for these sessions would improve access to this valuable service, allowing patients to gain a greater understanding and comfort level regarding their decisions related to end-of-life care.

The bill takes effect on the first day of the fourth month following its enactment, but authorizes the Commissioner of Human Services to take such prior administrative action as may be necessary for implementation.