

ASSEMBLY, No. 1289

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

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SYNOPSIS

Provides for Medicaid coverage and reimbursement for mental health services provided through telepsychiatry.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 3/21/2014)

1 AN ACT concerning Medicaid coverage of telepsychiatry and
2 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
8 read 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 (42U.S.C. s.1395 et seq.). Hospice

1 services shall be provided subject to approval of the Secretary of
2 the federal Department of Health and Human Services for federal
3 reimbursement;

4 (21) Mammograms, subject to approval of the Secretary of the
5 federal Department of Health and Human Services for federal
6 reimbursement, including one baseline mammogram for women
7 who are at least 35 but less than 40 years of age; one mammogram
8 examination every two years or more frequently, if recommended
9 by a physician, for women who are at least 40 but less than 50 years
10 of age; and one mammogram examination every year for women
11 age 50 and over ;

12 (22) Telepsychiatry, subject to approval of the Secretary of the
13 federal Department of Health and Human Services for federal
14 reimbursement, that provides mental health services to adults and
15 children under 19 years of age through an exchange of information
16 by telephone or other technologically assisted means in order to
17 improve the mental health of adults and children, and is provided in
18 accordance with regulations adopted by the Commissioner of
19 Human Services at a reimbursement rate that is commensurate with
20 the cost of providing those services in the State.

21 c. Payments for the foregoing services, goods, and supplies
22 furnished pursuant to this act shall be made to the extent authorized
23 by this act, the rules and regulations promulgated pursuant thereto
24 and, where applicable, subject to the agreement of insurance
25 provided for under this act. The payments shall constitute payment
26 in full to the provider on behalf of the recipient. Every provider
27 making a claim for payment pursuant to this act shall certify in
28 writing on the claim submitted that no additional amount will be
29 charged to the recipient, the recipient's family, the recipient's
30 representative or others on the recipient's behalf for the services,
31 goods, and supplies furnished pursuant to this act.

32 No provider whose claim for payment pursuant to this act has
33 been denied because the services, goods, or supplies were
34 determined to be medically unnecessary shall seek reimbursement
35 from the recipient, his family, his representative or others on his
36 behalf for such services, goods, and supplies provided pursuant to
37 this act; provided, however, a provider may seek reimbursement
38 from a recipient for services, goods, or supplies not authorized by
39 this act, if the recipient elected to receive the services, goods or
40 supplies with the knowledge that they were not authorized.

41 d. Any individual eligible for medical assistance (including
42 drugs) may obtain such assistance from any person qualified to
43 perform the service or services required (including an organization
44 which provides such services, or arranges for their availability on a
45 prepayment basis), who undertakes to provide the individual such
46 services.

1 No copayment or other form of cost-sharing shall be imposed on
2 any individual eligible for medical assistance, except as mandated
3 by federal law as a condition of federal financial participation.

4 e. Anything in this act to the contrary notwithstanding, no
5 payments for medical assistance shall be made under this act with
6 respect to care or services for any individual who:

7 (1) Is an inmate of a public institution (except as a patient in a
8 medical institution); provided, however, that an individual who is
9 otherwise eligible may continue to receive services for the month in
10 which he becomes an inmate, should the commissioner determine to
11 expand the scope of Medicaid eligibility to include such an
12 individual, subject to the limitations imposed by federal law and
13 regulations, or

14 (2) Has not attained 65 years of age and who is a patient in an
15 institution for mental diseases, or

16 (3) Is over 21 years of age and who is receiving inpatient
17 psychiatric hospital services in a psychiatric facility; provided,
18 however, that an individual who was receiving such services
19 immediately prior to attaining age 21 may continue to receive such
20 services until the individual reaches age 22. Nothing in this
21 subsection shall prohibit the commissioner from extending medical
22 assistance to all eligible persons receiving inpatient psychiatric
23 services; provided that there is federal financial participation
24 available.

25 f. (1) A third party as defined in section 3 of P.L.1968, c.413
26 (C.30:4D-3) shall not consider a person's eligibility for Medicaid in
27 this or another state when determining the person's eligibility for
28 enrollment or the provision of benefits by that third party.

29 (2) In addition, any provision in a contract of insurance, health
30 benefits plan, or other health care coverage document, will, trust,
31 agreement, court order, or other instrument which reduces or
32 excludes coverage or payment for health care-related goods and
33 services to or for an individual because of that individual's actual or
34 potential eligibility for or receipt of Medicaid benefits shall be null
35 and void, and no payments shall be made under this act as a result
36 of any such provision.

37 (3) Notwithstanding any provision of law to the contrary, the
38 provisions of paragraph (2) of this subsection shall not apply to a
39 trust agreement that is established pursuant to 42 U.S.C.
40 s.1396p(d)(4)(A) or (C) to supplement and augment assistance
41 provided by government entities to a person who is disabled as
42 defined in section 1614(a)(3) of the federal Social Security Act (42
43 U.S.C. s.1382c (a)(3)).

44 g. The following services shall be provided to eligible
45 medically needy individuals as follows:

46 (1) Pregnant women shall be provided prenatal care and delivery
47 services and postpartum care, including the services cited in

1 subsection a.(1), (3), and (5) of this section and subsection b.(1)-
2 (10), (12), (15), and (17) of this section, and nursing facility
3 services cited in subsection b.(13) of this section.

4 (2) Dependent children shall be provided with services cited in
5 subsection a.(3) and (5) of this section and subsection b.(1), (2), (3),
6 (4), (5), (6), (7), (10), (12), (15), and (17) of this section, and
7 nursing facility services cited in subsection b.(13) of this section.

8 (3) Individuals who are 65 years of age or older shall be
9 provided with services cited in subsection a.(3) and (5) of this
10 section and subsection b.(1)-(5), (6) excluding prescribed drugs, (7),
11 (8), (10), (12), (15), and (17) of this section, and nursing facility
12 services cited in subsection b.(13) of this section.

13 (4) Individuals who are blind or disabled shall be provided with
14 services cited in subsection a.(3) and (5) of this section and
15 subsection b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10),
16 (12), (15), and (17) of this section, and nursing facility services
17 cited in subsection b.(13) of this section.

18 (5) (a) Inpatient hospital services, subsection a.(1) of this
19 section, shall only be provided to eligible medically needy
20 individuals, other than pregnant women, if the federal Department
21 of Health and Human Services discontinues the State's waiver to
22 establish inpatient hospital reimbursement rates for the Medicare
23 and Medicaid programs under the authority of section 601(c)(3) of
24 the Social Security Act Amendments of 1983, Pub.L.98-21 (42
25 U.S.C. s.1395ww(c)(5)). Inpatient hospital services may be
26 extended to other eligible medically needy individuals if the federal
27 Department of Health and Human Services directs that these
28 services be included.

29 (b) Outpatient hospital services, subsection a.(2) of this section,
30 shall only be provided to eligible medically needy individuals if the
31 federal Department of Health and Human Services discontinues the
32 State's waiver to establish outpatient hospital reimbursement rates
33 for the Medicare and Medicaid programs under the authority of
34 section 601(c)(3) of the Social Security Amendments of 1983,
35 Pub.L.98-21 (42 U.S.C. s.1395ww(c)(5)). Outpatient hospital
36 services may be extended to all or to certain medically needy
37 individuals if the federal Department of Health and Human Services
38 directs that these services be included. However, the use of
39 outpatient hospital services shall be limited to clinic services and to
40 emergency room services for injuries and significant acute medical
41 conditions.

42 (c) The division shall monitor the use of inpatient and outpatient
43 hospital services by medically needy persons.

44 h. In the case of a qualified disabled and working individual
45 pursuant to section 6408 of Pub.L.101-239 (42 U.S.C. s.1396d), the
46 only medical assistance provided under this act shall be the

1 payment of premiums for Medicare part A under 42 U.S.C.
2 ss.1395i-2 and 1395r.

3 i. In the case of a specified low-income Medicare beneficiary
4 pursuant to 42U.S.C. s.1396a(a)10(E)iii, the only medical
5 assistance provided under this act shall be the payment of premiums
6 for Medicare part B under 42U.S.C. s.1395r as provided for in 42
7 U.S.C. s.1396d(p)(3)(A)(ii).

8 j. In the case of a qualified individual pursuant to 42U.S.C.
9 s.1396a(aa), the only medical assistance provided under this act
10 shall be payment for authorized services provided during the period
11 in which the individual requires treatment for breast or cervical
12 cancer, in accordance with criteria established by the commissioner.
13 (cf: P.L.2012, c.17, s.359)

14
15 2. (New section) The Commissioner of Human Services, in
16 consultation with the Commissioner of Children and Families, shall
17 apply for such State plan amendments or waivers as may be
18 necessary to implement the provisions of this act and to secure
19 federal financial participation for State Medicaid expenditures
20 under the federal Medicaid program.

21
22 3. (New section) The Commissioner of Human Services shall
23 adopt rules and regulations pursuant to the "Administrative
24 Procedure Act" P.L.1968, c.410 (C.52:14B-1 et seq.) to effectuate
25 the purposes of this act; except that, notwithstanding any provision
26 of P.L.1968, c.410 to the contrary, the commissioner shall adopt,
27 immediately upon filing with the Office of Administrative Law,
28 such regulations as the commissioner deems necessary to
29 implement the provisions of this act, which shall be effective for a
30 period not to exceed six months and shall thereafter be amended,
31 adopted, or readopted by the commissioner in accordance with the
32 requirements of P.L.1968, c.410.

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34 4. This act shall take effect immediately.

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STATEMENT

39 This bill provides that, subject to approval by the federal
40 Department of Health and Human Services, the State Medicaid
41 program is to include coverage for telepsychiatry, which provides
42 for an exchange of information by telephone or other
43 technologically assisted means in order to improve the mental
44 health of adults and children under 19 years of age. Telepsychiatry
45 is to be provided in accordance with regulations adopted by the
46 Commissioner of Human Services and at a reimbursement rate that

1 is commensurate with the cost of providing those services in the
2 State.

3 To obtain the federal approval, the Commissioner of Human
4 Services, in consultation with the Commissioner of Children and
5 Families, is to apply for such State plan amendments or waivers as
6 may be necessary to implement the provisions of the bill and to
7 secure federal financial participation for State Medicaid
8 expenditures under the federal Medicaid program.

9 Presently, New Jersey is one of only 10 states that do not provide
10 Medicaid reimbursements for telepsychiatry within the medical or
11 clinical mental health community. Unacceptable wait times for
12 individuals seeking appointments for mental health professional
13 counseling or treatment in the State have been the subject of
14 numerous articles in medical journals and media sources, which
15 have described the limited access to adequate care and treatment as
16 a "broken system."

17 It is intended that Medicaid coverage and reimbursement for
18 mental health services provided through telepsychiatry will reduce
19 the wait times, improve access to mental health services, and attract
20 more mental health professionals to practice in the State.