

[First Reprint]

**SENATE, No. 2081**

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**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

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INTRODUCED MARCH 5, 2018

**Sponsored by:**

**Senator SHIRLEY K. TURNER**

**District 15 (Hunterdon and Mercer)**

**SYNOPSIS**

Provides for coverage of comprehensive tobacco cessation benefits in Medicaid.

**CURRENT VERSION OF TEXT**

As reported by the Senate Health, Human Services and Senior Citizens Committee on September 24, 2018, with amendments.



1 AN ACT concerning Medicaid coverage of tobacco cessation  
2 benefits 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 health status 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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SHH committee amendments adopted September 24, 2018.

- 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 substance use disorder, when the treatment is
- 21 prescribed by a physician and provided in a licensed hospital or in a
- 22 narcotic and substance use disorder treatment center approved by
- 23 the Department of Health pursuant to P.L.1970, c.334 (C.26:2G-21
- 24 et seq.) and whose staff includes a medical director, and limited to
- 25 those services eligible for federal financial participation under Title
- 26 XIX of the federal 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 <sup>1</sup>**Obstetrics and Gynecology** Obstetricians
- 34 and Gynecologists<sup>1</sup>; additional prenatal and postpartum visits that
- 35 are medically necessary; necessary laboratory, nutritional
- 36 assessment and counseling, health education, personal counseling,
- 37 managed care, outreach, and follow-up services; treatment of
- 38 conditions which may complicate pregnancy; and physician or
- 39 certified nurse-midwife delivery 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;

11 (22) Upon referral by a physician, advanced practice nurse, or  
12 physician assistant of a person who has been diagnosed with  
13 diabetes, gestational diabetes, or pre-diabetes, in accordance with  
14 standards adopted by the American Diabetes Association:

15 (a) Expenses for diabetes self-management education or training  
16 to ensure that a person with diabetes, gestational diabetes, or pre-  
17 diabetes can optimize metabolic control, prevent and manage  
18 complications, and maximize quality of life. Diabetes self-  
19 management education shall be provided by an in-State provider  
20 who is:

21 (i) a licensed, registered, or certified health care professional  
22 who is certified by the National Certification Board of Diabetes  
23 Educators as a Certified Diabetes Educator, or certified by the  
24 American Association of Diabetes Educators with a Board  
25 Certified-Advanced Diabetes Management credential, including, but  
26 not limited to: a physician, an advanced practice or registered nurse,  
27 a physician assistant, a pharmacist, a chiropractor, a dietitian  
28 registered by a nationally recognized professional association of  
29 dietitians, or a nutritionist holding a certified nutritionist specialist  
30 (CNS) credential from the Board for Certification of Nutrition  
31 Specialists; or

32 (ii) an entity meeting the National Standards for Diabetes Self-  
33 Management Education and Support, as evidenced by a recognition  
34 by the American Diabetes Association or accreditation by the  
35 American Association of Diabetes Educators;

36 (b) Expenses for medical nutrition therapy as an effective  
37 component of the person's overall treatment plan upon a: diagnosis  
38 of diabetes, gestational diabetes, or pre-diabetes; change in the  
39 beneficiary's medical condition, treatment, or diagnosis; or  
40 determination of a physician, advanced practice nurse, or physician  
41 assistant that reeducation or refresher education is necessary.  
42 Medical nutrition therapy shall be provided by an in-State provider  
43 who is a dietitian registered by a nationally-recognized professional  
44 association of dietitians, or a nutritionist holding a certified  
45 nutritionist specialist (CNS) credential from the Board for  
46 Certification of Nutrition Specialists, who is familiar with the  
47 components of diabetes medical nutrition therapy;

1 (c) For a person diagnosed with pre-diabetes, items and services  
2 furnished under an in-State diabetes prevention program that meets  
3 the standards of the National Diabetes Prevention Program, as  
4 established by the federal Centers for Disease Control and  
5 Prevention; and

6 (d) Expenses for any medically appropriate and necessary  
7 supplies and equipment recommended or prescribed by a physician,  
8 advanced practice nurse, or physician assistant for the management  
9 and treatment of diabetes, gestational diabetes, or pre-diabetes,  
10 including, but not limited to: equipment and supplies for self-  
11 management of blood glucose; insulin pens; insulin pumps and  
12 related supplies; and other insulin delivery devices ; and

13 (23) Comprehensive tobacco cessation benefits '1, which shall  
14 include individual, group, and phone counseling; nicotine gun,  
15 patches, lozenges, nasal sprays, and inhalers; bupropion;  
16 varenicline; and any other benefits recommended by the American  
17 Lung Association】 to an individual who is 18 years of age or older,  
18 or who is pregnant. Coverage shall include: brief and high intensity  
19 individual counseling, brief and high intensity group counseling,  
20 and phone counseling; all medications approved for tobacco  
21 cessation by the U.S. Food and Drug Administration; and other  
22 tobacco cessation counseling recommended by the Treating  
23 Tobacco Use and Dependence Clinical Practice Guideline issued by  
24 the U.S. Public Health Service. Notwithstanding the provisions of  
25 any other law, rule, or regulation to the contrary, and except as  
26 otherwise provided in this section:

27 (a) Information regarding the availability of the tobacco  
28 cessation services described in this paragraph shall be provided to  
29 all individuals authorized to receive the tobacco cessation services  
30 pursuant to this paragraph at the following times: no later than 30  
31 days after the effective date of P.L. , c. (C. ) (pending before  
32 the Legislature as this bill); upon the establishment of an  
33 individual's eligibility for medical assistance; and upon the  
34 redetermination of an individual's eligibility for medical assistance;

35 (b) The following conditions shall not be imposed on any  
36 tobacco cessation services provided pursuant to this paragraph;  
37 copayments or any other forms of cost-sharing, including  
38 deductibles; counseling requirements for medication; stepped care  
39 therapy or similar restrictions requiring the use of one service prior  
40 to another; limits on the duration of services; or annual or lifetime  
41 limits on the amount, frequency, or cost of services, including, but  
42 not limited to, annual or lifetime limits on the number of covered  
43 attempts to quit; and

44 (c) Prior authorization requirements shall not be imposed on any  
45 tobacco cessation services provided pursuant to this paragraph  
46 except in the following circumstances where prior authorization  
47 may be required: for a treatment that exceeds the duration  
48 recommended by the most recently published United States Public

1 Health Service clinical practice guidelines on treating tobacco use  
2 and dependence; or for services associated with more than two  
3 attempts to quit within a 12-month period<sup>1</sup>.

4 c. Payments for the foregoing services, goods, and supplies  
5 furnished pursuant to this act shall be made to the extent authorized  
6 by this act, the rules and regulations promulgated pursuant thereto  
7 and, where applicable, subject to the agreement of insurance  
8 provided for under this act. The payments shall constitute payment  
9 in full to the provider on behalf of the recipient. Every provider  
10 making a claim for payment pursuant to this act shall certify in  
11 writing on the claim submitted that no additional amount will be  
12 charged to the recipient, the recipient's family, the recipient's  
13 representative or others on the recipient's behalf for the services,  
14 goods, and supplies furnished pursuant to this act.

15 No provider whose claim for payment pursuant to this act has  
16 been denied because the services, goods, or supplies were  
17 determined to be medically unnecessary shall seek reimbursement  
18 from the recipient, his family, his representative or others on his  
19 behalf for such services, goods, and supplies provided pursuant to  
20 this act; provided, however, a provider may seek reimbursement  
21 from a recipient for services, goods, or supplies not authorized by  
22 this act, if the recipient elected to receive the services, goods or  
23 supplies with the knowledge that they were not authorized.

24 d. Any individual eligible for medical assistance (including  
25 drugs) may obtain such assistance from any person qualified to  
26 perform the service or services required (including an organization  
27 which provides such services, or arranges for their availability on a  
28 prepayment basis), who undertakes to provide the individual such  
29 services.

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

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

36 (1) Is an inmate of a public institution (except as a patient in a  
37 medical institution); provided, however, that an individual who is  
38 otherwise eligible may continue to receive services for the month in  
39 which he becomes an inmate, should the commissioner determine to  
40 expand the scope of Medicaid eligibility to include such an  
41 individual, subject to the limitations imposed by federal law and  
42 regulations, or

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

45 (3) Is over 21 years of age and who is receiving inpatient  
46 psychiatric hospital services in a psychiatric facility; provided,  
47 however, that an individual who was receiving such services  
48 immediately prior to attaining age 21 may continue to receive such

1 services until the individual reaches age 22. Nothing in this  
2 subsection shall prohibit the commissioner from extending medical  
3 assistance to all eligible persons receiving inpatient psychiatric  
4 services; provided that there is federal financial participation  
5 available.

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

10 (2) In addition, any provision in a contract of insurance, health  
11 benefits plan, or other health care coverage document, will, trust,  
12 agreement, court order, or other instrument which reduces or  
13 excludes coverage or payment for health care-related goods and  
14 services to or for an individual because of that individual's actual or  
15 potential eligibility for or receipt of Medicaid benefits shall be null  
16 and void, and no payments shall be made under this act as a result  
17 of any such provision.

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

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

27 (1) Pregnant women shall be provided prenatal care and delivery  
28 services and postpartum care, including the services cited in  
29 subsection a.(1), (3), and (5) of this section and subsection b.(1)-  
30 (10), (12), (15), and (17) of this section, and nursing facility  
31 services cited in subsection b.(13) of this section.

32 (2) Dependent children shall be provided with services cited in  
33 subsection a.(3) and (5) of this section and subsection b.(1), (2), (3),  
34 (4), (5), (6), (7), (10), (12), (15), and (17) of this section, and  
35 nursing facility services cited in subsection b.(13) of this section.

36 (3) Individuals who are 65 years of age or older shall be  
37 provided with services cited in subsection a.(3) and (5) of this  
38 section and subsection b.(1)-(5), (6) excluding prescribed drugs, (7),  
39 (8), (10), (12), (15), and (17) of this section, and nursing facility  
40 services cited in subsection b.(13) of this section.

41 (4) Individuals who are blind or disabled shall be provided with  
42 services cited in subsection a.(3) and (5) of this section and  
43 subsection b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10),  
44 (12), (15), and (17) of this section, and nursing facility services  
45 cited in subsection b.(13) of this section.

46 (5) (a) Inpatient hospital services, subsection a.(1) of this  
47 section, shall only be provided to eligible medically needy  
48 individuals, other than pregnant women, if the federal Department

1 of Health and Human Services discontinues the State's waiver to  
2 establish inpatient hospital reimbursement rates for the Medicare  
3 and Medicaid programs under the authority of section 601(c)(3) of  
4 the Social Security Act Amendments of 1983, Pub.L.98-21 (42  
5 U.S.C. s.1395ww(c)(5)). Inpatient hospital services may be  
6 extended to other eligible medically needy individuals if the federal  
7 Department of Health and Human Services directs that these  
8 services be included.

9 (b) Outpatient hospital services, subsection a.(2) of this section,  
10 shall only be provided to eligible medically needy individuals if the  
11 federal Department of Health and Human Services discontinues the  
12 State's waiver to establish outpatient hospital reimbursement rates  
13 for the Medicare and Medicaid programs under the authority of  
14 section 601(c)(3) of the Social Security Amendments of 1983,  
15 Pub.L.98-21 (42 U.S.C. s.1395ww(c)(5)). Outpatient hospital  
16 services may be extended to all or to certain medically needy  
17 individuals if the federal Department of Health and Human Services  
18 directs that these services be included. However, the use of  
19 outpatient hospital services shall be limited to clinic services and to  
20 emergency room services for injuries and significant acute medical  
21 conditions.

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

24 h. In the case of a qualified disabled and working individual  
25 pursuant to section 6408 of Pub.L.101-239 (42 U.S.C. s.1396d), the  
26 only medical assistance provided under this act shall be the  
27 payment of premiums for Medicare part A under 42 U.S.C.  
28 ss.1395i-2 and 1395r.

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

34 j. In the case of a qualified individual pursuant to 42 U.S.C.  
35 s.1396a(aa), the only medical assistance provided under this act  
36 shall be payment for authorized services provided during the period  
37 in which the individual requires treatment for breast or cervical  
38 cancer, in accordance with criteria established by the commissioner.

39 k. In the case of a qualified individual pursuant to 42 U.S.C.  
40 s.1396a(ii), the only medical assistance provided under this act shall  
41 be payment for family planning services and supplies as described  
42 at 42 U.S.C. s.1396d(a)(4)(C), including medical diagnosis and  
43 treatment services that are provided pursuant to a family planning  
44 service in a family planning setting.

45 (cf: P.L.2018, c.1, s.2)

46  
47 2. (New section) The Commissioner of Human Services shall  
48 apply for such State plan amendments or waivers as may be



1 necessary to implement the provisions of this act and to secure  
2 federal financial participation for State Medicaid expenditures  
3 under the federal Medicaid program.

4  
5 3. (New section) The Commissioner of Human Services shall  
6 adopt rules and regulations pursuant to the "Administrative  
7 Procedure Act" P.L.1968, c.410 (C.52:14B-1 et seq.) to effectuate  
8 the purposes of this act; except that, notwithstanding any provision  
9 of P.L.1968, c.410 <sup>1</sup>(C.52:14B-1 et seq.)<sup>1</sup> to the contrary, the  
10 commissioner shall adopt, immediately upon filing with the Office  
11 of Administrative Law, such regulations as the commissioner deems  
12 necessary to implement the provisions of this act, which shall be  
13 effective for a period not to exceed six months and shall thereafter  
14 be amended, adopted, or readopted by the commissioner in  
15 accordance with the requirements of P.L.1968, c.410 <sup>1</sup>(C.52:14B-1  
16 et seq.)<sup>1</sup>.

17  
18 4. This act shall take effect immediately.