

SENATE, No. 3159

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED NOVEMBER 26, 2018

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

SYNOPSIS

Requires Medicaid coverage for pasteurized donated human breast milk under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/11/2018)

1 AN ACT concerning Medicaid coverage for pasteurized donated
2 human breast milk 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.

- 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 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;

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;

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

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

(23) Expenses incurred for the provision of pasteurized donated human breast milk, which shall include human milk fortifiers if indicated in a medical order provided by a licensed medical practitioner, to an infant under the age of six months provided that the milk is obtained from a human milk bank that meets quality guidelines established by the Department of Health and a licensed medical practitioner has issued a medical order for the infant under at least one of the following circumstances:

(a) the infant is medically or physically unable to receive maternal breast milk or participate in breast feeding or the infant's mother is medically or physically unable to produce maternal breast milk in sufficient quantities or participate in breast feeding despite optimal lactation support; or

(b) the infant meets any of the following conditions:

(i) a body weight below healthy levels determined by the licensed medical practitioner;

(ii) a congenital or acquired condition that places the infant at a high risk for development of necrotizing enterocolitis; or

(iii) a congenital or acquired condition that may benefit from the use of donor breast milk and human milk fortifiers as determined by the Department of Health.

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

No provider whose claim for payment pursuant to this act has been denied because the services, goods, or supplies were determined to be medically unnecessary shall seek reimbursement from the recipient, his family, his representative or others on his

1 behalf for such services, goods, and supplies provided pursuant to
2 this act; provided, however, a provider may seek reimbursement
3 from a recipient for services, goods, or supplies not authorized by
4 this act, if the recipient elected to receive the services, goods or
5 supplies with the knowledge that they were not authorized.

6 d. Any individual eligible for medical assistance (including
7 drugs) may obtain such assistance from any person qualified to
8 perform the service or services required (including an organization
9 which provides such services, or arranges for their availability on a
10 prepayment basis), who undertakes to provide the individual such
11 services.

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

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

18 (1) Is an inmate of a public institution (except as a patient in a
19 medical institution); provided, however, that an individual who is
20 otherwise eligible may continue to receive services for the month in
21 which he becomes an inmate, should the commissioner determine to
22 expand the scope of Medicaid eligibility to include such an
23 individual, subject to the limitations imposed by federal law and
24 regulations, or

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

27 (3) Is over 21 years of age and who is receiving inpatient
28 psychiatric hospital services in a psychiatric facility; provided,
29 however, that an individual who was receiving such services
30 immediately prior to attaining age 21 may continue to receive such
31 services until the individual reaches age 22. Nothing in this
32 subsection shall prohibit the commissioner from extending medical
33 assistance to all eligible persons receiving inpatient psychiatric
34 services; provided that there is federal financial participation
35 available.

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

40 (2) In addition, any provision in a contract of insurance, health
41 benefits plan, or other health care coverage document, will, trust,
42 agreement, court order, or other instrument which reduces or
43 excludes coverage or payment for health care-related goods and
44 services to or for an individual because of that individual's actual or
45 potential eligibility for or receipt of Medicaid benefits shall be null
46 and void, and no payments shall be made under this act as a result
47 of any such provision.

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

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

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

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

19 (3) Individuals who are 65 years of age or older shall be
20 provided with services cited in subsection a.(3) and (5) of this
21 section and subsection b.(1)-(5), (6) excluding prescribed drugs, (7),
22 (8), (10), (12), (15), and (17) of this section, and nursing facility
23 services cited in subsection b.(13) of this section.

24 (4) Individuals who are blind or disabled shall be provided with
25 services cited in subsection a.(3) and (5) of this section and
26 subsection b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10),
27 (12), (15), and (17) of this section, and nursing facility services
28 cited in subsection b.(13) of this section.

29 (5) (a) Inpatient hospital services, subsection a.(1) of this
30 section, shall only be provided to eligible medically needy
31 individuals, other than pregnant women, if the federal Department
32 of Health and Human Services discontinues the State's waiver to
33 establish inpatient hospital reimbursement rates for the Medicare
34 and Medicaid programs under the authority of section 601(c)(3) of
35 the Social Security Act Amendments of 1983, Pub.L.98-21 (42
36 U.S.C. s.1395ww(c)(5)). Inpatient hospital services may be
37 extended to other eligible medically needy individuals if the federal
38 Department of Health and Human Services directs that these
39 services be included.

40 (b) Outpatient hospital services, subsection a.(2) of this section,
41 shall only be provided to eligible medically needy individuals if the
42 federal Department of Health and Human Services discontinues the
43 State's waiver to establish outpatient hospital reimbursement rates
44 for the Medicare and Medicaid programs under the authority of
45 section 601(c)(3) of the Social Security Amendments of 1983,
46 Pub.L.98-21 (42 U.S.C. s.1395ww(c)(5)). Outpatient hospital
47 services may be extended to all or to certain medically needy
48 individuals if the federal Department of Health and Human Services

1 directs that these services be included. However, the use of
2 outpatient hospital services shall be limited to clinic services and to
3 emergency room services for injuries and significant acute medical
4 conditions.

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

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

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

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

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

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

29
30 2. The Commissioner of Human Services shall apply for such
31 State plan amendments or waivers as may be necessary to
32 implement the provisions of this act and to secure federal financial
33 participation for State Medicaid expenditures under the federal
34 Medicaid program.

35
36 3. The Commissioner of Human Services, pursuant to the
37 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
38 seq.), shall adopt rules and regulations necessary to implement the
39 provisions of this act.

40
41 4. This act shall take effect on the first day of the fourth month
42 next following the date of enactment, but the Commissioner of
43 Human Services may take such anticipatory administrative action in
44 advance thereof as may be necessary for the implementation of this
45 act.

STATEMENT

The bill provides for an expansion of the State Medicaid program to include coverage for pasteurized donated human breast milk under certain circumstances. Research indicates that breast milk can protect infants from infection, and reduce the rates of health problems, such as diabetes, obesity, and asthma, later in life. The American Academy of Pediatrics and the American College of Obstetricians and Gynecologists, strongly recommends breastfeeding exclusively for six months. However, breastfeeding is not always possible or a sufficient source of nutrition for an infant, particularly for premature infants. P.L.2017, c.309, enacted in January 2018, recognizes the importance of certain families having access to donated breast milk and mandates health benefits coverage for donated human breast milk. This bill would extend the same benefits provided under that law to low-income families in the State.

Specifically, this bill provides that coverage under the Medicaid program includes expenses incurred for the provision of pasteurized donated human breast milk, which are required to include human milk fortifiers if indicated in a medical order provided by a licensed medical practitioner, to an infant under the age of six months. In order for the Medicaid program to cover such expenses, the milk must be obtained from a human milk bank that meets quality guidelines established by the Department of Health. In addition, a licensed medical practitioner must have issued a medical order for the infant under at least one of the following circumstances:

(1) the infant is medically or physically unable to receive maternal breast milk or participate in breast feeding or the infant's mother is medically or physically unable to produce maternal breast milk in sufficient quantities or participate in breast feeding despite optimal lactation support; or

(2) the infant meets any of the following conditions: a body weight below healthy levels determined by the licensed medical practitioner; a congenital or acquired condition that places the infant at a high risk for development of necrotizing enterocolitis; or a congenital or acquired condition that may benefit from the use of donor breast milk and human milk fortifiers as determined by the Department of Health.