

SENATE, No. 3455

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 16, 2021

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Senator ANTHONY M. BUCCO

District 25 (Morris and Somerset)

SYNOPSIS

Revises eligibility requirements for NJ Workability Program and Personal Assistance Services Program.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning medical and support services provided to
2 certain working individuals with disabilities and amending Title
3 30 of the Revised Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. Section 3 of P.L.1968, c.413 (C.30:4D-3) is amended to read
9 as follows:

10 3. Definitions. As used in P.L.1968, c.413 (C.30:4D-1 et seq.),
11 and unless the context otherwise requires:

12 a. "Applicant" means any person who has made application for
13 purposes of becoming a "qualified applicant."

14 b. "Commissioner" means the Commissioner of Human
15 Services.

16 c. "Department" means the Department of Human Services,
17 which is herein designated as the single State agency to administer
18 the provisions of this act.

19 d. "Director" means the Director of the Division of Medical
20 Assistance and Health Services.

21 e. "Division" means the Division of Medical Assistance and
22 Health Services.

23 f. "Medicaid" means the New Jersey Medical Assistance and
24 Health Services Program.

25 g. "Medical assistance" means payments on behalf of recipients
26 to providers for medical care and services authorized under
27 P.L.1968, c.413.

28 h. "Provider" means any person, public or private institution,
29 agency, or business concern approved by the division lawfully
30 providing medical care, services, goods, and supplies authorized
31 under P.L.1968, c.413, holding, where applicable, a current valid
32 license to provide such services or to dispense such goods or
33 supplies.

34 i. "Qualified applicant" means a person who is a resident of
35 this State, and either a citizen of the United States or an eligible
36 alien, and is determined to need medical care and services as
37 provided under P.L.1968, c.413, with respect to whom the period
38 for which eligibility to be a recipient is determined shall be the
39 maximum period permitted under federal law, and who:

40 (1) Is a dependent child or parent or caretaker relative of a
41 dependent child who would be, except for resources, eligible for the
42 aid to families with dependent children program under the State
43 Plan for Title IV-A of the federal Social Security Act as of July 16,
44 1996;

45 (2) Is a recipient of Supplemental Security Income for the Aged,
46 Blind and Disabled under Title XVI of the Social Security Act;

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 (3) Is an "ineligible spouse" of a recipient of Supplemental
2 Security Income for the Aged, Blind and Disabled under Title XVI
3 of the Social Security Act, as defined by the federal Social Security
4 Administration;

5 (4) Would be eligible to receive Supplemental Security Income
6 under Title XVI of the federal Social Security Act or, without
7 regard to resources, would be eligible for the aid to families with
8 dependent children program under the State Plan for Title IV-A of
9 the federal Social Security Act as of July 16, 1996, except for
10 failure to meet an eligibility condition or requirement imposed
11 under such State program which is prohibited under Title XIX of
12 the federal Social Security Act such as a durational residency
13 requirement, relative responsibility, consent to imposition of a lien;

14 (5) (Deleted by amendment, P.L.2000, c.71).

15 (6) Is an individual under 21 years of age who, without regard to
16 resources, would be, except for dependent child requirements,
17 eligible for the aid to families with dependent children program
18 under the State Plan for Title IV-A of the federal Social Security
19 Act as of July 16, 1996, or groups of such individuals, including but
20 not limited to, children in resource family placement under
21 supervision of the Division of Child Protection and Permanency in
22 the Department of Children and Families whose maintenance is
23 being paid in whole or in part from public funds, children placed in
24 a resource family home or institution by a private adoption agency
25 in New Jersey or children in intermediate care facilities, including
26 developmental centers for the developmentally disabled, or in
27 psychiatric hospitals;

28 (7) Would be eligible for the Supplemental Security Income
29 program, but is not receiving such assistance and applies for
30 medical assistance only;

31 (8) Is determined to be medically needy and meets all the
32 eligibility requirements described below:

33 (a) The following individuals are eligible for services, if they
34 are determined to be medically needy:

35 (i) Pregnant women;

36 (ii) Dependent children under the age of 21;

37 (iii) Individuals who are 65 years of age and older; and

38 (iv) Individuals who are blind or disabled pursuant to either 42
39 C.F.R.435.530 et seq. or 42 C.F.R.435.540 et seq., respectively.

40 (b) The following income standard shall be used to determine
41 medically needy eligibility:

42 (i) For one person and two person households, the income
43 standard shall be the maximum allowable under federal law, but
44 shall not exceed 133 1/3% of the State's payment level to two
45 person households under the aid to families with dependent children
46 program under the State Plan for Title IV-A of the federal Social
47 Security Act in effect as of July 16, 1996; and

1 (ii) For households of three or more persons, the income
2 standard shall be set at 133 1/3% of the State's payment level to
3 similar size households under the aid to families with dependent
4 children program under the State Plan for Title IV-A of the federal
5 Social Security Act in effect as of July 16, 1996.

6 (c) The following resource standard shall be used to determine
7 medically needy eligibility:

8 (i) For one person households, the resource standard shall be
9 200% of the resource standard for recipients of Supplemental
10 Security Income pursuant to 42 U.S.C. s.1382(1)(B);

11 (ii) For two person households, the resource standard shall be
12 200% of the resource standard for recipients of Supplemental
13 Security Income pursuant to 42 U.S.C. s.1382(2)(B);

14 (iii) For households of three or more persons, the resource
15 standard in subparagraph (c)(ii) above shall be increased by
16 \$100.00 for each additional person; and

17 (iv) The resource standards established in (i), (ii), and (iii) are
18 subject to federal approval and the resource standard may be lower
19 if required by the federal Department of Health and Human
20 Services.

21 (d) Individuals whose income exceeds those established in
22 subparagraph (b) of paragraph (8) of this subsection may become
23 medically needy by incurring medical expenses as defined in 42
24 C.F.R.435.831(c) which will reduce their income to the applicable
25 medically needy income established in subparagraph (b) of
26 paragraph (8) of this subsection.

27 (e) A six-month period shall be used to determine whether an
28 individual is medically needy.

29 (f) Eligibility determinations for the medically needy program
30 shall be administered as follows:

31 (i) County welfare agencies and other entities designated by the
32 commissioner are responsible for determining and certifying the
33 eligibility of pregnant women and dependent children. The division
34 shall reimburse county welfare agencies for 100% of the reasonable
35 costs of administration which are not reimbursed by the federal
36 government for the first 12 months of this program's operation.
37 Thereafter, 75% of the administrative costs incurred by county
38 welfare agencies which are not reimbursed by the federal
39 government shall be reimbursed by the division;

40 (ii) The division is responsible for certifying the eligibility of
41 individuals who are 65 years of age and older and individuals who
42 are blind or disabled. The division may enter into contracts with
43 county welfare agencies to determine certain aspects of eligibility.
44 In such instances the division shall provide county welfare agencies
45 with all information the division may have available on the
46 individual.

1 The division shall notify all eligible recipients of the
2 Pharmaceutical Assistance to the Aged and Disabled program,
3 P.L.1975, c.194 (C.30:4D-20 et seq.) on an annual basis of the
4 medically needy program and the program's general requirements.
5 The division shall take all reasonable administrative actions to
6 ensure that Pharmaceutical Assistance to the Aged and Disabled
7 recipients, who notify the division that they may be eligible for the
8 program, have their applications processed expeditiously, at times
9 and locations convenient to the recipients; and

10 (iii) The division is responsible for certifying incurred medical
11 expenses for all eligible persons who attempt to qualify for the
12 program pursuant to subparagraph (d) of paragraph (8) of this
13 subsection;

14 (9) (a) Is a child who is at least one year of age and under 19
15 years of age and, if older than six years of age but under 19 years of
16 age, is uninsured; and

17 (b) Is a member of a family whose income does not exceed
18 133% of the poverty level and who meets the federal Medicaid
19 eligibility requirements set forth in section 9401 of Pub.L.99-509
20 (42 U.S.C. s.1396a);

21 (10) Is a pregnant woman who is determined by a provider to be
22 presumptively eligible for medical assistance based on criteria
23 established by the commissioner, pursuant to section 9407 of
24 Pub.L.99-509 (42 U.S.C. s.1396a(a));

25 (11) Is an individual 65 years of age and older, or an individual
26 who is blind or disabled pursuant to section 301 of Pub.L.92-603
27 (42 U.S.C. s.1382c), whose income does not exceed 100% of the
28 poverty level, adjusted for family size, and whose resources do not
29 exceed 100% of the resource standard used to determine medically
30 needy eligibility pursuant to paragraph (8) of this subsection;

31 (12) Is a qualified disabled and working individual pursuant to
32 section 6408 of Pub.L.101-239 (42 U.S.C. s.1396d) whose income
33 does not exceed 200% of the poverty level and whose resources do
34 not exceed 200% of the resource standard used to determine
35 eligibility under the Supplemental Security Income Program,
36 P.L.1973, c.256 (C.44:7-85 et seq.);

37 (13) Is a pregnant woman or is a child who is under one year of
38 age and is a member of a family whose income does not exceed
39 185% of the poverty level and who meets the federal Medicaid
40 eligibility requirements set forth in section 9401 of Pub.L.99-509
41 (42 U.S.C. s.1396a), except that a pregnant woman who is
42 determined to be a qualified applicant shall, notwithstanding any
43 change in the income of the family of which she is a member,
44 continue to be deemed a qualified applicant until the end of the 60-
45 day period beginning on the last day of her pregnancy;

46 (14) (Deleted by amendment, P.L.1997, c.272).

47 (15) (a) Is a specified low-income Medicare beneficiary
48 pursuant to 42 U.S.C. s.1396a(a)10(E)iii whose resources beginning

1 January 1, 1993 do not exceed 200% of the resource standard used
2 to determine eligibility under the Supplemental Security Income
3 program, P.L.1973, c.256 (C.44:7-85 et seq.) and whose income
4 beginning January 1, 1993 does not exceed 110% of the poverty
5 level, and beginning January 1, 1995 does not exceed 120% of the
6 poverty level.

7 (b) An individual who has, within 36 months, or within 60
8 months in the case of funds transferred into a trust, of applying to
9 be a qualified applicant for Medicaid services in a nursing facility
10 or a medical institution, or for home or community-based services
11 under section 1915(c) of the federal Social Security Act (42 U.S.C.
12 s.1396n(c)), disposed of resources or income for less than fair
13 market value shall be ineligible for assistance for nursing facility
14 services, an equivalent level of services in a medical institution, or
15 home or community-based services under section 1915(c) of the
16 federal Social Security Act (42 U.S.C. s.1396n(c)). The period of
17 the ineligibility shall be the number of months resulting from
18 dividing the uncompensated value of the transferred resources or
19 income by the average monthly private payment rate for nursing
20 facility services in the State as determined annually by the
21 commissioner. In the case of multiple resource or income transfers,
22 the resulting penalty periods shall be imposed sequentially.
23 Application of this requirement shall be governed by 42 U.S.C.
24 s.1396p(c). In accordance with federal law, this provision is
25 effective for all transfers of resources or income made on or after
26 August 11, 1993. Notwithstanding the provisions of this subsection
27 to the contrary, the State eligibility requirements concerning
28 resource or income transfers shall not be more restrictive than those
29 enacted pursuant to 42 U.S.C. s.1396p(c).

30 (c) An individual seeking nursing facility services or home or
31 community-based services and who has a community spouse shall
32 be required to expend those resources which are not protected for
33 the needs of the community spouse in accordance with section
34 1924(c) of the federal Social Security Act (42 U.S.C. s.1396r-5(c))
35 on the costs of long-term care, burial arrangements, and any other
36 expense deemed appropriate and authorized by the commissioner.
37 An individual shall be ineligible for Medicaid services in a nursing
38 facility or for home or community-based services under section
39 1915(c) of the federal Social Security Act (42 U.S.C. s.1396n(c)) if
40 the individual expends funds in violation of this subparagraph. The
41 period of ineligibility shall be the number of months resulting from
42 dividing the uncompensated value of transferred resources and
43 income by the average monthly private payment rate for nursing
44 facility services in the State as determined by the commissioner.
45 The period of ineligibility shall begin with the month that the
46 individual would otherwise be eligible for Medicaid coverage for
47 nursing facility services or home or community-based services.

1 This subparagraph shall be operative only if all necessary
2 approvals are received from the federal government including, but
3 not limited to, approval of necessary State plan amendments and
4 approval of any waivers;

5 (16) Subject to federal approval under Title XIX of the federal
6 Social Security Act, is a dependent child, parent or specified
7 caretaker relative of a child who is a qualified applicant, who would
8 be eligible, without regard to resources, for the aid to families with
9 dependent children program under the State Plan for Title IV-A of
10 the federal Social Security Act as of July 16, 1996, except for the
11 income eligibility requirements of that program, and whose family
12 earned income,

13 (a) if a dependent child, does not exceed 133% of the poverty
14 level; and

15 (b) if a parent or specified caretaker relative, beginning
16 September 1, 2005 does not exceed 100% of the poverty level,
17 beginning September 1, 2006 does not exceed 115% of the poverty
18 level and beginning September 1, 2007 does not exceed 133% of
19 the poverty level, plus such earned income disregards as shall be
20 determined according to a methodology to be established by
21 regulation of the commissioner;

22 The commissioner may increase the income eligibility limits for
23 children and parents and specified caretaker relatives, as funding
24 permits;

25 (17) Is an individual from 18 through 20 years of age who is not
26 a dependent child and would be eligible for medical assistance
27 pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.), without regard to
28 income or resources, who, on the individual's 18th birthday was in
29 resource family care under the care and custody of the Division of
30 Child Protection and Permanency in the Department of Children
31 and Families and whose maintenance was being paid in whole or in
32 part from public funds;

33 (18) Is a person **【between the ages of】** 16 years of age or older
34 and **【65】** who is permanently disabled and working, and**【**:

35 (a) whose income is at or below 250% of the poverty level, plus
36 other established disregards;

37 (b)**【** who pays the premium contribution and other cost sharing
38 as established by the commissioner based solely on the applicant's
39 earned and unearned income, subject to the limits and conditions of
40 federal law**【**; and

41 (c) whose assets, resources and unearned income do not exceed
42 limitations as established by the commissioner**【**.

43 A qualified applicant pursuant to this paragraph shall: (a) not be
44 subject to any eligibility requirements regarding the earned or
45 unearned income of the applicant or the applicant's spouse; and (b)
46 remain eligible for medical care and services as provided under

1 P.L.1968, c.413 for up to a period of one year if, through no fault of
2 the applicant, a job loss occurs;

3 (19) Is an uninsured individual under 65 years of age who:

4 (a) has been screened for breast or cervical cancer under the
5 federal Centers for Disease Control and Prevention breast and
6 cervical cancer early detection program;

7 (b) requires treatment for breast or cervical cancer based upon
8 criteria established by the commissioner;

9 (c) has an income that does not exceed the income standard
10 established by the commissioner pursuant to federal guidelines;

11 (d) meets all other Medicaid eligibility requirements; and

12 (e) in accordance with Pub.L.106-354, is determined by a
13 qualified entity to be presumptively eligible for medical assistance
14 pursuant to 42 U.S.C. s.1396a(aa), based upon criteria established
15 by the commissioner pursuant to section 1920B of the federal Social
16 Security Act (42 U.S.C. s.1396r-1b);

17 (20) Subject to federal approval under Title XIX of the federal
18 Social Security Act, is a single adult or couple, without dependent
19 children, whose income in 2006 does not exceed 50% of the poverty
20 level, in 2007 does not exceed 75% of the poverty level and in 2008
21 and each year thereafter does not exceed 100% of the poverty level;
22 except that a person who is a recipient of Work First New Jersey
23 general public assistance, pursuant to P.L.1947, c.156 (C.44:8-107
24 et seq.), shall not be a qualified applicant; or

25 (21) is an individual who:

26 (a) has an income that does not exceed the highest income
27 eligibility level for pregnant women established under the State
28 plan under Title XIX or Title XXI of the federal Social Security
29 Act;

30 (b) is not pregnant; and

31 (c) is eligible to receive family planning services provided
32 under the Medicaid program pursuant to subsection k. of section 6
33 of P.L.1968, c.413 (C.30:4D-6) and in accordance with 42 U.S.C.
34 s.1396a(ii).

35 j. "Recipient" means any qualified applicant receiving benefits
36 under this act.

37 k. "Resident" means a person who is living in the State
38 voluntarily with the intention of making his home here and not for a
39 temporary purpose. Temporary absences from the State, with
40 subsequent returns to the State or intent to return when the purposes
41 of the absences have been accomplished, do not interrupt continuity
42 of residence.

43 l. "State Medicaid Commission" means the Governor, the
44 Commissioner of Human Services, the President of the Senate and
45 the Speaker of the General Assembly, hereby constituted a
46 commission to approve and direct the means and method for the
47 payment of claims pursuant to P.L.1968, c.413.

- 1 m. "Third party" means any person, institution, corporation,
2 insurance company, group health plan as defined in section 607(1)
3 of the federal "Employee Retirement and Income Security Act of
4 1974," 29 U.S.C. s.1167(1), service benefit plan, health
5 maintenance organization, or other prepaid health plan, or public,
6 private or governmental entity who is or may be liable in contract,
7 tort, or otherwise by law or equity to pay all or part of the medical
8 cost of injury, disease or disability of an applicant for or recipient
9 of medical assistance payable under P.L.1968, c.413.
- 10 n. "Governmental peer grouping system" means a separate
11 class of skilled nursing and intermediate care facilities administered
12 by the State or county governments, established for the purpose of
13 screening their reported costs and setting reimbursement rates under
14 the Medicaid program that are reasonable and adequate to meet the
15 costs that must be incurred by efficiently and economically operated
16 State or county skilled nursing and intermediate care facilities.
- 17 o. "Comprehensive maternity or pediatric care provider" means
18 any person or public or private health care facility that is a provider
19 and that is approved by the commissioner to provide comprehensive
20 maternity care or comprehensive pediatric care as defined in
21 subsection b. (18) and (19) of section 6 of P.L.1968, c.413
22 (C.30:4D-6).
- 23 p. "Poverty level" means the official poverty level based on
24 family size established and adjusted under Section 673(2) of
25 Subtitle B, the "Community Services Block Grant Act," of
26 Pub.L.97-35 (42 U.S.C. s.9902(2)).
- 27 q. "Eligible alien" means one of the following:
28 (1) an alien present in the United States prior to August 22,
29 1996, who is:
30 (a) a lawful permanent resident;
31 (b) a refugee pursuant to section 207 of the federal "Immigration
32 and Nationality Act" (8 U.S.C. s.1157);
33 (c) an asylee pursuant to section 208 of the federal
34 "Immigration and Nationality Act" (8 U.S.C. s.1158);
35 (d) an alien who has had deportation withheld pursuant to
36 section 243(h) of the federal "Immigration and Nationality Act" (8
37 U.S.C. s.1253 (h));
38 (e) an alien who has been granted parole for less than one year
39 by the U.S. Citizenship and Immigration Services pursuant to
40 section 212(d)(5) of the federal "Immigration and Nationality Act"
41 (8 U.S.C. s.1182(d)(5));
42 (f) an alien granted conditional entry pursuant to section
43 203(a)(7) of the federal "Immigration and Nationality Act" (8
44 U.S.C. s.1153(a)(7)) in effect prior to April 1, 1980; or
45 (g) an alien who is honorably discharged from or on active duty
46 in the United States armed forces and the alien's spouse and
47 unmarried dependent child.

1 (2) An alien who entered the United States on or after August
2 22, 1996, who is:

3 (a) an alien as described in paragraph (1)(b), (c), (d) or (g) of
4 this subsection; or

5 (b) an alien as described in paragraph (1)(a), (e) or (f) of this
6 subsection who entered the United States at least five years ago.

7 (3) A legal alien who is a victim of domestic violence in
8 accordance with criteria specified for eligibility for public benefits
9 as provided in Title V of the federal "Illegal Immigration Reform
10 and Immigrant Responsibility Act of 1996" (8 U.S.C. s.1641).

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

12

13 2. Section 4 of P.L.1987, c.350 (C.30:4G-16) is amended to
14 read as follows:

15 4. A person is eligible for the personal assistance services
16 program if:

17 a. The person has a permanent physical disability;

18 b. The person is 18 **through 70** years of age or older;

19 c. The person is a resident of this State;

20 d. The person is in need of personal assistance services
21 pursuant to a written plan of service;

22 e. The person is capable of managing and supervising their
23 personal assistance services;

24 f. A relative or other informal caregiver is not available to
25 provide the services that the person needs;

26 g. The person lives or plans to live in a private house or
27 apartment, rooming or boarding house, group home, educational
28 facility or residential health care facility; and the personal
29 assistance services that the person shall receive are supplemental to,
30 and not duplicative of, services provided to the person in the
31 rooming or boarding house, group home, educational facility or
32 residential health care facility pursuant to licensure requirements.

33 A person who resides, or is a patient, in a nursing, assisted living,
34 or intermediate care facility, special hospital or other inpatient
35 medical setting is not eligible for the personal assistance services
36 program;

37 h. The attending physician of the person who shall receive the
38 personal assistance services has confirmed in writing that the
39 person has a permanent physical disability, requires no assistance in
40 the coordination of therapeutic regimes, and that the personal
41 assistance services will be appropriate to meet the person's needs;
42 and

43 i. The person receives no more than 40 hours of personal
44 assistance services from this program or any other program per
45 week. The commissioner shall develop rules for individual
46 exceptions to this requirement.

1 j. The commissioner shall develop rules for individual
2 exceptions to the age criteria.

3 (cf: P.L.2009, c.160, s.3)
4

5 3. The Commissioner of Human Services shall apply for such
6 State plan amendments or waivers as may be necessary to implement
7 the provisions of this act and to continue to secure federal financial
8 participation for the New Jersey Medicaid program.
9

10 4. The Commissioner of Human services, pursuant to the
11 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.)
12 shall adopt such rules and regulations necessary to implement the
13 provisions of this act.
14

15 5. This act shall take effect immediately, but shall remain
16 inoperative until the Commissioner of Human Services receives any
17 federal approvals following the submission of State plan
18 amendments or waivers, pursuant to section 3.
19
20

21 STATEMENT 22

23 This bill revises eligibility requirements for the NJ Workability
24 Program and the Personal Assistance Services Program. It is the
25 sponsor’s intent that this bill will remove barriers to employment and
26 career advancement for individuals with disabilities.

27 The NJ Workability Program is a Medicaid buy-in option for
28 employed, permanently-disabled individuals, authorized under the
29 federal “Ticket to Work and Work Incentives Improvement Act of
30 1999,” Pub.L.106-170. The bill expands the eligibility for this
31 program in various ways. First, the bill removes the upper age limit
32 for eligibility, providing that any individual who is older than 16 may
33 qualify. The current age requirement is between 16 and 65 years of
34 age. Second, the bills requires that the premium contribution
35 established by the commissioner is to be based solely on the
36 applicant’s earned and unearned income. In doing so, the income of
37 the applicant’s spouse cannot be considered in this determination.
38 Third, the bill eliminates the program’s existing income eligibility
39 limit of 250 percent of the federal poverty level and explicitly provides
40 that a qualified applicant is not to be subject to any eligibility
41 requirements regarding the earned or unearned income of the applicant
42 or the applicant’s spouse. Finally, the bill permits that an eligible
43 applicant for the program is to remain eligible for Medicaid for up to a
44 period of one year if, through no fault of the applicant, a job loss
45 occurs.

1 The Personal Assistance Services Program is a State-funded
2 program that provides up to 40 hours per week of non-medical
3 personal care assistance to those individuals with permanent
4 physical disabilities who work, seek educational advancement, or
5 volunteer in the community for a minimum of 20 hours per month.
6 Currently, only individuals 18 through 70 years of age can qualify
7 for this program. Under the bill, the age cap is removed, providing
8 that anyone over the age of 18 may be eligible for these services.