

P.L. 1997, CHAPTER 352, *approved January 15, 1998*
Senate, No. 2170

1 **AN ACT** concerning the eligibility of legal aliens for the Medicaid
2 program and amending and supplementing 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 3 of P.L.1968, c.413 (C.30:4D-3) is amended to read as
8 follows:

9 3. Definitions. As used in this act, and unless the context
10 otherwise requires:

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

13 b. "Commissioner" means the Commissioner of Human Services.

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

17 d. "Director" means the Director of the Division of Medical
18 Assistance and Health Services.

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

21 f. "Medicaid" means the New Jersey Medical Assistance and Health
22 Services Program.

23 g. "Medical assistance" means payments on behalf of recipients to
24 providers for medical care and services authorized under this act.

25 h. "Provider" means any person, public or private institution,
26 agency or business concern approved by the division lawfully
27 providing medical care, services, goods and supplies authorized under
28 this act, holding, where applicable, a current valid license to provide
29 such services or to dispense such goods or supplies.

30 i. "Qualified applicant" means a person who is a resident of this
31 State, and either a citizen of the United States or an eligible alien, and
32 is determined to need medical care and services as provided under this
33 act, and who:

34 (1) Is a dependent child or parent or caretaker relative of a

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

Matter underlined thus is new matter.

1 dependent child and a recipient of benefits under the Work First New
2 Jersey program established pursuant to [P.L. , c. (C.)(pending
3 before the Legislature as Assembly Bill No. 12 of 1996)] P.L.1997,
4 c.38 (C.44:10-55 et seq.) who would be, except for resources, eligible
5 for the aid to families with dependent children program under the State
6 Plan for Title IV-A of the federal Social Security Act as of July 16,
7 1996;

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

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

13 (4) Would be eligible to receive Supplemental Security Income
14 under Title XVI of the federal Social Security Act or, using the
15 resource standards of the Work First New Jersey program, would be
16 [, except for resources,] eligible for the aid to families with dependent
17 children program under the State Plan for Title IV-A of the federal
18 Social Security Act as of July 16, 1996, except for failure to meet an
19 eligibility condition or requirement imposed under such State program
20 which is prohibited under Title XIX of the federal Social Security Act
21 such as a durational residency requirement, relative responsibility,
22 consent to imposition of a lien;

23 (5) Is a child between 18 and 21 years of age who, using the
24 resource standards of the Work First New Jersey program, would be
25 [, except for resources,] eligible for the aid to families with dependent
26 children program under the State Plan for Title IV-A of the federal
27 Social Security Act as of July 16, 1996, living in the family group
28 except for lack of school attendance or pursuit of formalized
29 vocational or technical training;

30 (6) Is an individual under 21 years of age who, using the resource
31 standards of the Work First New Jersey program, would be, except for
32 [resources or] dependent child requirements, eligible for the aid to
33 families with dependent children program under the State Plan for
34 Title IV-A of the federal Social Security Act as of July 16, 1996, or
35 groups of such individuals, including but not limited to, children in
36 foster placement under supervision of the Division of Youth and
37 Family Services whose maintenance is being paid in whole or in part
38 from public funds, children placed in a foster home or institution by a
39 private adoption agency in New Jersey or children in intermediate care
40 facilities, including developmental centers for the developmentally
41 disabled, or in psychiatric hospitals;

42 (7) [Except for resources] Using the resource standards of the
43 Work First New Jersey program, would be eligible for the aid to
44 families with dependent children program under the State Plan for
45 Title IV-A of the federal Social Security Act in effect as of July 16,
46 1996 or the Supplemental Security Income program, but is not

- 1 receiving such assistance and applies for medical assistance only;
- 2 (8) Is determined to be medically needy and meets all the eligibility
3 requirements described below:
- 4 (a) The following individuals are eligible for services, if they are
5 determined to be medically needy:
- 6 (i) Pregnant women;
- 7 (ii) Dependent children under the age of 21;
- 8 (iii) Individuals who are 65 years of age and older; and
- 9 (iv) Individuals who are blind or disabled pursuant to either
10 42 C.F.R.435.530 et seq. or 42 C.F.R.435.540 et seq., respectively.
- 11 (b) The following income standard shall be used to determine
12 medically needy eligibility:
- 13 (i) For one person and two person households, the income standard
14 shall be the maximum allowable under federal law, but shall not exceed
15 133 1/3% of the State's payment level to two person households under
16 the aid to families with dependent children program under the State
17 Plan for Title IV-A of the federal Social Security Act in effect as of
18 July 16, 1996 ; and
- 19 (ii) For households of three or more persons, the income standard
20 shall be set at 133 1/3% of the State's payment level to similar size
21 households under the aid to families with dependent children program
22 under the State Plan for Title IV-A of the federal Social Security Act
23 in effect as of July 16, 1996 .
- 24 (c) The following resource standard shall be used to determine
25 medically needy eligibility:
- 26 (i) For one person households, the resource standard shall be 200%
27 of the resource standard for recipients of Supplemental Security
28 Income pursuant to 42 U.S.C. [s.]§1382(1)(B);
- 29 (ii) For two person households, the resource standard shall be
30 200% of the resource standard for recipients of Supplemental Security
31 Income pursuant to 42 U.S.C. [s.]§1382(2)(B);
- 32 (iii) For households of three or more persons, the resource
33 standard in subparagraph (c)(ii) above shall be increased by \$100.00
34 for each additional person; and
- 35 (iv) The resource standards established in (i), (ii), and (iii) are
36 subject to federal approval and the resource standard may be lower if
37 required by the federal Department of Health and Human Services.
- 38 (d) Individuals whose income exceeds those established in
39 subparagraph (b) of paragraph (8) of this subsection may become
40 medically needy by incurring medical expenses as defined in
41 42 C.F.R.435.831(c) which will reduce their income to the applicable
42 medically needy income established in subparagraph (b) of paragraph
43 (8) of this subsection.
- 44 (e) A six-month period shall be used to determine whether an
45 individual is medically needy.
- 46 (f) Eligibility determinations for the medically needy program shall

1 be administered as follows:

2 (i) County welfare agencies are responsible for determining and
3 certifying the eligibility of pregnant women and dependent children.
4 The division shall reimburse county welfare agencies for 100% of the
5 reasonable costs of administration which are not reimbursed by the
6 federal government for the first 12 months of this program's operation.
7 Thereafter, 75% of the administrative costs incurred by county welfare
8 agencies which are not reimbursed by the federal government shall be
9 reimbursed by the division;

10 (ii) The division is responsible for certifying the eligibility of
11 individuals who are 65 years of age and older and individuals who are
12 blind or disabled. The division may enter into contracts with county
13 welfare agencies to determine certain aspects of eligibility. In such
14 instances the division shall provide county welfare agencies with all
15 information the division may have available on the individual.

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

25 (iii) The division is responsible for certifying incurred medical
26 expenses for all eligible persons who attempt to qualify for the
27 program pursuant to subparagraph (d) of paragraph (8) of this
28 subsection;

29 (9) (a) Is a child who is at least one year of age and under six
30 years of age; and

31 (b) Is a member of a family whose income does not exceed 133%
32 of the poverty level and who meets the federal Medicaid eligibility
33 requirements set forth in section 9401 of
34 Pub.L.99-509 (42 U.S.C. [s.]§1396a);

35 (10) Is a pregnant woman who is determined by a provider to be
36 presumptively eligible for medical assistance based on criteria
37 established by the commissioner, pursuant to section 9407 of
38 Pub.L.99-509 (42 U.S.C. [s.]§1396a(a));

39 (11) Is an individual 65 years of age and older, or an individual
40 who is blind or disabled pursuant to section 301 of Pub.L.92-603
41 (42 U.S.C. [s.]§1382c), whose income does not exceed 100% of the
42 poverty level, adjusted for family size, and whose resources do not
43 exceed 100% of the resource standard used to determine medically
44 needy eligibility pursuant to paragraph (8) of this subsection;

45 (12) Is a qualified disabled and working individual pursuant to
46 section 6408 of Pub.L.101-239 (42 U.S.C. [s.]§1396d) whose income

1 does not exceed 200% of the poverty level and whose resources do
2 not exceed 200% of the resource standard used to determine eligibility
3 under the Supplemental Security Income Program, P.L.1973, c.256
4 (C.44:7-85 et seq.);

5 (13) Is a pregnant woman or is a child who is under one year of
6 age and is a member of a family whose income does not exceed 185%
7 of the poverty level and who meets the federal Medicaid eligibility
8 requirements set forth in section 9401 of Pub.L.99-509
9 (42 U.S.C. [s.]§1396a), except that a pregnant woman who is
10 determined to be a qualified applicant shall, notwithstanding any
11 change in the income of the family of which she is a member, continue
12 to be deemed a qualified applicant until the end of the 60-day period
13 beginning on the last day of her pregnancy;

14 (14) Is a child born after September 30, 1983 who has attained six
15 years of age but has not attained 19 years of age and is a member of
16 a family whose income does not exceed 100% of the poverty level; or

17 (15) (a) Is a specified low-income [medicare] Medicare beneficiary
18 pursuant to 42 U.S.C. [s.]§1396a(a)10(E)iii whose resources
19 beginning January 1, 1993 do not exceed 200% of the resource
20 standard used to determine eligibility under the Supplemental Security
21 Income program, P.L.1973, c.256 (C.44:7-85 et seq.) and whose
22 income beginning January 1, 1993 does not exceed 110% of the
23 poverty level, and beginning January 1, 1995 does not exceed 120%
24 of the poverty level.

25 (b) An individual who has, within 36 months, or within 60 months
26 in the case of funds transferred into a trust, of applying to be a
27 qualified applicant for Medicaid services in a nursing facility or a
28 medical institution, or for home or community-based services under
29 section 1915(c) of the federal Social Security Act (42 U.S.C.
30 [s.]§1396n(c)), disposed of resources or income for less than fair
31 market value shall be ineligible for assistance for nursing facility
32 services, an equivalent level of services in a medical institution, or
33 home or community-based services under section 1915(c) of the
34 federal Social Security Act (42 U.S.C. [s.]§1396n(c)). The period of
35 the ineligibility shall be the number of months resulting from dividing
36 the uncompensated value of the transferred resources or income by the
37 average monthly private payment rate for nursing facility services in
38 the State as determined annually by the commissioner. In the case of
39 multiple resource or income transfers, the resulting penalty periods
40 shall be imposed sequentially. Application of this requirement shall be
41 governed by 42 U.S.C. [s.]§1396p(c). In accordance with federal law,
42 this provision is effective for all transfers of resources or income made
43 on or after August 11, 1993. Notwithstanding the provisions of this
44 subsection to the contrary, the State eligibility requirements
45 concerning resource or income transfers shall not be more restrictive
46 than those enacted pursuant to 42 U.S.C. [s.]§1396p(c).

1 (c) An individual seeking nursing facility services or home or
2 community-based services and who has a community spouse shall be
3 required to expend those resources which are not protected for the
4 needs of the community spouse in accordance with section 1924(c) of
5 the federal Social Security Act (42 U.S.C. [s.]§1396r-5(c)) on the
6 costs of long-term care, burial arrangements, and any other expense
7 deemed appropriate and authorized by the commissioner. An
8 individual shall be ineligible for Medicaid services in a nursing facility
9 or for home or community-based services under section 1915(c) of the
10 federal Social Security Act (42 U.S.C. [s.]§1396n(c)) if the individual
11 expends funds in violation of this subparagraph. The period of
12 ineligibility shall be the number of months resulting from dividing the
13 uncompensated value of transferred resources and income by the
14 average monthly private payment rate for nursing facility services in
15 the State as determined by the commissioner. The period of
16 ineligibility shall begin with the month that the individual would
17 otherwise be eligible for Medicaid coverage for nursing facility
18 services or home or community-based services.

19 This subparagraph shall be operative only if all necessary approvals
20 are received from the federal government including, but not limited to,
21 approval of necessary State plan amendments and approval of any
22 waivers.

23 j. "Recipient" means any qualified applicant receiving benefits
24 under this act.

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

30 l. "State Medicaid Commission" means the Governor, the
31 Commissioner of Human Services, the President of the Senate and the
32 Speaker of the General Assembly, hereby constituted a commission to
33 approve and direct the means and method for the payment of claims
34 pursuant to this act.

35 m. "Third party" means any person, institution, corporation,
36 insurance company, group health plan as defined in section 607(1) of
37 the federal "Employee Retirement and Income Security Act of 1974,"
38 29 U.S.C. [s.]§1167(1), service benefit plan, health maintenance
39 organization, or other prepaid health plan, or public, private or
40 governmental entity who is or may be liable in contract, tort, or
41 otherwise by law or equity to pay all or part of the medical cost of
42 injury, disease or disability of an applicant for or recipient of medical
43 assistance payable under this act.

44 n. "Governmental peer grouping system" means a separate class of
45 skilled nursing and intermediate care facilities administered by the
46 State or county governments, established for the purpose of screening

1 their reported costs and setting reimbursement rates under the
2 Medicaid program that are reasonable and adequate to meet the costs
3 that must be incurred by efficiently and economically operated State
4 or county skilled nursing and intermediate care facilities.

5 o. "Comprehensive maternity or pediatric care provider" means any
6 person or public or private health care facility that is a provider and
7 that is approved by the commissioner to provide comprehensive
8 maternity care or comprehensive pediatric care as defined in
9 subsection b. (18) and (19) of section 6 of P.L.1968, c.413
10 (C.30:4D-6).

11 p. "Poverty level" means the official poverty level based on family
12 size established and adjusted under Section 673(2) of Subtitle B, the
13 "Community Services Block Grant Act," of Pub.L.97-35
14 (42 U.S.C. [s.]§9902(2)).

15 q. "Eligible alien" means one of the following:

16 (1) an alien present in the United States prior to August 22, 1996,
17 who is:

18 (a) a lawful permanent resident;

19 (b) a refugee pursuant to section 207 of the federal "Immigration
20 and Nationality Act" (8 U.S.C.§1157);

21 (c) an asylee pursuant to section 208 of the federal "Immigration
22 and Nationality Act" (8 U.S.C.§1158);

23 (d) an alien who has had deportation withheld pursuant to section
24 243(h) of the federal "Immigration and Nationality Act"
25 (8 U.S.C.§1253 (h));

26 (e) an alien who has been granted parole for less than one year by
27 the federal Immigration and Naturalization Service pursuant to section
28 212(d)(5) of the federal "Immigration and Nationality Act"
29 (8 U.S.C.§1182(d)(5));

30 (f) an alien granted conditional entry pursuant to section 203(a)(7)
31 of the federal "Immigration and Nationality Act"
32 (8 U.S.C.§1153(a)(7)) in effect prior to April 1, 1980; or

33 (g) an alien who is honorably discharged from or on active duty in
34 the United States armed forces and the alien's spouse and unmarried
35 dependent child.

36 (2) An alien who entered the United States on or after August 22,
37 1996, who is:

38 (a) an alien as described in paragraphs (1)(b), (c), (d) or (g) of this
39 subsection; or

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

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

46 (cf: P.L.1997, c.13, s.10)

1 2. (New section) An eligible alien as defined in section 3 of
2 P.L.1968, c.413 (C.30:4D-1 et seq.) who otherwise meets all eligibility
3 criteria therefor is entitled to medical assistance provided pursuant to
4 section 6 of P.L.1968, c.413 (C.30:4D-6). An alien who does not
5 qualify as an eligible alien but who is a resident of New Jersey and
6 would otherwise be eligible for medical assistance provided pursuant
7 to section 6 of P.L.1968, c.413 is entitled only to care and services
8 necessary for the treatment of an emergency medical condition as
9 defined in section 1903(v)(3) of the federal Social Security Act (42
10 U.S.C.§1396b(v)(3)).

11

12 3. This act shall take effect immediately.

13

14

15

STATEMENT

16

17 This bill amends the "New Jersey Medical Assistance and Health
18 Services Act," P.L.1968, c.413 (C.30:4D-1 et seq.) to conform
19 Medicaid eligibility requirements for alien residents of this State to the
20 provisions of the recently enacted federal welfare reform law, the
21 "Personal Responsibility and Work Opportunity Reconciliation Act of
22 1996," Pub.L.104-193. The bill also revises Medicaid resource
23 eligibility provisions enacted by P.L.1997, c.13 (C.44:10-34 et seq.),
24 which was part of the legislative package establishing the "Work First
25 New Jersey" program, to apply the resource eligibility criteria of the
26 Work First New Jersey program to Medicaid, as originally intended.

27 Pub.L.104-193 limited the criteria by which legal aliens can qualify
28 for Medicaid, as follows: those entering the United States before
29 August 22, 1996 (the date of enactment of the federal statute), lawful
30 permanent residents with 40 quarters of work history, and those
31 honorably discharged from or actively serving in the United States
32 armed forces are eligible for Medicaid if they meet other eligibility
33 criteria; and refugees, asylees and persons whose deportation has been
34 withheld are also eligible, but only for a period of five years after entry
35 into this country.

36 Pub.L.104-193 does, however, give the State the option to provide
37 Medicaid assistance to lawful permanent residents without regard to
38 quarters of work history and to other categories of legal aliens if they
39 were present in the United States prior to August 22, 1996. This bill
40 would implement this optional coverage in order to maximize federal
41 financial participation for delivered health care services.

42 For legal aliens entering the United States on or after August 22,
43 1996, Pub.L.104-193 prohibits Medicaid eligibility for the first five
44 years after entry into the country but requires Medicaid coverage after
45 the five-year period elapses for those otherwise eligible legal aliens
46 who have compiled 40 hours of work history. The federal law also

1 requires Medicaid coverage of otherwise eligible refugees, asylees,
2 aliens who were veterans, and aliens whose deportation was withheld,
3 for a period of five years beginning with their date of entry into the
4 United States.

5 For legal aliens entering the United States on or after August 22,
6 1996, Pub.L.104-193 does, however, give the State the option to
7 provide Medicaid assistance to lawful permanent residents after the
8 five-year ban on eligibility without regard to quarters of work history,
9 and also to other categories of legal aliens beyond the five-year period
10 of required Medicaid coverage. This bill implements this optional
11 coverage so as to maximize federal financial participation for delivered
12 health care services.

13 Pub.L.104-193 eliminated the automatic eligibility for Medicaid of
14 persons receiving aid to families with dependent children (AFDC)
15 benefits. Medicaid eligibility is now tied to AFDC income and
16 resource methodologies which were in effect on July 16, 1996;
17 however, states may use more liberal methodologies than these. This
18 bill clarifies that the more liberal resource methodologies used in
19 determining eligibility for Work First New Jersey benefits will also be
20 used in determining eligibility for Medicaid. By doing so, the bill will
21 ensure consistency between the two programs with respect to resource
22 eligibility policy and thereby simplify eligibility systems and avoid
23 disruptions which could result from having two different eligibility
24 policies.

25

26

27

28

29 Revises Medicaid eligibility requirements for legal aliens pursuant to
30 federal law.