

[Passed Both Houses]

SENATE, No. 2170

STATE OF NEW JERSEY

INTRODUCED JUNE 12, 1997

By Senators BASSANO, Sinagra, Assemblywoman Vandervalk,
Assemblymen Felice, Bucco, Assemblywomen Quigley and
Weinberg

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:

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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.

**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 i. "Qualified applicant" means a person who is a resident of this
2 State, and either a citizen of the United States or an eligible alien, and
3 is determined to need medical care and services as provided under this
4 act, and who:
- 5 (1) Is a dependent child or parent or caretaker relative of a
6 dependent child and a recipient of benefits under the Work First New
7 Jersey program established pursuant to [P.L. , c. (C.)(pending
8 before the Legislature as Assembly Bill No. 12 of 1996)] P.L.1997,
9 c.38 (C.44:10-55 et seq.) who would be, except for resources, eligible
10 for the aid to families with dependent children program under the State
11 Plan for Title IV-A of the federal Social Security Act as of July 16,
12 1996;
- 13 (2) Is a recipient of Supplemental Security Income for the Aged,
14 Blind and Disabled under Title XVI of the Social Security Act;
- 15 (3) Is an "ineligible spouse" of a recipient of Supplemental Security
16 Income for the Aged, Blind and Disabled under Title XVI of the Social
17 Security Act, as defined by the federal Social Security Administration;
- 18 (4) Would be eligible to receive Supplemental Security Income
19 under Title XVI of the federal Social Security Act or, using the
20 resource standards of the Work First New Jersey program, would be
21 [, except for resources,] eligible for the aid to families with dependent
22 children program under the State Plan for Title IV-A of the federal
23 Social Security Act as of July 16, 1996, except for failure to meet an
24 eligibility condition or requirement imposed under such State program
25 which is prohibited under Title XIX of the federal Social Security Act
26 such as a durational residency requirement, relative responsibility,
27 consent to imposition of a lien;
- 28 (5) Is a child between 18 and 21 years of age who, using the
29 resource standards of the Work First New Jersey program, would be
30 [, except for resources,] eligible for the aid to families with dependent
31 children program under the State Plan for Title IV-A of the federal
32 Social Security Act as of July 16, 1996, living in the family group
33 except for lack of school attendance or pursuit of formalized
34 vocational or technical training;
- 35 (6) Is an individual under 21 years of age who, using the resource
36 standards of the Work First New Jersey program, would be, except for
37 [resources or] dependent child requirements, eligible for the aid to
38 families with dependent children program under the State Plan for
39 Title IV-A of the federal Social Security Act as of July 16, 1996, or
40 groups of such individuals, including but not limited to, children in
41 foster placement under supervision of the Division of Youth and
42 Family Services whose maintenance is being paid in whole or in part
43 from public funds, children placed in a foster home or institution by a
44 private adoption agency in New Jersey or children in intermediate care
45 facilities, including developmental centers for the developmentally
46 disabled, or in psychiatric hospitals;

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

1 medically needy income established in subparagraph (b) of paragraph
2 (8) of this subsection.

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

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

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

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

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

30 (iii) The division is responsible for certifying incurred medical
31 expenses for all eligible persons who attempt to qualify for the
32 program pursuant to subparagraph (d) of paragraph (8) of this
33 subsection;

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

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

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

44 (11) Is an individual 65 years of age and older, or an individual
45 who is blind or disabled pursuant to section 301 of Pub.L.92-603
46 (42 U.S.C. [s.]§1382c), whose income does not exceed 100% of the

1 poverty level, adjusted for family size, and whose resources do not
2 exceed 100% of the resource standard used to determine medically
3 needy eligibility pursuant to paragraph (8) of this subsection;

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

10 (13) Is a pregnant woman or is a child who is under one year of
11 age and is a member of a family whose income does not exceed 185%
12 of the poverty level and who meets the federal Medicaid eligibility
13 requirements set forth in section 9401 of Pub.L.99-509
14 (42 U.S.C. [s.]§1396a), except that a pregnant woman who is
15 determined to be a qualified applicant shall, notwithstanding any
16 change in the income of the family of which she is a member, continue
17 to be deemed a qualified applicant until the end of the 60-day period
18 beginning on the last day of her pregnancy;

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

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

30 (b) An individual who has, within 36 months, or within 60 months
31 in the case of funds transferred into a trust, of applying to be a
32 qualified applicant for Medicaid services in a nursing facility or a
33 medical institution, or for home or community-based services under
34 section 1915(c) of the federal Social Security Act (42 U.S.C.
35 [s.]§1396n(c)), disposed of resources or income for less than fair
36 market value shall be ineligible for assistance for nursing facility
37 services, an equivalent level of services in a medical institution, or
38 home or community-based services under section 1915(c) of the
39 federal Social Security Act (42 U.S.C. [s.]§1396n(c)). The period of
40 the ineligibility shall be the number of months resulting from dividing
41 the uncompensated value of the transferred resources or income by the
42 average monthly private payment rate for nursing facility services in
43 the State as determined annually by the commissioner. In the case of
44 multiple resource or income transfers, the resulting penalty periods
45 shall be imposed sequentially. Application of this requirement shall be
46 governed by 42 U.S.C. [s.]§1396p(c). In accordance with federal law,

1 this provision is effective for all transfers of resources or income made
2 on or after August 11, 1993. Notwithstanding the provisions of this
3 subsection to the contrary, the State eligibility requirements
4 concerning resource or income transfers shall not be more restrictive
5 than those enacted pursuant to 42 U.S.C. [s.]§1396p(c).

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

24 This subparagraph shall be operative only if all necessary approvals
25 are received from the federal government including, but not limited to,
26 approval of necessary State plan amendments and approval of any
27 waivers.

28 j. "Recipient" means any qualified applicant receiving benefits
29 under this act.

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

35 l. "State Medicaid Commission" means the Governor, the
36 Commissioner of Human Services, the President of the Senate and the
37 Speaker of the General Assembly, hereby constituted a commission to
38 approve and direct the means and method for the payment of claims
39 pursuant to this act.

40 m. "Third party" means any person, institution, corporation,
41 insurance company, group health plan as defined in section 607(1) of
42 the federal "Employee Retirement and Income Security Act of 1974,"
43 29 U.S.C. [s.]§1167(1), service benefit plan, health maintenance
44 organization, or other prepaid health plan, or public, private or
45 governmental entity who is or may be liable in contract, tort, or
46 otherwise by law or equity to pay all or part of the medical cost of

1 injury, disease or disability of an applicant for or recipient of medical
2 assistance payable under this act.

3 n. "Governmental peer grouping system" means a separate class of
4 skilled nursing and intermediate care facilities administered by the
5 State or county governments, established for the purpose of screening
6 their reported costs and setting reimbursement rates under the
7 Medicaid program that are reasonable and adequate to meet the costs
8 that must be incurred by efficiently and economically operated State
9 or county skilled nursing and intermediate care facilities.

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

16 p. "Poverty level" means the official poverty level based on family
17 size established and adjusted under Section 673(2) of Subtitle B, the
18 "Community Services Block Grant Act," of Pub.L.97-35
19 (42 U.S.C. [s.]§9902(2)).

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

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

23 (a) a lawful permanent resident;

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

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

28 (d) an alien who has had deportation withheld pursuant to section
29 243(h) of the federal "Immigration and Nationality Act"
30 (8 U.S.C. §1253 (h));

31 (e) an alien who has been granted parole for less than one year by
32 the federal Immigration and Naturalization Service pursuant to section
33 212(d)(5) of the federal "Immigration and Nationality Act"
34 (8 U.S.C. §1182(d)(5));

35 (f) an alien granted conditional entry pursuant to section 203(a)(7)
36 of the federal "Immigration and Nationality Act"
37 (8 U.S.C. §1153(a)(7)) in effect prior to April 1, 1980; or

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

41 (2) An alien who entered the United States on or after August 22,
42 1996, who is:

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

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

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

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

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

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18 3. This act shall take effect immediately.

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STATEMENT

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23 This bill amends the "New Jersey Medical Assistance and Health
24 Services Act," P.L.1968, c.413 (C.30:4D-1 et seq.) to conform
25 Medicaid eligibility requirements for alien residents of this State to the
26 provisions of the recently enacted federal welfare reform law, the
27 "Personal Responsibility and Work Opportunity Reconciliation Act of
28 1996," Pub.L.104-193. The bill also revises Medicaid resource
29 eligibility provisions enacted by P.L.1997, c.13 (C.44:10-34 et seq.),
30 which was part of the legislative package establishing the "Work First
31 New Jersey" program, to apply the resource eligibility criteria of the
32 Work First New Jersey program to Medicaid, as originally intended.

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

42 Pub.L.104-193 does, however, give the State the option to provide
43 Medicaid assistance to lawful permanent residents without regard to
44 quarters of work history and to other categories of legal aliens if they
45 were present in the United States prior to August 22, 1996. This bill
46 would implement this optional coverage in order to maximize federal

1 financial participation for delivered health care services.

2 For legal aliens entering the United States on or after August 22,
3 1996, Pub.L.104-193 prohibits Medicaid eligibility for the first five
4 years after entry into the country but requires Medicaid coverage after
5 the five-year period elapses for those otherwise eligible legal aliens
6 who have compiled 40 hours of work history. The federal law also
7 requires Medicaid coverage of otherwise eligible refugees, asylees,
8 aliens who were veterans, and aliens whose deportation was withheld,
9 for a period of five years beginning with their date of entry into the
10 United States.

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

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

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35 Revises Medicaid eligibility requirements for legal aliens pursuant to
36 federal law.