

ASSEMBLY, No. 2641

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Revises procedures for processing incomplete Medicaid applications; exempts asset transfers of up to \$500 per month during look back period for determining eligibility for long-term care services.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning Medicaid and amending and supplementing
2 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
8 as follows:

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

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

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

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

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

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

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

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

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

44 (2) Is a recipient of Supplemental Security Income for the Aged,
45 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;

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

2 (15) (a) Is a specified low-income Medicare beneficiary
3 pursuant to 42 U.S.C. s.1396a(a)10(E)iii whose resources beginning
4 January 1, 1993 do not exceed 200% of the resource standard used
5 to determine eligibility under the Supplemental Security Income
6 program, P.L.1973, c.256 (C.44:7-85 et seq.) and whose income
7 beginning January 1, 1993 does not exceed 110% of the poverty
8 level, and beginning January 1, 1995 does not exceed 120% of the
9 poverty level.

10 (b) An individual who has, **【within 36 months, or】** within 60
11 months **【in the case of funds transferred into a trust,】** of applying to
12 be a qualified applicant for Medicaid services in a nursing facility
13 or a medical institution, or for home or community-based services
14 under section 1915(c) of the federal Social Security Act (42 U.S.C.
15 s.1396n(c)), disposed of resources or income for less than fair
16 market value shall be ineligible for assistance for nursing facility
17 services, an equivalent level of services in a medical institution, or
18 home or community-based services under section 1915(c) of the
19 federal Social Security Act (42 U.S.C. s.1396n(c)). The period of
20 the ineligibility shall be the number of months resulting from
21 dividing the uncompensated value of the transferred resources or
22 income by the average monthly private payment rate for nursing
23 facility services in the State as determined annually by the
24 commissioner. In the case of multiple resource or income transfers,
25 the resulting penalty periods shall be imposed sequentially.
26 Application of this requirement shall be governed by 42 U.S.C.
27 s.1396p(c). In accordance with federal law, this provision is
28 effective for all transfers of resources or income made on or after
29 August 11, 1993. Notwithstanding the provisions of this subsection
30 to the contrary, the State eligibility requirements concerning
31 resource or income transfers shall not be more restrictive than those
32 enacted pursuant to 42 U.S.C. s.1396p(c). An individual shall not
33 be subject to a period of ineligibility as a result of transfers that
34 total \$500 or less in a calendar month.

35 (c) An individual seeking nursing facility services or home or
36 community-based services and who has a community spouse shall
37 be required to expend those resources which are not protected for
38 the needs of the community spouse in accordance with section
39 1924(c) of the federal Social Security Act (42 U.S.C. s.1396r-5(c))
40 on the costs of long-term care, burial arrangements, and any other
41 expense deemed appropriate and authorized by the commissioner.
42 An individual shall be ineligible for Medicaid services in a nursing
43 facility or for home or community-based services under section
44 1915(c) of the federal Social Security Act (42 U.S.C. s.1396n(c)) if
45 the individual expends funds in violation of this subparagraph. The
46 period of ineligibility shall be the number of months resulting from

1 dividing the uncompensated value of transferred resources and
2 income by the average monthly private payment rate for nursing
3 facility services in the State as determined by the commissioner.
4 The period of ineligibility shall begin with the month that the
5 individual would otherwise be eligible for Medicaid coverage for
6 nursing facility services or home or community-based services.

7 This subparagraph shall be operative only if all necessary
8 approvals are received from the federal government including, but
9 not limited to, approval of necessary State plan amendments and
10 approval of any waivers;

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

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

21 (b) if a parent or specified caretaker relative, beginning
22 September 1, 2005 does not exceed 100% of the poverty level,
23 beginning September 1, 2006 does not exceed 115% of the poverty
24 level and beginning September 1, 2007 does not exceed 133% of
25 the poverty level, plus such earned income disregards as shall be
26 determined according to a methodology to be established by
27 regulation of the commissioner;

28 The commissioner may increase the income eligibility limits for
29 children and parents and specified caretaker relatives, as funding
30 permits;

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

39 (18) Is a person between the ages of 16 and 65 who is
40 permanently disabled and working, and:

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

43 (b) who pays the premium contribution and other cost sharing as
44 established by the commissioner, subject to the limits and
45 conditions of federal law; and

- 1 (c) whose assets, resources and unearned income do not exceed
2 limitations as established by the commissioner;
- 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-
24 107 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.2019, c.1, s.1)

12

13 2. (New section) a. If an application to be a qualified
14 applicant for Medicaid services is deemed to be incomplete based
15 on incomplete or missing information, the county welfare agency
16 processing the application shall:

17 (1) notify the applicant that the application has been deemed
18 incomplete;

19 (2) identify the specific information that is incomplete or
20 missing;

21 (3) inform the applicant that the incomplete or missing
22 information may be provided at any time; and

23 (4) inform the applicant that the application will be reviewed
24 upon receipt of all incomplete or missing information identified in
25 paragraph (3) of this subsection.

26 b. A county welfare agency that has deemed an application
27 incomplete pursuant to subsection a. of this section shall review the
28 application upon receipt of all information the agency identified as
29 incomplete or missing pursuant to paragraph (3) of subsection a. of
30 this section.

31

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

36

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

41

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

STATEMENT

This bill permits individuals to transfer up to \$500 in assets per calendar month during the 60 month look back period prior to receiving Medicaid coverage for long-term care services without being subject to a period of ineligibility.

State and federal law requires a look-back period of 60 months from the date of an individual's application for Medicaid long-term care benefits to determine whether the individual has transferred financial resources to other individuals. (The bill also revises the State statute to conform with federal law extending the 60 month look-back period to all asset transfers.) Unauthorized resources transfers may result in a penalty period during which the individual may not receive Medicaid coverage of long-term care services.

Federal law permits states to exclude certain transfers made for less than fair consideration, which are called "*de minimis* gifts," on the assumption that gifts or transfers under a certain amount of money would not be presumed to be made in contemplation of future Medicaid eligibility. New Jersey does not currently have a clear standard regarding such transfers, effectively leaving decisions about whether certain gifts will result in a penalty to the county welfare agencies. The lack of a clear standard also results in applicants resorting to the fair hearing process to resolve disputes, which may be costly for both the applicant and the State.

The bill also provides that, if a county welfare agency deems a Medicaid application incomplete on the basis of incomplete or missing information, the agency will be required to provide the applicant with notice that the application was deemed incomplete, identify the information that is incomplete or missing, and inform the applicant that this information can be provided at any time and that the application will be reviewed when the incomplete or missing information is provided. The bill expressly requires the agency to review an application deemed incomplete upon receipt of all information identified as incomplete or missing.