

ASSEMBLY, No. 2871

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 20, 2020

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

SYNOPSIS

Provides for Medicaid coverage and reimbursement for mental health services provided through telepsychiatry.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/25/2020)

1 AN ACT concerning Medicaid coverage of telepsychiatry and
2 amending P.L.1968, c.413.

3

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

6

7 1. Section 6 of P.L.1968, c.413 (C.30:4D-6) is amended to read
8 as follows:

9 6. a. Subject to the requirements of Title XIX of the federal
10 Social Security Act, the limitations imposed by this act and by the
11 rules and regulations promulgated pursuant thereto, the department
12 shall provide medical assistance to qualified applicants, including
13 authorized services within each of the following classifications:

14 (1) Inpatient hospital services;

15 (2) Outpatient hospital services;

16 (3) Other laboratory and X-ray services;

17 (4) (a) Skilled nursing or intermediate care facility services;

18 (b) Early and periodic screening and diagnosis of individuals
19 who are eligible under the program and are under age 21, to
20 ascertain their physical or mental health status and the health care,
21 treatment, and other measures to correct or ameliorate defects and
22 chronic conditions discovered thereby, as may be provided in
23 regulations of the Secretary of the federal Department of Health and
24 Human Services and approved by the commissioner;

25 (5) Physician's services furnished in the office, the patient's
26 home, a hospital, a skilled nursing, or intermediate care facility or
27 elsewhere.

28 As used in this subsection, "laboratory and X-ray services"
29 includes HIV drug resistance testing, including, but not limited to,
30 genotype assays that have been cleared or approved by the federal
31 Food and Drug Administration, laboratory developed genotype
32 assays, phenotype assays, and other assays using phenotype
33 prediction with genotype comparison, for persons diagnosed with
34 HIV infection or AIDS.

35 b. Subject to the limitations imposed by federal law, by this
36 act, and by the rules and regulations promulgated pursuant thereto,
37 the medical assistance program may be expanded to include
38 authorized services within each of the following classifications:

39 (1) Medical care not included in subsection a.(5) above, or any
40 other type of remedial care recognized under State law, furnished
41 by licensed practitioners within the scope of their practice, as
42 defined by State law;

43 (2) Home health care services;

44 (3) Clinic services;

45 (4) Dental services;

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

Matter underlined thus is new matter.

- 1 (5) Physical therapy and related services;
- 2 (6) Prescribed drugs, dentures, and prosthetic devices; and
- 3 eyeglasses prescribed by a physician skilled in diseases of the eye
- 4 or by an optometrist, whichever the individual may select;
- 5 (7) Optometric services;
- 6 (8) Podiatric services;
- 7 (9) Chiropractic services;
- 8 (10) Psychological services;
- 9 (11) Inpatient psychiatric hospital services for individuals under
- 10 21 years of age, or under age 22 if they are receiving such services
- 11 immediately before attaining age 21;
- 12 (12) Other diagnostic, screening, preventive, and rehabilitative
- 13 services, and other remedial care;
- 14 (13) Inpatient hospital services, nursing facility services, and
- 15 intermediate care facility services for individuals 65 years of age or
- 16 over in an institution for mental diseases;
- 17 (14) Intermediate care facility services;
- 18 (15) Transportation services;
- 19 (16) Services in connection with the inpatient or outpatient
- 20 treatment or care of substance use disorder, when the treatment is
- 21 prescribed by a physician and provided in a licensed hospital or in a
- 22 narcotic and substance use disorder treatment center approved by
- 23 the Department of Health pursuant to P.L.1970, c.334 (C.26:2G-21
- 24 et seq.) and whose staff includes a medical director, and limited to
- 25 those services eligible for federal financial participation under Title
- 26 XIX of the federal Social Security Act;
- 27 (17) Any other medical care and any other type of remedial care
- 28 recognized under State law, specified by the Secretary of the federal
- 29 Department of Health and Human Services, and approved by the
- 30 commissioner;
- 31 (18) Comprehensive maternity care, which may include: the
- 32 basic number of prenatal and postpartum visits recommended by the
- 33 American College of Obstetrics and Gynecology; additional
- 34 prenatal and postpartum visits that are medically necessary;
- 35 necessary laboratory, nutritional assessment and counseling, health
- 36 education, personal counseling, managed care, outreach, and
- 37 follow-up services; treatment of conditions which may complicate
- 38 pregnancy; doula care and physician or certified nurse-midwife
- 39 delivery services. For the purposes of this paragraph, "doula"
- 40 means a trained professional who provides continuous physical,
- 41 emotional, and informational support to a mother before, during,
- 42 and shortly after childbirth, to help her to achieve the healthiest,
- 43 most satisfying experience possible;
- 44 (19) Comprehensive pediatric care, which may include:
- 45 ambulatory, preventive, and primary care health services. The
- 46 preventive services shall include, at a minimum, the basic number
- 47 of preventive visits recommended by the American Academy of
- 48 Pediatrics;

1 (20) Services provided by a hospice which is participating in the
2 Medicare program established pursuant to Title XVIII of the Social
3 Security Act, Pub.L.89-97 (42 U.S.C. s.1395 et seq.). Hospice
4 services shall be provided subject to approval of the Secretary of
5 the federal Department of Health and Human Services for federal
6 reimbursement;

7 (21) Mammograms, subject to approval of the Secretary of the
8 federal Department of Health and Human Services for federal
9 reimbursement, including one baseline mammogram for women
10 who are at least 35 but less than 40 years of age; one mammogram
11 examination every two years or more frequently, if recommended
12 by a physician, for women who are at least 40 but less than 50 years
13 of age; and one mammogram examination every year for women
14 age 50 and over;

15 (22) Upon referral by a physician, advanced practice nurse, or
16 physician assistant of a person who has been diagnosed with
17 diabetes, gestational diabetes, or pre-diabetes, in accordance with
18 standards adopted by the American Diabetes Association:

19 (a) Expenses for diabetes self-management education or training
20 to ensure that a person with diabetes, gestational diabetes, or pre-
21 diabetes can optimize metabolic control, prevent and manage
22 complications, and maximize quality of life. Diabetes self-
23 management education shall be provided by an in-State provider
24 who is:

25 (i) a licensed, registered, or certified health care professional
26 who is certified by the National Certification Board of Diabetes
27 Educators as a Certified Diabetes Educator, or certified by the
28 American Association of Diabetes Educators with a Board
29 Certified-Advanced Diabetes Management credential, including, but
30 not limited to: a physician, an advanced practice or registered nurse,
31 a physician assistant, a pharmacist, a chiropractor, a dietitian
32 registered by a nationally recognized professional association of
33 dietitians, or a nutritionist holding a certified nutritionist specialist
34 (CNS) credential from the Board for Certification of Nutrition
35 Specialists; or

36 (ii) an entity meeting the National Standards for Diabetes Self-
37 Management Education and Support, as evidenced by a recognition
38 by the American Diabetes Association or accreditation by the
39 American Association of Diabetes Educators;

40 (b) Expenses for medical nutrition therapy as an effective
41 component of the person's overall treatment plan upon a: diagnosis
42 of diabetes, gestational diabetes, or pre-diabetes; change in the
43 beneficiary's medical condition, treatment, or diagnosis; or
44 determination of a physician, advanced practice nurse, or physician
45 assistant that reeducation or refresher education is necessary.
46 Medical nutrition therapy shall be provided by an in-State provider
47 who is a dietitian registered by a nationally-recognized professional
48 association of dietitians, or a nutritionist holding a certified

1 nutritionist specialist (CNS) credential from the Board for
2 Certification of Nutrition Specialists, who is familiar with the
3 components of diabetes medical nutrition therapy;

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

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

16 (23) Expenses incurred for the provision of group prenatal care
17 services to a pregnant woman, provided that:

18 (a) the provider of such services, which shall include, but not be
19 limited to, a federally qualified health center or a community health
20 center operating in the State:

21 (i) is a site accredited by the Centering Healthcare Institute, or
22 is a site engaged in an active implementation contract with the
23 Centering Healthcare Institute, that utilizes the Centering Pregnancy
24 model; and

25 (ii) incorporates the applicable information outlined in any best
26 practices manual for prenatal and postpartum maternal care
27 developed by the Department of Health into the curriculum for each
28 group prenatal visit;

29 (b) each group prenatal care visit is at least 1.5 hours in
30 duration, with a minimum of two women and a maximum of 20
31 women in participation; and

32 (c) no more than 10 group prenatal care visits occur per
33 pregnancy.

34 As used in this paragraph, "group prenatal care services" means a
35 series of prenatal care visits provided in a group setting which are
36 based upon the Centering Pregnancy model developed by the
37 Centering Healthcare Institute and which include health
38 assessments, social and clinical support, and educational activities;
39 and

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

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

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

7 (i) a body weight below healthy levels, as determined by the
8 licensed medical practitioner issuing the medical order for the
9 infant;

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

13 (iii) the infant has a congenital or acquired condition that may
14 benefit from the use of donor breast milk and human milk fortifiers,
15 as determined by the Department of Health; and

16 (25) Telepsychiatry, subject to approval of the Secretary of the
17 federal Department of Health and Human Services for federal
18 reimbursement, that provides mental health services to adults and
19 children under 19 years of age through an exchange of information
20 by telephone or other technologically-assisted means in order to
21 improve the mental health of adults and children, and is provided in
22 accordance with regulations adopted by the Commissioner of
23 Human Services at a reimbursement rate that is commensurate with
24 the cost of providing those services in the State.

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

36 No provider whose claim for payment pursuant to this act has
37 been denied because the services, goods, or supplies were
38 determined to be medically unnecessary shall seek reimbursement
39 from the recipient, his family, his representative or others on his
40 behalf for such services, goods, and supplies provided pursuant to
41 this act; provided, however, a provider may seek reimbursement
42 from a recipient for services, goods, or supplies not authorized by
43 this act, if the recipient elected to receive the services, goods or
44 supplies with the knowledge that they were not authorized.

45 d. Any individual eligible for medical assistance (including
46 drugs) may obtain such assistance from any person qualified to
47 perform the service or services required (including an organization
48 which provides such services, or arranges for their availability on a

1 prepayment basis), who undertakes to provide the individual such
2 services.

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

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

9 (1) Is an inmate of a public institution (except as a patient in a
10 medical institution); provided, however, that an individual who is
11 otherwise eligible may continue to receive services for the month in
12 which he becomes an inmate, should the commissioner determine to
13 expand the scope of Medicaid eligibility to include such an
14 individual, subject to the limitations imposed by federal law and
15 regulations, or

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

18 (3) Is over 21 years of age and who is receiving inpatient
19 psychiatric hospital services in a psychiatric facility; provided,
20 however, that an individual who was receiving such services
21 immediately prior to attaining age 21 may continue to receive such
22 services until the individual reaches age 22. Nothing in this
23 subsection shall prohibit the commissioner from extending medical
24 assistance to all eligible persons receiving inpatient psychiatric
25 services; provided that there is federal financial participation
26 available.

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

31 (2) In addition, any provision in a contract of insurance, health
32 benefits plan, or other health care coverage document, will, trust,
33 agreement, court order, or other instrument which reduces or
34 excludes coverage or payment for health care-related goods and
35 services to or for an individual because of that individual's actual or
36 potential eligibility for or receipt of Medicaid benefits shall be null
37 and void, and no payments shall be made under this act as a result
38 of any such provision.

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

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

1 (1) Pregnant women shall be provided prenatal care and delivery
2 services and postpartum care, including the services cited in
3 subsections a.(1), (3), and (5) of this section and subsections b.(1)-
4 (10), (12), (15), and (17) of this section, and nursing facility
5 services cited in subsection b.(13) of this section.

6 (2) Dependent children shall be provided with services cited in
7 subsections a.(3) and (5) of this section and subsections b.(1), (2),
8 (3), (4), (5), (6), (7), (10), (12), (15), and (17) of this section, and
9 nursing facility services cited in subsection b.(13) of this section.

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

15 (4) Individuals who are blind or disabled shall be provided with
16 services cited in subsections a.(3) and (5) of this section and
17 subsections b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10),
18 (12), (15), and (17) of this section, and nursing facility services
19 cited in subsection b.(13) of this section.

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

31 (b) Outpatient hospital services, subsection a.(2) of this section,
32 shall only be provided to eligible medically needy individuals if the
33 federal Department of Health and Human Services discontinues the
34 State's waiver to establish outpatient hospital reimbursement rates
35 for the Medicare and Medicaid programs under the authority of
36 section 601(c)(3) of the Social Security Amendments of 1983,
37 Pub.L.98-21 (42 U.S.C. s.1395ww(c)(5)). Outpatient hospital
38 services may be extended to all or to certain medically needy
39 individuals if the federal Department of Health and Human Services
40 directs that these services be included. However, the use of
41 outpatient hospital services shall be limited to clinic services and to
42 emergency room services for injuries and significant acute medical
43 conditions.

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

46 h. In the case of a qualified disabled and working individual
47 pursuant to section 6408 of Pub.L.101-239 (42 U.S.C. s.1396d), the
48 only medical assistance provided under this act shall be the

1 payment of premiums for Medicare part A under 42 U.S.C.
2 ss.1395i-2 and 1395r.

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

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

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

19 (cf: P.L.2019, c.85)

20

21 2. (New section) The Commissioner of Human Services, in
22 consultation with the Commissioner of Children and Families, shall
23 apply for such State plan amendments or waivers as may be
24 necessary to implement the provisions of this act and to secure
25 federal financial participation for State Medicaid expenditures
26 under the federal Medicaid program.

27

28 3. (New section) Notwithstanding any provision of the
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
30 seq.) to the contrary, the Commissioner of Human Services shall
31 adopt, immediately upon filing with the Office of Administrative
32 Law, such regulations as the commissioner deems necessary to
33 implement the provisions of this act, which regulations shall be
34 effective for a period not to exceed six months and shall thereafter
35 be amended, adopted, or readopted by the commissioner in
36 accordance with the requirements of P.L.1968, c.410 (C.52:14B-1
37 et seq.).

38

39 4. This act shall take effect immediately.

40

41

42

STATEMENT

43

44 This bill provides that, subject to approval by the federal
45 Department of Health and Human Services, the State Medicaid
46 program is to include coverage for telepsychiatry, which provides
47 for an exchange of information by telephone or other
48 technologically assisted means in order to improve the mental

1 health of adults and children under 19 years of age. Telepsychiatry
2 is to be provided in accordance with regulations adopted by the
3 Commissioner of Human Services and at a reimbursement rate that
4 is commensurate with the cost of providing those services in the
5 State.

6 To obtain the federal approval, the Commissioner of Human
7 Services, in consultation with the Commissioner of Children and
8 Families, is to apply for such State plan amendments or waivers as
9 may be necessary to implement the provisions of the bill and to
10 secure federal financial participation for State Medicaid
11 expenditures under the federal Medicaid program.

12 Unacceptable wait times for individuals seeking appointments
13 for mental health professional counseling or treatment in the State
14 have been the subject of numerous articles in medical journals and
15 media sources, which have described the limited access to adequate
16 care and treatment as a "broken system." It is intended that
17 Medicaid coverage and reimbursement for mental health services
18 provided through telepsychiatry will reduce the wait times, improve
19 access to mental health services, and attract more mental health
20 professionals to practice in the State.