

A4747

SPONSOR'S STATEMENT: (Begins on page 8 of introduced bill) Yes

COMMITTEE STATEMENT:

ASSEMBLY: Yes Financial
Inst & Ins

Appropriations

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes 12/16/2019

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

Rwh/cl

P.L. 2019, CHAPTER 317, *approved January 13, 2020*
Senate, No. 3159 (*First Reprint*)

1 AN ACT concerning Medicaid coverage for pasteurized donated
2 human breast milk and 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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SHH committee amendments adopted March 4, 2019.

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

1 of preventive visits recommended by the American Academy of
2 Pediatrics;

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

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

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

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

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

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

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

1 who is a dietitian registered by a nationally-recognized professional
 2 association of dietitians, or a nutritionist holding a certified
 3 nutritionist specialist (CNS) credential from the Board for
 4 Certification of Nutrition Specialists, who is familiar with the
 5 components of diabetes medical nutrition therapy;

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

11 (d) Expenses for any medically appropriate and necessary
 12 supplies and equipment recommended or prescribed by a physician,
 13 advanced practice nurse, or physician assistant for the management
 14 and treatment of diabetes, gestational diabetes, or pre-diabetes,
 15 including, but not limited to: equipment and supplies for self-
 16 management of blood glucose; insulin pens; insulin pumps and
 17 related supplies; and other insulin delivery devices ¹[.] ; and¹

18 (23) Expenses incurred for the provision of pasteurized donated
 19 human breast milk, which shall include human milk fortifiers if
 20 indicated in a medical order provided by a licensed medical
 21 practitioner, to an infant under the age of six months ¹; ¹ provided
 22 that the milk is obtained from a human milk bank that meets quality
 23 guidelines established by the Department of Health and a licensed
 24 medical practitioner has issued a medical order for the infant under
 25 at least one of the following circumstances:

26 (a) the infant is medically or physically unable to receive
 27 maternal breast milk or participate in breast feeding ¹; ¹ or the
 28 infant's mother is medically or physically unable to produce
 29 maternal breast milk in sufficient quantities or participate in breast
 30 feeding despite optimal lactation support; or

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

32 (i) a body weight below healthy levels ¹, as ¹ determined by the
 33 licensed medical practitioner ¹issuing the medical order for the
 34 infant¹;

35 (ii) ¹the infant has¹ a congenital or acquired condition that places
 36 the infant at a high risk for development of necrotizing enterocolitis;
 37 or

38 (iii) ¹the infant has¹ a congenital or acquired condition that may
 39 benefit from the use of donor breast milk and human milk fortifiers ¹; ¹
 40 as determined by the Department of Health.

41 c. Payments for the foregoing services, goods, and supplies
 42 furnished pursuant to this act shall be made to the extent authorized
 43 by this act, the rules and regulations promulgated pursuant thereto
 44 and, where applicable, subject to the agreement of insurance
 45 provided for under this act. The payments shall constitute payment
 46 in full to the provider on behalf of the recipient. Every provider
 47 making a claim for payment pursuant to this act shall certify in

1 writing on the claim submitted that no additional amount will be
2 charged to the recipient, the recipient's family, the recipient's
3 representative or others on the recipient's behalf for the services,
4 goods, and supplies furnished pursuant to this act.

5 No provider whose claim for payment pursuant to this act has
6 been denied because the services, goods, or supplies were
7 determined to be medically unnecessary shall seek reimbursement
8 from the recipient, his family, his representative or others on his
9 behalf for such services, goods, and supplies provided pursuant to
10 this act; provided, however, a provider may seek reimbursement
11 from a recipient for services, goods, or supplies not authorized by
12 this act, if the recipient elected to receive the services, goods or
13 supplies with the knowledge that they were not authorized.

14 d. Any individual eligible for medical assistance (including
15 drugs) may obtain such assistance from any person qualified to
16 perform the service or services required (including an organization
17 which provides such services, or arranges for their availability on a
18 prepayment basis), who undertakes to provide the individual such
19 services.

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

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

26 (1) Is an inmate of a public institution (except as a patient in a
27 medical institution); provided, however, that an individual who is
28 otherwise eligible may continue to receive services for the month in
29 which he becomes an inmate, should the commissioner determine to
30 expand the scope of Medicaid eligibility to include such an
31 individual, subject to the limitations imposed by federal law and
32 regulations, or

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

35 (3) Is over 21 years of age and who is receiving inpatient
36 psychiatric hospital services in a psychiatric facility; provided,
37 however, that an individual who was receiving such services
38 immediately prior to attaining age 21 may continue to receive such
39 services until the individual reaches age 22. Nothing in this
40 subsection shall prohibit the commissioner from extending medical
41 assistance to all eligible persons receiving inpatient psychiatric
42 services; provided that there is federal financial participation
43 available.

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

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

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

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

18 (1) Pregnant women shall be provided prenatal care and delivery
19 services and postpartum care, including the services cited in
20 subsection a.(1), (3), and (5) of this section and subsection b.(1)-
21 (10), (12), (15), and (17) of this section, and nursing facility
22 services cited in subsection b.(13) of this section.

23 (2) Dependent children shall be provided with services cited in
24 subsection a.(3) and (5) of this section and subsection b.(1), (2), (3),
25 (4), (5), (6), (7), (10), (12), (15), and (17) of this section, and
26 nursing facility services cited in subsection b.(13) of this section.

27 (3) Individuals who are 65 years of age or older shall be
28 provided with services cited in subsection a.(3) and (5) of this
29 section and subsection b.(1)-(5), (6) excluding prescribed drugs, (7),
30 (8), (10), (12), (15), and (17) of this section, and nursing facility
31 services cited in subsection b.(13) of this section.

32 (4) Individuals who are blind or disabled shall be provided with
33 services cited in subsection a.(3) and (5) of this section and
34 subsection b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10),
35 (12), (15), and (17) of this section, and nursing facility services
36 cited in subsection b.(13) of this section.

37 (5) (a) Inpatient hospital services, subsection a.(1) of this
38 section, shall only be provided to eligible medically needy
39 individuals, other than pregnant women, if the federal Department
40 of Health and Human Services discontinues the State's waiver to
41 establish inpatient hospital reimbursement rates for the Medicare
42 and Medicaid programs under the authority of section 601(c)(3) of
43 the Social Security Act Amendments of 1983, Pub.L.98-21 (42
44 U.S.C. s.1395ww(c)(5)). Inpatient hospital services may be
45 extended to other eligible medically needy individuals if the federal
46 Department of Health and Human Services directs that these
47 services be included.

1 (b) Outpatient hospital services, subsection a.(2) of this section,
2 shall only be provided to eligible medically needy individuals if the
3 federal Department of Health and Human Services discontinues the
4 State's waiver to establish outpatient hospital reimbursement rates
5 for the Medicare and Medicaid programs under the authority of
6 section 601(c)(3) of the Social Security Amendments of 1983,
7 Pub.L.98-21 (42 U.S.C. s.1395ww(c)(5)). Outpatient hospital
8 services may be extended to all or to certain medically needy
9 individuals if the federal Department of Health and Human Services
10 directs that these services be included. However, the use of
11 outpatient hospital services shall be limited to clinic services and to
12 emergency room services for injuries and significant acute medical
13 conditions.

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

16 h. In the case of a qualified disabled and working individual
17 pursuant to section 6408 of Pub.L.101-239 (42 U.S.C. s.1396d), the
18 only medical assistance provided under this act shall be the
19 payment of premiums for Medicare part A under 42 U.S.C.
20 ss.1395i-2 and 1395r.

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

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

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

37 (cf: P.L.2018, c.1, s.2)

38

39 2. (New section) The Commissioner of Human Services shall
40 apply for such State plan amendments or waivers as may be
41 necessary to implement the provisions of this act and to secure
42 federal financial participation for State Medicaid expenditures
43 under the federal Medicaid program.

44

45 3. (New section) The Commissioner of Human Services,
46 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
47 (C.52:14B-1 et seq.), shall adopt rules and regulations necessary to
48 implement the provisions of this act.

S3159 [1R]

8

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

6

7

8

9

10 Requires Medicaid coverage for pasteurized donated human
11 breast milk under certain circumstances.

SENATE, No. 3159

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED NOVEMBER 26, 2018

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

SYNOPSIS

Requires Medicaid coverage for pasteurized donated human breast milk under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/11/2018)

1 AN ACT concerning Medicaid coverage for pasteurized donated
2 human breast milk and amending P.L.1968, c.413.

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

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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
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13 services, and other remedial care;
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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
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- 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; and physician or certified nurse-midwife delivery
39 services;
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42 preventive services shall include, at a minimum, the basic number
43 of preventive visits recommended by the American Academy of
44 Pediatrics;
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46 Medicare program established pursuant to Title XVIII of the Social
47 Security Act, Pub.L.89-97 (42 U.S.C. s.1395 et seq.). Hospice
48 services shall be provided subject to approval of the Secretary of

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

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

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

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

32 (ii) an entity meeting the National Standards for Diabetes Self-
33 Management Education and Support, as evidenced by a recognition
34 by the American Diabetes Association or accreditation by the
35 American Association of Diabetes Educators;

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37 component of the person's overall treatment plan upon a: diagnosis
38 of diabetes, gestational diabetes, or pre-diabetes; change in the
39 beneficiary's medical condition, treatment, or diagnosis; or
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41 assistant that reeducation or refresher education is necessary.
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43 who is a dietitian registered by a nationally-recognized professional
44 association of dietitians, or a nutritionist holding a certified
45 nutritionist specialist (CNS) credential from the Board for
46 Certification of Nutrition Specialists, who is familiar with the
47 components of diabetes medical nutrition therapy;

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2 furnished under an in-State diabetes prevention program that meets
3 the standards of the National Diabetes Prevention Program, as
4 established by the federal Centers for Disease Control and
5 Prevention; and

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7 supplies and equipment recommended or prescribed by a physician,
8 advanced practice nurse, or physician assistant for the management
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10 including, but not limited to: equipment and supplies for self-
11 management of blood glucose; insulin pens; insulin pumps and
12 related supplies; and other insulin delivery devices.

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14 human breast milk, which shall include human milk fortifiers if
15 indicated in a medical order provided by a licensed medical
16 practitioner, to an infant under the age of six months provided that
17 the milk is obtained from a human milk bank that meets quality
18 guidelines established by the Department of Health and a licensed
19 medical practitioner has issued a medical order for the infant under
20 at least one of the following circumstances:

21 (a) the infant is medically or physically unable to receive
22 maternal breast milk or participate in breast feeding or the infant's
23 mother is medically or physically unable to produce maternal breast
24 milk in sufficient quantities or participate in breast feeding despite
25 optimal lactation support; or

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

27 (i) a body weight below healthy levels determined by the
28 licensed medical practitioner;

29 (ii) a congenital or acquired condition that places the infant at a
30 high risk for development of necrotizing enterocolitis; or

31 (iii) a congenital or acquired condition that may benefit from the
32 use of donor breast milk and human milk fortifiers as determined by
33 the Department of Health.

34 c. Payments for the foregoing services, goods, and supplies
35 furnished pursuant to this act shall be made to the extent authorized
36 by this act, the rules and regulations promulgated pursuant thereto
37 and, where applicable, subject to the agreement of insurance
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43 representative or others on the recipient's behalf for the services,
44 goods, and supplies furnished pursuant to this act.

45 No provider whose claim for payment pursuant to this act has
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1 behalf for such services, goods, and supplies provided pursuant to
2 this act; provided, however, a provider may seek reimbursement
3 from a recipient for services, goods, or supplies not authorized by
4 this act, if the recipient elected to receive the services, goods or
5 supplies with the knowledge that they were not authorized.

6 d. Any individual eligible for medical assistance (including
7 drugs) may obtain such assistance from any person qualified to
8 perform the service or services required (including an organization
9 which provides such services, or arranges for their availability on a
10 prepayment basis), who undertakes to provide the individual such
11 services.

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

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

18 (1) Is an inmate of a public institution (except as a patient in a
19 medical institution); provided, however, that an individual who is
20 otherwise eligible may continue to receive services for the month in
21 which he becomes an inmate, should the commissioner determine to
22 expand the scope of Medicaid eligibility to include such an
23 individual, subject to the limitations imposed by federal law and
24 regulations, or

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

27 (3) Is over 21 years of age and who is receiving inpatient
28 psychiatric hospital services in a psychiatric facility; provided,
29 however, that an individual who was receiving such services
30 immediately prior to attaining age 21 may continue to receive such
31 services until the individual reaches age 22. Nothing in this
32 subsection shall prohibit the commissioner from extending medical
33 assistance to all eligible persons receiving inpatient psychiatric
34 services; provided that there is federal financial participation
35 available.

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

40 (2) In addition, any provision in a contract of insurance, health
41 benefits plan, or other health care coverage document, will, trust,
42 agreement, court order, or other instrument which reduces or
43 excludes coverage or payment for health care-related goods and
44 services to or for an individual because of that individual's actual or
45 potential eligibility for or receipt of Medicaid benefits shall be null
46 and void, and no payments shall be made under this act as a result
47 of any such provision.

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

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

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

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

19 (3) Individuals who are 65 years of age or older shall be
20 provided with services cited in subsection a.(3) and (5) of this
21 section and subsection b.(1)-(5), (6) excluding prescribed drugs, (7),
22 (8), (10), (12), (15), and (17) of this section, and nursing facility
23 services cited in subsection b.(13) of this section.

24 (4) Individuals who are blind or disabled shall be provided with
25 services cited in subsection a.(3) and (5) of this section and
26 subsection b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10),
27 (12), (15), and (17) of this section, and nursing facility services
28 cited in subsection b.(13) of this section.

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

40 (b) Outpatient hospital services, subsection a.(2) of this section,
41 shall only be provided to eligible medically needy individuals if the
42 federal Department of Health and Human Services discontinues the
43 State's waiver to establish outpatient hospital reimbursement rates
44 for the Medicare and Medicaid programs under the authority of
45 section 601(c)(3) of the Social Security Amendments of 1983,
46 Pub.L.98-21 (42 U.S.C. s.1395ww(c)(5)). Outpatient hospital
47 services may be extended to all or to certain medically needy
48 individuals if the federal Department of Health and Human Services

1 directs that these services be included. However, the use of
2 outpatient hospital services shall be limited to clinic services and to
3 emergency room services for injuries and significant acute medical
4 conditions.

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

7 h. In the case of a qualified disabled and working individual
8 pursuant to section 6408 of Pub.L.101-239 (42 U.S.C. s.1396d), the
9 only medical assistance provided under this act shall be the
10 payment of premiums for Medicare part A under 42 U.S.C.
11 ss.1395i-2 and 1395r.

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

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

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

28 (cf: P.L.2018, c.1, s.2)

29

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

35

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

40

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

STATEMENT

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The bill provides for an expansion of the State Medicaid program to include coverage for pasteurized donated human breast milk under certain circumstances. Research indicates that breast milk can protect infants from infection, and reduce the rates of health problems, such as diabetes, obesity, and asthma, later in life. The American Academy of Pediatrics and the American College of Obstetricians and Gynecologists, strongly recommends breastfeeding exclusively for six months. However, breastfeeding is not always possible or a sufficient source of nutrition for an infant, particularly for premature infants. P.L.2017, c.309, enacted in January 2018, recognizes the importance of certain families having access to donated breast milk and mandates health benefits coverage for donated human breast milk. This bill would extend the same benefits provided under that law to low-income families in the State.

Specifically, this bill provides that coverage under the Medicaid program includes expenses incurred for the provision of pasteurized donated human breast milk, which are required to include human milk fortifiers if indicated in a medical order provided by a licensed medical practitioner, to an infant under the age of six months. In order for the Medicaid program to cover such expenses, the milk must be obtained from a human milk bank that meets quality guidelines established by the Department of Health. In addition, a licensed medical practitioner must have issued a medical order for the infant under at least one of the following circumstances:

- (1) the infant is medically or physically unable to receive maternal breast milk or participate in breast feeding or the infant's mother is medically or physically unable to produce maternal breast milk in sufficient quantities or participate in breast feeding despite optimal lactation support; or
- (2) the infant meets any of the following conditions: a body weight below healthy levels determined by the licensed medical practitioner; a congenital or acquired condition that places the infant at a high risk for development of necrotizing enterocolitis; or a congenital or acquired condition that may benefit from the use of donor breast milk and human milk fortifiers as determined by the Department of Health.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 3159

STATE OF NEW JERSEY

DATED: DECEMBER 5, 2019

The Assembly Financial Institutions and Insurance Committee reports favorably Senate Bill No. 3159 (1R).

This bill provides that coverage under the Medicaid program includes expenses incurred for the provision of pasteurized donated human breast milk, which will include human milk fortifiers, if indicated in a medical order provided by a licensed medical practitioner, to an infant under the age of six months. In order for the Medicaid program to cover such expenses, the milk must be obtained from a human milk bank that meets quality guidelines established by the Department of Health. In addition, a licensed medical practitioner must have issued a medical order for the infant under at least one of the following circumstances:

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

(2) the infant meets any of the following conditions: a body weight below healthy levels, as determined by the licensed medical practitioner issuing the medical order for the infant; a congenital or acquired condition that places the infant at a high risk for development of necrotizing enterocolitis; or a congenital or acquired condition that may benefit from the use of donor breast milk and human milk fortifiers as determined by the Department of Health.

As reported, this bill is identical to Assembly Bill No. 4747 (1R), as also amended and reported by the committee.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 3159

STATE OF NEW JERSEY

DATED: DECEMBER 12, 2019

The Assembly Appropriations Committee reports favorably Senate Bill No. 3159 (1R).

This bill provides for an expansion of the State Medicaid program to include coverage for pasteurized donated human breast milk under certain circumstances.

Specifically, this bill provides that coverage under the Medicaid program includes expenses incurred for the provision of pasteurized donated human breast milk, which are required to include human milk fortifiers if indicated in a medical order provided by a licensed medical practitioner, to an infant under the age of six months. In order for the Medicaid program to cover such expenses, the milk must be obtained from a human milk bank that meets quality guidelines established by the Department of Health. In addition, a licensed medical practitioner must have issued a medical order for the infant under at least one of the following circumstances:

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

(2) the infant meets any of the following conditions: a body weight below healthy levels determined by the licensed medical practitioner issuing the medical order for the infant; a congenital or acquired condition that places the infant at a high risk for development of necrotizing enterocolitis; or a congenital or acquired condition that may benefit from the use of donor breast milk and human milk fortifiers as determined by the Department of Health.

As reported by the committee, Senate Bill No. 3159 (1R) is identical to Assembly Bill No. 4747 (1R), which also was reported by the committee on this date.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that this bill may cause the State to incur annual costs to provide pasteurized donated human breast milk to individuals who receive health care

services under the State's Medicaid program, and to receive and expend federal Medicaid matching funds.

The cost to provide these services cannot be quantified with any certainty as: (1) the cost for these services is unknown and (2) the number of individuals who will receive these services is unpredictable.

Some of the expenditures may result in a decrease in medical costs associated with the care of infants; however, the OLS cannot quantify with any certainty any savings that may be attributed to the provisions of the bill.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO
SENATE, No. 3159

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 4, 2019

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 3159.

As amended by the committee, this bill provides that coverage under the Medicaid program includes expenses incurred for the provision of pasteurized donated human breast milk, which will include human milk fortifiers, if indicated in a medical order provided by a licensed medical practitioner, to an infant under the age of six months. In order for the Medicaid program to cover such expenses, the milk must be obtained from a human milk bank that meets quality guidelines established by the Department of Health. In addition, a licensed medical practitioner must have issued a medical order for the infant under at least one of the following circumstances:

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

(2) the infant meets any of the following conditions: a body weight below healthy levels, as determined by the licensed medical practitioner; a congenital or acquired condition that places the infant at a high risk for development of necrotizing enterocolitis; or a congenital or acquired condition that may benefit from the use of donor breast milk and human milk fortifiers as determined by the Department of Health.

COMMITTEE AMENDMENTS:

The committee amended the bill to make certain technical changes involving punctuation and syntax.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 3159

STATE OF NEW JERSEY

DATED: MARCH 18, 2019

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3159 (1R).

Senate Bill No. 3159 provides that coverage under the Medicaid program includes expenses incurred for the provision of pasteurized donated human breast milk, which will include human milk fortifiers, if indicated in a medical order provided by a licensed medical practitioner, to an infant under the age of six months. In order for the Medicaid program to cover such expenses, the milk must be obtained from a human milk bank that meets quality guidelines established by the Department of Health. In addition, a licensed medical practitioner must have issued a medical order for the infant under at least one of the following circumstances:

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

(2) the infant meets any of the following conditions: a body weight below healthy levels, as determined by the licensed medical practitioner; a congenital or acquired condition that places the infant at a high risk for development of necrotizing enterocolitis; or a congenital or acquired condition that may benefit from the use of donor breast milk and human milk fortifiers, as determined by the Department of Health.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that this bill may cause the State to incur indeterminate annual costs to provide pasteurized donated human breast milk to individuals who receive health care services under the State's Medicaid program, and to receive and expend federal Medicaid matching funds. The cost to provide these services cannot be quantified with any certainty as: (1) the cost for these services is unknown and (2) the number of individuals who will receive these services is unpredictable. Some of the expenditures may result in a decrease in medical costs associated with the care of infants; however, the OLS cannot quantify with any certainty any savings that may be attributed to the provisions of the bill.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 3159 STATE OF NEW JERSEY 218th LEGISLATURE

DATED: MARCH 22, 2019

SUMMARY

- Synopsis:** Requires Medicaid coverage for pasteurized donated human breast milk under certain circumstances.
- Type of Impact:** Indeterminate impact on State costs and revenue.
- Agencies Affected:** Department of Human Services, Division of Medical Assistance and Health Services.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Cost	Indeterminate impact
State Revenue	Indeterminate impact

- The Office of Legislative Services (OLS) estimates that this bill may cause the State to incur annual costs to provide pasteurized donated human breast milk to individuals who receive health care services under the State's Medicaid program, and to receive and expend federal Medicaid matching funds.
- The cost to provide these services cannot be quantified with any certainty as: (1) the cost for these services is unknown and (2) the number of individuals who will receive these services is unpredictable.
- Some of the expenditures may result in a decrease in medical costs associated with the care of infants; however, the OLS cannot quantify with any certainty any savings that may be attributed to the provisions of the bill.

BILL DESCRIPTION

This bill provides that coverage under the Medicaid program includes expenses incurred for the provision of pasteurized donated human breast milk, which will include human milk

fortifiers, if indicated in a medical order provided by a licensed medical practitioner, to an infant under the age of six months. In order for the Medicaid program to cover such expenses, the milk must be obtained from a human milk bank that meets quality guidelines established by the Department of Health. In addition, a licensed medical practitioner must have issued a medical order for the infant under at least one of the following circumstances:

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

(2) the infant meets any of the following conditions: a body weight below healthy levels, as determined by the licensed medical practitioner; a congenital or acquired condition that places the infant at a high risk for development of necrotizing enterocolitis; or a congenital or acquired condition that may benefit from the use of donor breast milk and human milk fortifiers as determined by the Department of Health.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that this bill may cause the State to incur annual costs to provide pasteurized donated human breast milk to individuals who receive health care services under the State's Medicaid program, and to receive and expend federal Medicaid matching funds. The cost to provide these services cannot be quantified with any certainty as: (1) the cost for these services is unknown and (2) the number of individuals who will receive these services is unpredictable. Some of the expenditures may result in a decrease in medical costs associated with the care of infants; however, the OLS cannot quantify with any certainty any savings that may be attributed to the provisions of the bill.

The fiscal impact on the State of offering pasteurized donated human breast milk as a Medicaid benefit would depend on the level of benefit provided. The bill does not specify a reimbursement rate for this benefit, and instead permits the Commissioner of Human Services to establish regulations to implement the bill. Current costs for pasteurized donated human breast milk can vary widely, from \$3 to \$5 per ounce.

Five states and the District of Columbia currently provide pasteurized donated human breast milk under their Medicaid programs. In New York, hospitals are directed to bill for the benefit per actual acquisition cost which, if purchased from the New York Milk Bank, is \$4.50 per ounce.¹ According to a 2017 survey by the Center for Evidenced Based Policy, in Texas the reimbursement rate is \$2.00 per ounce; in California, \$2.94 per ounce; and in the District of Columbia, \$3.30 per ounce.² Generally, infants between one and six months of age need approximately 25 ounces of milk a day. Using the low and high range of the reimbursement rate examples provided above, it may cost between \$1,500 and \$3,375 to provide 25 ounces of pasteurized donated human breast milk a month to a qualifying infant under the bill.

¹https://www.health.ny.gov/health_care/medicaid/program/update/2017/2017-11.htm;

<https://nonprofitquarterly.org/2017/04/27/liquid-gold-6-states-allow-medicaid-access-breast-milk/>

² https://www.health.ny.gov/health_care/medicaid/ebbrac/docs/2017-06-13_donor_human_milk.pdf

Another factor of the bill's impact on State expenditures is the number of infants who would annually qualify for pasteurized donated human breast milk. The OLS, however, cannot predict what portion of Medicaid births may meet one of the several circumstances for the provision of pasteurized donated human breast milk enumerated under the bill. For reference, according to the New Jersey Health Assessment Data website, 31,151 of the 101,154 births in New Jersey in CY 2017 were financed by Medicaid, in CY 2016, there were 31,877 Medicaid births and in CY 2015 there were 30,986. Under the bill, one of the circumstances that can qualify an infant for the pasteurized donated human breast milk benefit is body weight below health levels, as determined by a licensed medical practitioner. For reference, of the 31,151 live Medicaid births in CY 2017, 2,752 had a birth weight of less than 2500 grams.

Providing a pasteurized donated human breast milk benefit may also lead to certain indeterminate State savings. According to a National Association of Neonatal Nurses (NANN) position paper, human milk provides many specific health benefits to a vulnerable infant, both during the hospital stay and following discharge.³ These benefits include a 72 percent decrease in respiratory tract infections, a 64 percent decrease in gastrointestinal tract infections, and a lower incidence and severity of hospital-acquired infections. Furthermore, human milk reduces the incidence of necrotizing enterocolitis, a disease that affects the intestines of premature infants, by 77 percent. NANN asserts that these health benefits suggest that for every dollar spent on banked donor milk, a state can save up to \$11 in other medical costs.⁴ While the OLS cannot confirm this statement, it is possible that the State may experience long-term savings in overall healthcare costs due to the aforementioned improved medical outcomes for infants who qualify for the benefit under the bill.

Section: Human Services

*Analyst: Sarah Schmidt
Senior Research Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

³http://nann.org/uploads/About/PositionPDFS/1.4.3_Use%20of%20Human%20Milk%20and%20Breastfeeding%20in%20the%20NICU.pdf

⁴http://nann.org/uploads/Advocacy_Fact_Sheets/2016_Donor_Breast_Milk.pdf

ASSEMBLY, No. 4747

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED DECEMBER 3, 2018

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Co-Sponsored by:

Assemblyman Webber and Assemblywoman McKnight

SYNOPSIS

Requires Medicaid coverage for pasteurized donated human breast milk under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/6/2019)

1 AN ACT concerning Medicaid coverage for pasteurized donated
2 human breast milk and 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-
24 21 et seq.) and whose staff includes a medical director, and limited
25 to those services eligible for federal financial participation under
26 Title 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; and physician or certified nurse-midwife delivery
39 services;
- 40 (19) Comprehensive pediatric care, which may include:
41 ambulatory, preventive, and primary care health services. The
42 preventive services shall include, at a minimum, the basic number
43 of preventive visits recommended by the American Academy of
44 Pediatrics;
- 45 (20) Services provided by a hospice which is participating in
46 the Medicare program established pursuant to Title XVIII of the
47 Social Security Act, Pub.L.89-97 (42 U.S.C. s.1395 et seq.).
48 Hospice services shall be provided subject to approval of the

1 Secretary of the federal Department of Health and Human Services
2 for federal reimbursement;

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

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

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

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

32 (ii) an entity meeting the National Standards for Diabetes Self-
33 Management Education and Support, as evidenced by a recognition
34 by the American Diabetes Association or accreditation by the
35 American Association of Diabetes Educators;

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

48 (c) For a person diagnosed with pre-diabetes, items and services
49 furnished under an in-State diabetes prevention program that meets

1 the standards of the National Diabetes Prevention Program, as
2 established by the federal Centers for Disease Control and
3 Prevention; and

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

11 (23) Expenses incurred for the provision of pasteurized donated
12 human breast milk, which shall include human milk fortifiers if
13 indicated in a medical order provided by a licensed medical
14 practitioner, to an infant under the age of six months provided that
15 the milk is obtained from a human milk bank that meets quality
16 guidelines established by the Department of Health and a licensed
17 medical practitioner has issued a medical order for the infant under
18 at least one of the following circumstances:

19 (a) the infant is medically or physically unable to receive
20 maternal breast milk or participate in breast feeding or the infant's
21 mother is medically or physically unable to produce maternal breast
22 milk in sufficient quantities or participate in breast feeding despite
23 optimal lactation support; or

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

25 (i) a body weight below healthy levels determined by the
26 licensed medical practitioner;

27 (ii) a congenital or acquired condition that places the infant at a
28 high risk for development of necrotizing enterocolitis; or

29 (iii) a congenital or acquired condition that may benefit from the
30 use of donor breast milk and human milk fortifiers as determined by
31 the Department of Health.

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

43 No provider whose claim for payment pursuant to this act has
44 been denied because the services, goods, or supplies were
45 determined to be medically unnecessary shall seek reimbursement
46 from the recipient, his family, his representative or others on his
47 behalf for such services, goods, and supplies provided pursuant to
48 this act; provided, however, a provider may seek reimbursement
49 from a recipient for services, goods, or supplies not authorized by

1 this act, if the recipient elected to receive the services, goods or
2 supplies with the knowledge that they were not authorized.

3 d. Any individual eligible for medical assistance (including
4 drugs) may obtain such assistance from any person qualified to
5 perform the service or services required (including an organization
6 which provides such services, or arranges for their availability on a
7 prepayment basis), who undertakes to provide the individual such
8 services.

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

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

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

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

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

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

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

45 (3) Notwithstanding any provision of law to the contrary, the
46 provisions of paragraph (2) of this subsection shall not apply to a
47 trust agreement that is established pursuant to 42 U.S.C.
48 s.1396p(d)(4)(A) or (C) to supplement and augment assistance
49 provided by government entities to a person who is disabled as

1 defined in section 1614(a)(3) of the federal Social Security Act (42
2 U.S.C. s.1382c (a)(3)).

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

5 (1) Pregnant women shall be provided prenatal care and delivery
6 services and postpartum care, including the services cited in
7 subsection a.(1), (3), and (5) of this section and subsection b.(1)-
8 (10), (12), (15), and (17) of this section, and nursing facility
9 services cited in subsection b.(13) of this section.

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

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

19 (4) Individuals who are blind or disabled shall be provided with
20 services cited in subsection a.(3) and (5) of this section and
21 subsection b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10),
22 (12), (15), and (17) of this section, and nursing facility services
23 cited in subsection b.(13) of this section.

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

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

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

1 h. In the case of a qualified disabled and working individual
2 pursuant to section 6408 of Pub.L.101-239 (42 U.S.C. s.1396d), the
3 only medical assistance provided under this act shall be the
4 payment of premiums for Medicare part A under 42 U.S.C.
5 ss.1395i-2 and 1395r.

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

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

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

22 (cf: P.L.2018, c.1, s.2)

23

24 2. (New section) The Commissioner of Human Services shall
25 apply for such State plan amendments or waivers as may be
26 necessary to implement the provisions of this act and to secure
27 federal financial participation for State Medicaid expenditures
28 under the federal Medicaid program.

29

30 3. (New section) The Commissioner of Human Services,
31 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
32 (C.52:14B-1 et seq.), shall adopt rules and regulations necessary to
33 implement the provisions of this act.

34

35 4. This act shall take effect on the first day of the fourth month
36 next following the date of enactment, but the Commissioner of
37 Human Services may take such anticipatory administrative action in
38 advance thereof as may be necessary for the implementation of this
39 act.

40

41

42

STATEMENT

43

44 The bill provides for an expansion of the State Medicaid program to
45 include coverage for pasteurized donated human breast milk under
46 certain circumstances. Research indicates that breast milk can protect
47 infants from infection, and reduce the rates of health problems, such as
48 diabetes, obesity, and asthma, later in life. The American Academy of
49 Pediatrics and the American College of Obstetricians and Gynecologists,

1 strongly recommends breastfeeding exclusively for six months.
2 However, breastfeeding is not always possible or a sufficient source of
3 nutrition for an infant, particularly for premature infants. P.L.2017,
4 c.309, enacted in January 2018, recognizes the importance of certain
5 families having access to donated breast milk and mandates health
6 benefits coverage for donated human breast milk. This bill would extend
7 the same benefits provided under that law to low-income families in the
8 State.

9 Specifically, this bill provides that coverage under the Medicaid
10 program includes expenses incurred for the provision of pasteurized
11 donated human breast milk, which are required to include human
12 milk fortifiers if indicated in a medical order provided by a licensed
13 medical practitioner, to an infant under the age of six months. In
14 order for the Medicaid program to cover such expenses, the milk
15 must be obtained from a human milk bank that meets quality
16 guidelines established by the Department of Health. In addition, a
17 licensed medical practitioner must have issued a medical order for
18 the infant under at least one of the following circumstances:

19 (1) the infant is medically or physically unable to receive
20 maternal breast milk or participate in breast feeding or the infant's
21 mother is medically or physically unable to produce maternal breast
22 milk in sufficient quantities or participate in breast feeding despite
23 optimal lactation support; or

24 (2) the infant meets any of the following conditions: a body
25 weight below healthy levels determined by the licensed medical
26 practitioner; a congenital or acquired condition that places the infant
27 at a high risk for development of necrotizing enterocolitis; or a
28 congenital or acquired condition that may benefit from the use of
29 donor breast milk and human milk fortifiers as determined by the
30 Department of Health.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 4747

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 5, 2019

The Assembly Financial Institutions and Insurance Committee reports favorably and with committee amendments Assembly Bill No. 4747.

As amended, the bill provides for an expansion of the State Medicaid program to include coverage for pasteurized donated human breast milk under certain circumstances. Research indicates that breast milk can protect infants from infection, and reduce the rates of health problems, such as diabetes, obesity, and asthma, later in life. The American Academy of Pediatrics and the American College of Obstetricians and Gynecologists, strongly recommends breastfeeding exclusively for six months. However, breastfeeding is not always possible or a sufficient source of nutrition for an infant, particularly for premature infants. P.L.2017, c.309, enacted in January 2018, recognizes the importance of families having access to donated breast milk and mandates health benefits coverage for donated human breast milk. This bill would extend the same benefits provided under that law to low-income families in the State.

Specifically, this bill provides that coverage under the Medicaid program includes expenses incurred for the provision of pasteurized donated human breast milk, which are required to include human milk fortifiers if indicated in a medical order provided by a licensed medical practitioner, to an infant under the age of six months. In order for the Medicaid program to cover such expenses, the milk must be obtained from a human milk bank that meets quality guidelines established by the Department of Health. In addition, a licensed medical practitioner must have issued a medical order for the infant under at least one of the following circumstances:

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

(2) the infant meets any of the following conditions: a body weight below healthy levels determined by the licensed medical practitioner

issuing the medical order for the infant; a congenital or acquired condition that places the infant at a high risk for development of necrotizing enterocolitis; or a congenital or acquired condition that may benefit from the use of donor breast milk and human milk fortifiers as determined by the Department of Health.

As amended and reported, this bill is identical to Senate Bill No. 3159 (1R), as also reported by the committee.

COMMITTEE AMENDMENTS:

The committee amended the bill to make certain technical changes involving punctuation and syntax.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 4747

STATE OF NEW JERSEY

DATED: DECEMBER 12, 2019

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4747 (1R).

This bill provides for an expansion of the State Medicaid program to include coverage for pasteurized donated human breast milk under certain circumstances.

Specifically, this bill provides that coverage under the Medicaid program includes expenses incurred for the provision of pasteurized donated human breast milk, which are required to include human milk fortifiers if indicated in a medical order provided by a licensed medical practitioner, to an infant under the age of six months. In order for the Medicaid program to cover such expenses, the milk must be obtained from a human milk bank that meets quality guidelines established by the Department of Health. In addition, a licensed medical practitioner must have issued a medical order for the infant under at least one of the following circumstances:

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

(2) the infant meets any of the following conditions: a body weight below healthy levels determined by the licensed medical practitioner issuing the medical order for the infant; a congenital or acquired condition that places the infant at a high risk for development of necrotizing enterocolitis; or a congenital or acquired condition that may benefit from the use of donor breast milk and human milk fortifiers as determined by the Department of Health.

As reported by the committee, Assembly Bill No. 4747 (1R) is identical to Senate Bill No. 3159 (1R), which also was reported by the committee on this date.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that this bill may cause the State to incur annual costs to provide pasteurized donated human breast milk to individuals who receive health care

services under the State's Medicaid program, and to receive and expend federal Medicaid matching funds.

The cost to provide these services cannot be quantified with any certainty as: (1) the cost for these services is unknown and (2) the number of individuals who will receive these services is unpredictable.

Some of the expenditures may result in a decrease in medical costs associated with the care of infants; however, the OLS cannot quantify with any certainty any savings that may be attributed to the provisions of the bill.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 4747

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: DECEMBER 16, 2019

SUMMARY

- Synopsis:** Requires Medicaid coverage for pasteurized donated human breast milk under certain circumstances.
- Type of Impact:** Indeterminate impact on State costs and revenue.
- Agencies Affected:** Department of Human Services, Division of Medical Assistance and Health Services.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Cost	Indeterminate Impact
State Revenue	Indeterminate Impact

- The Office of Legislative Services (OLS) estimates that this bill may cause the State to incur annual costs to provide pasteurized donated human breast milk to individuals who receive health care services under the State's Medicaid program, and to receive and expend federal Medicaid matching funds.
- The cost to provide these services cannot be quantified with any certainty as: (1) the precise cost for these services in New Jersey is unknown and (2) the number of individuals who will receive these services is unpredictable.
- Some of the expenditures may result in a decrease in medical costs associated with the care of infants; however, the OLS cannot quantify with any certainty any savings that may be attributed to the provisions of the bill.

BILL DESCRIPTION

The bill provides for an expansion of the State Medicaid program to include coverage for pasteurized donated human breast milk under certain circumstances. Specifically, this bill

provides that coverage under the Medicaid program includes expenses incurred for the provision of pasteurized donated human breast milk, which is required to include human milk fortifiers if indicated in a medical order provided by a licensed medical practitioner, to an infant under the age of six months. In order for the State Medicaid program to cover such expenses, the milk must be obtained from a human milk bank that meets quality guidelines established by the New Jersey Department of Health (DOH). In addition, a licensed medical practitioner must have issued a medical order for the infant under at least one of the following circumstances:

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

(2) the infant meets any of the following conditions: a body weight below healthy levels determined by the licensed medical practitioner issuing the medical order for the infant; a congenital or acquired condition that places the infant at a high risk for development of necrotizing enterocolitis; or a congenital or acquired condition that may benefit from the use of donor breast milk and human milk fortifiers as determined by the DOH.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that this bill may cause the State to incur annual costs to provide pasteurized donated human breast milk to individuals who receive health care services under the State's Medicaid program, and to receive and expend federal Medicaid matching funds. The cost to provide these services cannot be quantified with any certainty as: (1) the precise cost for these services is unknown and (2) the number of individuals who will receive these services is unpredictable. Some of the expenditures may result in a decrease in medical costs associated with the care of infants; however, the OLS cannot quantify with any certainty any savings that may be attributed to the provisions of the bill.

The fiscal impact on the State of offering pasteurized donated human breast milk as a Medicaid benefit would depend on the level of benefit provided. The bill does not specify a reimbursement rate for this benefit, and instead permits the Commissioner of Human Services to establish regulations to implement the bill. Current costs for pasteurized donated human breast milk can vary widely, from \$3 to \$5 per ounce.

At least seven states and the District of Columbia currently provide pasteurized donated human breast milk under their Medicaid programs. In New York, hospitals are directed to bill for the benefit per actual acquisition cost which, if purchased from the New York Milk Bank, is \$4.50 per ounce.¹ According to a 2017 survey by the Center for Evidenced Based Policy, in Texas the reimbursement rate is \$2.00 per ounce; in California, \$2.94 per ounce; and in the District of Columbia, \$3.30 per ounce.² Generally, infants between one and six months of age need

¹https://www.health.ny.gov/health_care/medicaid/program/update/2017/2017-11.htm;

<https://nonprofitquarterly.org/2017/04/27/liquid-gold-6-states-allow-medicaid-access-breast-milk/>

² https://www.health.ny.gov/health_care/medicaid/ebprac/docs/2017-06-13_donor_human_milk.pdf

approximately 25 ounces of milk a day. Using the low and high range of the reimbursement rate examples provided above, it may cost between \$1,500 and \$3,375 to provide 25 ounces of pasteurized donated human breast milk a month to a qualifying infant under the bill.

Another factor of the bill's impact on State expenditures is the number of infants who would annually qualify for pasteurized donated human breast milk. The OLS, however, cannot predict what portion of Medicaid births may meet one of the several circumstances for the provision of pasteurized donated human breast milk enumerated under the bill. For reference, according to the New Jersey Health Assessment Data website, 30,942 of the 101,171 births in New Jersey in CY 2018 were financed by Medicaid, while in CY 2017, there were 31,153 Medicaid births and in CY 2016 there were 31,877. Under the bill, one of the circumstances that can qualify an infant for the pasteurized donated human breast milk benefit is body weight below health levels, as determined by a licensed medical practitioner. For reference, of the 30,942 live Medicaid births in CY 2018, 2,658 had a birth weight of less than 2500 grams.

Providing a pasteurized donated human breast milk benefit may also lead to certain indeterminate State savings. According to a National Association of Neonatal Nurses (NANN) position paper, human milk provides many specific health benefits to a vulnerable infant, both during the hospital stay and following discharge.³ These benefits include a 72 percent decrease in respiratory tract infections, a 64 percent decrease in gastrointestinal tract infections, and a lower incidence and severity of hospital-acquired infections. Furthermore, human milk reduces the incidence of necrotizing enterocolitis, a disease that affects the intestines of premature infants, by 77 percent. NANN asserts that these health benefits suggest that for every dollar spent on banked donor milk, a state can save up to \$11 in other medical costs.⁴ While the OLS cannot confirm this statement, it is possible that the State may experience long-term savings in overall healthcare costs due to the aforementioned improved medical outcomes for infants who qualify for the benefit under the bill.

Section: Human Services
Analyst: Anne Cappabianca
Assistant Fiscal Analyst
Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

³http://nann.org/uploads/About/PositionPDFS/1.4.3_Use%20of%20Human%20Milk%20and%20Breastfeeding%20in%20the%20NICU.pdf

⁴http://nann.org/uploads/Advocacy_Fact_Sheets/2016_Donor_Breast_Milk.pdf

Governor Murphy Signs Legislative Package to Fight New Jersey's Maternal and Infant Health Crisis

01/13/2020

TRENTON - Governor Phil Murphy today signed a legislative package into law to combat New Jersey's maternal and infant health crisis and provide health benefits coverage for fertility preservation services. The series of bills aims to improve health outcomes for New Jersey's mothers and babies and address the racial inequities in maternal and infant health care. The legislation will support the efforts of the Administration's Nurture NJ campaign, which is led by First Lady Tammy Murphy.

"In New Jersey, we are committed to improving the health and safety of every mother and child," **said Governor Murphy**. "By signing today's bills, we are taking another step forward in our effort to eliminate the racial disparities in maternal and infant care. I am proud to sign these bills into law and commend my colleagues in the Legislature for their commitment to improve health outcomes for New Jersey's mothers, babies, and families."

"Our mission is to make New Jersey the safest place in the nation to give birth," **said First Lady Tammy Murphy**. "To achieve this, it is absolutely essential that mothers across all races, ethnicities, social and economic backgrounds are listened to and supported by federal, state and community resources. Today's legislation provides better care and support for our mothers and babies, and moves us closer to improving health outcomes for all of New Jersey's families."

The Governor signed the following four bills into law:

- **A5509 (Mosquera, Timberlake, Mukherji/Ruiz, Pou)** – Requires health benefits and Medicaid coverage for breastfeeding support.
- **S3159 (Weinberg, Greenstein/Vainieri Huttle, Reynolds-Jackson, Mukherji)** - Requires Medicaid coverage for pasteurized donated human breast milk under certain circumstances.
- **S484 (Vitale, Gill/ McKeon, Speight, Vainieri Huttle)** - Revises Newborn Screening program in the Department of Health.
- **S2133 (Cruz-Perez, Ruiz/Lampitt, Timberlake, Mosquera, Sumter, Tucker, Reynolds-Jackson)** - Mandates health benefits coverage for fertility preservation services under certain health insurance plans.

A5509

"As parents of young children, each of us knows first-hand the challenges of raising a child and just how important it is to be able to receive the support you need. Under the ACA, Medicaid currently provides coverage for breastfeeding equipment and services. This new mandate would not only guarantee continued coverage for Medicaid recipients even if the ACA is dismantled at the federal level, but would also require all New Jersey insurers to provide coverage for comprehensive lactation support. We are ensuring the health and well-being of mothers and their babies, while giving New Jersey parents one less expense to worry about as they care for their children," **said Assemblymembers Mosquera, Timberlake, and Mukherji**.

S3159

"The American Academy of Pediatrics recommends breast milk as the exclusive source of nutrition for a child in their first six months of life," **said Assemblywoman Valerie Vainieri Huttle**. "In extending health coverage for donated breast milk, we can ensure it is available and affordable for all mothers seeking to breastfeed and boost positive health outcomes for their babies."

"Low-income families under Medicaid will now have the same access to breast milk as those under all other health coverage policies," **said Assemblywoman Verlina Reynolds-Jackson**. "With breastfeeding shown to have a protective effect against respiratory illnesses, ear infections, allergy development and other diseases, it is important to remove barriers and guarantee quality health care to all mothers and babies in need."

"As my wife and I recently experienced, milk production is not always as seamless post-delivery as you'd hope or expect, nor does it always last as long as desired," **Assemblyman Raj Mukherji**. "The coverage extended under this new law will be particularly important for parents with prematurely born babies or those babies who may

need human breast milk for certain conditions for which formula is insufficient. As outcomes have shown, fortified breast milk can better provide the necessary nutrients for those in the Neonatal Intensive Care Unit to greatly increase healthy growth and development. Income should not determine which New Jersey families can ensure the health of their babies.”

S484

“The importance of this type of advisory committee cannot be emphasized enough,” **said Assemblyman McKeon**. “Its members would have both the experience and authority necessary to make recommendations to the Department of Health on screening technologies, treatment options, follow-up procedures and more. Their advice would help promote the well-being of newborns throughout the state.”

“We must prioritize our children’s health by utilizing the expertise of scientists, doctors and other educated professionals when it comes to congenital disorders,” **said Assemblywoman Speight**. “Maintaining updated methods of screening for a wide array of biochemical disorders can help reduce the amount of morbidity, mortality and disability that would otherwise be caused by undetected health problems.”

“Early diagnosis of a potential congenital disorder and access to early medical interventions can save parents and their children a lifetime of pain,” **said Assemblywoman Vainieri Huttle**. “It’s important for our state to do everything we can to make sure medical practitioners and parents are educated with standardized, up-to-date information on these disorders and how they can be both identified and treated.”

S2133

“Being diagnosed with a serious health condition and deciding to undergo major medical treatment is stressful enough without having to worry about potential infertility as a result of the treatment,” **said Assemblywoman Lampitt**. “Having the option to utilize fertility services helps to provide patients with peace of mind and makes the decision to seek medical treatment a little easier.”

“When someone requires a life-saving treatment, they shouldn’t have to choose between daunting medical bills or never having a family,” **said Assemblywoman Timberlake**. “Guaranteeing insurance coverage is one way we can help alleviate patients’ financial concerns and allow them to make their decision based on what they want rather than what they can afford.”

“As a mother, there is nothing in the world I value more than my children. Raising a child is such a rewarding experience,” **said Assemblywoman Mosquera**. “This law will ensure that no one who dreams of being a parent will be denied that opportunity if there is any way for them to do so, regardless of their current health problems.” “Advancements in medical technology are providing patients with incredible alternatives they never would have had in the past,” **said Assemblywoman Sumter**. “If someone wants to start a family of their own someday but may soon face infertility, it’s important we help them achieve their dream by guaranteeing coverage of these beneficial fertility preservation services.”

“Everyone deserves the chance to form a family of their own,” **said Assemblywoman Tucker**. “In the past, the kinds of treatment cancer patients receive would have severely limited their ability to do so – but that is no longer the case thanks to modern fertility preservation services. We must ensure their ability to use those services whenever necessary and desired.”

“At a time when patients are coping with serious illnesses that can be both challenging and discouraging, knowing they can still have a family someday gives them hope,” **said Assemblywoman Reynolds-Jackson**. “That kind of hope during such a difficult time is more powerful than many people can comprehend. This law will help patients focus on the possibilities of life.”