

VETO MESSAGE:

No

GOVERNOR'S PRESS RELEASE ON SIGNING:

No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>.

REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

No

P.L. 2003, CHAPTER 294, *approved January 14, 2004*
Assembly Committee Substitute (*First Reprint*) for
Assembly, Nos. 2444 and 1933

1 AN ACT concerning Medicaid coverage of HIV drug resistance testing
2 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) Such early and periodic screening and diagnosis of individuals
19 who are eligible under the program and are under age 21, to ascertain
20 their physical or mental defects and such health care, treatment, and
21 other measures to correct or ameliorate defects and chronic conditions
22 discovered thereby, as may be provided in regulations of the Secretary
23 of the federal Department of Health and Human Services and approved
24 by the commissioner;

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

27 As used in this subsection, "laboratory and X-ray services" includes
28 HIV drug resistance testing, including, but not limited to, genotype
29 ¹assays that have been cleared or approved by the federal Food and
30 Drug Administration, laboratory developed genotype assays¹ ,
31 phenotype ¹[and virtual phenotype]¹ assays ¹, and other assays
32 using phenotype prediction with genotype comparison,¹ for persons
33 diagnosed with HIV infection or AIDS.

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

38 (1) Medical care not included in subsection a.(5) above, or any
39 other type of remedial care recognized under State law, furnished by

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:

¹ Assembly AAP committee amendments adopted December 9, 2002.

- 1 licensed practitioners within the scope of their practice, as defined by
2 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 or by
9 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 drug abuse, when the treatment is prescribed by
26 a physician and provided in a licensed hospital or in a narcotic and
27 drug abuse treatment center approved by the Department of Health
28 and Senior Services pursuant to P.L.1970, c.334 (C.26:2G-21 et seq.)
29 and whose staff includes a medical director, and limited to those
30 services eligible for federal financial participation under Title XIX of
31 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 basic
37 number of prenatal and postpartum visits recommended by the
38 American College of Obstetrics and Gynecology; additional prenatal
39 and postpartum visits that are medically necessary; necessary
40 laboratory, nutritional assessment and counseling, health education,
41 personal counseling, managed care, outreach and follow-up services;
42 treatment of conditions which may complicate pregnancy; and
43 physician or certified nurse-midwife delivery services;
- 44 (19) Comprehensive pediatric care, which may include:
45 ambulatory, preventive and primary care health services. The
46 preventive services shall include, at a minimum, the basic number of

1 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 the
7 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 who
12 are at least 35 but less than 40 years of age; one mammogram
13 examination every two years or more frequently, if recommended by
14 a physician, for women who are at least 40 but less than 50 years of
15 age; and one mammogram examination every year for women age 50
16 and over.

17 c. Payments for the foregoing services, goods and supplies
18 furnished pursuant to this act shall be made to the extent authorized
19 by this act, the rules and regulations promulgated pursuant thereto
20 and, where applicable, subject to the agreement of insurance provided
21 for under this act. Said payments shall constitute payment in full to
22 the provider on behalf of the recipient. Every provider making a claim
23 for payment pursuant to this act shall certify in writing on the claim
24 submitted that no additional amount will be charged to the recipient,
25 his family, his representative or others on his behalf for the services,
26 goods and supplies furnished pursuant to this act.

27 No provider whose claim for payment pursuant to this act has been
28 denied because the services, goods or supplies were determined to be
29 medically unnecessary shall seek reimbursement from the recipient, his
30 family, his representative or others on his behalf for such services,
31 goods and supplies provided pursuant to this act; provided, however,
32 a provider may seek reimbursement from a recipient for services,
33 goods or supplies not authorized by this act, if the recipient elected to
34 receive the services, goods or supplies with the knowledge that they
35 were not authorized.

36 d. Any individual eligible for medical assistance (including drugs)
37 may obtain such assistance from any person qualified to perform the
38 service or services required (including an organization which provides
39 such services, or arranges for their availability on a prepayment basis),
40 who undertakes to provide him such services.

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

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

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

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

9 (3) Is over 21 years of age and who is receiving inpatient
10 psychiatric hospital services in a psychiatric facility; provided,
11 however, that an individual who was receiving such services
12 immediately prior to attaining age 21 may continue to receive such
13 services until he reaches age 22. Nothing in this subsection shall
14 prohibit the commissioner from extending medical assistance to all
15 eligible persons receiving inpatient psychiatric services; provided that
16 there is federal financial participation available.

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

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

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

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

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

42 (2) Dependent children shall be provided with services cited in
43 subsection a.(3) and (5) of this section and subsection b.(1), (2), (3),
44 (4), (5), (6), (7), (10), (12), (15) and (17) of this section, and nursing
45 facility services cited in subsection b.(13) of this section.

46 (3) Individuals who are 65 years of age or older shall be provided

1 with services cited in subsection a.(3) and (5) of this section and
2 subsection b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10),
3 (12), (15) and (17) of this section, and nursing facility services cited
4 in subsection b.(13) of this section.

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

10 (5) (a) Inpatient hospital services, subsection a.(1) of this section,
11 shall only be provided to eligible medically needy individuals, other
12 than pregnant women, if the federal Department of Health and Human
13 Services discontinues the State's waiver to establish inpatient hospital
14 reimbursement rates for the Medicare and Medicaid programs under
15 the authority of section 601(c)(3) of the Social Security Act
16 Amendments of 1983, Pub.L.98-21 (42 U.S.C. s.1395ww(c)(5)).
17 Inpatient hospital services may be extended to other eligible medically
18 needy individuals if the federal Department of Health and Human
19 Services directs that these services be included.

20 (b) Outpatient hospital services, subsection a.(2) of this section,
21 shall only be provided to eligible medically needy individuals if the
22 federal Department of Health and Human Services discontinues the
23 State's waiver to establish outpatient hospital reimbursement rates for
24 the Medicare and Medicaid programs under the authority of section
25 601(c)(3) of the Social Security Amendments of 1983, Pub.L.98-21
26 (42 U.S.C. s.1395ww(c)(5)). Outpatient hospital services may be
27 extended to all or to certain medically needy individuals if the federal
28 Department of Health and Human Services directs that these services
29 be included. However, the use of outpatient hospital services shall be
30 limited to clinic services and to emergency room services for injuries
31 and significant acute medical conditions.

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

34 h. In the case of a qualified disabled and working individual
35 pursuant to section 6408 of Pub.L.101-239 (42 U.S.C. s.1396d), the
36 only medical assistance provided under this act shall be the payment
37 of premiums for Medicare part A under 42 U.S.C. ss.1395i-2 and
38 1395r.

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

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

1 (cf: P.L.2001, c.186, s.2)

2

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

7

8 3. This act shall take effect on the 180th day after enactment,
9 except that the Commissioner of Human Services may take such
10 anticipatory administrative action in advance as shall be necessary for
11 the implementation of the act.

12

13

14

15

16 _____
Requires Medicaid coverage of HIV drug resistance testing.

ASSEMBLY, No. 2444

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED JUNE 13, 2002

Sponsored by:

Assemblyman JOSEPH J. ROBERTS, JR.

District 5 (Camden and Gloucester)

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

SYNOPSIS

Provides Medicaid coverage for certain HIV drug resistance testing.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT providing for Medicaid coverage of certain HIV drug
2 resistance testing 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 as
8 follows:

9 6. a. Subject to the requirements of Title XIX of the federal Social
10 Security Act, the limitations imposed by this act and by the rules and
11 regulations promulgated pursuant thereto, the department shall
12 provide medical assistance to qualified applicants, including authorized
13 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) Such early and periodic screening and diagnosis of individuals
19 who are eligible under the program and are under age 21, to ascertain
20 their physical or mental defects and such health care, treatment, and
21 other measures to correct or ameliorate defects and chronic conditions
22 discovered thereby, as may be provided in regulations of the Secretary
23 of the federal Department of Health and Human Services and approved
24 by the commissioner;

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

27 As used in paragraph (3) of this subsection, "other laboratory and
28 X-ray services" includes HIV drug resistance testing for persons
29 diagnosed with HIV infection or AIDS in the form of genotype assays
30 that have been determined to be safe and clinically effective by the
31 federal Food and Drug Administration and phenotype assays.

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

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

40 (2) Home health care services;

41 (3) Clinic services;

42 (4) Dental services;

43 (5) Physical therapy and related 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 (6) Prescribed drugs, dentures, and prosthetic devices; and
2 eyeglasses prescribed by a physician skilled in diseases of the eye or by
3 an optometrist, whichever the individual may select;
- 4 (7) Optometric services;
- 5 (8) Podiatric services;
- 6 (9) Chiropractic services;
- 7 (10) Psychological services;
- 8 (11) Inpatient psychiatric hospital services for individuals under
9 21 years of age, or under age 22 if they are receiving such services
10 immediately before attaining age 21;
- 11 (12) Other diagnostic, screening, preventive, and rehabilitative
12 services, and other remedial care;
- 13 (13) Inpatient hospital services, nursing facility services and
14 intermediate care facility services for individuals 65 years of age or
15 over in an institution for mental diseases;
- 16 (14) Intermediate care facility services;
- 17 (15) Transportation services;
- 18 (16) Services in connection with the inpatient or outpatient
19 treatment or care of drug abuse, when the treatment is prescribed by
20 a physician and provided in a licensed hospital or in a narcotic and
21 drug abuse treatment center approved by the Department of Health
22 and Senior Services pursuant to P.L.1970, c.334 (C.26:2G-21 et seq.)
23 and whose staff includes a medical director, and limited to those
24 services eligible for federal financial participation under Title XIX of
25 the federal Social Security Act;
- 26 (17) Any other medical care and any other type of remedial care
27 recognized under State law, specified by the Secretary of the federal
28 Department of Health and Human Services, and approved by the
29 commissioner;
- 30 (18) Comprehensive maternity care, which may include: the basic
31 number of prenatal and postpartum visits recommended by the
32 American College of Obstetrics and Gynecology; additional prenatal
33 and postpartum visits that are medically necessary; necessary
34 laboratory, nutritional assessment and counseling, health education,
35 personal counseling, managed care, outreach and follow-up services;
36 treatment of conditions which may complicate pregnancy; and
37 physician or certified nurse-midwife delivery services;
- 38 (19) Comprehensive pediatric care, which may include: ambulatory,
39 preventive and primary care health services. The preventive services
40 shall include, at a minimum, the basic number of preventive visits
41 recommended by the American Academy of Pediatrics;
- 42 (20) Services provided by a hospice which is participating in the
43 Medicare program established pursuant to Title XVIII of the Social
44 Security Act, Pub.L.89-97 (42 U.S.C. s.1395 et seq.). Hospice
45 services shall be provided subject to approval of the Secretary of the
46 federal Department of Health and Human Services for federal

1 reimbursement;

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

10 c. Payments for the foregoing services, goods and supplies
11 furnished pursuant to this act shall be made to the extent authorized
12 by this act, the rules and regulations promulgated pursuant thereto
13 and, where applicable, subject to the agreement of insurance provided
14 for under this act. Said payments shall constitute payment in full to
15 the provider on behalf of the recipient. Every provider making a claim
16 for payment pursuant to this act shall certify in writing on the claim
17 submitted that no additional amount will be charged to the recipient,
18 his family, his representative or others on his behalf for the services,
19 goods and supplies furnished pursuant to this act.

20 No provider whose claim for payment pursuant to this act has been
21 denied because the services, goods or supplies were determined to be
22 medically unnecessary shall seek reimbursement from the recipient, his
23 family, his representative or others on his behalf for such services,
24 goods and supplies provided pursuant to this act; provided, however,
25 a provider may seek reimbursement from a recipient for services,
26 goods or supplies not authorized by this act, if the recipient elected to
27 receive the services, goods or supplies with the knowledge that they
28 were not authorized.

29 d. Any individual eligible for medical assistance (including drugs)
30 may obtain such assistance from any person qualified to perform the
31 service or services required (including an organization which provides
32 such services, or arranges for their availability on a prepayment basis),
33 who undertakes to provide him such services.

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

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

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

46 (2) Has not attained 65 years of age and who is a patient in an

1 institution for mental diseases, or

2 (3) Is over 21 years of age and who is receiving inpatient
3 psychiatric hospital services in a psychiatric facility; provided,
4 however, that an individual who was receiving such services
5 immediately prior to attaining age 21 may continue to receive such
6 services until he reaches age 22. Nothing in this subsection shall
7 prohibit the commissioner from extending medical assistance to all
8 eligible persons receiving inpatient psychiatric services; provided that
9 there is federal financial participation available.

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

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

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

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

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

35 (2) Dependent children shall be provided with services cited in
36 subsection a.(3) and (5) of this section and subsection b.(1), (2), (3),
37 (4), (5), (6), (7), (10), (12), (15) and (17) of this section, and nursing
38 facility services cited in subsection b.(13) of this section.

39 (3) Individuals who are 65 years of age or older shall be provided
40 with services cited in subsection a.(3) and (5) of this section and
41 subsection b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10),
42 (12), (15) and (17) of this section, and nursing facility services cited
43 in subsection b.(13) of this section.

44 (4) Individuals who are blind or disabled shall be provided with
45 services cited in subsection a.(3) and (5) of this section and subsection
46 b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10), (12), (15) and

1 (17) of this section, and nursing facility services cited in subsection
2 b.(13) of this section.

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

13 (b) Outpatient hospital services, subsection a.(2) of this section,
14 shall only be provided to eligible medically needy individuals if the
15 federal Department of Health and Human Services discontinues the
16 State's waiver to establish outpatient hospital reimbursement rates for
17 the Medicare and Medicaid programs under the authority of section
18 601(c)(3) of the Social Security Amendments of 1983, Pub.L.98-21
19 (42 U.S.C. s.1395ww(c)(5)). Outpatient hospital services may be
20 extended to all or to certain medically needy individuals if the federal
21 Department of Health and Human Services directs that these services
22 be included. However, the use of outpatient hospital services shall be
23 limited to clinic services and to emergency room services for injuries
24 and significant acute medical conditions.

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

27 h. In the case of a qualified disabled and working individual
28 pursuant to section 6408 of Pub.L.101-239 (42 U.S.C. s.1396d), the
29 only medical assistance provided under this act shall be the payment
30 of premiums for Medicare part A under 42 U.S.C. ss.1395i-2 and
31 1395r.

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

37 j. In the case of a qualified individual pursuant to 42 U.S.C. s.
38 1396a(aa), the only medical assistance provided under this act shall be
39 payment for authorized services provided during the period in which
40 the individual requires treatment for breast or cervical cancer, in
41 accordance with criteria established by the commissioner.

42 (cf: P.L.2001, c.186, s.2)

43

44 2. The Commissioner of Human Services, pursuant to the
45 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
46 seq.), shall adopt rules and regulations to effectuate the purposes of
47 this act.

1 3. This act shall take effect on the 90th day after enactment, except
2 that the Commissioner of Human Services may take such anticipatory
3 administrative action in advance as shall be necessary for the
4 implementation of the act.

5

6

7

STATEMENT

8

9 This bill would provide Medicaid coverage for certain HIV drug
10 resistance testing, for persons diagnosed with HIV infection or AIDS,
11 in the form of genotype assays that have been determined to be safe
12 and clinically effective by the federal Food and Drug Administration
13 and phenotype assays.

14 This testing is useful in determining the combinations of
15 medications that are effective in controlling HIV infection in individual
16 patients, especially among those whose current drug regimen is
17 unsuccessful, and can help to explain treatment failures and guide
18 treatment decisions.

19 The bill takes effect on the 90th day after enactment, but authorizes
20 the Commissioner of Human Services to take anticipatory
21 administrative action in advance as necessary for its implementation.

ASSEMBLY, No. 1933

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED FEBRUARY 28, 2002

Sponsored by:

Assemblywoman CHARLOTTE VANDERVALK

District 39 (Bergen)

Assemblywoman LORETTA WEINBERG

District 37 (Bergen)

Co-Sponsored by:

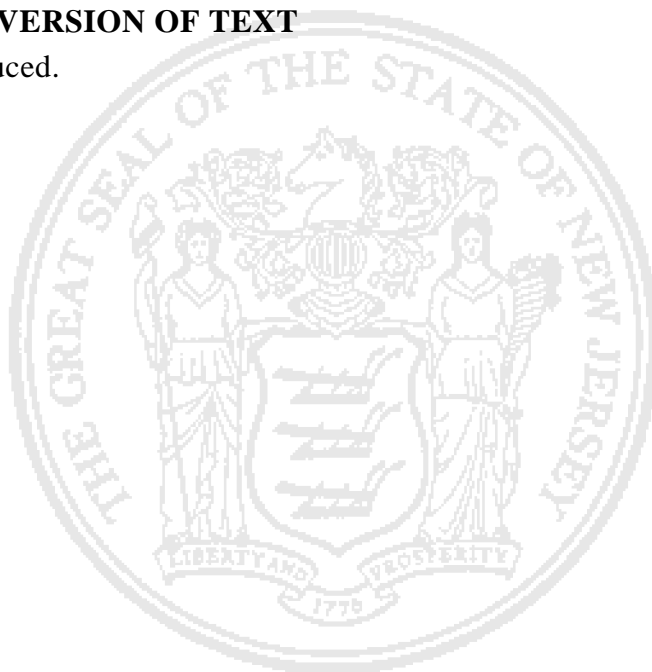
**Assemblymen Gusciora, Conaway, Conners, Cryan, Assemblywoman
Quigley, Assemblymen Thompson and Munoz**

SYNOPSIS

Requires Medicaid coverage of HIV drug resistance testing.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/20/2002)

1 AN ACT concerning Medicaid coverage of HIV drug resistance testing
2 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 as
8 follows:

9 6. a. Subject to the requirements of Title XIX of the federal Social
10 Security Act, the limitations imposed by this act and by the rules and
11 regulations promulgated pursuant thereto, the department shall
12 provide medical assistance to qualified applicants, including authorized
13 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) Such early and periodic screening and diagnosis of individuals
19 who are eligible under the program and are under age 21, to ascertain
20 their physical or mental defects and such health care, treatment, and
21 other measures to correct or ameliorate defects and chronic conditions
22 discovered thereby, as may be provided in regulations of the Secretary
23 of the federal Department of Health and Human Services and approved
24 by the commissioner;

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

27 As used in this subsection, "laboratory and X-ray services" includes
28 HIV drug resistance testing in the form of phenotype assays and
29 genotype assays for persons diagnosed with HIV infection or AIDS.

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

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

38 (2) Home health care services;

39 (3) Clinic services;

40 (4) Dental services;

41 (5) Physical therapy and related services;

42 (6) Prescribed drugs, dentures, and prosthetic devices; and
43 eyeglasses prescribed by a physician skilled in diseases of the eye or by
44 an optometrist, whichever the individual may select;

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 (7) Optometric services;
- 2 (8) Podiatric services;
- 3 (9) Chiropractic services;
- 4 (10) Psychological services;
- 5 (11) Inpatient psychiatric hospital services for individuals under
- 6 21 years of age, or under age 22 if they are receiving such services
- 7 immediately before attaining age 21;
- 8 (12) Other diagnostic, screening, preventive, and rehabilitative
- 9 services, and other remedial care;
- 10 (13) Inpatient hospital services, nursing facility services and
- 11 intermediate care facility services for individuals 65 years of age or
- 12 over in an institution for mental diseases;
- 13 (14) Intermediate care facility services;
- 14 (15) Transportation services;
- 15 (16) Services in connection with the inpatient or outpatient
- 16 treatment or care of drug abuse, when the treatment is prescribed by
- 17 a physician and provided in a licensed hospital or in a narcotic and
- 18 drug abuse treatment center approved by the Department of Health
- 19 and Senior Services pursuant to P.L.1970, c.334 (C.26:2G-21 et seq.)
- 20 and whose staff includes a medical director, and limited to those
- 21 services eligible for federal financial participation under Title XIX of
- 22 the federal Social Security Act;
- 23 (17) Any other medical care and any other type of remedial care
- 24 recognized under State law, specified by the Secretary of the federal
- 25 Department of Health and Human Services, and approved by the
- 26 commissioner;
- 27 (18) Comprehensive maternity care, which may include: the basic
- 28 number of prenatal and postpartum visits recommended by the
- 29 American College of Obstetrics and Gynecology; additional prenatal
- 30 and postpartum visits that are medically necessary; necessary
- 31 laboratory, nutritional assessment and counseling, health education,
- 32 personal counseling, managed care, outreach and follow-up services;
- 33 treatment of conditions which may complicate pregnancy; and
- 34 physician or certified nurse-midwife delivery services;
- 35 (19) Comprehensive pediatric care, which may include: ambulatory,
- 36 preventive and primary care health services. The preventive services
- 37 shall include, at a minimum, the basic number of preventive visits
- 38 recommended by the American Academy of Pediatrics;
- 39 (20) Services provided by a hospice which is participating in the
- 40 Medicare program established pursuant to Title XVIII of the Social
- 41 Security Act, Pub.L.89-97 (42 U.S.C. s.1395 et seq.). Hospice
- 42 services shall be provided subject to approval of the Secretary of the
- 43 federal Department of Health and Human Services for federal
- 44 reimbursement;
- 45 (21) Mammograms, subject to approval of the Secretary of the
- 46 federal Department of Health and Human Services for federal

1 reimbursement, including one baseline mammogram for women who
2 are at least 35 but less than 40 years of age; one mammogram
3 examination every two years or more frequently, if recommended by
4 a physician, for women who are at least 40 but less than 50 years of
5 age; and one mammogram examination every year for women age 50
6 and over.

7 c. Payments for the foregoing services, goods and supplies
8 furnished pursuant to this act shall be made to the extent authorized
9 by this act, the rules and regulations promulgated pursuant thereto
10 and, where applicable, subject to the agreement of insurance provided
11 for under this act. Said payments shall constitute payment in full to
12 the provider on behalf of the recipient. Every provider making a claim
13 for payment pursuant to this act shall certify in writing on the claim
14 submitted that no additional amount will be charged to the recipient,
15 his family, his representative or others on his behalf for the services,
16 goods and supplies furnished pursuant to this act.

17 No provider whose claim for payment pursuant to this act has been
18 denied because the services, goods or supplies were determined to be
19 medically unnecessary shall seek reimbursement from the recipient, his
20 family, his representative or others on his behalf for such services,
21 goods and supplies provided pursuant to this act; provided, however,
22 a provider may seek reimbursement from a recipient for services,
23 goods or supplies not authorized by this act, if the recipient elected to
24 receive the services, goods or supplies with the knowledge that they
25 were not authorized.

26 d. Any individual eligible for medical assistance (including drugs)
27 may obtain such assistance from any person qualified to perform the
28 service or services required (including an organization which provides
29 such services, or arranges for their availability on a prepayment basis),
30 who undertakes to provide him such services.

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

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

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

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

45 (3) Is over 21 years of age and who is receiving inpatient
46 psychiatric hospital services in a psychiatric facility; provided,

1 however, that an individual who was receiving such services
2 immediately prior to attaining age 21 may continue to receive such
3 services until he reaches age 22. Nothing in this subsection shall
4 prohibit the commissioner from extending medical assistance to all
5 eligible persons receiving inpatient psychiatric services; provided that
6 there is federal financial participation available.

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

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

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

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

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

32 (2) Dependent children shall be provided with services cited in
33 subsection a.(3) and (5) of this section and subsection b.(1), (2), (3),
34 (4), (5), (6), (7), (10), (12), (15) and (17) of this section, and nursing
35 facility services cited in subsection b.(13) of this section.

36 (3) Individuals who are 65 years of age or older shall be provided
37 with services cited in subsection a.(3) and (5) of this section and
38 subsection b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10),
39 (12), (15) and (17) of this section, and nursing facility services cited
40 in subsection b.(13) of this section.

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

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

11 (b) Outpatient hospital services, subsection a.(2) of this section,
12 shall only be provided to eligible medically needy individuals if the
13 federal Department of Health and Human Services discontinues the
14 State's waiver to establish outpatient hospital reimbursement rates for
15 the Medicare and Medicaid programs under the authority of section
16 601(c)(3) of the Social Security Amendments of 1983, Pub.L.98-21
17 (42 U.S.C. s.1395ww(c)(5)). Outpatient hospital services may be
18 extended to all or to certain medically needy individuals if the federal
19 Department of Health and Human Services directs that these services
20 be included. However, the use of outpatient hospital services shall be
21 limited to clinic services and to emergency room services for injuries
22 and significant acute medical conditions.

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

25 h. In the case of a qualified disabled and working individual
26 pursuant to section 6408 of Pub.L.101-239 (42 U.S.C. s.1396d), the
27 only medical assistance provided under this act shall be the payment
28 of premiums for Medicare part A under 42 U.S.C. ss.1395i-2 and
29 1395r.

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

35 j. In the case of a qualified individual pursuant to 42 U.S.C. s.
36 1396a(aa), the only medical assistance provided under this act shall be
37 payment for authorized services provided during the period in which
38 the individual requires treatment for breast or cervical cancer, in
39 accordance with criteria established by the commissioner.

40 (cf: P.L.2001, c.186, s.2)

41

42 2. The Commissioner of Human Services, pursuant to the
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
44 seq.), shall adopt rules and regulations to effectuate the purposes of
45 this act.

ASSEMBLY HEALTH AND HUMAN SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 2444 and 1933**

STATE OF NEW JERSEY

DATED: OCTOBER 21, 2002

The Assembly Health and Human Services Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 2444 and 1933.

This committee substitute would require Medicaid coverage of HIV drug resistance testing, including, but not limited to, genotype, phenotype and virtual phenotype assays for persons diagnosed with HIV infection or AIDS.

In addition to other laboratory tests that are already widely used for patients with HIV infection or AIDS, such as CD-4 cell counts and HIV viral load testing, drug resistance testing is reported to be making its way into clinical use and is expected to make its way into more clinical laboratories in the very near future. This testing is useful in determining the combinations of medications that are effective in controlling HIV infection in individual patients, particularly among those whose current drug regimen is unsuccessful, and can help to explain treatment failures and guide treatment decisions.

Genotyping identifies genetic mutations in the virus that permit it to develop resistance to medications; phenotyping assesses the vulnerability of the dominant strain of HIV in a particular patient's body to specific antiretroviral drugs; and virtual phenotyping provides a quantitative, biologically-based prediction of resistance that is derived from a large database of linked genotypes and phenotypes based on the genetic sequence of the virus.

The International AIDS Society-USA recently published its recommendations for the clinical use of HIV drug resistance testing, which include the following situations:

- C after many highly active antiretroviral therapy regimens have failed;
- C after the failure of an initial regimen, if poor compliance and pharmacokinetic (drug action) reasons are not believed to be responsible for the failure; and
- C for pregnant women, especially those living in communities with a high prevalence of drug-resistant HIV virus.

The substitute takes effect on the 180th day after enactment, but authorizes the Commissioner of Human Services to take anticipatory administrative action in advance as necessary for its implementation.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 2444 and 1933

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 9, 2002

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2444 and 1933 (ACS), with committee amendments.

Assembly Bill Nos. 2444 and 1933 (ACS), as amended, requires Medicaid coverage of HIV drug resistance testing, including, but not limited to, genotype assays, phenotype assays, and other assays using phenotype prediction with genotype comparison.

In addition to other laboratory tests that are already widely used for patients with HIV infection or AIDS, such as CD-4 cell counts and HIV viral load testing, drug resistance testing is reported to be making its way into clinical use and is expected to make its way into more clinical laboratories in the very near future. This testing is useful in determining the combinations of medications that are effective in controlling HIV infection in individual patients, particularly among those whose current drug regimen is unsuccessful, and can help to explain treatment failures and guide treatment decisions.

Genotyping identifies genetic mutations in the virus that permit it to develop resistance to medications; phenotyping assesses the vulnerability of the dominant strain of HIV in a particular patient's body to specific antiretroviral drugs; and phenotype prediction with genotype comparison provides a quantitative, biologically-based prediction of resistance that is derived from a large database of linked genotypes and phenotypes based on the genetic sequence of the virus.

The International AIDS Society-USA recently published its recommendations for the clinical use of HIV drug resistance testing, which include the following situations:

- C after many highly active antiretroviral therapy regimens have failed;
- C after the failure of an initial regimen, if poor compliance and pharmacokinetic (drug action) reasons are not believed to be responsible for the failure; and
- C for pregnant women, especially those living in communities with a high prevalence of drug-resistant HIV virus.

The legislation takes effect on the 180th day after enactment, but authorizes the Commissioner of Human Services to take anticipatory administrative action in advance as necessary for its implementation.

FISCAL IMPACT:

No fiscal information has been obtained on this legislation. However, sources have indicated cost estimates as follows: genotype testing - \$300; phenotype testing - \$600. A specific patient may need two tests of each type yearly for an annual cost of \$1,800. However, the number of specific patients needing these tests is not known.

COMMITTEE AMENDMENTS:

The amendments clarify the assays that are included under medicaid coverage by using more general and generic terms to describe the assays.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 2444 and 1933

STATE OF NEW JERSEY

DATED: MAY 8, 2003

The Senate Health, Human Services and Senior Citizens Committee reports favorably the Assembly Committee Substitute for Assembly Bill Nos. 2444 and 1933 (1R).

This committee substitute requires Medicaid coverage of HIV drug resistance testing, including, but not limited to, genotype assays, phenotype assays, and other assays using phenotype prediction with genotype comparison.

In addition to other laboratory tests that are already widely used for patients with HIV infection or AIDS, such as CD-4 cell counts and HIV viral load testing, drug resistance testing is reported to be making its way into clinical use and is expected to make its way into more clinical laboratories in the very near future. This testing is useful in determining the combinations of medications that are effective in controlling HIV infection in individual patients, particularly among those whose current drug regimen is unsuccessful, and can help to explain treatment failures and guide treatment decisions.

Genotyping identifies genetic mutations in the virus that permit it to develop resistance to medications; phenotyping assesses the vulnerability of the dominant strain of HIV in a particular patient's body to specific antiretroviral drugs; and phenotype prediction with genotype comparison provides a quantitative, biologically-based prediction of resistance that is derived from a large database of linked genotypes and phenotypes based on the genetic sequence of the virus.

The International AIDS Society-USA recently published its recommendations for the clinical use of HIV drug resistance testing, which include the following situations:

- C after many highly active antiretroviral therapy regimens have failed;
- C after the failure of an initial regimen, if poor compliance and pharmacokinetic (drug action) reasons are not believed to be responsible for the failure; and

C for pregnant women, especially those living in communities with a high prevalence of drug-resistant HIV virus.

The substitute takes effect on the 180th day after enactment, but authorizes the Commissioner of Human Services to take anticipatory administrative action in advance as necessary for its implementation.

This substitute is identical to Senate Bill No.2256 (Vitale/Singer), which the committee also reported favorably on this date.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 2444 and 1933

STATE OF NEW JERSEY

DATED: DECEMBER 4, 2003

The Senate Budget and Appropriations Committee reports favorably Assembly Bill Nos. 2444 and 1933 ACS (1R).

This bill requires Medicaid coverage of HIV drug resistance testing, including, but not limited to, genotype assays, phenotype assays, and other assays using phenotype prediction with genotype comparison.

In addition to other laboratory tests that are already widely used for patients with HIV infection or AIDS, such as CD-4 cell counts and HIV viral load testing, drug resistance testing is reported to be making its way into clinical use and is expected to make its way into more clinical laboratories in the very near future. This testing is useful in determining the combinations of medications that are effective in controlling HIV infection in individual patients, particularly among those whose current drug regimen is unsuccessful, and can help to explain treatment failures and guide treatment decisions.

Genotyping identifies genetic mutations in the virus that permit it to develop resistance to medications; phenotyping assesses the vulnerability of the dominant strain of HIV in a particular patient's body to specific antiretroviral drugs; and phenotype prediction with genotype comparison provides a quantitative, biologically-based prediction of resistance that is derived from a large database of linked genotypes and phenotypes based on the genetic sequence of the virus.

The International AIDS Society-USA recently published its recommendations for the clinical use of HIV drug resistance testing, which include the following situations:

- * after many highly active antiretroviral therapy regimens have failed;
- * after the failure of an initial regimen, if poor compliance and pharmacokinetic (drug action) reasons are not believed to be responsible for the failure; and
- * for pregnant women, especially those living in communities with a high prevalence of drug-resistant HIV virus.

The bill takes effect on the 180th day after enactment, but authorizes the Commissioner of Human Services to take anticipatory administrative action in advance as necessary for its implementation.

The provisions of this bill are identical to those of Senate Bill No. 2256, which the committee also reports this day.

FISCAL IMPACT

The Department of Human Services advises that it has adopted a plan to implement the HIV testing coverage mandated under this bill, and that the State's FY2004 budget for Medicaid includes sufficient funding to support such testing. The annual cost of the program is estimated to be about \$500,000, of which cost the State will be responsible for one half while the remaining portion is met through federal funds.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 2444 and 1933
STATE OF NEW JERSEY
210th LEGISLATURE

DATED: JANUARY 9, 2003

SUMMARY

Synopsis: Requires Medicaid coverage of HIV drug resistance testing.
Type of Impact: Possible increase/decrease in State expenditures.
Agencies Affected: Department of Human Services; local health departments.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1 to 3</u>
State Cost	Indeterminable.
Local Cost	Indeterminable.

! Potential costs/savings cannot be determined as: (a) The cost associated with conducting genotype, phenotype and virtual phenotype assays is not known; (b) the number of persons that may be tested annually is not known; and (c) it is uncertain whether such tests will reduce unnecessary medications prescribed on behalf of persons with HIV or AID.

BILL DESCRIPTION

Assembly Committee Substitute for Assembly Bill Nos. 2444 and 1933 would require Medicaid coverage of HIV drug resistance testing, including, but not limited to, genotype, phenotype and virtual phenotype assays for persons diagnosed with HIV infection or AIDS.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) is not able to estimate the fiscal impact of including

genotype, phenotype and virtual phenotype assays for persons diagnosed with HIV infection or AIDS as OLS has no information as to: (a) the cost associated with conducting these assays or (b) the number of persons that may require such testing.

Though available literature indicates that genotype, phenotype and virtual phenotype assays are much more expensive to conduct than other types of tests for HIV, such as CD-4 cell counts or HIV viral load testing, cost information for conducting such tests is not specified in the literature.

While the use of the tests is intended to reduce the inappropriate use of drugs by persons with AIDS/HIV, whether the tests will actually reduce prescription drug costs incurred by the Medicaid program is uncertain.

The requirement that Medicaid provide coverage for the additional HIV tests, may result in local health departments having to provide the tests to persons who are not covered by Medicaid. This may increase costs for local health departments.

Section: *Human Services*

Analyst: *Jay Hershberg*

Approved: *Alan R. Kooney*
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.

SENATE, No. 2256

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED JANUARY 23, 2003

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator ROBERT W. SINGER

District 30 (Burlington, Mercer, Monmouth and Ocean)

SYNOPSIS

Requires Medicaid coverage of HIV drug resistance testing.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/28/2003)

1 AN ACT concerning Medicaid coverage of HIV drug resistance testing
2 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 as
8 follows:

9 6. a. Subject to the requirements of Title XIX of the federal Social
10 Security Act, the limitations imposed by this act and by the rules and
11 regulations promulgated pursuant thereto, the department shall
12 provide medical assistance to qualified applicants, including authorized
13 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) Such early and periodic screening and diagnosis of individuals
19 who are eligible under the program and are under age 21, to ascertain
20 their physical or mental defects and such health care, treatment, and
21 other measures to correct or ameliorate defects and chronic conditions
22 discovered thereby, as may be provided in regulations of the Secretary
23 of the federal Department of Health and Human Services and approved
24 by the commissioner;

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

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

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

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

42 (2) Home health care services;

43 (3) Clinic services;

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

Matter underlined thus is new matter.

- 1 (4) Dental services;
- 2 (5) Physical therapy and related services;
- 3 (6) Prescribed drugs, dentures, and prosthetic devices; and
- 4 eyeglasses prescribed by a physician skilled in diseases of the eye or by
- 5 an optometrist, whichever the individual may select;
- 6 (7) Optometric services;
- 7 (8) Podiatric services;
- 8 (9) Chiropractic services;
- 9 (10) Psychological services;
- 10 (11) Inpatient psychiatric hospital services for individuals under
- 11 21 years of age, or under age 22 if they are receiving such services
- 12 immediately before attaining age 21;
- 13 (12) Other diagnostic, screening, preventive, and rehabilitative
- 14 services, and other remedial care;
- 15 (13) Inpatient hospital services, nursing facility services and
- 16 intermediate care facility services for individuals 65 years of age or
- 17 over in an institution for mental diseases;
- 18 (14) Intermediate care facility services;
- 19 (15) Transportation services;
- 20 (16) Services in connection with the inpatient or outpatient
- 21 treatment or care of drug abuse, when the treatment is prescribed by
- 22 a physician and provided in a licensed hospital or in a narcotic and
- 23 drug abuse treatment center approved by the Department of Health
- 24 and Senior Services pursuant to P.L.1970, c.334 (C.26:2G-21 et seq.)
- 25 and whose staff includes a medical director, and limited to those
- 26 services eligible for federal financial participation under Title XIX of
- 27 the federal Social Security Act;
- 28 (17) Any other medical care and any other type of remedial care
- 29 recognized under State law, specified by the Secretary of the federal
- 30 Department of Health and Human Services, and approved by the
- 31 commissioner;
- 32 (18) Comprehensive maternity care, which may include: the basic
- 33 number of prenatal and postpartum visits recommended by the
- 34 American College of Obstetrics and Gynecology; additional prenatal
- 35 and postpartum visits that are medically necessary; necessary
- 36 laboratory, nutritional assessment and counseling, health education,
- 37 personal counseling, managed care, outreach and follow-up services;
- 38 treatment of conditions which may complicate pregnancy; and
- 39 physician or certified nurse-midwife delivery services;
- 40 (19) Comprehensive pediatric care, which may include: ambulatory,
- 41 preventive and primary care health services. The preventive services
- 42 shall include, at a minimum, the basic number of preventive visits
- 43 recommended by the American Academy of Pediatrics;
- 44 (20) Services provided by a hospice which is participating in the
- 45 Medicare program established pursuant to Title XVIII of the Social
- 46 Security Act, Pub.L.89-97 (42 U.S.C.s.1395 et seq.). Hospice

1 services shall be provided subject to approval of the Secretary of the
2 federal Department of Health and Human Services for federal
3 reimbursement;

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

12 c. Payments for the foregoing services, goods and supplies
13 furnished pursuant to this act shall be made to the extent authorized
14 by this act, the rules and regulations promulgated pursuant thereto
15 and, where applicable, subject to the agreement of insurance provided
16 for under this act. Said payments shall constitute payment in full to
17 the provider on behalf of the recipient. Every provider making a claim
18 for payment pursuant to this act shall certify in writing on the claim
19 submitted that no additional amount will be charged to the recipient,
20 his family, his representative or others on his behalf for the services,
21 goods and supplies furnished pursuant to this act.

22 No provider whose claim for payment pursuant to this act has been
23 denied because the services, goods or supplies were determined to be
24 medically unnecessary shall seek reimbursement from the recipient, his
25 family, his representative or others on his behalf for such services,
26 goods and supplies provided pursuant to this act; provided, however,
27 a provider may seek reimbursement from a recipient for services,
28 goods or supplies not authorized by this act, if the recipient elected to
29 receive the services, goods or supplies with the knowledge that they
30 were not authorized.

31 d. Any individual eligible for medical assistance (including drugs)
32 may obtain such assistance from any person qualified to perform the
33 service or services required (including an organization which provides
34 such services, or arranges for their availability on a prepayment basis),
35 who undertakes to provide him such services.

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

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

42 (1) Is an inmate of a public institution (except as a patient in a
43 medical institution); provided, however, that an individual who is
44 otherwise eligible may continue to receive services for the month in
45 which he becomes an inmate, should the commissioner determine to
46 expand the scope of Medicaid eligibility to include such an individual,

1 subject to the limitations imposed by federal law and regulations, or

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

4 (3) Is over 21 years of age and who is receiving inpatient
5 psychiatric hospital services in a psychiatric facility; provided,
6 however, that an individual who was receiving such services
7 immediately prior to attaining age 21 may continue to receive such
8 services until he reaches age 22. Nothing in this subsection shall
9 prohibit the commissioner from extending medical assistance to all
10 eligible persons receiving inpatient psychiatric services; provided that
11 there is federal financial participation available.

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

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

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

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

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

37 (2) Dependent children shall be provided with services cited in
38 subsection a.(3) and (5) of this section and subsection b.(1), (2), (3),
39 (4), (5), (6), (7), (10), (12), (15) and (17) of this section, and nursing
40 facility services cited in subsection b.(13) of this section.

41 (3) Individuals who are 65 years of age or older shall be provided
42 with services cited in subsection a.(3) and (5) of this section and
43 subsection b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10),
44 (12), (15) and (17) of this section, and nursing facility services cited
45 in subsection b.(13) of this section.

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

6 (5) (a) Inpatient hospital services, subsection a.(1) of this section,
7 shall only be provided to eligible medically needy individuals, other
8 than pregnant women, if the federal Department of Health and Human
9 Services discontinues the State's waiver to establish inpatient hospital
10 reimbursement rates for the Medicare and Medicaid programs under
11 the authority of section 601(c)(3) of the Social Security Act
12 Amendments of 1983, Pub.L.98-21 (42 U.S.C. s.1395ww(c)(5)).
13 Inpatient hospital services may be extended to other eligible medically
14 needy individuals if the federal Department of Health and Human
15 Services directs that these services be included.

16 (b) Outpatient hospital services, subsection a.(2) of this section,
17 shall only be provided to eligible medically needy individuals if the
18 federal Department of Health and Human Services discontinues the
19 State's waiver to establish outpatient hospital reimbursement rates for
20 the Medicare and Medicaid programs under the authority of section
21 601(c)(3) of the Social Security Amendments of 1983, Pub.L.98-21
22 (42 U.S.C. s.1395ww(c)(5)). Outpatient hospital services may be
23 extended to all or to certain medically needy individuals if the federal
24 Department of Health and Human Services directs that these services
25 be included. However, the use of outpatient hospital services shall be
26 limited to clinic services and to emergency room services for injuries
27 and significant acute medical conditions.

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

30 h. In the case of a qualified disabled and working individual
31 pursuant to section 6408 of Pub.L.101-239 (42 U.S.C. s.1396d), the
32 only medical assistance provided under this act shall be the payment
33 of premiums for Medicare part A under 42 U.S.C. ss.1395i-2 and
34 1395r.

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

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

45 (cf: P.L.2001, c.186, s.2)

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 2256

STATE OF NEW JERSEY

DATED: MAY 8, 2003

The Senate Health, Human Services and Senior Citizens Committee reports favorably Senate Bill No. 2256.

This bill requires Medicaid coverage of HIV drug resistance testing, including, but not limited to, genotype assays, phenotype assays, and other assays using phenotype prediction with genotype comparison.

In addition to other laboratory tests that are already widely used for patients with HIV infection or AIDS, such as CD-4 cell counts and HIV viral load testing, drug resistance testing is reported to be making its way into clinical use and is expected to make its way into more clinical laboratories in the very near future. This testing is useful in determining the combinations of medications that are effective in controlling HIV infection in individual patients, particularly among those whose current drug regimen is unsuccessful, and can help to explain treatment failures and guide treatment decisions.

Genotyping identifies genetic mutations in the virus that permit it to develop resistance to medications; phenotyping assesses the vulnerability of the dominant strain of HIV in a particular patient's body to specific antiretroviral drugs; and phenotype prediction with genotype comparison provides a quantitative, biologically-based prediction of resistance that is derived from a large database of linked genotypes and phenotypes based on the genetic sequence of the virus.

The International AIDS Society-USA recently published its recommendations for the clinical use of HIV drug resistance testing, which include the following situations:

- C after many highly active antiretroviral therapy regimens have failed;
- C after the failure of an initial regimen, if poor compliance and pharmacokinetic (drug action) reasons are not believed to be responsible for the failure; and
- C for pregnant women, especially those living in communities with a high prevalence of drug-resistant HIV virus.

The bill takes effect on the 180th day after enactment, but authorizes the Commissioner of Human Services to take anticipatory administrative action in advance as necessary for its implementation.

This bill is identical to the Assembly Committee Substitute for Assembly Bill Nos. 2444 and 1933(1R) (Roberts/Greenwald/Vandervalk/Weinberg), which the committee also reported favorably on this date.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2256

STATE OF NEW JERSEY

DATED: DECEMBER 4, 2003

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2256.

This bill requires Medicaid coverage of HIV drug resistance testing, including, but not limited to, genotype assays, phenotype assays, and other assays using phenotype prediction with genotype comparison.

In addition to other laboratory tests that are already widely used for patients with HIV infection or AIDS, such as CD-4 cell counts and HIV viral load testing, drug resistance testing is reported to be making its way into clinical use and is expected to make its way into more clinical laboratories in the very near future. This testing is useful in determining the combinations of medications that are effective in controlling HIV infection in individual patients, particularly among those whose current drug regimen is unsuccessful, and can help to explain treatment failures and guide treatment decisions.

Genotyping identifies genetic mutations in the virus that permit it to develop resistance to medications; phenotyping assesses the vulnerability of the dominant strain of HIV in a particular patient's body to specific antiretroviral drugs; and phenotype prediction with genotype comparison provides a quantitative, biologically-based prediction of resistance that is derived from a large database of linked genotypes and phenotypes based on the genetic sequence of the virus.

The International AIDS Society-USA recently published its recommendations for the clinical use of HIV drug resistance testing, which include the following situations:

- * after many highly active antiretroviral therapy regimens have failed;
- * after the failure of an initial regimen, if poor compliance and pharmacokinetic (drug action) reasons are not believed to be responsible for the failure; and
- * for pregnant women, especially those living in communities with a high prevalence of drug-resistant HIV virus.

The bill takes effect on the 180th day after enactment, but authorizes the Commissioner of Human Services to take anticipatory administrative action in advance as necessary for its implementation.

The provisions of this bill are identical to those of Assembly Bill Nos. 2444 and 1933 ACS (1R), which the committee also reports this day.

FISCAL IMPACT

The Department of Human Services advises that it has adopted a plan to implement the HIV testing coverage mandated under this bill, and that the State's FY2004 budget for Medicaid includes sufficient funding to support such testing. The annual cost of the program is estimated to be about \$500,000, of which cost the State will be responsible for one half while the remaining portion is met through federal funds.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 2256
STATE OF NEW JERSEY
210th LEGISLATURE

DATED: DECEMBER 18, 2003

SUMMARY

Synopsis: Requires Medicaid coverage of HIV drug resistance testing.
Type of Impact: None as the Department of Human Services has implemented the testing program in question.
Agencies Affected: Department of Human Services; local health departments.

Office of Legislative Services Estimate

Fiscal Impact	Year 1 to 3
State Cost	None (as the department has recently implemented the testing program in question).
Local Cost	Indeterminable as some local health department may already be providing such tests.

* The number of persons that may be tested annually is not known; and it is uncertain whether such tests will reduce unnecessary medications prescribed on behalf of persons with HIV or AIDS.

BILL DESCRIPTION

Senate Bill No. 2256 of 2003 would require Medicaid coverage of HIV drug resistance testing, including, but not limited to, genotype, phenotype and virtual phenotype assays for persons diagnosed with HIV infection or AIDS.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Department of Human Services, Division of Medical Assistance and Health Services has recently implemented the HIV testing program required by the legislation. Therefore is no new cost associated with the legislation. The program is funded within the division's overall Medicaid appropriation.

While the use of such tests is intended to reduce the inappropriate use of drugs by persons with AIDS/HIV, whether the tests will actually reduce prescription drug costs incurred by the Medicaid program is uncertain.

As the Medicaid program now covers the HIV tests in question, local health departments may have to provide the tests to persons who are not covered by Medicaid. However, as some local health departments may already provide such tests, the cost impact on local health departments cannot be determined.

Section: *Human Services*

Analyst: *Jay Hershberg*
Principal Fiscal Analyst

Approved: *Frank W. Haines III*
Assistant 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