

30:4D-3

**LEGISLATIVE HISTORY CHECKLIST**  
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(Medicaid eligibility--transfer  
of assets)

**NJSA:** 30:4D-3

**LAWS OF:** 1994 **CHAPTER:** 65

**BILL NO:** A1846

**SPONSOR(S):** Bagger

**DATE INTRODUCED:** May 23, 1994

**COMMITTEE:** **ASSEMBLY:** Appropriations

**SENATE:** ---

**AMENDED DURING PASSAGE:** Yes Amendments denoted by  
First reprint enacted superscript numbers

**DATE OF PASSAGE:** **ASSEMBLY:** June 27, 1994 .

**SENATE:** June 27, 1994

**DATE OF APPROVAL:** June 30, 1994

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes

**SENATE:** No

**FISCAL NOTE:** No

**VETO MESSAGE:** No

**MESSAGE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

**REPORTS:** No

**HEARINGS:** No

KBG:pp

[FIRST REPRINT]  
ASSEMBLY, No. 1846  
STATE OF NEW JERSEY

INTRODUCED MAY 23, 1994

By Assemblyman BAGGER

1 AN ACT concerning the Medicaid program and amending  
2 P.L.1968, c.413.

3

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

6 1. Section 3 of P.L.1968, c.413 (C.30:4D-3) is amended to read  
7 as follows:

8 3. Definitions. As used in this act, and unless the context  
9 otherwise requires:

10 a. "Applicant" means any person who has made application for  
11 purposes of becoming a "qualified applicant."

12 b. "Commissioner" means the Commissioner of Human  
13 Services.

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

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

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

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

23 g. "Medical assistance" means payments on behalf of  
24 recipients to providers for medical care and services authorized  
25 under this act.

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

31 i. "Qualified applicant" means a person who is a resident of  
32 this State and is determined to need medical care and services as  
33 provided under this act, and who:

34 (1) Is a recipient of Aid to Families with Dependent Children;

35 (2) Is a recipient of Supplemental Security Income for the  
36 Aged, Blind and Disabled under Title XVI of the Social Security  
37 Act;

38 (3) Is an "ineligible spouse" of a recipient of Supplemental  
39 Security Income for the Aged, Blind and Disabled under Title XVI  
40 of the Social Security Act, as defined by the federal Social  
41 Security Administration;

42 (4) Would be eligible to receive public assistance under a  
43 categorical assistance program except for failure to meet an

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 floor amendments adopted June 20, 1994.

1 eligibility condition or requirement imposed under such State  
2 program which is prohibited under Title XIX of the federal Social  
3 Security Act such as a durational residency requirement, relative  
4 responsibility, consent to imposition of a lien;

5 (5) Is a child between 18 and 21 years of age who would be  
6 eligible for Aid to Families with Dependent Children, living in the  
7 family group except for lack of school attendance or pursuit of  
8 formalized vocational or technical training;

9 (6) Is an individual under 21 years of age who qualifies for  
10 categorical assistance on the basis of financial eligibility, but  
11 does not qualify as a dependent child under the State's program  
12 of Aid to Families with Dependent Children (AFDC), or groups of  
13 such individuals, including but not limited to, children in foster  
14 placement under supervision of the Division of Youth and Family  
15 Services whose maintenance is being paid in whole or in part from  
16 public funds, children placed in a foster home or institution by a  
17 private adoption agency in New Jersey or children in  
18 intermediate care facilities, including institutions for the  
19 mentally retarded, or in psychiatric hospitals;

20 (7) Meets the standard of need applicable to his circumstances  
21 under a categorical assistance program or Supplemental Security  
22 Income program, but is not receiving such assistance and applies  
23 for medical assistance only;

24 (8) Is determined to be medically needy and meets all the  
25 eligibility requirements described below:

26 (a) The following individuals are eligible for services, if they  
27 are determined to be medically needy:

28 (i) Pregnant women;

29 (ii) Dependent children under the age of 21;

30 (iii) Individuals who are 65 years of age and older; and

31 (iv) Individuals who are blind or disabled pursuant to either 42  
32 C.F.R.435.530 et seq. or 42 C.F.R.435.540 et seq., respectively.

33 (b) The following income standard shall be used to determine  
34 medically needy eligibility:

35 (i) For one person and two person households, the income  
36 standard shall be the maximum allowable under federal law, but  
37 shall not exceed 133 1/3% of the State's payment level to two  
38 person households eligible to receive assistance pursuant to  
39 P.L.1959, c.86 (C.44:10-1 et seq.); and

40 (ii) For households of three or more persons, the income  
41 standard shall be set at 133 1/3% of the State's payment level to  
42 similar size households eligible to receive assistance pursuant to  
43 P.L.1959, c.86 (C.44:10-1 et seq.).

44 (c) The following resource standard shall be used to determine  
45 medically needy eligibility:

46 (i) For one person households, the resource standard shall be  
47 200% of the resource standard for recipients of Supplemental  
48 Security Income pursuant to 42 U.S.C.§1382(1)(B);

49 (ii) For two person households, the resource standard shall be  
50 200% of the resource standard for recipients of Supplemental  
51 Security Income pursuant to 42 U.S.C.§1382(2)(B);

52 (iii) For households of three or more persons, the resource  
53 standard in subparagraph (c)(ii) above shall be increased by  
54 \$100.00 for each additional person; and

1 (iv) The resource standards established in (i), (ii), and (iii) are  
2 subject to federal approval and the resource standard may be  
3 lower if required by the federal Department of Health and Human  
4 Services.

5 (d) Individuals whose income exceeds those established in  
6 subparagraph (b) of paragraph (8) of this subsection may become  
7 medically needy by incurring medical expenses as defined in 42  
8 C.F.R.435.831(c) which will reduce their income to the applicable  
9 medically needy income established in subparagraph (b) of  
10 paragraph (8) of this subsection.

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

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

15 (i) County welfare agencies are responsible for determining  
16 and certifying the eligibility of pregnant women and dependent  
17 children. The division shall reimburse county welfare agencies for  
18 100% of the reasonable costs of administration which are not  
19 reimbursed by the federal government for the first 12 months of  
20 this program's operation. Thereafter, 75% of the administrative  
21 costs incurred by county welfare agencies which are not  
22 reimbursed by the federal government shall be reimbursed by the  
23 division;

24 (ii) The division is responsible for certifying the eligibility of  
25 individuals who are 65 years of age and older and individuals who  
26 are blind or disabled. The division may enter into contracts with  
27 county welfare agencies to determine certain aspects of  
28 eligibility. In such instances the division shall provide county  
29 welfare agencies with all information the division may have  
30 available on the individual.

31 The division shall notify all eligible recipients of the  
32 Pharmaceutical Assistance to the Aged and Disabled program,  
33 P.L.1975, c.194 (C.30:4D-20 et seq.) on an annual basis of the  
34 medically needy program and the program's general  
35 requirements. The division shall take all reasonable  
36 administrative actions to ensure that Pharmaceutical Assistance  
37 to the Aged and Disabled recipients, who notify the division that  
38 they may be eligible for the program, have their applications  
39 processed expeditiously, at times and locations convenient to the  
40 recipients; and

41 (iii) The division is responsible for certifying incurred medical  
42 expenses for all eligible persons who attempt to qualify for the  
43 program pursuant to subparagraph (d) of paragraph (8) of this  
44 subsection;

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

47 (b) Is a member of a family whose income does not exceed  
48 133% of the poverty level and who meets the federal Medicaid  
49 eligibility requirements set forth in section 9401 of Pub.L.99-509  
50 (42 U.S.C.§1396a);

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

1 (11) Is an individual 65 years of age and older, or an individual  
2 who is blind or disabled pursuant to section 301 of Pub.L.92-603  
3 (42 U.S.C.§1382c), whose income does not exceed 100% of the  
4 poverty level, adjusted for family size, and whose resources do  
5 not exceed 100% of the resource standard used to determine  
6 medically needy eligibility pursuant to paragraph (8) of this  
7 subsection;

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

14 (13) Is a pregnant woman or is a child who is under one year of  
15 age and is a member of a family whose income does not exceed  
16 185% of the poverty level and who meets the federal Medicaid  
17 eligibility requirements set forth in section 9401 of Pub.L.99-509  
18 (42 U.S.C.§1396a), except that a pregnant woman who is  
19 determined to be a qualified applicant shall, notwithstanding any  
20 change in the income of the family of which she is a member,  
21 continue to be deemed a qualified applicant until the end of the  
22 60-day period beginning on the last day of her pregnancy;

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

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

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

1 made on or after August 11, 1993. <sup>1</sup>Notwithstanding the  
2 provisions of this subsection to the contrary, the State eligibility  
3 requirements concerning resource or income transfers shall not  
4 be more restrictive than those enacted pursuant to 42 U.S.C.  
5 §1396p(c).<sup>1</sup>

6 j. "Recipient" means any qualified applicant receiving benefits  
7 under this act.

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

14 l. "State Medicaid Commission" means the Governor, the  
15 Commissioner of Human Services, the President of the Senate  
16 and the Speaker of the General Assembly, hereby constituted a  
17 commission to approve and direct the means and method for the  
18 payment of claims pursuant to this act.

19 m. "Third party" means any person, institution, corporation,  
20 insurance company, public, private or governmental entity who is  
21 or may be liable in contract, tort, or otherwise by law or equity  
22 to pay all or part of the medical cost of injury, disease or  
23 disability of an applicant for or recipient of medical assistance  
24 payable under this act.

25 n. "Governmental peer grouping system" means a separate  
26 class of skilled nursing and intermediate care facilities  
27 administered by the State or county governments, established for  
28 the purpose of screening their reported costs and setting  
29 reimbursement rates under the Medicaid program that are  
30 reasonable and adequate to meet the costs that must be incurred  
31 by efficiently and economically operated State or county skilled  
32 nursing and intermediate care facilities.

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

39 p. "Poverty level" means the official poverty level based on  
40 family size established and adjusted under Section 673(2) of  
41 Subtitle B, the "Community Services Block Grant Act," of  
42 Pub.L.97-35 (42 U.S.C. §9902(2)).  
43 (cf: P.L.1992, c.208, s.1)

44 2. This act shall take effect immediately.

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49 Limits transfer of assets and income for Medicaid eligibility.

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#### STATEMENT

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45 The federal "Omnibus Budget Reconciliation Act of 1993"  
46 requires states to revise the period of ineligibility for Medicaid  
47 payment of long-term care services resulting from the transfer  
48 of assets. The federal statute specifies that transfers of both  
49 income and resources shall be subject to an eligibility penalty.  
50 Previously, the transfer prohibition applied only to resources.

51 The new federal statute provides that transfers of resources or  
52 income within 36 months, or 60 months in the case of funds  
53 transferred into a trust, may result in an ineligibility period.  
54 Currently, transfers of resources within 30 months of applying for

1 long-term care services can result in a penalty period.

2 The new federal provision eliminates the maximum penalty  
3 period. Prior federal statute allowed penalty periods for multiple  
4 transfers to run concurrently, allowing individuals to minimize  
5 the effect of the penalty period. New federal language requires  
6 that penalty periods apply sequentially.

7 This bill will assure compliance with federal law and serve to  
8 discourage the disposal of substantial assets in order to qualify  
9 for Medicaid benefits.

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14 Limits transfer of assets and income for Medicaid eligibility.



ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1846

STATE OF NEW JERSEY

DATED: JUNE 2, 1994

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1846.

Assembly Bill No. 1846 assures compliance with federal law and serves to discourage the disposal of substantial assets in order to qualify for Medicaid benefits. The federal "Omnibus Budget Reconciliation Act of 1993" requires states to revise the period of ineligibility for Medicaid payment of long-term care services resulting from the transfer of assets. The federal statute specifies that transfers of both income and resources shall be subject to an eligibility penalty. Previously, the transfer prohibition applied only to resources.

The new federal statute provides that transfers of resources or income within 36 months, or 60 months in the case of funds transferred into a trust, may result in an ineligibility period. Currently, transfers of resources within 30 months of applying for long-term care services can result in a penalty period.

The new federal provision eliminates the maximum penalty period. Prior federal statute allowed penalty periods for multiple transfers to run concurrently, allowing individuals to minimize the effect of the penalty period. New federal language requires that penalty periods apply sequentially.

FISCAL IMPACT:

The increase from 30 months to 36 months will result in a savings to the Medicaid program. However, the amount of savings cannot be determined since available data on the subject is virtually non-existent. Furthermore, the application would be on an individual-by-individual basis, making it difficult to determine beforehand the number of people that may be affected.