

30:4D-6

LEGISLATIVE HISTORY CHECKLIST
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(Medicaid--liens, recovery from
transferred assets)

NJSA: 30:4D-6

LAWS OF: 1992 CHAPTER: 115

BILL NO: A136

SPONSOR(S) Felice

DATE INTRODUCED: June 11, 1992

COMMITTEE: ASSEMBLY: Health & Human Services
SENATE: ---

AMENDED DURING PASSAGE: Yes Amendments during passage
denoted by asterisks

DATE OF PASSAGE: ASSEMBLY: June 25, 1992 Re-enacted 10-8-92
SENATE: June 29, 1992 Re-enacted 10-19-92

DATE OF APPROVAL: October 21, 1992

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes
SENATE: No

FISCAL NOTE: Yes

VETO MESSAGE: YES

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

STATE OF NEW JERSEY

INTRODUCED JUNE 11, 1992

By Assemblyman FELICE

1 AN ACT concerning the Medicaid program and amending
2 ¹[P.L.1968, c.413,]¹ P.L.1979, c.365 and P.L.1981, c.217.

3
4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

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

8 **6.~a.** Subject to the requirements of Title XIX of the federal
9 Social Security Act, the limitations imposed by this act and by
10 the rules and regulations promulgated pursuant thereto, the
11 department shall provide medical assistance to qualified
12 applicants, including authorized services within each of the
13 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
19 individuals who are eligible under the program and are under age
20 21, to ascertain their physical or mental defects and such health
21 care, treatment, and other measures to correct or ameliorate
22 defects and chronic conditions discovered thereby, as may be
23 provided in regulations of the Secretary of the federal
24 Department of Health and Human Services and approved by the
25 commissioner;
26 (5) Physician's services furnished in the office, the patient's
27 home, a hospital, a skilled nursing or intermediate care facility or
28 elsewhere.

29 b. Subject to the limitations imposed by federal law, by this
30 act, and by the rules and regulations promulgated pursuant
31 thereto, the medical assistance program may be expanded to
32 include authorized services within each of the following
33 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
36 by licensed practitioners within the scope of their practice, as
37 defined by 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

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 AHH committee amendments adopted June 15, 1992.

² Assembly amendments adopted in accordance with Governor's
recommendations August 3, 1992.

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

1 less than 50 years of age; and one mammogram examination
2 every year for women age 50 and over.

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

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

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

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

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

36 (1) Is an inmate of a public institution (except as a patient in a
37 medical institution); provided, however, that an individual who is
38 otherwise eligible may continue to receive services for the month
39 in which he becomes an inmate, should the commissioner
40 determine to expand the scope of Medicaid eligibility to include
41 such an individual, subject to the limitations imposed by federal
42 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,
47 however, that an individual who was receiving such services
48 immediately prior to attaining age 21 may continue to receive
49 such services until he reaches age 22. Nothing in this subsection
50 shall prohibit the commissioner from extending medical
51 assistance to all eligible persons receiving inpatient psychiatric
52 services; provided that there is federal financial participation
53 available.

54 f. Any provision in a contract or plan of insurance, including,

1 but not limited to, the federal "Employee Retirement and Income
2 Security Act of 1974" (29 U.S.C. §1001 et seq.) or other employee
3 welfare benefit plan, self-insured plan, or prepaid health plan,
4 will, trust agreement, court order, or other instrument which
5 reduces or excludes coverage or payment for health-care related
6 goods and services to or for an individual because of that
7 individual's eligibility or potential eligibility for or receipt of
8 Medicaid benefits shall be null and void, and no payments shall be
9 made under this act as a result of any such provision. Any
10 provision of a will, trust agreement, court order, or similar
11 instrument that reduces, terminates or denies payment because
12 of an individual's illness, disability, infirmity, or need for health
13 care services, including long term care services, shall also be null
14 and void, and no payments shall be made under this act as a result
15 of any such provision. Any Medicaid payments made as a result
16 of such provisions shall be subject to recovery.

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

19 (1) Pregnant women shall be provided prenatal care and
20 delivery services and postpartum care, including the services
21 cited in subsection a.(1), (3) and (5) of section 6 of P.L.1968,
22 c.413 (C.30:4D-6) and subsection b.(1)-(10), (12), (15) and (17) of
23 section 6 of P.L.1968, c.413 (C.30:4D-6).

24 (2) Dependent children shall be provided with services cited in
25 subsection a.(3) and (5) of section 6 of P.L.1968, c.413
26 (C.30:4D-6) and subsection b.(1), (2), (3), (4), (5), (6), (7), (10),
27 (12), (15) and (17) of section 6 of P.L.1968, c.413 (C.30:4D-6).

28 (3) Individuals who are 65 years of age or older shall be
29 provided with services cited in subsection a.(3) and (5) of section
30 6 of P.L.1968, c.413 (C.30:4D-6) and subsection b.(1)-(5), (6)
31 excluding prescribed drugs, (7), (8), (10), (12), (15) and (17) of
32 section 6 of P.L.1968, c.413 (C.30:4D-6).

33 (4) Individuals who are blind or disabled shall be provided with
34 services cited in subsection a.(3) and (5) of section 6 of P.L.1968,
35 c.413 (C.30:4D-6) and subsection b.(1)-(5), (6) excluding
36 prescribed drugs, (7), (8), (10), (12), (15) and (17) of section 6 of
37 P.L.1968, c.413 (C.30:4D-6).

38 (5) (a) Inpatient hospital services, subsection a.(1) of section 6
39 of P.L.1968, c.413 (C.30:4D-6), shall only be provided to eligible
40 medically needy individuals, other than pregnant women, if the
41 federal Department of Health and Human Services discontinues
42 the State's waiver to establish inpatient hospital reimbursement
43 rates for the Medicare and Medicaid programs under the
44 authority of section 601(c)(3) of the Social Security Act
45 Amendments of 1983, Pub.L.98-21 (42 U.S.C. §1395ww(c)(5)).
46 Inpatient hospital services may be extended to other eligible
47 medically needy individuals if the federal Department of Health
48 and Human Services directs that these services be included.

49 (b) Outpatient hospital services, subsection a.(2) of section 6
50 of P.L.1968, c.413 (C.30:4D-6), shall only be provided to eligible
51 medically needy individuals if the federal Department of Health
52 and Human Services discontinues the State's waiver to establish
53 outpatient hospital reimbursement rates for the Medicare and
54 Medicaid programs under the authority of section 601(c)(3) of the

1 Social Security Amendments of 1983, Pub.L.98-21
2 (42 U.S.C.§1395ww(c)(5)). Outpatient hospital services may be
3 extended to all or to certain medically needy individuals if the
4 federal Department of Health and Human Services directs that
5 these services be included. However, the use of outpatient
6 hospital services shall be limited to clinic services and to
7 emergency room services for injuries and significant acute
8 medical conditions.

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

11 h. In the case of a qualified disabled and working individual
12 pursuant to section 6408 of Pub.L. 101-239 (42 U.S.C.§1396d), the
13 only medical assistance provided under this act shall be the
14 payment of premiums for Medicare part A under
15 42 U.S.C.§1395i-2 and §1395r.

16 (cf. P.L.1991, c.20, s.2, P.L.1991, c.371, s.1).¹

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

19 7. Duties of commissioner. The commissioner is authorized
20 and empowered to issue, or to cause to be issued through the
21 Division of Medical Assistance and Health Services, all necessary
22 rules and regulations and administrative orders, and to do or
23 cause to be done all other acts and things necessary to secure for
24 the State of New Jersey the maximum federal participation that
25 is available with respect to a program of medical assistance,
26 consistent with fiscal responsibility and within the limits of funds
27 available for any fiscal year, and to the extent authorized by the
28 medical assistance program plan; to adopt fee schedules with
29 regard to medical assistance benefits and otherwise to
30 accomplish the purposes of this act, including specifically the
31 following:

32 a. Subject to the limits imposed by this act, to submit a plan
33 for medical assistance, as required by Title XIX of the federal
34 Social Security Act, to the federal Department of Health and
35 Human Services for approval pursuant to the provisions of such
36 law; to act for the State in making negotiations relative to the
37 submission and approval of such plan, to make such arrangements,
38 not inconsistent with the law, as may be required by or pursuant
39 to federal law to obtain and retain such approval and to secure
40 for the State the benefits of the provisions of such law;

41 b. Subject to the limits imposed by this act, to determine the
42 amount and scope of services to be covered, that the amounts to
43 be paid are reasonable, and the duration of medical assistance to
44 be furnished; provided, however, that the department shall
45 provide medical assistance on behalf of all recipients of
46 categorical assistance and such other related groups as are
47 mandatory under federal laws and rules and regulations, as they
48 now are or as they may be hereafter amended, in order to obtain
49 federal matching funds for such purposes and, in addition, provide
50 medical assistance for the foster children specified in section 3i.
51 (7) of this act. The medical assistance provided for these groups
52 shall not be less in scope, duration, or amount than is currently
53 furnished such groups, and in addition, shall include at least the
54 minimum services required under federal laws and rules and

1 regulations to obtain federal matching funds for such purposes.

2 The commissioner is authorized and empowered, at such times
3 as he may determine feasible, within the limits of appropriated
4 funds for any fiscal year, to extend the scope, duration, and
5 amount of medical assistance on behalf of these groups of
6 categorical assistance recipients, related groups as are
7 mandatory, and foster children authorized pursuant to section 3i.
8 (7) of this act, so as to include, in whole or in part, the optional
9 medical services authorized under federal laws and rules and
10 regulations, and the commissioner shall have the authority to
11 establish and maintain the priorities given such optional medical
12 services; provided, however, that medical assistance shall be
13 provided to at least such groups and in such scope, duration, and
14 amount as are required to obtain federal matching funds.

15 The commissioner is further authorized and empowered, at
16 such times as he may determine feasible, within the limits of
17 appropriated funds for any fiscal year, to issue, or cause to be
18 issued through the Division of Medical Assistance and Health
19 Services, all necessary rules, regulations and administrative
20 orders, and to do or cause to be done all other acts and things
21 necessary to implement and administer demonstration projects
22 pursuant to Title XI, section 1115 of the federal Social Security
23 Act, including, but not limited to waiving compliance with
24 specific provisions of this act, to the extent and for the period of
25 time the commissioner deems necessary, as well as contracting
26 with any legal entity, including but not limited to corporations
27 organized pursuant to Title 14A, New Jersey Statutes
28 (N.J.S.14A:1-1 et seq.), Title 15, Revised Statutes (R.S.15:1-1
29 et seq.) and Title 15A, New Jersey Statutes (N.J.S.15A:1-1 et
30 seq.) as well as boards, groups, agencies, persons and other public
31 or private entities;

32 c. To administer the provisions of this act;

33 d. To make reports to the federal Department of Health and
34 Human Services as from time to time may be required by such
35 federal department and to the New Jersey Legislature as
36 hereinafter provided;

37 e. To assure that any applicant, qualified applicant or
38 recipient shall be afforded the opportunity for a hearing should
39 his claim for medical assistance be denied, reduced, terminated
40 or not acted upon within a reasonable time;

41 f. To assure that providers shall be afforded the opportunity
42 for an administrative hearing within a reasonable time on any
43 valid complaint arising out of the claim payment process;

44 g. To provide safeguards to restrict the use or disclosure of
45 information concerning applicants and recipients to purposes
46 directly connected with administration of this act;

47 h. To take all necessary action to recover any and all
48 payments incorrectly made to or illegally received by a provider
49 from such provider or his estate or from any other person, firm,
50 corporation, partnership or entity responsible for or receiving the
51 benefit or possession of the incorrect or illegal payments or their
52 estates, successors or assigns, and to assess and collect such
53 penalties as are provided for herein;

54 i. To take all necessary action to recover the cost of benefits

1 incorrectly provided to or illegally obtained by a recipient,
2 including those made after a voluntary divestiture of real or
3 personal property or any interest or estate in property for less
4 than adequate consideration made for the purpose of qualifying
5 for assistance. The division shall take action to recover the cost
6 of benefits from a recipient, legally responsible relative,
7 representative payee, or any other party or parties whose action
8 or inaction resulted in the incorrect or illegal payments or who
9 received the benefit of the divestiture, or from their respective
10 estates, as the case may be and to assess and collect the
11 penalties as are provided for herein, except that no lien shall be
12 imposed against property of the recipient prior to his death
13 except in accordance with section 17 of P.L.1968, c.413
14 (C.30:4D-17). No recovery action shall be initiated more than
15 five years after an incorrect payment has been made to a
16 recipient when the incorrect payment was due solely to an error
17 on the part of the State or any agency, agent or subdivision
18 thereof;

19 (1) Within five years prior to the date on which a person
20 receives benefits under this act, if the person has transferred any
21 property or resources, including any interest or future rights to
22 any property or resources for less than fair market value, there
23 shall be a rebuttable presumption that the transferee acted with
24 the intent and for the purpose of assisting the transferor to
25 qualify for benefits under this act, except that, when the
26 transferor is a resident of a long-term care facility at the time
27 of the transfer or is receiving that level of care in the community
28 at the time of the resource transfer, the presumption is not
29 rebuttable. The transferee shall be liable to repay the State for
30 benefits paid on behalf of the transferor up to the amount by
31 which the fair market value of the transferred property or
32 resource exceeds the consideration received for such property or
33 resource;

34 (2) The commissioner may petition a court of competent
35 jurisdiction or file an administrative recovery action pursuant to
36 section 7 of P.L.1968, c.413 (C.30:4D-7) for an order requiring
37 repayment. That order shall continue in effect, as the court may
38 determine, for so long as the transferor receives benefits under
39 this act or until the benefits received as a result of the transfer
40 are repaid;

41 (3) There shall be no recovery for benefits paid as a result of
42 the transfer of any property or resource if it is determined that
43 the transfer would be permissible under section 1917(c)(2) of the
44 federal Social Security Act (42 U.S.C. §1396p) or the transferee
45 is without financial means or that the payment would work a
46 hardship on the transferee or his family. If the transferee does
47 not fully cooperate with the department to determine the nature
48 and the extent of the hardship, there shall be a rebuttable
49 presumption that no hardship exists;

50 j. To take all necessary action to recover the cost of benefits
51 correctly provided to a recipient from the estate of said recipient
52 in accordance with sections 6 through 12 of this amendatory and
53 supplementary act;

54 k. To take all reasonable measures to ascertain the legal or

1 equitable liability of third parties to pay for care and services
2 (available under the plan) arising out of injury, disease, or
3 disability; where it is known that a third party has a liability, to
4 treat such liability as a resource of the individual on whose behalf
5 the care and services are made available for purposes of
6 determining eligibility; and in any case where such a liability is
7 found to exist after medical assistance has been made available
8 on behalf of the individual, to seek reimbursement for such
9 assistance to the extent of such liability;

10 l. To compromise, waive or settle and execute a release of any
11 claim arising under this act including interest or other penalties,
12 or designate another to compromise, waive or settle and execute
13 a release of any claim arising under this act. The commissioner
14 or his designee whose title shall be specified by regulation may
15 compromise, settle or waive any such claim in whole or in part,
16 either in the interest of the Medicaid program or for any other
17 reason which the commissioner by regulation shall establish;

18 m. To pay or credit to a provider any net amount found by
19 final audit as defined by regulation to be owing to the provider.
20 Such payment, if it is not made within 45 days of the final audit,
21 shall include interest on the amount due at the maximum legal
22 rate in effect on the date the payment became due, except that
23 such interest shall not be paid on any obligation for the period
24 preceding September 15, 1976. This subsection shall not apply
25 until federal financial participation is available for such interest
26 payments;

27 n. To issue, or designate another to issue, subpoenas to compel
28 the attendance of witnesses and the production of books, records,
29 accounts, papers and documents of any party, whether or not that
30 party is a provider, which directly or indirectly relate to goods or
31 services provided under this act, for the purpose of assisting in
32 any investigation, examination, or inspection, or in any
33 suspension, debarment, disqualification, recovery, or other
34 proceeding arising under this act;

35 o. To solicit, receive and review bids pursuant to the
36 provisions of P.L.1954, c.48 (C.52:34-6 et seq.) and all
37 amendments and supplements thereto, by any corporation doing
38 business in the State of New Jersey, including nonprofit hospital
39 service corporations, medical service corporations, health service
40 corporations or dental service corporations incorporated in New
41 Jersey and authorized to do business pursuant to P.L.1938, c.366
42 (C.17:48-1 et seq.), P.L.1940, c.74 (C.17:48A-1 et seq.), P.L.1985,
43 c.236 (C.17:48E-1 et seq.), or P.L.1968, c.305 (C.17:48C-1
44 et seq.), and to make recommendations in connection therewith
45 to the State Medicaid Commission;

46 p. To contract, or otherwise provide as in this act provided,
47 for the payment of claims in the manner approved by the State
48 Medicaid Commission;

49 q. Where necessary, to advance funds to the underwriter or
50 fiscal agent to enable such underwriter or fiscal agent, in
51 accordance with terms of its contract, to make payments to
52 providers;

53 r. To enter into contracts with federal, State, or local
54 governmental agencies, or other appropriate parties, when

1 necessary to carry out the provisions of this act;

2 s. To assure that the nature and quality of the medical
3 assistance provided for under this act shall be uniform and
4 equitable to all recipients;

5 t. To provide for the reimbursement of State and
6 county-administered skilled nursing and intermediate care
7 facilities through the use of a governmental peer grouping
8 system, subject to federal approval and the availability of federal
9 reimbursement.

10 (1) In establishing a governmental peer grouping system, the
11 State's financial participation is limited to an amount equal to
12 the nonfederal share of the reimbursement which would be due
13 each facility if the governmental peer grouping system was not
14 established, and each county's financial participation in this
15 reimbursement system is equal to the nonfederal share of the
16 increase in reimbursement for its facility or facilities which
17 results from the establishment of the governmental peer grouping
18 system.

19 (2) On or before December 1 of each year, the commissioner
20 shall estimate and certify to the Director of the Division of Local
21 Government Services in the Department of Community Affairs
22 the amount of increased federal reimbursement a county may
23 receive under the governmental peer grouping system. On or
24 before December 15 of each year, the Director of the Division of
25 Local Government Services shall certify the increased federal
26 reimbursement to the chief financial officer of each county. If
27 the amount of increased federal reimbursement to a county
28 exceeds or is less than the amount certified, the certification for
29 the next year shall account for the actual amount of federal
30 reimbursement that the county received during the prior calendar
31 year.

32 (3) The governing body of each county entitled to receive
33 increased federal reimbursement under the provisions of this
34 amendatory act shall, by March 31 of each year, submit a report
35 to the commissioner on the intended use of the savings in county
36 expenditures which result from the increased federal
37 reimbursement. The governing body of each county, with the
38 advice of agencies providing social and health related services,
39 shall use not less than 10% and no more than 50% of the savings
40 in county expenditures which result from the increased federal
41 reimbursement for community-based social and health related
42 programs for elderly and disabled persons who may
43 otherwise require nursing home care. This percentage shall be
44 negotiated annually between the governing body and the
45 commissioner and shall take into account a county's social,
46 demographic and fiscal conditions, a county's social and health
47 related expenditures and needs, and estimates of federal revenues
48 to support county operations in the upcoming year, particularly in
49 the areas of social and health related services.

50 (4) The commissioner, subject to approval by law, may
51 terminate the governmental peer grouping system if federal
52 reimbursement is significantly reduced or if the Medicaid
53 program is significantly altered or changed by the federal
54 government subsequent to the enactment of this amendatory act.

1 The commissioner, prior to terminating the governmental peer
2 grouping system, shall submit to the Legislature and to the
3 governing body of each county a report as to the reasons for
4 terminating the governmental peer grouping system;

5 u. The commissioner, in consultation with the Commissioner of
6 Health, shall:

7 (1) Develop criteria and standards for comprehensive
8 maternity or pediatric care providers and determine whether a
9 provider who requests to become a comprehensive maternity or
10 pediatric care provider meets the department's criteria and
11 standards;

12 (2) Develop a program of comprehensive maternity care
13 services which defines the type of services to be provided, the
14 level of services to be provided, and the frequency with which
15 qualified applicants are to receive services pursuant to P.L.1968,
16 c.413 (C.30:4D-1 et seq.);

17 (3) Develop a program of comprehensive pediatric care
18 services which defines the type of services to be provided, the
19 level of services to be provided, and the frequency with which
20 qualified applicants are to receive services pursuant to P.L.1968,
21 c.413 (C.30:4D-1 et seq.);

22 (4) Develop and implement a system for monitoring the quality
23 and delivery of comprehensive maternity and pediatric care
24 services and a system for evaluating the effectiveness of the
25 services programs in meeting their objectives;

26 (5) Establish provider reimbursement rates for the
27 comprehensive maternity and pediatric care services;

28 v. The commissioner, jointly with the Commissioner of Health,
29 shall report to the Governor and the Legislature no later than two
30 years following the date of enactment of P.L.1987, c.115
31 (C.30:4D-2.1 et al.) and annually thereafter on the status of the
32 comprehensive maternity and pediatric care services and their
33 effectiveness in meeting the objectives set forth in section 1 of
34 P.L.1987, c.115 (C.30:4D-2.1) accompanying the report with any
35 recommendations for changes in the law governing the services
36 that the commissioners deem necessary.

37 (cf: P.L.1988, c.6, s.1)]¹

38 ¹[3.] 1.¹ Section 7 of P.L.1979, c.365 (C.30:4D-7.2) is amended
39 to read as follows:

40 7. a. A lien may be filed against or recovery sought from the
41 estate of a deceased recipient [if his spouse is also deceased and
42 he has no surviving child who is under age 21 or is blind or
43 permanently and totally disabled, for the benefits correctly paid
44 on behalf of the recipient after he attained the age of 65, and
45 this lien shall be deemed a preferred claim against the
46 recipient's estate having a priority equivalent to that under
47 subsection a. (4) of Section 50 of P.L.1977, c.412
48 (C.3A:2A-47a.(4))] for assistance correctly paid or to be paid on
49 his behalf when he was 65 years of age or older, except as
50 provided in section 1 of P.L.1981, c.217 (C.30:4D-7.2a).

51 b. A lien may be filed by the division against [the] a third
52 party's property, whether real or personal, or against any
53 interest or estate in property, whether vested or contingent[, of
54 any third party].

1 Subject to section [6.b. of this amendatory and supplementary
2 act] 6 of P.L.1979, c.365 (C.30:4D-7.1), any third party recovery
3 obtained by the division under this subsection shall not be reduced
4 by any counsel fees, costs, or other expenses, or portions thereof,
5 incurred by the recipient[, the third party, or their respective
6 attorneys] or the recipient's attorney.

7 c. A certificate of debt may be filed by the division against
8 such parties and in such a manner as is specified in subsection (h)
9 of [Section] section 17 of P.L.1968, c.413 (C.30:4D-17(h)).

10 ¹[d. A lien may be filed against and recovery sought from any
11 interest in real property of a Medicaid recipient who is an
12 inpatient in a nursing facility or other medical institution and
13 who cannot reasonably be expected to be discharged and to return
14 home, if such individual is required, as a condition of receiving
15 services in the facility under the State plan, to spend for costs of
16 medical care all but a minimal amount of his income required for
17 personal needs. The lien may be filed and recovery sought for
18 any correct payments made or to be made for that recipient to
19 the extent permitted and subject to the limitations imposed by
20 section 1917 of the federal Social Security Act (42 U.S.C. §1396p)
21 and 42 C.F.R. 433.36.

22 e. A lien, claim or encumbrance imposed by this act shall be
23 deemed a preferred claim against the recipient's estate and shall
24 have a priority equivalent to that under subsection d. of
25 N.J.S.3B:22-2.¹

26 ²d. A lien, claim or encumbrance imposed by this act shall be
27 deemed a preferred claim against the recipient's estate and shall
28 have a priority equivalent to that under subsection d. of
29 N.J.S.3B:22-2.²

30 (cf: P.L.1979, c.365, s.7)

31 ¹[4.] ¹ Section 1 of P.L.1981, c.217 (C.30:4D-7.2a) is
32 amended to read as follows:

33 1. No encumbrance or recovery [of any kind] shall be imposed
34 against or sought from the estate of a [qualified applicant or an
35 eligible person after his death because of assistance paid, or to be
36 paid, on his behalf] deceased recipient for assistance correctly
37 paid under:

38 a. The "New Jersey Medical Assistance and Health Services
39 Act," P.L.1968, c.413 (C.30:4D-1 et seq.), if the amount sought
40 to be recovered is less than [~~\$500.00~~] \$500, the gross estate is
41 less than [~~\$3,000.00~~] \$3,000 or there is a surviving spouse or a
42 surviving child who is under the age of 21 or is blind or
43 permanently and totally disabled, except for assistance
44 incorrectly or illegally paid, or for third party liability recovery
45 sought under P.L.1968, c.413 (C.30:4D-1 et seq.); or

46 b. The "Pharmaceutical Assistance to the Aged and Disabled"
47 program, P.L.1975, c.194 (C.30:4D-20 et seq.), except for
48 assistance incorrectly or illegally paid, or for third party liability
49 recovery sought under P.L.1968, c.413 (C.30:4D-1 et seq.).

50 (cf: P.L.1983, c. 371, s.1)

51 ¹[5.] ¹ This act shall take effect on the 90th day after
52 enactment except that section ¹[4] ¹ shall apply to all estates
53 coming into being on or after the date of enactment of this act.

1 Subject to section [6.b. of this amendatory and supplementary
2 act] 6 of P.L.1979, c.365 (C.30:4D-7.1), any third party recovery
3 obtained by the division under this subsection shall not be reduced
4 by any counsel fees, costs, or other expenses, or portions thereof,
5 incurred by the recipient[, the third party, or their respective
6 attorneys] or the recipient's attorney.

7 c. A certificate of debt may be filed by the division against
8 such parties and in such a manner as is specified in subsection (h)
9 of [Section] section 17 of P.L.1968, c.413 (C.30:4D-17(h)).

10 d. A lien may be filed against and recovery sought from any
11 interest in real property of a Medicaid recipient who is an
12 inpatient in a nursing facility or other medical institution and
13 who cannot reasonably be expected to be discharged and to return
14 home, if such individual is required, as a condition of receiving
15 services in the facility under the State plan, to spend for costs of
16 medical care all but a minimal amount of his income required for
17 personal needs. The lien may be filed and recovery sought for
18 any correct payments made or to be made for that recipient to
19 the extent permitted and subject to the limitations imposed by
20 section 1917 of the federal Social Security Act (42 U.S.C. §1396p)
21 and 42 C.F.R. 433.36.

22 e. A lien, claim or encumbrance imposed by this act shall be
23 deemed a preferred claim against the recipient's estate and shall
24 have a priority equivalent to that under subsection d. of
25 N.J.S.3B:22-2.

26 (cf: P.L.1979, c.365, s.7)

27 4. Section 1 of P.L.1981, c.217 (C.30:4D-7.2a) is amended to
28 read as follows:

29 1. No encumbrance or recovery [of any kind] shall be imposed
30 against or sought from the estate of a [qualified applicant or an
31 eligible person after his death because of assistance paid, or to be
32 paid, on his behalf] deceased recipient for assistance correctly
33 paid under:

34 a. The "New Jersey Medical Assistance and Health Services
35 Act," P.L.1968, c.413 (C.30:4D-1 et seq.), if the amount sought
36 to be recovered is less than [~~\$500.00~~] \$500, the gross estate is
37 less than [~~\$3,000.00~~] \$3,000 or there is a surviving spouse or a
38 surviving child who is under the age of 21 or is blind or
39 permanently and totally disabled, except for assistance
40 incorrectly or illegally paid, or for third party liability recovery
41 sought under P.L.1968, c.413 (C.30:4D-1 et seq.); or

42 b. The "Pharmaceutical Assistance to the Aged and Disabled"
43 program, P.L.1975, c.194 (C.30:4D-20 et seq.), except for
44 assistance incorrectly or illegally paid, or for third party liability
45 recovery sought under P.L.1968, c.413 (C.30:4D-1 et seq.).

46 (cf: P.L.1983, c. 371, s.1)

47 5. This act shall take effect on the 90th day after enactment
48 except that section 4 shall apply to all estates coming into being
49 on or after the date of enactment of this act.

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52 **STATEMENT**

53
54 This bill amends P.L.1968, c.413 (C.30:4D-1 et seq.) to both
55 restrict the transfer of assets for eligibility for Medicaid benefits

1 for long-term care and to expand the recovery of Medicaid
2 benefits in cases where Medicaid recipients have transferred
3 assets at below fair market value to become eligible for those
4 benefits.

5 The bill also strengthens the Medicaid lien law by allowing the
6 Division of Medical Assistance and Health Services, pursuant to
7 federal law, to seek liens and recoveries against a Medicaid
8 recipient's interest in real property when the recipient is an
9 inpatient in a medical facility, is not expected to be discharged
10 and as a condition of receiving services, is required to spend all
11 but a minimal amount of his income for the costs of his medical
12 care.

13 In addition, the bill clarifies current law regarding the
14 placement of liens against the estate of a deceased recipient of
15 medical assistance under the Medicaid program. Presently the
16 lien law permits a lien except when, among other things, there is
17 a surviving child. The bill clarifies this portion of the law by
18 permitting a lien to be imposed except when there is a surviving
19 child who is under the age of 21 or is blind or permanently and
20 totally disabled.

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26 Limits transfer of assets for Medicaid eligibility, expands
27 recovery of Medicaid benefits, and clarifies and strengthens the
28 Medicaid lien law.

ASSEMBLY HEALTH AND HUMAN SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 136

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 15, 1992

The Assembly Health and Human Services Committee favorably reports Assembly Bill No. 136 with committee amendments.

As amended by the committee, this bill clarifies current law regarding the placement of liens against the estate of a deceased recipient of medical assistance under the Medicaid program. Presently the lien law permits a lien except when, among other things, there is a surviving child. The bill clarifies this portion of the law by permitting a lien to be imposed except when there is a surviving child who is under the age of 21 or is blind or permanently and totally disabled.

The committee amendments delete sections 1 and 2 of the bill concerning the transfer of assets for Medicaid eligibility for long-term care and the recovery of Medicaid benefits in cases where Medicaid recipients have transferred assets at below fair market value to become eligible for those benefits. The committee also amended section 3 of the bill to delete subsections d. and e. from section 7 of P.L.1979, c.365 (C.30:4D-7.2) concerning liens and recoveries against a Medicaid recipient's interest in real property when the recipient is an inpatient in a medical facility.

LEGISLATIVE FISCAL ESTIMATE TO

[FIRST REPRINT]

ASSEMBLY, No. 136

STATE OF NEW JERSEY

DATED: July 6, 1992

Assembly Bill No. 136 [1R] of 1992 clarifies current law regarding the placement of liens against the estate of a deceased recipient of medical assistance under the Medicaid program. Presently the lien law permits a lien except when, among other things, there is a surviving child. The bill clarifies this portion of the law by permitting a lien to be imposed except when there is a surviving child who is under the age of 21 or who is blind or permanently and totally disabled.

The Department of Human Services (DHS) and the Office of Management and Budget have not provided any fiscal information concerning the legislation.

The Office of Legislative Services is not able to estimate the amount of additional revenues Assembly Bill No. 136 (1R) may generate, as no information is readily available regarding the amount currently collected under the existing lien law. OLS notes that DHS had suggested the legislation and indicated that it could generate about \$1 million in additional revenues.

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.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

August 3, 1992

ASSEMBLY BILL NO. 136 (First Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14, of the New Jersey Constitution, I herewith return Assembly Bill No. 136 (First Reprint) with my objections for reconsideration.

This bill would clarify the language of N.J.S.A. 30:4D-7.2. The bill would also permit the Division of Medical Assistance and Health Services in the Department of Human Services to impose liens upon the estates of deceased recipients for benefits paid to the recipient where the surviving child is over the age of 21. The Division, however, would continue to be prohibited from seeking recoveries from the estates of recipients where the surviving child is under the age of 21 or where the child is blind or permanently and totally disabled.

Amendments made to the bill prior to passage, however, deleted the provision in N.J.S.A. 30:4D-7.2 which provided that the Medicaid Division's liens were to have a preferred status. This is an important provision which increases the likelihood that the Medicaid Division will be able to make recoveries. Accordingly, I am recommending that the legislation be amended to restore this important provision.

Therefore, I herewith return Assembly Bill No. 136 (First Reprint) and recommend that it be amended as follows:

Page 11, Section 2, Line 10: Insert new subsection d. as follows:

"d. A lien, claim or encumbrance imposed by this act shall be deemed a preferred claim against the recipient's estate and shall have a priority equivalent to that under subsection d. of N.J.S. 3B:22-2. (P.L.1979, c.365, s.7)."

Respectfully,

/s/ James J. Florio

GOVERNOR

[seal]

Attest:

/s/ M. Robert DeCotiis

Chief Counsel to the Governor

