

CHAPTER 114

AN ACT concerning nurse midwives and amending P.L.1948, c.110 and P.L.1997, c.38.

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

1. Section 15 of P.L.1948, c.110 (C.43:21-39) is amended to read as follows:

C.43:21-39 Limitation of benefits.

15. Limitation of benefits. Notwithstanding any other provision of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), no benefits shall be payable under the State plan to any individual:

(a) for the first seven consecutive days of each period of disability; except that:

(1) if benefits shall be payable for three consecutive weeks with respect to any period of disability, then benefits shall also be payable with respect to the first seven days thereof;

(2) in the case of intermittent leave in a single period of family temporary disability leave taken to provide care for a family member of the individual with a serious health condition, benefits shall be payable with respect to the first day of leave taken after the first one-week period following the commencement of the period of family temporary disability leave and each subsequent day of leave during that period of family temporary disability leave; and if benefits become payable on any day after the first three weeks in which leave is taken, then benefits shall also be payable with respect to any leave taken during the first one-week period in which leave is taken; and

(3) in the case of an individual taking family temporary disability leave immediately after the individual has a period of disability for the individual's own disability, there shall be no waiting period between the period of the individual's own disability and the period of family temporary disability;

(b) (1) for more than 26 weeks with respect to any one period of disability of the individual;

(2) for more than six weeks with respect to any one period of family temporary disability leave, or more than 42 days with respect to any one period of family temporary disability leave taken on an intermittent basis to provide care for a family member of the individual with a serious health condition; and

(3) for more than six weeks of family temporary disability leave during any 12-month period, or more than 42 days of family temporary disability leave taken during any 12-month period, on an intermittent basis to provide care for a family member of the individual with a serious health condition, including family temporary disability leave taken pursuant to R.S.43:21-4(f)(2) while unemployed;

(c) for any period of disability which did not commence while the claimant was a covered individual;

(d) for any period of disability of a claimant during which the claimant is not under the care of a legally licensed physician, dentist, optometrist, podiatrist, practicing psychologist, advanced practice nurse, certified nurse midwife, or chiropractor, who, when requested by the division, shall certify within the scope of the practitioner's practice, the disability of the claimant, the probable duration thereof, and, where applicable, the medical facts within the practitioner's knowledge or for any period of family temporary disability leave for a serious health condition of a family member of the claimant, during which the family member is not receiving inpatient care in a hospital, hospice, or residential medical care facility or is not subject to continuing medical treatment or continuing supervision by a health care provider, who, when requested by the division, shall certify within the scope of the provider's practice,

the serious health condition of the family member, the probable duration thereof, and, where applicable, the medical facts within the provider's knowledge;

(e) (Deleted by amendment, P.L.1980, c.90.)

(f) for any period of disability due to willfully and intentionally self-inflicted injury, or to injury sustained in the perpetration by the claimant of a crime of the first, second, third, or fourth degree, or for any period during which a covered individual would be disqualified for unemployment compensation benefits for gross misconduct under subsection (b) of R.S.43:21-5;

(g) for any period during which the claimant performs any work for remuneration or profit;

(h) in a weekly amount which together with any remuneration the claimant continues to receive from the employer would exceed regular weekly wages immediately prior to disability;

(i) for any period during which a covered individual would be disqualified for unemployment compensation benefits under subsection (d) of R.S.43:21-5, unless the disability commenced prior to such disqualification;

and there shall be no other cause of disqualification or ineligibility to receive disability benefits hereunder except as may be specifically provided in this act.

2. Section 25 of P.L.1948, c.110 (C.43:21-49) is amended to read as follows:

C.43:21-49 Postings, notice and claim for disability benefits.

25. (a) (1) Every employer shall post, in prominent locations, notices to employees in the form provided by the division of whether the employer is permitted or required to participate in a temporary disability benefits program pursuant to the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), and whether the employer does or does not participate. For employers who participate in a temporary disability benefits program, the notice shall also describe the temporary disability benefits available to the employees and prominently disclose that pregnancy is regarded by law as a disability and that pregnant employees are regarded as disabled and entitled to temporary disability benefits to the same extent as other disabled employees. Upon the request of an employer, the division shall, without charge, provide the employer with a copy of each applicable notice, suitable for reproduction by the employer. Each employer participating in the State plan or a private plan shall give a printed copy of benefit instructions to any disabled employee as soon as the employer becomes aware of the disability.

(2) In addition, in the event of the disability of any individual covered under the State plan, the employer shall, on the ninth day of disability, issue to the individual and to the division printed notices on division forms containing the name, address and Social Security number of the individual, such wage information as the division may require to determine the individual's eligibility for benefits, and the name, address, and division identity number of the employer. Not later than 30 days after the commencement of the period of disability for which such notice is furnished, the individual shall furnish to the division a notice and claim for disability benefits under the State plan or for disability during unemployment. Upon the submission of such notices by the employer and the individual, the division may issue benefit payments for periods not exceeding three weeks pending the receipt of medical proof. When requested by the division, such notice and proof shall include certification of total disability by the attending physician, or a record of hospital confinement. Failure to furnish notice and proof within the time or in the manner above provided shall not invalidate or reduce any

claim if it shall be shown to the satisfaction of the division not to have been reasonably possible to furnish such notice and proof and that such notice and proof was furnished as soon as reasonably possible.

(b) A person claiming benefits under the State plan or for disability during unemployment shall, when requested by the division, submit at intervals, but not more often than once a week, to an examination by a legally licensed physician, dentist, podiatrist, chiropractor, certified nurse midwife, advanced practice nurse or public health nurse designated by the division. In all cases of physical examination of a claimant, the examination shall be made by a designee of the division, who shall be the same sex as the claimant if so requested by the claimant. All such examinations by physicians, dentists, podiatrists, chiropractors, certified nurse midwives or nurses designated by the division shall be without cost to the claimant and shall be held at a reasonable time and place. Refusal to submit to such a requested examination shall disqualify the claimant from all benefits for the period of disability in question, except as to benefits already paid.

(c) All medical records of the division, except to the extent necessary for the proper administration of this act, shall be confidential and shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the identity of the claimant, or the nature or cause of disability nor admissible in evidence in any action or special proceeding other than one arising under this act.

3. Section 8 of P.L.1997, c.38 (C.44:10-62) is amended to read as follows:

C.44:10-62 Adult recipient to seek employment.

8. a. As defined by the commissioner, each adult recipient shall continuously and actively seek employment in an effort to remove the assistance unit of which the recipient is a member from the program. A recipient may be assigned to a work activity as determined by the commissioner. The recipient shall sign an individual responsibility plan, as provided in subsection f. of this section, in order to be able to participate in the program, which shall indicate the terms of the work activity requirements that the recipient must fulfill in order to continue to receive benefits.

b. In accordance with Pub.L.104-193 (42 U.S.C. s. 601 et seq.), a recipient in an assistance unit with dependent children shall commence participation in a work activity, self-directed job search or other activities as determined by the commissioner at some time prior to having received 24 months of benefits; except that if the recipient is a full-time post-secondary student in a course of study related to employment as defined by regulation of the commissioner, the recipient shall be required to engage in another work activity for no more than 15 hours a week, subject to the recipient making satisfactory progress toward the completion of the post-secondary course of study as determined by the commissioner.

c. A recipient shall comply with work activity participation requirements as a condition of remaining eligible for benefits. In accordance with the requirements of Pub.L.104-193 (42 U.S.C. s. 601 et seq.), a minimum participation rate of 25% shall be realized in federal fiscal year 1997. The participation rate shall increase by 5% in each federal fiscal year to a level of 50% in federal fiscal year 2002 and thereafter. For two-parent assistance units with dependent children receiving benefits, the participation rate shall be 75% for federal fiscal years 1997 and 1998 and 90% in federal fiscal year 1999 and thereafter. The participation rate shall be calculated in accordance with federal requirements. A recipient may be required

to participate in one or more work activities for a maximum aggregate hourly total of 40 hours per week.

d. A recipient shall not be required to engage in a work activity if child care, including the unavailability of after-school child care for children over six years of age, is unavailable for the recipient's dependent child, as determined by regulation of the commissioner.

e. A recipient may temporarily be deferred from work activity requirements as provided for by the commissioner if the recipient is:

(1) a woman in the third trimester of pregnancy;

(2) a person certified by an examining legally licensed physician or legally licensed certified nurse midwife, acting within the scope of the practitioner's profession, to be unable, by reason of a physical or mental defect, disease or impairment, to engage in any gainful occupation for any period less than 12 months; or

(3) the parent or relative of a child under the age of 12 weeks who is providing care for that child, except that, the deferral may be extended for an appropriate period of time if determined to be medically necessary for the parent or child.

f. Upon a determination of eligibility for benefits, each adult recipient not otherwise deferred or exempted under this act shall be given an assessment of that person's potential and readiness for work, including, but not limited to, skills, education, past work experience and any barriers to securing employment, including a screening and assessment for substance abuse, as appropriate. For all recipients not deferred or exempt, an annual individual responsibility plan shall be developed jointly by the county agency or municipal welfare agency, as appropriate, and the recipient specifying the steps that will be taken by each to assist the recipient to secure employment. The individual responsibility plan shall include specific goals for each adult member or minor parent in the assistance unit, and may include specific goals for a dependent child member of the assistance unit. The goals, as determined by regulation of the commissioner, shall include, but not be limited to, requirements for parental participation in a dependent child's primary school program, immunizations for a dependent child, and regular school attendance by a dependent child. Recipients who are job ready shall be placed immediately in a self-directed job search. Within the amount of funds allocated by the commissioner for this purpose, other recipients shall be placed in an appropriate work activity as indicated by their individual assessments.

g. The county agency or municipal welfare agency, as appropriate, shall ensure the provision of necessary case management for recipients, as appropriate to their degree of job readiness, pursuant to regulations adopted by the commissioner. The most intensive case management shall be directed to those recipients facing the most serious barriers to employment.

h. (1) A recipient shall not be placed or utilized in a position at a particular workplace:

(a) that was previously filled by a regular employee if that position, or a substantially similar position at that workplace, has been made vacant through a demotion, substantial reduction of hours or a layoff of a regular employee in the previous 12 months, or has been eliminated by the employer at any time during the previous 12 months;

(b) in a manner that infringes upon a wage rate or an employment benefit, or violates the contractual overtime provisions of a regular employee at that workplace;

(c) in a manner that violates an existing collective bargaining agreement or a statutory provision that applies to that workplace;

(d) in a manner that supplants or duplicates a position in an existing, approved apprenticeship program;

(e) by or through an employment agency or temporary help service firm as a community work experience or alternative work experience worker;

(f) if there is a contractual or statutory recall right to that position at that workplace; or

(g) if there is an ongoing strike or lockout at that workplace.

(2) A person who believes that he has been adversely affected by a violation of this subsection, or the organization that is duly authorized to represent the collective bargaining unit to which that person belongs, shall be afforded an opportunity to meet with a designee of the Commissioner of Labor and Workforce Development or the Governor's Office of Employee Relations, as appropriate. The designee shall attempt to resolve the complaint of the alleged violation within 30 days of the date of the request for the meeting. The Commissioner of Labor and Workforce Development, in consultation with the Governor's Office of Employee Relations, shall adopt regulations to effectuate the provisions of this subsection. In the event that the complaint is not resolved within the 30-day period, the complainant may appeal to the New Jersey State Board of Mediation in the Department of Labor and Workforce Development for expedited binding arbitration in accordance with the rules of the board. If the arbitrator determines that a violation has occurred, he shall provide an appropriate remedy. The cost of the arbitration shall be borne equally by both parties to the dispute.

(3) Nothing in this subsection shall be construed to prevent a collective bargaining agreement from containing additional protections for a regular employee.

i. The commissioner, acting in conjunction with the Commissioners of Banking and Insurance, Community Affairs, Education, Health and Senior Services, Labor and Workforce Development and Transportation, shall implement all elements of the program and establish initiatives to assist in moving recipients towards self-sufficiency.

j. The commissioner shall take such actions as are necessary to ensure that the program meets the requirements to qualify for the maximum amount of federal funds due the State under Pub.L.104-193 (42 U.S.C. s. 601 et seq.).

k. The commissioner is authorized to seek such waivers from the federal government as are necessary to accomplish the goals of the program.

4. This act shall take effect immediately.

Approved August 12, 2009.