

P.L. 2022, CHAPTER 78, *approved July 29, 2022*
Assembly, No. 3110 (*Second Reprint*)

1 AN ACT concerning Medicaid reimbursement for brain injury
2 services and supplementing Title 30 of the Revised Statutes.

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

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7 1. The Legislature funds and declares:

8 a. An acquired brain injury is an injury caused by an event,
9 either internal or external to the injured individual, and does not
10 include congenital or degenerative disorders, or those injuries
11 induced by birth trauma. An acquired brain injury can either be
12 categorized as a traumatic brain injury or non-traumatic brain
13 injury. A traumatic brain injury is an alteration in brain function
14 caused by an external force and may be caused by falls, assaults,
15 motor vehicle accidents, or sports injuries. A non-traumatic brain
16 injury is damage to the brain caused by internal factors, such as
17 stroke, aneurysm, tumor, infectious disease, ¹**[and]** or¹ anoxia.

18 b. A severe acquired brain injury can produce an altered or
19 diminished state of consciousness and result in an impairment of
20 cognitive abilities or physical functioning. It can also effect
21 behavioral or emotional functioning. These impairments may be
22 permanent and cause partial or total functional disability, leading to
23 the injured individual requiring long-term care supports.

24 c. The State's Medicaid program provides brain injury services
25 under the Managed Long-Term Supports and Services program,
26 with the goal of providing community alternatives for individuals
27 with brain injuries residing in nursing facilities or who are in the
28 community and at risk for placement in nursing facilities.

29 d. Unlike other Medicaid community-based services,
30 reimbursement rates for brain injury services have remained static
31 in recent years despite growing costs, which threatens the ability of
32 providers to meet the complex health needs of individuals with
33 brain injuries and provide services within a safe and fulfilling
34 community environment.

35 e. Despite the similar model of care, reimbursement rates for
36 services provided to Medicaid beneficiaries with intellectual and
37 developmental disabilities have not only increased, but have been
38 restructured to account for adequate consideration for acuity,

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:

¹Assembly AHU committee amendments adopted May 12, 2022.

²Senate floor amendments adopted June 29, 2022.

1 increased minimum wage requirements, and other inflationary
2 trends that assert pressure on providers' cost structures.

3 f. By failing to receive reimbursement rates that adequately
4 support services, brain injury providers are being forced to return
5 this fragile population to more costly institutional care in nursing
6 home facilities.

7 g. It is imperative that the Legislature take action and increase
8 Medicaid rates for these essential services and ensure that
9 individuals with brain injuries can continue to thrive and reach their
10 optimal recoveries in community settings.

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12 2. a. Notwithstanding the provisions of any law or regulation to
13 the contrary, the Medicaid per diem or encounter reimbursement rates
14 for eligible brain injury services, when such services are provided by
15 an approved brain injury ¹~~services~~ service¹ provider to a Medicaid
16 beneficiary requiring treatment for a brain injury, shall be, at
17 minimum, as follows:

18 (1) The reimbursement rate for Community Residential Services –
19 Low Supervision provided to a Medicaid beneficiary eligible for brain
20 injury services shall be equal to the reimbursement rate for Individuals
21 Supports Services - ²~~Tier C~~ Tier B² provided to a Medicaid
22 beneficiary eligible for services provided by the Division of
23 Developmental Disabilities ¹in the Department of Human Services¹ ;

24 (2) The reimbursement rate for Community Residential Services –
25 Moderate Supervision provided to a Medicaid beneficiary eligible for
26 brain injury services shall be equal to the reimbursement rate for
27 Individuals Supports Services - ²~~Tier D~~ Tier C² provided to a
28 Medicaid beneficiary eligible for services provided by the Division of
29 Developmental Disabilities ¹in the Department of Human Services¹ ;
30 ²and²

31 (3) The reimbursement rate for Community Residential Services –
32 High Supervision provided to a Medicaid beneficiary eligible for brain
33 injury services shall be equal to the ²average of the² reimbursement
34 ²~~rate~~ rates² for Individuals Supports Services - ²~~Tier E~~ Tiers D
35 and E² provided to a Medicaid beneficiary eligible for services
36 provided by the Division of Developmental Disabilities ¹in the
37 Department of Human Services¹ ²]; and

38 (4) The reimbursement rate for Structured Day Program Services
39 provided to a Medicaid beneficiary eligible for brain injury services
40 shall be equal to the reimbursement rate for Day Habilitation Services
41 - Tier D provided to a Medicaid beneficiary eligible for services
42 provided by the Division of Developmental Disabilities ¹in the
43 Department of Human Services¹ ² .

44 b. As used in this section:

45 ¹~~“Medicaid”~~ means the program established pursuant to
46 P.L.1968, c.413 (C.30:4D-1 et seq.).¹

47 “Brain injury service” means community-based services,
48 residential services, day care services, and home care services

1 provided to a Medicaid beneficiary requiring treatment for traumatic
2 or non-traumatic brain injuries, ¹regardless of¹ whether such services
3 are provided through the Medicaid fee-for-service delivery system or
4 the managed care delivery system.

5 “Brain injury service provider” means a facility licensed by the
6 Division of Disability Services in the Department of Human Services
7 to provide traumatic or non-traumatic brain injury services.

8 ¹“Medicaid” means the Medicaid program established pursuant to
9 P.L.1968, c.413 (C.30:4D-1 et seq.).¹

10 “Non-traumatic brain injury” means an injury to the brain caused
11 by internal factors, such as stroke, aneurysm, tumor, infectious disease,
12 ¹**[and]** or¹ anoxia, where continued impairment can be demonstrated.
13 This term does not include brain dysfunction caused by congenital or
14 degenerative disorders, birth trauma, or injuries caused by other
15 circumstances.

16 “Traumatic brain injury” means an injury to the brain caused by a
17 blow or jolt to the head or a penetrating head injury or neuro-trauma
18 that disrupts the normal brain function, where continued impairment
19 can be demonstrated. This term does not include brain dysfunction
20 caused by congenital or degenerative disorders, birth trauma, or
21 injuries caused by other circumstances.

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23 3. The Commissioner of Human Services shall apply for such
24 State plan amendments or waivers specific to brain injury services,
25 that currently exist or may arise in the future which affect
26 reimbursement rates, as may be necessary to implement the
27 provisions of this act and to secure federal financial participation for
28 State Medicaid expenditures under the federal Medicaid program.

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30 4. The Commissioner of Human Services, in accordance with the
31 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),
32 shall adopt such rules and regulations as the commissioner deems
33 necessary to carry out the provisions of this act.

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35 5. This act shall take effect ²**[on July 1 next following]** 30
36 days after² the date of enactment and shall apply to services
37 provided on or after the effective date of this act and to any
38 Medicaid managed care contract executed or renewed on or after
39 the effective date of this act.

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44 Establishes minimum Medicaid reimbursement rates for brain
45 injury services.