

CHAPTER 2022-40

Committee Substitute for Senate Bill No. 1770

An act relating to donor human milk bank services; amending s. 409.906, F.S.; authorizing the Agency for Health Care Administration to pay for donor human milk bank services as an optional Medicaid service if certain conditions are met; specifying coverage requirements; requiring the agency to adopt rules; authorizing the agency to seek federal approval; amending s. 409.908, F.S.; adding donor human milk bank services to the list of Medicaid services authorized for reimbursement on a fee-for-service basis; amending s. 409.973, F.S.; adding donor human milk bank services to the list of minimum benefits required to be covered by Medicaid managed care plans; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (28) is added to section 409.906, Florida Statutes, to read:

409.906 Optional Medicaid services.—Subject to specific appropriations, the agency may make payments for services which are optional to the state under Title XIX of the Social Security Act and are furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any optional service that is provided shall be provided only when medically necessary and in accordance with state and federal law. Optional services rendered by providers in mobile units to Medicaid recipients may be restricted or prohibited by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. If necessary to safeguard the state's systems of providing services to elderly and disabled persons and subject to the notice and review provisions of s. 216.177, the Governor may direct the Agency for Health Care Administration to amend the Medicaid state plan to delete the optional Medicaid service known as "Intermediate Care Facilities for the Developmentally Disabled." Optional services may include:

(28) DONOR HUMAN MILK BANK SERVICES.—The agency may pay for the provision of donor human milk and human milk products derived therefrom for inpatient use, for which a licensed physician, nurse practitioner, physician assistant, or dietitian has issued an order for an infant who is medically or physically unable to receive maternal breast milk or to breastfeed or whose mother is medically or physically unable to produce maternal breast milk or breastfeed. Such infant must have a documented birth weight of 1,800 grams or less; have a congenital or acquired condition and be at high risk for developing a feeding intolerance, necrotizing

enterocolitis, or an infection; or otherwise have a medical indication for a human milk diet. The agency shall adopt rules that include, but are not limited to, eligible providers of donor human milk and donor human milk derivatives. The agency may seek federal approval necessary to implement this subsection.

Section 2. Present paragraphs (f) through (t) of subsection (3) of section 409.908, Florida Statutes, are redesignated as paragraphs (g) through (u), respectively, and a new paragraph (f) is added to that subsection, to read:

409.908 Reimbursement of Medicaid providers.—Subject to specific appropriations, the agency shall reimburse Medicaid providers, in accordance with state and federal law, according to methodologies set forth in the rules of the agency and in policy manuals and handbooks incorporated by reference therein. These methodologies may include fee schedules, reimbursement methods based on cost reporting, negotiated fees, competitive bidding pursuant to s. 287.057, and other mechanisms the agency considers efficient and effective for purchasing services or goods on behalf of recipients. If a provider is reimbursed based on cost reporting and submits a cost report late and that cost report would have been used to set a lower reimbursement rate for a rate semester, then the provider's rate for that semester shall be retroactively calculated using the new cost report, and full payment at the recalculated rate shall be effected retroactively. Medicare-granted extensions for filing cost reports, if applicable, shall also apply to Medicaid cost reports. Payment for Medicaid compensable services made on behalf of Medicaid-eligible persons is subject to the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. Further, nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act, provided the adjustment is consistent with legislative intent.

(3) Subject to any limitations or directions provided for in the General Appropriations Act, the following Medicaid services and goods may be reimbursed on a fee-for-service basis. For each allowable service or goods furnished in accordance with Medicaid rules, policy manuals, handbooks, and state and federal law, the payment shall be the amount billed by the provider, the provider's usual and customary charge, or the maximum allowable fee established by the agency, whichever amount is less, with the exception of those services or goods for which the agency makes payment using a methodology based on capitation rates, average costs, or negotiated fees.

(f) Donor human milk bank services.

Section 3. Present paragraphs (e) through (bb) of subsection (1) of section 409.973, Florida Statutes, are redesignated as paragraphs (f) through (cc), respectively, and a new paragraph (e) is added to that subsection, to read:

409.973 Benefits.—

(1) MINIMUM BENEFITS.—Managed care plans shall cover, at a minimum, the following services:

(e) Donor human milk bank services.

Section 4. This act shall take effect July 1, 2022.

Approved by the Governor April 6, 2022.

Filed in Office Secretary of State April 6, 2022.