

# LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

## ASSEMBLY, No. 1952

### STATE OF NEW JERSEY 217th LEGISLATURE

DATED: NOVEMBER 10, 2016

#### SUMMARY

- Synopsis:** “Out-of-network Consumer Protection, Transparency, Cost Containment and Accountability Act.”
- Type of Impact:** Annual State and Local Government Cost Savings, Annual State Revenue Increase, Annual Revenue Decreases to University Hospital and Bergen Regional Medical Center.
- Agencies Affected:** Department of Banking and Insurance, Department of the Treasury, Department of Health, Division of Consumer Affairs in the Department of Law and Public Safety, State Health Benefits Program, School Employees’ Health Benefits Program, health benefits plans offered by certain local units, University Hospital, and Bergen Regional Medical Center.

#### Office of Legislative Services Estimate

Fiscal Impact	Annual
<b>State and Local Government Cost Savings –</b>	
<b>Decreased Employee Health Insurance Costs</b>	Indeterminate – See comments below
<b>State Revenue Increase – Penalty Collections</b>	Indeterminate – See comments below
<b>University Hospital Revenue Decrease –</b>	
<b>Reduced Payments for Out-Of-Network Services</b>	Indeterminate – See comments below
<b>Bergen Regional Medical Center Revenue</b>	
<b>Decrease – Reduced Payments for Out-Of-Network Services</b>	Indeterminate – See comments below

- The Office of Legislative Services (OLS) concludes that the enactment of Assembly Bill No. 1952 (2R) of 2016 may result in indeterminate annual cost savings to the State Health Benefits Program, the School Employees’ Health Benefits Program, and health benefits plans offered by local units due to a decrease in out-of-network charges. However, in order for any savings to be realized from health benefits plans offered by local units that do not participate in the State Health Benefits Program, these units would be required to elect to be subject to the provisions of the bill.

- The OLS notes that the enactment of the bill may result in an indeterminate annual decrease in revenue from out-of-network charges to: a) University Hospital, an independent non-profit legal entity that is an instrumentality of the State located in Newark; and b) Bergen Regional Medical Center, a county-owned entity located in Paramus.
- The OLS notes that the enactment of the bill would result in an indeterminate annual State revenue increase to the General Fund due to the collection of penalties established under the bill.
- Additionally, this bill requires the Department of Health, the Division of Consumer Affairs in the Department of Law and Public Safety, and the Department of Banking and Insurance to collect and report certain information. Such requirements, however, may not result in additional costs to the respective departments as the expenses associated with these activities could likely be absorbed into the departments' existing operating budgets.

## **BILL DESCRIPTION**

Assembly Bill No. 1952 (2R) of 2016 reforms various aspects of the health care delivery system in New Jersey to increase transparency in pricing for health care services, enhance consumer protections, create an arbitration system to resolve certain health care billing disputes, contain rising costs associated with out-of-network health care services, and measure success with regard to these goals.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

The Executive has not submitted a formal, written fiscal note for this bill, but the Department of the Treasury has provided informal information to the OLS indicating that covered persons under the Horizon NJ Direct plans within the State Health Benefits Program and the School Employees' Health Benefits Program filed 3,253,180 out-of-network claims in fiscal year 2015. As of September 30, 2016, the State has paid out \$895,854,618 for the cost of those claims. These data include all out-of-network claims and costs under the Horizon NJ Direct plans, not just the emergency and inadvertent claims to which the bill applies. Furthermore, these data do not include out-of-network claims and costs associated with any other plans offered by the State and School Employee Health Benefits Plans, such as Horizon tiered plans, Horizon HMO plans, or any Aetna plans.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS concludes that the enactment of Assembly Bill No. 1952 (2R) of 2016 may result in indeterminate annual cost savings to the State Health Benefits Program, the School Employees' Health Benefits Program, and health benefits plans offered by local units due to a decrease in out-of-network charges. However, in order for any savings to be realized from health benefits

plans offered by local units that do not participate in the State Health Benefits Program, these units would be required to elect to be subject to the provisions of the bill.

The OLS also notes that the enactment of the bill may result in an indeterminate annual decrease in revenue from out-of-network charges to: a) University Hospital, an independent non-profit legal entity that is an instrumentality of the State located in Newark; and b) Bergen Regional Medical Center, a county-owned entity located in Paramus.

The OLS notes further that the enactment of the bill would result in an indeterminate annual State revenue increase to the General Fund due to the collection of penalties established under the bill.

Additionally, this bill requires the Department of Health, the Division of Consumer Affairs in the Department of Law and Public Safety, and the Department of Banking and Insurance to collect and report certain information. Such requirements, however, may not result in additional costs to the respective departments as the expenses associated with these activities could likely be absorbed into the departments' existing operating budgets.

### **Out-of-network Billing**

Currently, when an individual covered by a network-based health benefits plan receives care from an out-of-network health care provider under circumstances that could not be avoided, the individual is partially protected under State rules and regulations. Specifically, N.J.A.C.11:22-5.8(b) states that a covered person's liability for services rendered during a hospitalization in a network hospital, regardless of whether the admitting physician is in-network or out-of-network, shall, in most situations, be limited to the copayment, deductible, and/or coinsurance applicable to network services. The rule partially protects members of certain health benefits plans from being billed more than the in-network rate for services rendered at the time of care, and suggests that health benefits plans are responsible for protecting their members and absorbing the excess costs associated with out-of-network charges to their members. While the rule only applies to health maintenance organizations (HMOs) and other non-HMO network-based plans, some self-insured plans, such as the State Health Benefits Program and the School Employees' Health Benefits Program, follow similar out-of-network rules. The rule does not limit the amounts that providers can charge the carriers or the State plans, which in some cases pay up to the billed charges if a lower amount cannot be negotiated.

This bill places certain limitations on charges by out-of-network providers in two situations: (1) if a covered person receives medically necessary services at any health care facility on an emergency or urgent basis; and (2) inadvertent out-of-network services. The OLS notes that limiting charges by out-of-network health care providers in such a manner may provide direct savings to covered persons and health benefits plans in the State. Under the bill's definition of "carrier," this includes the State Health Benefits Program and the School Employees' Health Benefits Program. However, other self-funded plans, such as those offered by local units that do not participate in the State Health Benefits Program, would only be included under the bill's provisions if the plan elects to be subject to them. The savings that may be realized for the State and local units would be the result of a decrease in costs associated with out-of-network charges. Under the bill, health benefits plans would pay out-of-network providers the amounts, subject to a statutorily-prescribed ceiling, resulting from a mandatory arbitration process, if the carrier and the provider cannot agree on a reimbursement rate.

In testimony submitted to the Assembly Appropriations Committee in October of 2016, Dudley Burdge, who represents the Communications Workers of America and is also a commissioner on the State Health Benefits Commission, estimated that the direct savings from the bill to the State and School Employee Health Benefits Plans due to decreases in out-of-network payments to physicians, hospitals, and other providers of medical services would be

approximately \$133 million annually. Furthermore, the New Jersey Pension and Health Benefit Study Commission reported in February 2016 that general reform to the statutes and regulations that govern out-of-network provider reimbursement, in conjunction with other reforms in the health care delivery system, would save the State an estimated \$164 million in the first fiscal year of implementation.

Additionally, the Department of the Treasury has provided informal information to the OLS indicating that covered persons under the Horizon NJ Direct plans within the State Health Benefits Program and the School Employees' Health Benefits Program filed 3,253,180 out-of-network claims in fiscal year 2015. As of September 30, 2016, the State has paid out \$895,854,618 for the cost of those claims. The OLS notes that these data include all out-of-network claims and costs under the Horizon NJ Direct plans, not just the emergency and inadvertent claims to which the bill applies. Furthermore, these data do not include out-of-network claims and costs associated with any other plans offered by the State and School Employee Health Benefits Plans, such as Horizon tiered plans, Horizon HMO plans, or any Aetna plans.

Moreover, a 2015 actuarial study commissioned by Horizon Blue Cross Blue Shield of New Jersey determined that if Horizon paid all out-of-network claims, not just those to which the bill applies, at 150 percent of the Medicare rate instead of up to the fully charged amount, Horizon would realize savings of approximately \$500 million annually, or a 4.3 percent reduction in total commercial paid claims. As reference, this bill provides that the arbitrator's decision must be within a range of 100 percent to 250 percent of the applicable payment rate under the federal Medicare program.

However, since insufficient data are available to estimate the impact that limiting charges by out-of-network providers would have on the State Health Benefits Program, the School Employees' Health Benefits Program, and health benefits plans offered by local units, the OLS is unable to determine the direct savings that may be realized to these health benefits plans.

Furthermore, the OLS also notes that the enactment of the bill may result in an indeterminate annual decrease in revenue from out-of-network charges to: a) University Hospital, an independent non-profit legal entity that is an instrumentality of the State located in Newark; and b) Bergen Regional Medical Center, a county-owned entity located in Paramus.

### **Penalties**

Penalties established under this bill range from \$100 to \$2,500 for violations committed by individuals or entities, and \$1,000 to \$25,000 for violations committed by health care facilities. The OLS, however, cannot determine the nature and number of infractions that may be committed, and therefore the amount of revenue generated, under the bill.

### **Reporting**

This bill places certain responsibilities on health care facilities and health care professionals to report certain information to the Department of Health and the Division of Consumer Affairs in the Department of Law and Public Safety. The reported information would be shareable with the Department of Banking and Insurance. Furthermore, the bill requires the Department of Banking and Insurance to make publicly available, on the department's website, certain information in regard to the bill. The collection and reporting of such information may not result in additional costs to the respective departments as the expenses associated with these activities could likely be absorbed into the departments' existing operating budgets.

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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 (C.52:13B-6 et seq.).