

LEGISLATIVE FISCAL ESTIMATE
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2600
STATE OF NEW JERSEY
216th LEGISLATURE

DATED: MARCH 19, 2015

SUMMARY

Synopsis: Prohibits transfer of individuals with developmental disabilities from out-of-State to in-State placements under certain conditions.

Type of Impact: Indeterminate expenditure reduction from the General Fund, matched by indeterminate State revenue increase from federal funds.

Agencies Affected: Department of Human Services

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1 to Year 3</u>
State Expenditures	Indeterminate- See comments below
State Revenue	Indeterminate- See comments below

- The Office of Legislative Services (OLS) cannot determine with any certainty the total fiscal of the Senate Committee Substitute for Senate Bill. 2600. The OLS notes that the substitute will require all individuals who are in an out-of-State placement, which costs more than an in-State placement, be moved to an in-State placement. Thus, the bill should result in reduced State expenditures which may be matched by federal funding. However, there are numerous uncertainties related to the substitute that will affect any expenditure reductions or federal revenue generated by this substitute.
- The OLS estimates that there are 394 individuals currently residing in out-of-State placements who the Department of Human Services (DHS) intends to move to in-State placements through the Return Home New Jersey Program (RHNJ).
- The OLS notes that section 1 of this substitute *may* exclude 230 of the 394 individuals from the RHNJ program; however, it is likely that some of the 230 individuals may be required to move to an in-State placement due to provisions of section 2 of the committee substitute. For example, if the individual costs the State more for an out-of-State placement than in an in-State placement or the individual remains ineligible for Medicaid for 90 days, then the individual could be returned to New Jersey.

- There is no analysis that the OLS is aware of that estimates, by individual, a cost for out-of-State placement versus a projected in-State placement cost. There are many variables, including: future federal funding; the cost to provide care in New Jersey versus an individual's current state of residence, and the total cost to provide care in a community setting versus an institutional setting which are specific to each individual and will affect this analysis. These variables may have a significant impact on the costs or savings achieved through this substitute.
- The OLS notes that the DHS must develop a uniform assessment tool to determine that an individual will cost less in an in-State placement than an out-of-State placement prior to relocating certain individuals to an in-State placement.
- The OLS also notes that many of these individuals have been in out-of-State placements for a lengthy period of time and have been very reluctant to move to in-State placements. They will most likely continue to act to delay their movement and this delay will result in a continued drain on State resources to facilitate these moves.

BILL DESCRIPTION

The Senate Committee Substitute for Senate Bill No. 2600 of 2014 provides that the Division of Developmental Disabilities in the DHS is not to transfer, or otherwise compel the transfer of, an individual with a developmental disability who is currently residing in an out-of-State placement to a residential placement in this State, under the Return Home New Jersey initiative or any similar program transferring individuals with developmental disabilities from out-of-State placements to residential placements in this State, if the individual or the guardian of the individual objects in writing and either of the following conditions exists: 1) The individual has resided out-of-State for 25 or more years or 50 percent or more of the life of the individual, whichever is less; or 2) The individual is enrolled in the federal Medicaid waiver under section 1115 (the Comprehensive Medicaid Waiver) or section 1915(c) (the Community Care Waiver) of the federal Social Security Act.

The substitute adds, however, that **the above provisions would not apply if:**

- The U.S. Department of Justice, the Centers for Medicare & Medicaid Services, or a federally-designated state protection and advocacy organization has deemed the out-of-State facility unsafe or an individual residing in the facility to be at risk for health or safety violations;
- The individual does not continue to be served by the same out-of-State provider in the same location after the effective date of the substitute;
- The individual or the individual's guardian is not in compliance with State regulations concerning contribution to care and maintenance within 90 days of the effective date, or the individual or guardian fails to continue to comply with these regulations for the duration of the out-of-State care;
- The primary residence of the legal guardian is not located in this State; or, in the case of co-guardianship, the primary residence of each co-guardian is not located in this State, so that the individual does not have a guardian or co-guardian whose primary residence is in this State on the effective date;
- **The individual is not enrolled in the State Medicaid program, within 90 days of the effective date;**

- The total cost of the out-of-State residential placement exceeds the cost of an in-State residential placement of the individual taking into account funds the State would receive for the in-State placement of the individual from the Medicaid waivers, as determined by a uniform assessment tool developed by the division;

- The out-of-State provider fails to transmit to the division written reports of life safety oversight and copies of all relevant incident reports required by the division; or

- The Bureau of Guardianship Services is the legal guardian of the individual.

The substitute specifies that: it is not to be construed as limiting the ability of DHS to determine reasonable funding for services provided by out-of State providers; it does not prohibit an individual with a developmental disability from remaining in an out-of-State placement if no State funds are allocated through DHS; and it applies to individuals with developmental disabilities who, as of the effective date, are funded by the division.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS cannot estimate with any certainty the fiscal impact of the Senate Committee Substitute for Senate Bill No. 2600. There is no analysis that the OLS is aware of that estimates, by individual, a cost for out-of-State placement versus a projected in-State placement cost. There are many variables, including: future federal funding; the cost to provide care in New Jersey versus an individual's current state of residence, and the total cost to provide care in a community setting versus an institutional setting, which are dependent upon the individual's circumstances. These variables may have a significant impact on the costs or savings of the substitute.

The OLS notes that this substitute pertains to approximately 394 individuals, who are currently residing in out-of-State placements. Section 1 of the substitute *may* exclude 230 of the 394 individuals from the RHNJ program. However, it is likely that some of these 230 individuals may be required to move to an in-State placement due to provisions of section 2 of the committee substitute. For example, if the individual remains ineligible for Medicaid for at least 90 days or it costs the State more for an out-of-State placement than in an in-State placement, these individuals could still be returned to New Jersey. The remaining 164 individuals do not meet the provisions of section 1 and will remain subject to the Return Home New Jersey program.

Any savings attributed to the RHNJ program for these 394 individuals are most likely due to increased federal reimbursement for these individuals through participation in Medicaid and cost efficiencies gained through alternate placement options. However, the OLS notes that several factors may limit the State's ability to claim such savings associated with the initiative, and may therefore reduce the fiscal impact of the substitute. For example, the federal Medicaid reimbursement rate for most services is equal to 50 percent of the cost, but does not apply to room and board costs, which must be paid by the State or individual in any case. Consequently the overall federal reimbursement rate may effectively be lower than 50 percent. Furthermore, the estimated annual cost of \$115,000 per client cited by DHS may not apply to all affected individuals once they are moved to New Jersey. It is possible that some individuals with highly

specialized care needs were placed out-of-State in order to accommodate those needs, and that similar services may be more expensive to provide in New Jersey than in the current placement. RHNJ has already moved a number of individuals to in-State placements, and it is possible that the remaining clients may have more specialized needs and may cost more than the average. Savings cannot be determined with any certainty.

The substitute also provides that the DHS must develop a uniform assessment tool to determine that an individual will cost less in an in-State placement than in an out-of-State placement prior to relocating certain individuals to an in-State placement. The creation of this tool will be absorbed into the department's operating budget. It is important to note that the tool will need to be neutral and explore all avenues of accessing federal reimbursement. Available information indicates that most claims for federal reimbursement were rejected because the facility is not regarded as either a home- or community-based service provider or an ICF/MR (a developmental center) under federal rules, and is therefore ineligible for federal Medicaid funding. However, it may be possible to encourage some facilities to make adjustments (e.g., adding kitchens for residents' use) so that they could qualify as home- and community-based providers. The OLS also notes that the State's Comprehensive Medicaid Waiver includes a new Intellectual Developmental Disability Program for Out of State New Jersey Residents that authorizes federal reimbursement for certain individuals not enrolled in the Community Care Waiver, though the OLS cannot verify if the State has attempted to make any claims under this program or how many of the individuals who would be transferred and are not currently eligible for CCW might be eligible. If federal reimbursement can be obtained for some of these individuals in out-of-State placements, then the fiscal incentive to access federal reimbursement through moving the individuals to in-State placements is significantly reduced. Finally, it may be possible for the State to negotiate an expansion of the Comprehensive Medicaid Waiver or the Community Care Waiver to provide federal reimbursement for more of the individuals currently in out-of-State placements, though there is no guarantee that the federal government would approve such a proposal.

Finally, the OLS notes that many of these individuals have been in out-of-State placements for a lengthy period of time and have been very reluctant to move to in-State placements. They will most likely continue to act to delay their movement and this delay will result in a continued drain on State resources to facilitate these moves. Although the costs to the department to continue this initiative cannot be determined, it must be considered as compared to any anticipated savings to move these individuals.

Section: Human Services

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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.).