

## CHAPTER 85

**AN ACT** concerning the transition by certain community-based health care treatment service providers to a fee-for-service reimbursement model and making an appropriation.

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

1. a. The Legislature finds the following:

(1) The Division of Mental Health and Addiction Services (DMHAS) and the Division of Developmental Disabilities (DDD) in the Department of Human Services have historically used a cost reimbursement system to provide most State-level funding for community-based services in New Jersey. Both divisions have begun to transition most community-based services from a cost reimbursement system to a fee-for-service reimbursement system. The DMHAS plans to require all providers to complete the transition by July 2017, while the DDD is transitioning providers in a more gradual fashion.

(2) Under the cost reimbursement system, community-based providers in both divisions receive a monthly payment at a predetermined contracted rate, regardless of the actual services provided to consumers, and a close-out process is used at the end of the year to reconcile each provider's actual costs with the payments made. Under the new fee-for-service reimbursement model, monthly reimbursement will not be predetermined, and each provider will instead be required to submit a reimbursement claim for each specific unit of service that it has actually delivered to a consumer.

(3) The divisions have proposed new reimbursement rate schedules that would take effect as part of the transition to a fee-for-service model. The new rates cannot easily be compared to the cost reimbursement system, since the actual payments that providers will receive under the new fee-for-service model will be based on submitted claims, rather than on predetermined monthly amounts. While the Executive Branch estimates that the new rates will result in an overall increase in funding to providers, for many providers the new rates may be insufficient to cover the costs of providing services.

(4) The new fee-for-service reimbursement system may negatively affect many providers' cash flow, particularly during the transition. The fee-for-service system will allow reimbursement only for specific services that have been provided and claimed, and may effectively pay less than providers had received in the past for delivering the same services. This reduced predictability of revenue may impede providers' ability to provide adequate services to persons in need. The conversion may simultaneously force providers to increase their marketing expenditures in an attempt to maximize billable services, while forcing them to maintain a greater reserve of cash on hand in order to ensure their ability to absorb costs when vacancies inevitably arise.

(5) Providers engaged in the transition to a fee-for-service reimbursement model will also be required to be approved by Medicaid, which will necessitate their compliance with extensive administrative regulations, and their use and administration of new billing systems and software, both of which may require additional and unanticipated financial expenditures.

b. The Legislature therefore declares that it is both reasonable and necessary, and in the public interest, for the State to establish procedures for monitoring the transition by community-based providers to a fee-for-service reimbursement system, in order to ensure that reimbursement rates established under the new fee-for-service system are adequate, that client access to care is maintained, and that continuity of care and quality of care are not harmed as a result of the transition.

2. a. There are hereby established two advisory boards to be known as the Independent Mental Health and Addiction Fee-for-Service Transition Oversight Board and the Independent Developmental Disability Fee-for-Service Transition Oversight Board. The purpose of the Independent Mental Health and Addiction Fee-for-Service Transition Oversight Board shall be to monitor and oversee the transition by DMHAS-contracted providers to a fee-for-service reimbursement system; determine the adequacy of fee-for-service reimbursement rates; and provide recommendations to better facilitate the transition. The purpose of the Independent Developmental Disability Fee-for-Service Transition Oversight Board shall be to monitor and oversee the transition by DDD-contracted providers to a fee-for-service reimbursement system; determine the adequacy of fee-for-service reimbursement rates; and provide recommendations to better facilitate the transition.

b. The Independent Mental Health and Addiction Fee-for-Service Transition Oversight Board shall be comprised of 13 members, appointed by the Governor, as follows:

(1) two representatives of provider entities that receive State funds for mental health services;

(2) two representatives of provider entities that receive State funds for substance use disorder treatment services;

(3) a certified public accountant, upon the recommendation of the New Jersey Society of Certified Public Accountants (NJCPA);

(4) a current consumer of State-funded mental health services, or the parent or guardian of such consumer;

(5) a current consumer of State-funded substance use disorder treatment services, or the parent or guardian of such consumer;

(6) one person upon the recommendation of the Mental Health Association in New Jersey;

(7) one person upon the recommendation of the New Jersey chapter of the National Alliance on Mental Illness (NAMI);

(8) one person upon the recommendation of the New Jersey Association of Mental Health and Addiction Agencies (NJAMHAA);

(9) one person upon the recommendation of the New Jersey Psychiatric Rehabilitation Association;

(10) one person upon the recommendation of the New Jersey Hospital Association; and

(11) a member of the New Jersey Association of County Mental Health Administrators.

c. The Independent Developmental Disability Fee-for-Service Transition Oversight Board shall be comprised of 11 members, appointed by the Governor, as follows:

(1) two representatives of provider entities that receive State funds for developmental disability services;

(2) a certified public accountant, upon the recommendation of the New Jersey Society of Certified Public Accountants (NJCPA);

(3) a current consumer of State-funded developmental disability services, or the parent or guardian of such consumer;

(4) one person on the recommendation of the Alliance for the Betterment of Citizens with Disabilities (ABCD);

(5) one person on the recommendation of the Arc of New Jersey;

(6) one person on the recommendation of Autism New Jersey;

(7) one person on the recommendation of the Developmental Disabilities Association of New Jersey;

(8) one person on the recommendation of the New Jersey Association of Community Providers (NJACP);

(9) one person on the recommendation of the New Jersey Council on Developmental Disabilities (NJCDD); and

(10) one person on the recommendation of the Boggs Center on Developmental Disabilities at Robert Wood Johnson Medical School.

d. The members of the boards shall be appointed within 45 days after the effective date of this act, and each board shall hold its initial organizational meeting as soon as practicable, but no later than 30 days, after the appointment of its members. Each board shall select a chairperson from among its members, and shall meet and hold hearings at such places and times as the chairperson may designate. The chairperson may appoint a secretary who need not be a board member.

e. The members of the boards shall serve without compensation, but may be reimbursed for travel and other necessary expenses incurred in the performance of their duties, within the limits of funds appropriated or otherwise made available to each board for its purposes.

f. The Department of Human Services shall provide professional and clerical staff to the boards as may be necessary for each board's purposes. Each board shall also be entitled to call upon the services of any other State, county, or municipal department, board, commission, or agency, as may be available to it for its purposes.

g. In executing its duties under this act, each board shall consult with the providers and their clients who are being affected by the transition to a fee-for-service reimbursement model.

h. Each board may solicit and receive grants or other funds that are made available for its purposes by any governmental, public, private, not-for-profit, or for-profit agency, including funds that are made available under any federal or State law, regulation, or program.

3. a. Each board shall evaluate and report on the status and effects of the transition by community-based providers to a fee-for-service reimbursement model, in accordance with the provisions of this section. Each board's evaluation of the transition shall primarily focus on its effects on access to care, continuity of care, and quality of care. In order to determine the relationship between the transition to fee-for-service on these measures, each board shall consider information included in reports issued by the selected contractor pursuant to subsection c. of section 4 of this act, and may also independently evaluate providers' costs, revenues, revenue shortfalls, and other needs including technical assistance, training, and business infrastructure needs that are affected by the transition, and how these factors affect providers' ability to serve their clients. Each board may make recommendations to the contractor selected pursuant to section 4 of this act with regard to its evaluation.

b. Each board shall submit a written status report to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Governor, and to the Department of Human Services, at the following intervals: (1) an initial status report shall be submitted six months after the board's organizational meeting; (2) an interim status report shall be submitted one year after the board's organizational meeting; and (3) a final status report shall be submitted two years after the board's organizational meeting.

Each written report prepared pursuant to this subsection shall:

(1) evaluate the adequacy of fee-for-service reimbursement rates as of the time of the reporting;

(2) identify the positive and negative effects revealed during the reporting period that have been associated with the transition to a fee-for-service reimbursement system;

(3) identify the number and percentage of community-based mental health, substance use disorder, and developmental disability treatment providers that are having difficulties with the transition;

(4) identify any specific problems that are hampering the transition;

(5) identify any actions that have been undertaken by any entity during the reporting period to counteract or remedy the negative effects identified pursuant to paragraph (2) of this subsection, or the specific problems identified pursuant to paragraph (4) of this subsection;

(6) indicate the number and percentage of consumers who have been served by community mental health, substance use disorder, and developmental disability treatment providers during the course of the reporting period; identify whether the number or frequency of consumer contacts has been reduced as a result of the transition; and approximate the number and percentage of consumers who have been unable to obtain service as a result of the transition to a fee-for-service model; and

(7) provide recommendations for the modification of applicable reimbursement rate schedules, and recommendations for other actions that could be undertaken to better facilitate the transition or otherwise ease the burden on providers, and to avoid or redress any unintended lapses in service provision or reductions in service quality or capabilities that may result from the transition.

c. Each board shall dissolve 30 days after it submits its final report pursuant to paragraph (3) of subsection b. of this section.

4. a. The Division of Purchase and Property in the Department of the Treasury, in consultation with the Department of Human Services, shall issue a request for proposals to perform two separate independent evaluations of the transitions of the mental health and substance use disorders treatment service system and the developmental disability services system to fee-for-service. The evaluations shall assess the impact of each transition to fee-for-service and the particular rates adopted in the fee-for-service system on the financial sustainability of provider agencies, and on clients' access to care, continuity of care, and quality of care. Proposals shall be submitted no later than April 1, 2017. The criteria for selection shall include, but need not be limited to, demonstrated competence in developing and evaluating reimbursement systems for state health care programs. The division shall review all submissions and select one proposal, with the contract to begin no later than July 1, 2017.

b. The selected contractor shall be responsible for evaluating, on a continual basis, the impact of the transition of the community-based mental health and substance use disorder treatment services system and the community-based developmental disabilities service system to a fee-for-service reimbursement model and the particular rates adopted in the fee-for-service system on the financial sustainability of provider agencies, and on clients' access to care, continuity of care, and quality of care. The contractor shall conduct its evaluation in accordance with its contract and, to the maximum extent practicable, with the recommendations of the Independent Mental Health and Addiction Fee-for-Service Transition Oversight Board and the Independent Developmental Disability Fee-for-Service Transition Oversight Board established pursuant to section 2 of this act.

c. The contractor shall issue periodic written reports, separately for each of its evaluations, to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the

Governor, the Department of Human Services, the Independent Mental Health and Addiction Fee-for-Service Transition Oversight Board, and the Independent Developmental Disability Fee-for-Service Transition Oversight Board. At a minimum, the contractor shall issue written reports evaluating the transitions for the following reporting periods: (1) the start of the transition through September 30, 2017; (2) October 1, 2017 through December 31, 2017; (3) January 1, 2018 through June 30, 2018; and (4) July 1, 2018 through June 30, 2019. Each report shall be submitted no later than one month following the end of each reporting period. The contract will terminate after the submission of the final report.

5. There are appropriated from the General Fund to the Department of Human Services such amounts as are determined by the Director of the Division of Purchase and Property as are necessary for the performance of the independent evaluation contracts pursuant to section 4 of this act subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury.

6. This act shall take effect immediately, and shall expire on the later of: (1) the 30th day after each board submits its final report pursuant to subsection b. of section 3 of this act, or (2) the 30th day after the contractor submits its final report pursuant to subsection c. of section 4 of this act.

Approved May 11, 2017.