LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 2039

STATE OF NEW JERSEY
218th LEGISLATURE

DATED: APRIL 16, 2018

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
State and Local Government Cost Savings – Decreased Employee Health Insurance Costs	Indeterminate
State Revenue Increase – Penalty Collections	Indeterminate
University Hospital Revenue Decrease – Reduced Payments for Out-Of-Network Services	Indeterminate
Bergen Regional Medical Center Revenue Decrease – Reduced Payments for Out-Of-Network Services	Indeterminate

- The Office of Legislative Services (OLS) notes that the bill 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.

- The OLS notes that enactment of the bill may result in an indeterminate annual decrease in revenue from out-of-network charges to: University Hospital, an independent non-profit

legal entity that is an instrumentality of the State located in Newark; and Bergen Regional Medical Center, a county-owned entity located in Paramus.

- The OLS notes that 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

This bill is entitled the "Out-of-network Consumer Protection, Transparency, Cost Containment and Accountability Act." The bill 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 Branch 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 notes that the enactment of the bill 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.

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: University Hospital, an independent non-profit legal entity that is an instrumentality of the State located in Newark; and Bergen Regional Medical Center, a county-owned entity located in Paramus.

The OLS notes further that 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. 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 practice rules. The rule does not limit the amounts that out-of-network 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 and any entity providing a health benefits plan that is not self-funded. However, other self-funded plans could 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 an earlier version of 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 Benefits Review 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.

However, since insufficient data are available to estimate the impact that limiting certain 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: University Hospital, an independent non-profit legal entity that is an instrumentality of the State located in Newark; and 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 issue a report to the Governor and Legislature and make publicly available, on the department's website, certain information regarding 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 fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).