

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## SENATE, No. 1878

with committee amendments

# STATE OF NEW JERSEY

DATED: MARCH 5, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1878 (1R), with committee amendments.

As amended, this bill, entitled the “New Jersey Health Insurance Premium Security Act,” directs the Commissioner of Banking and Insurance to apply for a federal waiver of certain provisions of the Affordable Care Act to support a reinsurance program to help stabilize premiums in the New Jersey individual health insurance market. If the waiver is granted and the commissioner accepts the waiver, the bill creates a reinsurance plan to be known as the Health Insurance Premium Security Plan.

The bill, as amended, directs the commissioner to apply for a waiver from the United States Secretary of Health and Human Services with respect to health insurance coverage in the State for a plan year beginning on or after January 1, 2019. The commissioner, in consultation with the board of directors of the New Jersey Individual Health Coverage Program (the “board”), is directed to implement the plan to meet the waiver requirements in a manner consistent with federal and State law as approved by the United States Secretary of Health and Human Services. If the waiver is obtained, the commissioner may accept the waiver, so long as the commissioner determines that implementation of the plan will benefit policyholders and is expected to stabilize or reduce individual health insurance premiums. The commissioner is directed to administer the program, and is authorized to contract for actuarial services as necessary to implement the waiver application required pursuant to the bill.

The bill directs the commissioner to create payment parameters, including an attachment point, reinsurance cap, and coinsurance rate, which govern the plan’s operation. The attachment point for the plan is the threshold amount for claims costs incurred by an eligible carrier for an enrolled individual's covered benefits in a benefit year, beyond which the claims costs for benefits are eligible for reinsurance payments. The attachment point is to be set by the commissioner, but shall not exceed the reinsurance cap.

The coinsurance rate for the plan is the rate at which the board will reimburse an eligible carrier for claims incurred for an enrolled individual's covered benefits in a benefit year above the attachment point and below the reinsurance cap. The coinsurance rate shall be set by the commissioner.

The reinsurance cap is the threshold amount for claims costs incurred by an eligible carrier for an enrolled individual's covered benefits, above which the claims costs for benefits are no longer eligible for reinsurance payments. The reinsurance cap shall be set by the commissioner.

If the claims costs do not exceed the attachment point, a reinsurance payment shall not be made. If the claims costs exceed the attachment point, the reinsurance payment shall be calculated as the product of the coinsurance rate and the lesser of:

- (1) the claims costs minus the attachment point; or
- (2) the reinsurance cap minus the attachment point.

The bill provides that, if the amount in the fund is not anticipated to be adequate to fully fund the approved payment parameters as of July 1 of the year before the applicable benefit, the commissioner shall revise the payment parameters within the available appropriations. The commissioner must permit an eligible carrier to revise an applicable rate filing based on the final payment parameters for the next benefit year.

The commissioner is also directed to undertake certain auditing and review functions to ensure the plan operates pursuant to the bill's provisions.

The bill creates the New Jersey Health Insurance Premium Security Fund in the State Treasury for the purposes of the bill. This fund is to be the repository for monies collected pursuant to this bill and other monies received as grants or otherwise appropriated for the purposes of the bill.

For the purpose of providing the funds necessary to carry out the provisions of this bill, each carrier and third party administrator shall be assessed by the commissioner in proportion to the claims paid by the carrier or processed by the third party administrator, as appropriate, for covered persons in this State. The proceeds therefrom are to be deposited into the fund and the amount collected is not to exceed the amount required to fund the plan, less any amounts in the fund received from other sources.

The commissioner must also report on the department's website certain information regarding the operation of the plan, including the results of an audit performed by an independent certified public accountant for each benefit year.

The bill also includes a penalty provision, which penalizes any carrier that violates any provision of the bill, in an amount not less than \$1,000 nor more than \$10,000 for each day the carrier is in violation of the bill.

If the State does not obtain a federal waiver to support reinsurance payments to health insurance carriers with respect to claims for eligible individuals, or if the commissioner does not accept the waiver, the provisions of the bill will remain inoperative. The bill's effective date reflects this provision.

#### COMMITTEE AMENDMENTS:

The committee amended the bill as follows:

- Revise the definition of “carrier” to mean any entity subject to the insurance laws and regulations of this State, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefits plan, including a sickness and accident insurance company, a health maintenance organization, a hospital, medical or health service corporation, or any other entity providing a health benefits plan;
- Provide that the commissioner may accept the federal waiver provided for under the bill, so long as the commissioner determines that implementation of the plan: (1) will be beneficial to policyholders; and (2) is expected to stabilize or reduce premiums in the individual health insurance market; and
- Provide that documents, materials or other information that are in the possession or control of the commissioner and are obtained by or disclosed to the commissioner, the board, or any other person in the course of an examination or investigation made pursuant to the bill, are confidential by law and privileged and shall not be subject to disclosure or dissemination under P.L.1963, c.71 (C.47:1A-1 et seq.), or any other act. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the carrier.

#### FISCAL IMPACT:

The Office of Legislative Services (OLS) notes that the bill will result in a one-time indeterminate increase in State administrative expenditures. The Department of Banking and Insurance (DOBI) will incur the additional expenses in applying for a waiver from the United States Secretary of Health and Human Services whose approval would be a necessary precondition to implementing the reinsurance program envisioned by the bill.

Assuming that the federal government grants the waiver and that DOBI elects to implement the reinsurance program, the bill will have four additional indeterminate annual fiscal impacts.

First, the bill will result in an indeterminate annual increase in State administrative expenditures tied to DOBI's implementation of the program, including the cost of preparing the required annual reports. Absent information from DOBI, however, the OLS cannot anticipate the resources the department will allocate to operating the program.

Second, the bill will result in an indeterminate annual State expenditure increase equal to the amounts disbursed from the bill's New Jersey Health Insurance Premium Security Fund to make reinsurance payments to eligible insurance carriers. The OLS cannot quantify the amount of annual reinsurance payments because the bill grants DOBI substantial discretion in establishing payment calculation parameters and the OLS cannot anticipate the department's decisions in that regard.

Third, the bill will result in an indeterminate annual State revenue increase equal to the amounts deposited into the New Jersey Health Insurance Premium Security Fund; including collections from the annual assessment on insurance carriers and third-party administrators, any State or federal funds allocated to the reinsurance program, and any penalty payments by insurance carriers. The OLS notes that DOBI is to set the annual assessment imposed on insurance carriers and third-party administrators at a level so that fund balances from all sources will not exceed the cost of the reinsurance program. Accordingly, the bill's indeterminate annual increases in State expenditures and revenue will partially, if not fully, offset one another.

Fourth, the bill may also have an indeterminate impact on annual employee health benefits expenditures of the State and local government entities to the extent that the bill's assessment may cause insurance carriers and third-party administrators to alter the amounts they charge to the State and local government entities for their services. Given that the rate of the assessment is to be determined by DOBI, the OLS cannot determine the magnitude of any related changes in annual employee health benefit expenditures of the State and local government entities.