

# LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

**SENATE, No. 2559**

## **STATE OF NEW JERSEY 219th LEGISLATURE**

DATED: MARCH 30, 2021

### **SUMMARY**

- Synopsis:** Revises requirements for health insurance providers and Medicaid to cover services provided using telemedicine and telehealth; appropriates \$5 million.
- Type of Impact:** State expenditure increase from the General Fund.
- Agencies Affected:** Department of Human Services; Department of Banking and Insurance; Department of the Treasury; Department of Children and Families.

#### **Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Annual</u></b>
<b>State Cost (Medicaid)</b>	Indeterminate Increase
<b>State Cost (Appropriation)</b>	\$5,000,000
<b>State Cost (SEHBP/SHBP)</b>	\$5,000,000 - \$50,000,000
<b>State Revenue</b>	Indeterminate Increase

- The Office of Legislative Services (OLS) finds that State expenditures for monthly capitation payments made to State-contracted Medicaid managed care organizations (MCOs) for the cost of services provided to New Jersey FamilyCare beneficiaries will increase by an indeterminate amount due to the bill's requirement that New Jersey FamilyCare reimburse for telemedicine and telehealth services on the same basis as, and at a provider reimbursement rate that equals, the rate paid when these services are delivered in person, provided the services are otherwise covered when provided in person in New Jersey. However, increased State expenditures for NJ FamilyCare capitation payments will be eligible for additional federal Medicaid matching funds, thereby increasing State revenues, albeit by an indeterminate amount.
- The bill additionally appropriates \$5 million from the State General Fund to the Department of Human Services (DHS) to establish a program under which healthcare providers who provide telemedicine or telehealth services to NJ FamilyCare enrollees can be reimbursed for

the cost of providing temporary or ongoing access to the devices, technologies, and programs that enable those patients, who would not otherwise have access to such technology, to receive telemedicine or telehealth services.

- Although it is not possible to precisely estimate the impact of the bill's requirements on the School Employees' Health Benefits Program and the State Health Benefits Program (SEHBP/SHBP), the Department of the Treasury projects that, by increasing the cost of each telemedicine visit and broadening telemedicine coverage, this bill will increase annual costs to the SEHBP and the SHBP in a range between \$5 million and \$50 million.

## **BILL DESCRIPTION**

This bill revises the State's telemedicine and telehealth law to require health benefits plans, Medicaid and NJ FamilyCare, and the State Health Benefits Program (SHBP) and School Employees' Health Benefits Program (SEHBP), to provide expanded coverage for services provided using telemedicine and telehealth.

Specifically, the bill requires that reimbursement for telemedicine and telehealth services for physical and behavioral health care be equal to the reimbursement rate for the same services when they are provided in person, provided the services are otherwise covered when provided in person in New Jersey. Current law provides telemedicine and telehealth services may be reimbursed up to the amount at which the service would be reimbursed if provided in person. However, if a telemedicine or telehealth organization does not provide a given service on an in-person basis in New Jersey, the coverage parity requirements of the bill will not apply.

The bill also prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from imposing "place of service" requirements on providers or on patients in connection with telemedicine and telehealth services.

The bill prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from placing restrictions on the electronic or technological platform used to provide telemedicine and telehealth if the federal Centers for Medicare and Medicaid Services has authorized the use of the platform to provide services using telemedicine and telehealth under the federal Medicare program.

The bill further prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from denying coverage for, or refusing to provide reimbursement for, routine patient monitoring performed using telemedicine and telehealth, including remote monitoring of a patient's vital signs and routine check-ins with the patient to monitor the patient's status and condition, if coverage and reimbursement would be provided if those services are provided in person. The bill additionally prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from imposing more stringent utilization management requirements on the provision of services using telemedicine and telehealth than apply when those services are provided in person.

The bill provides for expanded use of asynchronous store-and-forward technologies, with or without the use of real-time, two-way audio, to provide services using telemedicine and telehealth. Current law provides that asynchronous store-and-forward technologies may generally be used to transmit diagnostics, data, and medical information, and may additionally be used in connection with interactive, real-time, two-way audio, without video capabilities, if, after accessing and reviewing the patient's medical records, the provider determines that the provider is able to meet the same standard of care as if the health care services were being provided in person. The bill

further provides that no medications may be prescribed based solely on responses included in an online static questionnaire.

The bill revises these requirements to provide that telemedicine and telehealth may be provided using asynchronous store-and-forward technologies any time the provider determines that the in-person standard of care can be met using those technologies.

This bill additionally revises the current requirement that the health care provider provide the patient with the provider's identity, professional credentials, and contact information at the time services are provided, to require that this information be provided at the time the patient schedules the telemedicine or telehealth encounter, if the provider is known at that time. If the provider is not known, the information is to be provided at the time of the encounter, but the patient is to be informed at the time of scheduling that the provider may not be a physician. At the time the provider initiates the telemedicine or telehealth encounter, if the provider is not a physician and the patient requests that the encounter be with a physician, the provider will be required to assist the patient in scheduling a telemedicine or telehealth encounter with a physician.

Current law requires that the patient's medical information be forwarded to the patient's primary care provider or another health care provider, if so requested by the patient. This bill additionally requires that the patient's medical information be recorded in the patient's electronic health record.

The bill also adds language clarifying that the provider is to assist the patient in finding a primary care provider if so requested by the patient, and clarifying that, when scheduling the patient for appropriate follow-up services, follow-up services may include in-person services.

The bill provides that, in the event that a mental health screener, screening service, or screening psychiatrist determines that an in-person psychiatric evaluation is necessary to meet standard of care requirements, or in the event that a patient requests an in-person psychiatric evaluation in lieu of a psychiatric evaluation performed using telemedicine or telehealth, the mental health screener, screening service, or screening psychiatrist may nevertheless perform a psychiatric evaluation using telemedicine and telehealth if it is determined that the patient cannot be scheduled for an in-person psychiatric evaluation within the next 24 hours. Nothing in the bill will prevent a patient who receives a psychiatric evaluation using telemedicine and telehealth from receiving a subsequent, in-person psychiatric evaluation in connection with the same treatment event, provided that the subsequent in-person psychiatric evaluation is necessary to meet standard of care requirements for that patient.

Pursuant to this bill, the Department of Banking and Insurance (DOBI) is to conduct a study as to whether telemedicine and telehealth may be used to satisfy network adequacy requirements for health benefits plans that are subject to those requirements. The DOBI will be required to submit to the Governor and the Legislature, within one year after the effective date of the bill, a report that includes the commissioner's findings and recommendations.

The bill includes a \$5 million appropriation from the General Fund to the Department of Human Services to establish a program under which health care providers that provide telemedicine or telehealth services to patients enrolled in the State Medicaid program can be reimbursed for the costs of providing those patients with access, on a temporary or permanent basis, to appropriate devices, programs, and technologies necessary to enable patients who do not ordinarily have access to those devices, programs, or technologies. The DHS will be required to establish standards and protocols for health care providers to apply for reimbursement under the program established pursuant to this section. The bill specifies that the appropriated funds may only be expended on acquiring electronic communication and information devices, programs, and technologies for use by patients, and in no case are the funds to be used to provide any form of direct reimbursement to an individual provider for physical or behavioral health care services provided to a patient using telemedicine or telehealth, or to provide reimbursement for any

electronic communication or information device, program, or technology for which payment may be made or covered, or for which reimbursement is provided, by a health benefits plan or by any other State or federal program. The bill also specifies that nothing in its provisions is to be construed to require a health benefits plan, the SHBP, or the SEHBP to provide reimbursement for acquiring or providing access to any electronic communication or information device, program, or technology for which coverage would not ordinarily be provided under the plan or contract.

The provisions of the bill revising the coverage mandates for telemedicine and telehealth will not take effect until January 1, 2022, and will apply to all plans and contracts issued or renewed after that date. The remainder of the bill will take effect immediately.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

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

#### New Jersey FamilyCare

The OLS finds that State expenditures for monthly capitation payments made to State-contracted Medicaid managed care organizations (MCOs) for the cost of services provided to New Jersey FamilyCare beneficiaries will increase by an indeterminate amount due to the bill's requirement that New Jersey FamilyCare reimburse for telemedicine and telehealth services on the same basis as, and at a provider reimbursement rate that equals, the rate paid when these services are delivered in person, provided the services are otherwise covered when provided in person in New Jersey. Under current law, NJ FamilyCare reimburses for telemedicine and telehealth services up to the amount at which such services would be reimbursed if provided during an in-person encounter.

Currently, approximately 95 percent of NJ FamilyCare beneficiaries are enrolled with a Medicaid MCO, under contract with the Division of Medical Assistance and Health Services (DMAHS) in the DHS. Pursuant to the Medicaid MCO contract, the DMAHS makes a prepaid monthly capitation payment to the Medicaid MCOs for each NJ FamilyCare enrollee, in exchange for the provision of a package of covered health benefits. Moreover, the OLS does not have access to the specific reimbursement rate paid by each Medicaid MCO to providers of telemedicine and telehealth services. To the extent that Medicaid MCO reimbursement rates for telemedicine and telehealth services are lower than the rates paid for the same services provided on an in-person basis, costs to the Medicaid MCOs will increase under this bill. The OLS assumes that the Medicaid MCOs will pass these increased costs for telemedicine and telehealth services along to the State in the form of higher capitation payments in the calendar year following the bill's enactment. However, increased State expenditures for NJ FamilyCare capitation payments will be eligible for additional federal Medicaid matching funds, thereby increasing State revenues, albeit by an indeterminate amount.

The bill additionally appropriates \$5 million from the General Fund to the DHS to establish a program under which healthcare providers who provide telemedicine or telehealth services to NJ FamilyCare enrollees can be reimbursed for the cost of providing temporary or ongoing access to the devices, technologies, and programs that enable those patients, who would not otherwise have access to such technology, to receive telemedicine or telehealth services. The bill also directs the DHS to establish protocols by which providers may apply for reimbursement under this program;

the OLS assumes that the DHS will base these protocols on those established for other DHS grant programs, thereby minimizing additional costs to the department.

### SHBP/SEHBP

Pursuant to current State law, the SEHBP and the SHBP programs provide coverage of telemedicine services without cost sharing and copayment requirements during, and for up to 90 days after the end of, the public health emergency declared pursuant to Executive Order No. 103 of 2020. According to informal information from the Division of Pensions and Benefits, the SEHBP and SHBP programs currently reimburse providers of telemedicine services at a rate consistent with rates paid for in-person services delivered by an in-network provider.

Although it is not possible to precisely estimate the impact of the bill's requirements on the SEHBP and the SHBP, the Department of the Treasury projects that, by increasing the cost of each telemedicine visit and broadening telemedicine coverage, this bill will increase annual costs to the SEHBP and the SHBP in a range between \$5 million and \$50 million. Moreover, because the SEHBP and the SHBP are secondary payers to the Medicare program, for retired SEHBP/SHBP enrollees who are also enrolled in Medicare, if the bill expressly requires coverage of services that are not currently covered by Medicare, this bill could result in additional costs to the State plans.

### Department of Banking and Insurance

The OLS concludes that the DOBI would utilize current operational budget resources in order to promulgate regulations governing implementation of the requirements under this bill, and to conduct a study as to whether telemedicine and telehealth may be used to satisfy network adequacy requirements for health benefits plans that are subject to those requirements. The DOBI is to submit to the Governor and the Legislature, within one year after the effective date of the bill, a report concerning the Commissioner's findings and recommendations.

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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.).