

LEGISLATIVE FISCAL ESTIMATE

[Fourth Reprint]

SENATE, No. 2559

STATE OF NEW JERSEY 219th LEGISLATURE

DATED: JUNE 29, 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

Fiscal Impact	<u>Annual</u>
State Cost (Medicaid)	Indeterminate Increase
State Cost (Appropriation)	\$5,000,000
State Cost (SEHBP/SHBP)	\$5,000,000 - \$50,000,000
State Cost (DOBI)	No Impact
State Revenue	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 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.

The bill stipulates that, 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 coverage parity requirements, moreover, will not apply in the case of a health care service provided through real-time, two way audio without a video component, including an audio-only telephone conversation. Rather, the reimbursement rate in such a case is to be determined under the contract between the provider and the carrier, provided that the contracted rate is at least 50 percent of the reimbursement rate for the same service when 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 also prohibits health benefits plans, Medicaid and NJ FamilyCare, and the State Health Benefits Program (SHBP) and School Employees' Health Benefits Program (SEHBP) from imposing "place of service" requirements on providers or on patients in connection with telemedicine and telehealth services.

The bill further prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from limiting coverage only to services provided by select third party telemedicine or telehealth providers. 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 and from imposing other requirements for the use of telemedicine or telehealth that are more restrictive than the requirements that apply when the service is provided in person.

Under the bill, health care providers are specifically prohibited from requiring a patient to use telemedicine or telehealth in lieu of receiving services from an in-network provider.

The bill also 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 who are 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 Commissioner of Human Services will be required to establish standards and protocols for health care providers to apply for

reimbursement under the program. The bill specifies that nothing in its provisions is to be construed to require a health benefits plan, the State Health Benefits Plan, or the School Employees' Health Benefits plan 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.

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.

The bill does provide exceptions to the coverage parity requirement in certain cases, such as a physical health care service provided through real-time, two way audio without a video component, including an audio-only telephone conversation. Reimbursement in such a case would be determined by the rate established in the contract between NJ FamilyCare and the provider.

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 may 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.

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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.).