

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 5123
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: MARCH 25, 2021

SUMMARY

- Synopsis:** Requires group homes and other community-based residential programs, as condition of licensure, to implement policies to prevent social isolation of residents.
- Type of Impact:** Annual increase in State costs and revenues.
- Agencies Affected:** Department of Human Services.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Cost Increase	Indeterminate
State Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) concludes that the bill may result in annual, potentially significant, cost increases to the Department of Human Services (DHS) from distributing State funds, upon request, to assist community-based residential programs in acquiring the communicative technologies and accessories needed to prevent social isolation of residents. The department will also incur expenses to inspect community-based residences, investigate complaints, and undertake disciplinary action when necessary.
- The magnitude of the State cost increase is indeterminate because it is not known how prevalent social isolation prevention policies currently are in community-based residential programs or how many residences will request funding from the State. The OLS notes that the bill does not include a State appropriation. However, to the extent that eligible State expenditures will be matched with federal Medicaid funds, particularly through the Supports Program or the Community Care Program, the State’s revenues will increase and the use of State funds for these costs will decrease.
- The State may realize an indeterminate amount of revenue from the collection of fines from programs that violate the provisions of the bill. The amount of revenue collected will be determined by the penalty schedule to be established by the DHS and the nature and number

of infractions that may be committed. However, these variables are not yet known and as such, the OLS cannot quantify the amount of revenue generated from penalties and fines under the bill.

- The OLS notes one possible indirect outcome of the bill's adoption. Expenses incurred by the community-based residential programs to comply with the bill's provisions may put upward pressure on reimbursement rates established under the Medicaid program. Any increase in community-based residential program rates would also increase annual State Medicaid expenditures and federal Medicaid matching funds.

BILL DESCRIPTION

This bill would require the operator of each community-based residential program in the State, as a condition of licensure, to adopt and implement written policies and have appropriate technology, staff, and other capabilities in place, to prevent the social isolation of residents at all times during operation. Community-based residential program is defined to include a developmental center, group home, supervised apartment, community care residence, or any other residential setting for individuals with developmental disabilities, which is licensed and regulated by the DHS.

The bill would require the DHS to distribute available federal and State funds, upon request, to assist community-based residential programs in acquiring the communicative technologies and accessories needed for the bill's purposes.

The bill further requires the Division of Developmental Disabilities in the DHS, to the extent consistent with federal law, to authorize a resident who is enrolled in the division's Supports Program or Community Care Program, which is operated pursuant to the State's approved Comprehensive Medicaid Waiver, to utilize funds from the Supports Program or Community Care Program, which have been budgeted for the purchase of goods and services, to finance the purchase of computers, mobile phones, and other equipment and accessories that may facilitate the resident's ability to engage in electronic or virtual contact, communications, and religious and recreational activities with other residents, and with family members, friends, and other external support systems. The Commissioner of Human Services will be required to apply for such State plan amendments or waivers as may be necessary to implement the bill's provisions, in this regard, and secure federal financial participation for State Medicaid expenditures under the federal Medicaid program.

The bill would require the DHS, when conducting an inspection of a community-based residence, to determine whether the residence is in compliance with the bill's provisions. In addition to any other applicable penalties provided by law, the licensed operator of a community-based residence that fails to comply with the bill's provisions will be liable to pay an administrative penalty and may be subject to adverse licensure action. The amount of the administrative penalty imposed is to be determined in accordance with a schedule established by DHS regulation, which schedule is to provide for an enhanced administrative penalty in the case of a repeat or ongoing violation.

The bill would further specify that, whenever a complaint received or an investigation conducted by Disability Rights New Jersey discloses evidence indicating that a community-based residence has failed to comply with the bill's provisions or has failed to properly implement the policies, protocols, and procedures adopted pursuant thereto, the executive director will be required to refer the matter to the DHS for disciplinary action and,

notwithstanding such referral, may take any other appropriate investigatory or enforcement action, with respect to the matter, as may be authorized by law.

The bill would require the DHS to adopt rules and regulations to implement the bill, on an emergency basis and in consultation with the Department of Health, within 60 days after the bill's effective date. The rules and regulations are to include, but need not be limited to, minimum standards for social isolation prevention policies adopted under the bill and a penalty schedule to be used when penalizing violations of the bill. The emergency rules and regulations are to remain in effect for a period of not more than one year before being subject to re-adoption or amendment.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that the bill may result in annual, potentially significant, cost increases to the DHS from distributing State funds, upon request, to assist community-based residential programs in acquiring the communicative technologies and accessories needed to prevent social isolation of residents. The department will also incur expenses to inspect community-based residences, investigate complaints, and undertake disciplinary action when necessary.

The magnitude of the State cost increase is indeterminate because it is not known how prevalent social isolation prevention policies currently are in community-based residential programs or how many residences will request funding from the State. The OLS notes that the bill does not include a State appropriation. However, to the extent that eligible State expenditures will be matched with federal Medicaid funds, particularly through the Supports Program or the Community Care Program, the State's revenues will increase and the use of State funds for these costs will decrease. Medicaid generally covers assistive technology, which describes a broad range of medical equipment and devices that can enhance the functional abilities of individuals with disabilities. It is likely, however, that the State will not receive approval to cover any of the devices noted under the bill that are not deemed medically necessary.

The OLS also assumes that the department will realize certain minimal expenses to support, monitor, and enforce the provisions of the bill regarding the adoption and implementation of policies by community-based residential programs to prevent the social isolation of residents. Currently, the Office of Program Integrity and Accountability (OPIA) in the DHS is responsible for incident investigations and licensing of department programs and facilities, such as those programs discussed in the bill. The Office of Licensing, within the OPIA, is charged with ensuring that all persons receiving services under the DHS are afforded certain rights, including the right to interaction with others. As such, the OLS assumes that some of the bill's provisions will overlap with the existing duties of OPIA, which should help minimize costs.

The State may also realize an indeterminate amount of revenue from the collection of fines from programs that violate the provisions of the bill. The amount of revenue collected will be determined by the penalty schedule to be established by the DHS and the nature and number of infractions that may be committed. However, these variables are not yet known and as such, the OLS cannot quantify the amount of revenue generated from penalties and fines under the bill. However, the OLS assumes that such revenue will not be significant.

The OLS notes that the bill may also indirectly affect annual State Medicaid expenditures. Community-based residential programs will likely incur costs to comply with the provisions of the bill, even if State and federal resources are available. While any change in community-based residential programs operating expenditures does not automatically result in corresponding modifications to Medicaid rates, significant changes would likely apply upward pressure on such rates and may lead to adjustments. Any increase in such program rates would also increase annual State Medicaid expenditures and federal Medicaid matching funds, which will increase State revenues.

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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.).