LEGISLATIVE FISCAL ESTIMATE

[Fifth Reprint]

SENATE, No. 2559

STATE OF NEW JERSEY
219th LEGISLATURE

DATED: DECEMBER 22, 2021

SUMMARY

Synopsis: Revises requirements for health insurance providers and Medicaid to cover services provided using telemedicine and telehealth; appropriates $500,000.

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; Department of Health.

Office of Legislative Services Estimate

Fiscal Impact	Year 1	Year 2	Year 3
State Cost (Medicaid)	Indeterminate Increase	Indeterminate Increase	No Impact
State Cost (Appropriation)	$500,000	-	-
State Cost (SEHBP/SHBP)	$5,000,000 - $50,000,000	$5,000,000 - $50,000,000	No Impact
State Cost (DOBI)	No Impact	No Impact	No Impact
State Revenue	Indeterminate Increase	Indeterminate Increase	Marginal 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 through calendar year 2023, due to the bill's requirement that New Jersey FamilyCare reimburse for telemedicine and telehealth services 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 during the time in which the coverage parity provision is in effect, thereby increasing State revenues, albeit by an indeterminate amount.

- The bill additionally appropriates $500,000 from the State General Fund to the Department of Health (DOH) to study whether, or to what extent, health care services provided via telemedicine and telehealth should be reimbursed at the same provider reimbursement rate as health services provided on an in-person basis.

- Although it is not possible to precisely estimate the impact of the bill's requirements on the School Employees' Health Benefits Program (SEHBP) and the State Health Benefits Program (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 provided on an in-person basis, as long as the services are otherwise covered when provided in person in New Jersey. This coverage parity mandate expires after December 31, 2023. 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 physical 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 for a physical health care service delivered via telemedicine or telehealth is at least 50 percent of the reimbursement rate for the same service when provided in person. By contrast, the bill requires that provider reimbursement rates for behavioral health services provided through real-time, two-way audio without a video component, including an audio-only telephone conversation, be equal to the reimbursement rates for such services when provided on an in-person basis.

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, except to ensure that the services in question meet the same standard of care as would be provided on an in-person basis.

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. 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 additionally requires carriers to cover, without any cost-sharing or medical management requirements, COVID testing ordered by a health care practitioner, as well as items and services provided during a health care practitioner visit, provided such items and services are related to the administration of the test or the evaluation of an individual's need for a test. This requirement applies to both in-person visits with a health care practitioner, and to telemedicine and telehealth encounters. These requirements would apply to the SHBP/SEHBP, and to insurance companies, health service corporations, hospital service corporations, medical service corporations, or health maintenance organizations authorized to issue health benefits plans in New Jersey. Currently, the SHBP/SEHBP provides COVID testing services at no cost to members and will continue to do so as long as the federal state of emergency, declared in response to the COVID pandemic, remains in place.

The bill also includes a $500,000 appropriation from the General Fund to the DOH for the department to conduct, or contract with a third party vendor to lead, a study that examines whether, or the extent to which, coverage for telemedicine and telehealth services should be covered at a provider reimbursement rate that equals the reimbursement rate paid for the same health care services when provided on an in-person basis. The department is further directed to evaluate whether health benefits plans operating in the State should be permitted to utilize telemedicine and telehealth services to satisfy network adequacy requirements. Pursuant to the bill, the department is directed to submit a report to the Governor and the Legislature that outlines the findings of the study and any recommendations that the department may have for legislative or regulatory actions.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

<u>New Jersey FamilyCare</u>

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 through calendar year 2023, due to the bill's requirement that New Jersey FamilyCare reimburse for telemedicine and telehealth services 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, provided that the contracted rate for a physical health care service delivered via telemedicine or telehealth is at least 50 percent of the reimbursement rate for the same service when provided in person. By contrast, the coverage parity requirement established pursuant to the bill includes provider reimbursement rates for behavioral health services provided through real-time, two-way audio without a video component, including an audio-only telephone conversation.

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 $500,000 from the General Fund to the DOH to study whether, or to what extent, health care services provided via telemedicine and telehealth should be covered at a provider reimbursement rate that equals the reimbursement rate paid for the same services provided on an in-person basis. The department also is to evaluate whether health benefits plans operating in the State should be permitted to utilize telemedicine and telehealth services to satisfy network adequacy requirements. Pursuant to the bill, the department is to prepare a report for the Governor and the Legislature that outlines the findings of the study and the department's recommendations for legislative or regulatory actions.

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 federal public health emergency declared in response to the COVID-19 pandemic. 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.).