



**LEGISLATIVE FISCAL ESTIMATE:**

Yes 3/22/2022  
7/5/2022

**VETO MESSAGE:**

No

**GOVERNOR'S PRESS RELEASE ON SIGNING:**

Yes

**FOLLOWING WERE PRINTED:**

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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

end

P.L. 2022, CHAPTER 78, *approved July 29, 2022*  
Assembly, No. 3110 (*Second Reprint*)

1 AN ACT concerning Medicaid reimbursement for brain injury  
2 services and supplementing Title 30 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. The Legislature funds and declares:

8 a. An acquired brain injury is an injury caused by an event,  
9 either internal or external to the injured individual, and does not  
10 include congenital or degenerative disorders, or those injuries  
11 induced by birth trauma. An acquired brain injury can either be  
12 categorized as a traumatic brain injury or non-traumatic brain  
13 injury. A traumatic brain injury is an alteration in brain function  
14 caused by an external force and may be caused by falls, assaults,  
15 motor vehicle accidents, or sports injuries. A non-traumatic brain  
16 injury is damage to the brain caused by internal factors, such as  
17 stroke, aneurysm, tumor, infectious disease, <sup>1</sup>**[and]** or<sup>1</sup> anoxia.

18 b. A severe acquired brain injury can produce an altered or  
19 diminished state of consciousness and result in an impairment of  
20 cognitive abilities or physical functioning. It can also effect  
21 behavioral or emotional functioning. These impairments may be  
22 permanent and cause partial or total functional disability, leading to  
23 the injured individual requiring long-term care supports.

24 c. The State's Medicaid program provides brain injury services  
25 under the Managed Long-Term Supports and Services program,  
26 with the goal of providing community alternatives for individuals  
27 with brain injuries residing in nursing facilities or who are in the  
28 community and at risk for placement in nursing facilities.

29 d. Unlike other Medicaid community-based services,  
30 reimbursement rates for brain injury services have remained static  
31 in recent years despite growing costs, which threatens the ability of  
32 providers to meet the complex health needs of individuals with  
33 brain injuries and provide services within a safe and fulfilling  
34 community environment.

35 e. Despite the similar model of care, reimbursement rates for  
36 services provided to Medicaid beneficiaries with intellectual and  
37 developmental disabilities have not only increased, but have been  
38 restructured to account for adequate consideration for acuity,

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AHU committee amendments adopted May 12, 2022.

<sup>2</sup>Senate floor amendments adopted June 29, 2022.

1 increased minimum wage requirements, and other inflationary  
2 trends that assert pressure on providers' cost structures.

3 f. By failing to receive reimbursement rates that adequately  
4 support services, brain injury providers are being forced to return  
5 this fragile population to more costly institutional care in nursing  
6 home facilities.

7 g. It is imperative that the Legislature take action and increase  
8 Medicaid rates for these essential services and ensure that  
9 individuals with brain injuries can continue to thrive and reach their  
10 optimal recoveries in community settings.

11

12 2. a. Notwithstanding the provisions of any law or regulation to  
13 the contrary, the Medicaid per diem or encounter reimbursement rates  
14 for eligible brain injury services, when such services are provided by  
15 an approved brain injury <sup>1</sup>~~services~~ service<sup>1</sup> provider to a Medicaid  
16 beneficiary requiring treatment for a brain injury, shall be, at  
17 minimum, as follows:

18 (1) The reimbursement rate for Community Residential Services –  
19 Low Supervision provided to a Medicaid beneficiary eligible for brain  
20 injury services shall be equal to the reimbursement rate for Individuals  
21 Supports Services - <sup>2</sup>~~Tier C~~ Tier B<sup>2</sup> provided to a Medicaid  
22 beneficiary eligible for services provided by the Division of  
23 Developmental Disabilities <sup>1</sup>in the Department of Human Services<sup>1</sup> ;

24 (2) The reimbursement rate for Community Residential Services –  
25 Moderate Supervision provided to a Medicaid beneficiary eligible for  
26 brain injury services shall be equal to the reimbursement rate for  
27 Individuals Supports Services - <sup>2</sup>~~Tier D~~ Tier C<sup>2</sup> provided to a  
28 Medicaid beneficiary eligible for services provided by the Division of  
29 Developmental Disabilities <sup>1</sup>in the Department of Human Services<sup>1</sup> ;  
30 <sup>2</sup>and<sup>2</sup>

31 (3) The reimbursement rate for Community Residential Services –  
32 High Supervision provided to a Medicaid beneficiary eligible for brain  
33 injury services shall be equal to the <sup>2</sup>average of the<sup>2</sup> reimbursement  
34 <sup>2</sup>~~rate~~ rates<sup>2</sup> for Individuals Supports Services - <sup>2</sup>~~Tier E~~ Tiers D  
35 and E<sup>2</sup> provided to a Medicaid beneficiary eligible for services  
36 provided by the Division of Developmental Disabilities <sup>1</sup>in the  
37 Department of Human Services<sup>1</sup> <sup>2</sup>]; and

38 (4) The reimbursement rate for Structured Day Program Services  
39 provided to a Medicaid beneficiary eligible for brain injury services  
40 shall be equal to the reimbursement rate for Day Habilitation Services  
41 - Tier D provided to a Medicaid beneficiary eligible for services  
42 provided by the Division of Developmental Disabilities <sup>1</sup>in the  
43 Department of Human Services<sup>1</sup> <sup>2</sup> .

44 b. As used in this section:

45 <sup>1</sup>~~“Medicaid”~~ means the program established pursuant to  
46 P.L.1968, c.413 (C.30:4D-1 et seq.).<sup>1</sup>

47 “Brain injury service” means community-based services,  
48 residential services, day care services, and home care services

1 provided to a Medicaid beneficiary requiring treatment for traumatic  
2 or non-traumatic brain injuries, <sup>1</sup>regardless of<sup>1</sup> whether such services  
3 are provided through the Medicaid fee-for-service delivery system or  
4 the managed care delivery system.

5 “Brain injury service provider” means a facility licensed by the  
6 Division of Disability Services in the Department of Human Services  
7 to provide traumatic or non-traumatic brain injury services.

8 <sup>1</sup>“Medicaid” means the Medicaid program established pursuant to  
9 P.L.1968, c.413 (C.30:4D-1 et seq.).<sup>1</sup>

10 “Non-traumatic brain injury” means an injury to the brain caused  
11 by internal factors, such as stroke, aneurysm, tumor, infectious disease,  
12 <sup>1</sup>**[and]** or<sup>1</sup> anoxia, where continued impairment can be demonstrated.  
13 This term does not include brain dysfunction caused by congenital or  
14 degenerative disorders, birth trauma, or injuries caused by other  
15 circumstances.

16 “Traumatic brain injury” means an injury to the brain caused by a  
17 blow or jolt to the head or a penetrating head injury or neuro-trauma  
18 that disrupts the normal brain function, where continued impairment  
19 can be demonstrated. This term does not include brain dysfunction  
20 caused by congenital or degenerative disorders, birth trauma, or  
21 injuries caused by other circumstances.

22

23 3. The Commissioner of Human Services shall apply for such  
24 State plan amendments or waivers specific to brain injury services,  
25 that currently exist or may arise in the future which affect  
26 reimbursement rates, as may be necessary to implement the  
27 provisions of this act and to secure federal financial participation for  
28 State Medicaid expenditures under the federal Medicaid program.

29

30 4. The Commissioner of Human Services, in accordance with the  
31 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),  
32 shall adopt such rules and regulations as the commissioner deems  
33 necessary to carry out the provisions of this act.

34

35 5. This act shall take effect <sup>2</sup>**[on July 1 next following]** 30  
36 days after<sup>2</sup> the date of enactment and shall apply to services  
37 provided on or after the effective date of this act and to any  
38 Medicaid managed care contract executed or renewed on or after  
39 the effective date of this act.

40

41

42

43

44 Establishes minimum Medicaid reimbursement rates for brain  
45 injury services.

# ASSEMBLY, No. 3110

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED MARCH 7, 2022

**Sponsored by:**

**Assemblywoman MILA M. JASEY**

**District 27 (Essex and Morris)**

**Assemblyman DANIEL R. BENSON**

**District 14 (Mercer and Middlesex)**

**Assemblywoman VERLINA REYNOLDS-JACKSON**

**District 15 (Hunterdon and Mercer)**

**Co-Sponsored by:**

**Assemblywomen Piperno, Eulner, Assemblymen Caputo, Verrelli,  
Assemblywomen Jimenez, Dunn and Assemblyman Barranco**

**SYNOPSIS**

Establishes minimum Medicaid reimbursement rates for brain injury services.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 5/12/2022)

1 AN ACT concerning Medicaid reimbursement for brain injury  
2 services and supplementing Title 30 of the Revised Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6

7 1. The Legislature funds and declares:

8 a. An acquired brain injury is an injury caused by an event,  
9 either internal or external to the injured individual, and does not  
10 include congenital or degenerative disorders, or those injuries  
11 induced by birth trauma. An acquired brain injury can either be  
12 categorized as a traumatic brain injury or non-traumatic brain injury.  
13 A traumatic brain injury is an alteration in brain function caused by  
14 an external force and may be caused by falls, assaults, motor vehicle  
15 accidents, or sports injuries. A non-traumatic brain injury is damage  
16 to the brain caused by internal factors, such as stroke, aneurysm,  
17 tumor, infectious disease, and anoxia.

18 b. A severe acquired brain injury can produce an altered or  
19 diminished state of consciousness and result in an impairment of  
20 cognitive abilities or physical functioning. It can also effect  
21 behavioral or emotional functioning. These impairments may be  
22 permanent and cause partial or total functional disability, leading to  
23 the injured individual requiring long-term care supports.

24 c. The State's Medicaid program provides brain injury services  
25 under the Managed Long-Term Supports and Services program, with  
26 the goal of providing community alternatives for individuals with  
27 brain injuries residing in nursing facilities or who are in the  
28 community and at risk for placement in nursing facilities.

29 d. Unlike other Medicaid community-based services,  
30 reimbursement rates for brain injury services have remained static in  
31 recent years despite growing costs, which threatens the ability of  
32 providers to meet the complex health needs of individuals with brain  
33 injuries and provide services within a safe and fulfilling community  
34 environment.

35 e. Despite the similar model of care, reimbursement rates for  
36 services provided to Medicaid beneficiaries with intellectual and  
37 developmental disabilities have not only increased, but have been  
38 restructured to account for adequate consideration for acuity,  
39 increased minimum wage requirements, and other inflationary trends  
40 that assert pressure on providers' cost structures.

41 f. By failing to receive reimbursement rates that adequately  
42 support services, brain injury providers are being forced to return this  
43 fragile population to more costly institutional care in nursing home  
44 facilities.

45 g. It is imperative that the Legislature take action and increase  
46 Medicaid rates for these essential services and ensure that individuals  
47 with brain injuries can continue to thrive and reach their optimal  
48 recoveries in community settings.

1       2. a. Notwithstanding the provisions of any law or regulation to  
2 the contrary, the Medicaid per diem or encounter reimbursement  
3 rates for eligible brain injury services, when such services are  
4 provided by an approved brain injury services provider to a Medicaid  
5 beneficiary requiring treatment for a brain injury, shall be, at  
6 minimum, as follows:

7       (1) The reimbursement rate for Community Residential Services  
8 – Low Supervision provided to a Medicaid beneficiary eligible for  
9 brain injury services shall be equal to the reimbursement rate for  
10 Individuals Supports Services - Tier C provided to a Medicaid  
11 beneficiary eligible for services provided by the Division of  
12 Developmental Disabilities;

13       (2) The reimbursement rate for Community Residential Services  
14 – Moderate Supervision provided to a Medicaid beneficiary eligible  
15 for brain injury services shall be equal to the reimbursement rate for  
16 Individuals Supports Services - Tier D provided to a Medicaid  
17 beneficiary eligible for services provided by the Division of  
18 Developmental Disabilities;

19       (3) The reimbursement rate for Community Residential Services  
20 – High Supervision provided to a Medicaid beneficiary eligible for  
21 brain injury services shall be equal to the reimbursement rate for  
22 Individuals Supports Services - Tier E provided to a Medicaid  
23 beneficiary eligible for services provided by the Division of  
24 Developmental Disabilities; and

25       (4) The reimbursement rate for Structured Day Program Services  
26 provided to a Medicaid beneficiary eligible for brain injury services  
27 shall be equal to the reimbursement rate for Day Habilitation Services  
28 - Tier D provided to a Medicaid beneficiary eligible for services  
29 provided by the Division of Developmental Disabilities.

30       b. As used in this section:

31       “Medicaid” means the program established pursuant to P.L.1968,  
32 c.413 (C.30:4D-1 et seq.).

33       “Brain injury service” means community-based services,  
34 residential services, day care services, and home care services  
35 provided to a Medicaid beneficiary requiring treatment for traumatic  
36 or non-traumatic brain injuries, whether such services are provided  
37 through the Medicaid fee-for-service delivery system or the managed  
38 care delivery system.

39       “Brain injury service provider” means a facility licensed by the  
40 Division of Disability Services in the Department of Human Services  
41 to provide traumatic or non-traumatic brain injury services.

42       “Non-traumatic brain injury” means an injury to the brain caused  
43 by internal factors, such as stroke, aneurysm, tumor, infectious  
44 disease, and anoxia, where continued impairment can be  
45 demonstrated. This term does not include brain dysfunction caused  
46 by congenital or degenerative disorders, birth trauma, or injuries  
47 caused by other circumstances.

48       “Traumatic brain injury” means an injury to the brain caused by a  
49 blow or jolt to the head or a penetrating head injury or neuro-trauma



1 that disrupts the normal brain function, where continued impairment  
2 can be demonstrated. This term does not include brain dysfunction  
3 caused by congenital or degenerative disorders, birth trauma, or  
4 injuries caused by other circumstances.

5  
6 3. The Commissioner of Human Services shall apply for such State  
7 plan amendments or waivers specific to brain injury services, that  
8 currently exist or may arise in the future which affect reimbursement  
9 rates, as may be necessary to implement the provisions of this act and  
10 to secure federal financial participation for State Medicaid expenditures  
11 under the federal Medicaid program.

12  
13 4. The Commissioner of Human Services, in accordance with the  
14 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),  
15 shall adopt such rules and regulations as the commissioner deems  
16 necessary to carry out the provisions of this act.

17  
18 5. This act shall take effect on July 1 next following the date of  
19 enactment and shall apply to services provided on or after the  
20 effective date of this act and to any Medicaid managed care contract  
21 executed or renewed on or after the effective date of this act.

22  
23  
24 STATEMENT  
25

26 This bill establishes minimum Medicaid reimbursement rates for  
27 brain injury services. Under this bill, the term brain injury includes  
28 both a traumatic brain injury and a non-traumatic brain injury.  
29 "Traumatic brain injury" means an injury to the brain caused by a  
30 blow or jolt to the head or a penetrating head injury or neuro-trauma  
31 that disrupts the normal brain function, where continued impairment  
32 can be demonstrated. "Non-traumatic brain injury" means an injury  
33 to the brain caused by internal factors, such as stroke, aneurysm,  
34 tumor, infectious disease, and anoxia, where continued impairment  
35 can be demonstrated. Neither term includes brain dysfunction caused  
36 by congenital or degenerative disorders, birth trauma, or injuries  
37 caused by other circumstances. Brain injury services include  
38 community-based services, residential services, day care services,  
39 and home care services whether the services are provided through the  
40 Medicaid fee-for-service delivery system or the managed care  
41 delivery system.

42 Specifically, the bill requires that the Medicaid per diem or  
43 encounter reimbursement rates for eligible brain injury services,  
44 when such services are provided by an approved brain injury services  
45 provider to a Medicaid beneficiary requiring treatment for a brain  
46 injury, is to be, at minimum, as follows:

47 (1) The reimbursement rate for Community Residential Services  
48 – Low Supervision provided to a Medicaid beneficiary eligible for  
49 brain injury services, currently at \$140 a day, is to be equal to the

1 reimbursement rate for Individuals Supports Services Tier - C  
2 provided to a Medicaid beneficiary eligible for services provided by  
3 the Division of Developmental Disabilities, currently at \$283.20 per  
4 day;

5 (2) The reimbursement rate for Community Residential Services  
6 – Moderate Supervision provided to a Medicaid beneficiary eligible  
7 for brain injury services, currently at \$190 a day, is to be equal to the  
8 reimbursement rate for Individuals Supports Services Tier - D  
9 provided to a Medicaid beneficiary eligible for services provided by  
10 the Division of Developmental Disabilities, currently at \$396.48 a  
11 day;

12 (3) The reimbursement rate for Community Residential Services  
13 – High Supervision provided to a Medicaid beneficiary eligible for  
14 brain injury services, currently at \$220 a day, is to be equal to the  
15 reimbursement rate for Individuals Supports Services - Tier E  
16 provided to a Medicaid beneficiary eligible for services provided by  
17 the Division of Developmental Disabilities, currently at \$509.96 a  
18 day; and

19 (4) The reimbursement rate for Structured Day Program Services  
20 provided to a Medicaid beneficiary eligible for brain injury services,  
21 currently at \$3.65 for every 15 minutes of services, is to be equal to  
22 the reimbursement rate for Day Habilitation Services - Tier D  
23 provided to a Medicaid beneficiary eligible for services provided by  
24 the Division of Developmental Disabilities, currently at \$6.91 for  
25 every 15 minutes of service.

26 Currently, the State's Medicaid program provides brain injury  
27 services under the Managed Long-Term Supports and Services  
28 program, with the goal of providing community alternatives for  
29 individuals with brain injuries residing in nursing facilities or who  
30 are in the community and at risk for placement in nursing facilities.  
31 Unlike other Medicaid community-based services, reimbursement  
32 rates for brain injury services have remained static in recent years  
33 despite growing costs, which threatens the ability of providers to  
34 meet the complex needs of individuals with brain injuries and provide  
35 services within a safe and fulfilling community environment.  
36 Despite the similar model of care, reimbursement rates for services  
37 provided to Medicaid beneficiaries with intellectual and  
38 developmental disabilities (I/DD) have not only increased, but have  
39 been restructured to account for adequate consideration for acuity,  
40 increased minimum wage requirements, and other inflationary trends  
41 that assert pressure on providers' cost structures. It is the sponsor's  
42 goal to align brain injury service rates with I/DD service rates to  
43 ensure that individuals with brain injuries can continue to thrive and  
44 reach their optimal recoveries in community settings.

# ASSEMBLY HUMAN SERVICES COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 3110

with committee amendments

# STATE OF NEW JERSEY

DATED: MAY 12, 2022

The Assembly Human Services Committee reports favorably and Assembly Bill No. 3110 with committee amendments

As amended by the committee, this bill establishes minimum Medicaid reimbursement rates for brain injury services. Under this bill, the term “brain injury” includes both a traumatic brain injury and a non-traumatic brain injury. “Traumatic brain injury” means an injury to the brain caused by a blow or jolt to the head or a penetrating head injury or neuro-trauma that disrupts the normal brain function, where continued impairment can be demonstrated. “Non-traumatic brain injury” means an injury to the brain caused by internal factors, such as stroke, aneurysm, tumor, infectious disease, or anoxia, where continued impairment can be demonstrated. Neither term includes brain dysfunction caused by congenital or degenerative disorders, birth trauma, or injuries caused by other circumstances. Brain injury services include community-based services, residential services, day care services, and home care services, regardless of whether the services are provided through the Medicaid fee-for-service delivery system or the managed care delivery system.

Specifically, the bill requires that the Medicaid per diem or encounter reimbursement rates for eligible brain injury services, when such services are provided by an approved brain injury services provider to a Medicaid beneficiary requiring treatment for a brain injury, are to be, at minimum, as follows:

(1) The reimbursement rate for Community Residential Services – Low Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$140 a day, is to be equal to the reimbursement rate for Individuals Supports Services Tier - C provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the Department of Human Services (DHS), currently at \$283.20 per day;

(2) The reimbursement rate for Community Residential Services – Moderate Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$190 a day, is to be equal to the reimbursement rate for Individuals Supports Services Tier - D provided to a Medicaid beneficiary eligible for services provided by

the Division of Developmental Disabilities in the DHS, currently at \$396.48 a day;

(3) The reimbursement rate for Community Residential Services – High Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$220 a day, is to be equal to the reimbursement rate for Individuals Supports Services - Tier E provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the DHS, currently at \$509.96 a day; and

(4) The reimbursement rate for Structured Day Program Services provided to a Medicaid beneficiary eligible for brain injury services, currently at \$3.65 for every 15 minutes of services, is to be equal to the reimbursement rate for Day Habilitation Services - Tier D provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the DHS, currently at \$6.91 for every 15 minutes of service.

As amended and reported by the committee, Assembly Bill No. 3110 is identical to Senate Bill No. 2049 (1R) which is pending in the Senate Budget and Appropriations Committee.

**COMMITTEE AMENDMENTS:**

The committee amendments make various technical changes to address grammatical, stylistic, and typographical issues.

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## ASSEMBLY, No. 3110

### STATE OF NEW JERSEY 220th LEGISLATURE

DATED: JUNE 1, 2022

#### SUMMARY

- Synopsis:** Establishes minimum Medicaid reimbursement rates for brain injury services.
- Type of Impact:** Annual Increase in State Costs and Revenue; General Fund.
- Agencies Affected:** Department of Human Services.

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>FY 2023 and Thereafter</u></b>
<b>State Cost Increase</b>	\$16.8 million to \$20.5 million
<b>State Revenue Increase</b>	\$8.4 million to \$10.3 million

- The Office of Legislative (OLS) concludes that the Department of Human Services (DHS) will incur between \$16.8 million and \$20.5 million in additional annual Medicaid expenditures in order to increase the reimbursement rates for brain injury services. As eligible State Medicaid expenditures are reimbursed 50 percent by federal funds, this bill will also increase annual State revenue between \$8.4 million and \$10.3 million.

#### BILL DESCRIPTION

This bill requires that the Medicaid per diem or encounter reimbursement rates for eligible brain injury services, when such services are provided by an approved brain injury services provider to a Medicaid beneficiary requiring treatment for a brain injury, are to be, at minimum, as follows:

(1) The reimbursement rate for Community Residential Services – Low Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$140 a day, is to be equal to the reimbursement rate for Individuals Supports Services Tier - C provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the DHS, currently at \$283.20 per day;

(2) The reimbursement rate for Community Residential Services – Moderate Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$190 a day, is to be equal to the reimbursement rate for Individuals Supports Services Tier - D provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the DHS, currently at \$396.48 a day;

(3) The reimbursement rate for Community Residential Services – High Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$220 a day, is to be equal to the reimbursement rate for Individuals Supports Services - Tier E provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the DHS, currently at \$509.96 a day; and

(4) The reimbursement rate for Structured Day Program Services provided to a Medicaid beneficiary eligible for brain injury services, currently at \$3.65 for every 15 minutes of services, is to be equal to the reimbursement rate for Day Habilitation Services - Tier D provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the DHS, currently at \$6.91 for every 15 minutes of service.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

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

The OLS concludes that the DHS will incur between \$16.8 million and \$20.5 million in additional annual Medicaid expenditures in order to increase the reimbursement rates for brain injury services. As eligible State Medicaid expenditures are reimbursed 50 percent by federal funds, this bill will also increase annual State revenue between \$8.4 million and \$10.3 million.

The brain injury services described under the bill are reimbursed as home and community based services (HCBS) under the Medicaid Managed Long Term Services and Supports (MLTSS) Program. Under this program, the DHS pays managed care organizations based on a per beneficiary per month capitation rate to cover costs of services. The existing MLTSS monthly capitation rate for HCBS, assuming beneficiaries are dually eligible for Medicare and Medicaid, is \$4,719.80.

The bill proposes increasing rates for brain injury services, on average, by 208 percent. Further, based upon data provided by the department that 304 individuals in the MLTSS program received brain injury services in CY 2014, a number which has been increased and decreased by 10 percent to provide a range of the impacted population for this analysis, it is estimated that the bill would affect the service rates of between 274 and 335 beneficiaries. Using the MLTSS monthly capitation rate for HCBS and imposing a 208 percent increase to these costs, results in a total cost to the State of between \$32.3 million and \$39.5 million - a difference of between \$16.8 million and \$20.5 million from the current estimated expenditures. Assuming a 50 percent federal Medicaid reimbursement, the State cost would be offset by an annual increase in State revenue of between \$8.4 million and \$10.3 million.

The OLS notes that beneficiaries receiving brain injury services represent a small portion of the MLTSS population of nearly 60,000 individuals. When developing capitation rates, the contracted actuary utilizes encounter claims data from the fiscal year that is two years prior to the rate setting period, managed care organization financial reports, and monthly beneficiary data

collected by the organizations and the department for the entire MLTSS population. It is possible that a variety of factors in the capitation rate setting process, which the OLS cannot determine, would influence State costs incurred under this bill.

*Section: Human Services*

*Analyst: Sarah Schmidt  
Senior Research Analyst*

*Approved: Thomas Koenig  
Legislative Budget and Finance Officer*

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.).

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

**ASSEMBLY, No. 3110**

# **STATE OF NEW JERSEY**

DATED: JUNE 23, 2022

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3110 (1R).

This bill establishes minimum Medicaid reimbursement rates for brain injury services. Under this bill, the term “brain injury” includes both a traumatic brain injury and a non-traumatic brain injury. “Traumatic brain injury” means an injury to the brain caused by a blow or jolt to the head or a penetrating head injury or neuro-trauma that disrupts the normal brain function, where continued impairment can be demonstrated. “Non-traumatic brain injury” means an injury to the brain caused by internal factors, such as stroke, aneurysm, tumor, infectious disease, or anoxia, where continued impairment can be demonstrated. Neither term includes brain dysfunction caused by congenital or degenerative disorders, birth trauma, or injuries caused by other circumstances. Brain injury services include community-based services, residential services, day care services, and home care services, regardless of whether the services are provided through the Medicaid fee-for-service delivery system or the managed care delivery system.

Specifically, the bill requires that the Medicaid per diem or encounter reimbursement rates for eligible brain injury services, when such services are provided by an approved brain injury services provider to a Medicaid beneficiary requiring treatment for a brain injury, are to be, at minimum, as follows:

(1) The reimbursement rate for Community Residential Services – Low Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$140 a day, is to be equal to the reimbursement rate for Individuals Supports Services Tier - C provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the Department of Human Services (DHS), currently at \$283.20 per day;

(2) The reimbursement rate for Community Residential Services – Moderate Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$190 a day, is to be equal to the reimbursement rate for Individuals Supports Services Tier - D provided to a Medicaid beneficiary eligible for services provided by



the Division of Developmental Disabilities in the DHS, currently at \$396.48 a day;

(3) The reimbursement rate for Community Residential Services – High Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$220 a day, is to be equal to the reimbursement rate for Individuals Supports Services - Tier E provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the DHS, currently at \$509.96 a day; and

(4) The reimbursement rate for Structured Day Program Services provided to a Medicaid beneficiary eligible for brain injury services, currently at \$3.65 for every 15 minutes of services, is to be equal to the reimbursement rate for Day Habilitation Services - Tier D provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the DHS, currently at \$6.91 for every 15 minutes of service.

**FISCAL IMPACT:**

The Office of Legislative Services (OLS) concludes that the DHS will incur between \$16.8 million and \$20.5 million in additional annual Medicaid expenditures in order to increase the reimbursement rates for brain injury services. As eligible Medicaid expenditures are reimbursed 50 percent by federal funds, this bill will also increase annual State revenue between \$8.4 million and \$10.3 million.

STATEMENT TO  
[First Reprint]  
**ASSEMBLY, No. 3110**

with Assembly Floor Amendments  
(Proposed by Senator CODEY)

ADOPTED: JUNE 29, 2022

These Senate amendments remove a provision of the bill that required the Medicaid reimbursement rate for Structured Day Program Services provided to a Medicaid beneficiary eligible for brain injury services be equal to the reimbursement rate for Day Habilitation Services – Tier D, as provided by the Division of Developmental Disabilities.

The Senate amendments adjust the Division of Developmental Disability Individual Supports Services tiers used to establish the minimum Medicaid reimbursement rates for Community Residential Services provided to a Medicaid beneficiary eligible for brain injury services. In effect, these amendments establish lower minimum reimbursement rates for brain injury services than those established in the bill as introduced.

The Senate amendments revise the effective date to occur 30 days after the date of enactment, rather than on July 1 next following the date of enactment.

# SENATE, No. 2049

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED MARCH 3, 2022

**Sponsored by:**

**Senator RICHARD J. CODEY**

**District 27 (Essex and Morris)**

**Senator HOLLY T. SCHEPISI**

**District 39 (Bergen and Passaic)**

**Co-Sponsored by:**

**Senators Durr and Singer**

**SYNOPSIS**

Establishes minimum Medicaid reimbursement rates for brain injury services.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 3/10/2022)

1 AN ACT concerning Medicaid reimbursement for brain injury  
2 services and supplementing Title 30 of the Revised Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6

7 1. The Legislature funds and declares:

8 a. An acquired brain injury is an injury caused by an event,  
9 either internal or external to the injured individual, and does not  
10 include congenital or degenerative disorders, or those injuries  
11 induced by birth trauma. An acquired brain injury can either be  
12 categorized as a traumatic brain injury or non-traumatic brain injury.  
13 A traumatic brain injury is an alteration in brain function caused by  
14 an external force and may be caused by falls, assaults, motor vehicle  
15 accidents, or sports injuries. A non-traumatic brain injury is damage  
16 to the brain caused by internal factors, such as stroke, aneurysm,  
17 tumor, infectious disease, and anoxia.

18 b. A severe acquired brain injury can produce an altered or  
19 diminished state of consciousness and result in an impairment of  
20 cognitive abilities or physical functioning. It can also effect  
21 behavioral or emotional functioning. These impairments may be  
22 permanent and cause partial or total functional disability, leading to  
23 the injured individual requiring long-term care supports.

24 c. The State's Medicaid program provides brain injury services  
25 under the Managed Long-Term Supports and Services program, with  
26 the goal of providing community alternatives for individuals with  
27 brain injuries residing in nursing facilities or who are in the  
28 community and at risk for placement in nursing facilities.

29 d. Unlike other Medicaid community-based services,  
30 reimbursement rates for brain injury services have remained static in  
31 recent years despite growing costs, which threatens the ability of  
32 providers to meet the complex health needs of individuals with brain  
33 injuries and provide services within a safe and fulfilling community  
34 environment.

35 e. Despite the similar model of care, reimbursement rates for  
36 services provided to Medicaid beneficiaries with intellectual and  
37 developmental disabilities have not only increased, but have been  
38 restructured to account for adequate consideration for acuity,  
39 increased minimum wage requirements, and other inflationary trends  
40 that assert pressure on providers' cost structures.

41 f. By failing to receive reimbursement rates that adequately  
42 support services, brain injury providers are being forced to return this  
43 fragile population to more costly institutional care in nursing home  
44 facilities.

45 g. It is imperative that the Legislature take action and increase  
46 Medicaid rates for these essential services and ensure that individuals  
47 with brain injuries can continue to thrive and reach their optimal  
48 recoveries in community settings.

1       2. a. Notwithstanding the provisions of any law or regulation to  
2 the contrary, the Medicaid per diem or encounter reimbursement  
3 rates for eligible brain injury services, when such services are  
4 provided by an approved brain injury services provider to a Medicaid  
5 beneficiary requiring treatment for a brain injury, shall be, at  
6 minimum, as follows:

7       (1) The reimbursement rate for Community Residential Services  
8 – Low Supervision provided to a Medicaid beneficiary eligible for  
9 brain injury services shall be equal to the reimbursement rate for  
10 Individuals Supports Services - Tier C provided to a Medicaid  
11 beneficiary eligible for services provided by the Division of  
12 Developmental Disabilities;

13       (2) The reimbursement rate for Community Residential Services  
14 – Moderate Supervision provided to a Medicaid beneficiary eligible  
15 for brain injury services shall be equal to the reimbursement rate for  
16 Individuals Supports Services - Tier D provided to a Medicaid  
17 beneficiary eligible for services provided by the Division of  
18 Developmental Disabilities;

19       (3) The reimbursement rate for Community Residential Services  
20 – High Supervision provided to a Medicaid beneficiary eligible for  
21 brain injury services shall be equal to the reimbursement rate for  
22 Individuals Supports Services - Tier E provided to a Medicaid  
23 beneficiary eligible for services provided by the Division of  
24 Developmental Disabilities; and

25       (4) The reimbursement rate for Structured Day Program Services  
26 provided to a Medicaid beneficiary eligible for brain injury services  
27 shall be equal to the reimbursement rate for Day Habilitation Services  
28 - Tier D provided to a Medicaid beneficiary eligible for services  
29 provided by the Division of Developmental Disabilities.

30       b. As used in this section:

31       “Medicaid” means the program established pursuant to P.L.1968,  
32 c.413 (C.30:4D-1 et seq.).

33       “Brain injury service” means community-based services,  
34 residential services, day care services, and home care services  
35 provided to a Medicaid beneficiary requiring treatment for traumatic  
36 or non-traumatic brain injuries, whether such services are provided  
37 through the Medicaid fee-for-service delivery system or the managed  
38 care delivery system.

39       “Brain injury service provider” means a facility licensed by the  
40 Division of Disability Services in the Department of Human Services  
41 to provide traumatic or non-traumatic brain injury services.

42       “Non-traumatic brain injury” means an injury to the brain caused  
43 by internal factors, such as stroke, aneurysm, tumor, infectious  
44 disease, and anoxia, where continued impairment can be  
45 demonstrated. This term does not include brain dysfunction caused  
46 by congenital or degenerative disorders, birth trauma, or injuries  
47 caused by other circumstances.

1 “Traumatic brain injury” means an injury to the brain caused by a  
2 blow or jolt to the head or a penetrating head injury or neuro-trauma  
3 that disrupts the normal brain function, where continued impairment  
4 can be demonstrated. This term does not include brain dysfunction  
5 caused by congenital or degenerative disorders, birth trauma, or  
6 injuries caused by other circumstances.

7  
8 3. The Commissioner of Human Services shall apply for such State  
9 plan amendments or waivers specific to brain injury services, that  
10 currently exist or may arise in the future which affect reimbursement  
11 rates, as may be necessary to implement the provisions of this act and  
12 to secure federal financial participation for State Medicaid expenditures  
13 under the federal Medicaid program.

14  
15 4. The Commissioner of Human Services, in accordance with the  
16 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),  
17 shall adopt such rules and regulations as the commissioner deems  
18 necessary to carry out the provisions of this act.

19  
20 5. This act shall take effect on July 1 next following the date of  
21 enactment and shall apply to services provided on or after the  
22 effective date of this act and to any Medicaid managed care contract  
23 executed or renewed on or after the effective date of this act.

24  
25  
26 STATEMENT  
27

28 This bill establishes minimum Medicaid reimbursement rates for  
29 brain injury services. Under this bill, the term brain injury includes  
30 both a traumatic brain injury and a non-traumatic brain injury.  
31 “Traumatic brain injury” means an injury to the brain caused by a  
32 blow or jolt to the head or a penetrating head injury or neuro-trauma  
33 that disrupts the normal brain function, where continued impairment  
34 can be demonstrated. “Non-traumatic brain injury” means an injury  
35 to the brain caused by internal factors, such as stroke, aneurysm,  
36 tumor, infectious disease, and anoxia, where continued impairment  
37 can be demonstrated. Neither term includes brain dysfunction caused  
38 by congenital or degenerative disorders, birth trauma, or injuries  
39 caused by other circumstances. Brain injury services include  
40 community-based services, residential services, day care services,  
41 and home care services whether the services are provided through the  
42 Medicaid fee-for-service delivery system or the managed care  
43 delivery system.

44 Specifically, the bill requires that the Medicaid per diem or  
45 encounter reimbursement rates for eligible brain injury services,  
46 when such services are provided by an approved brain injury services  
47 provider to a Medicaid beneficiary requiring treatment for a brain  
48 injury, is to be, at minimum, as follows:

1       (1) The reimbursement rate for Community Residential Services  
2 – Low Supervision provided to a Medicaid beneficiary eligible for  
3 brain injury services, currently at \$140 a day, is to be equal to the  
4 reimbursement rate for Individuals Supports Services Tier - C  
5 provided to a Medicaid beneficiary eligible for services provided by  
6 the Division of Developmental Disabilities, currently at \$283.20 per  
7 day;

8       (2) The reimbursement rate for Community Residential Services  
9 – Moderate Supervision provided to a Medicaid beneficiary eligible  
10 for brain injury services, currently at \$190 a day, is to be equal to the  
11 reimbursement rate for Individuals Supports Services Tier - D  
12 provided to a Medicaid beneficiary eligible for services provided by  
13 the Division of Developmental Disabilities, currently at \$396.48 a  
14 day;

15       (3) The reimbursement rate for Community Residential Services  
16 – High Supervision provided to a Medicaid beneficiary eligible for  
17 brain injury services, currently at \$220 a day, is to be equal to the  
18 reimbursement rate for Individuals Supports Services - Tier E  
19 provided to a Medicaid beneficiary eligible for services provided by  
20 the Division of Developmental Disabilities, currently at \$509.96 a  
21 day; and

22       (4) The reimbursement rate for Structured Day Program Services  
23 provided to a Medicaid beneficiary eligible for brain injury services,  
24 currently at \$3.65 for every 15 minutes of services, is to be equal to  
25 the reimbursement rate for Day Habilitation Services - Tier D  
26 provided to a Medicaid beneficiary eligible for services provided by  
27 the Division of Developmental Disabilities, currently at \$6.91 for  
28 every 15 minutes of service.

29       Currently, the State's Medicaid program provides brain injury  
30 services under the Managed Long-Term Supports and Services  
31 program, with the goal of providing community alternatives for  
32 individuals with brain injuries residing in nursing facilities or who  
33 are in the community and at risk for placement in nursing facilities.  
34 Unlike other Medicaid community-based services, reimbursement  
35 rates for brain injury services have remained static in recent years  
36 despite growing costs, which threatens the ability of providers to  
37 meet the complex needs of individuals with brain injuries and provide  
38 services within a safe and fulfilling community environment.  
39 Despite the similar model of care, reimbursement rates for services  
40 provided to Medicaid beneficiaries with intellectual and  
41 developmental disabilities (I/DD) have not only increased, but have  
42 been restructured to account for adequate consideration for acuity,  
43 increased minimum wage requirements, and other inflationary trends  
44 that assert pressure on providers' cost structures. It is the sponsor's  
45 goal to align brain injury service rates with I/DD service rates to  
46 ensure that individuals with brain injuries can continue to thrive and  
47 reach their optimal recoveries in community settings.

SENATE HEALTH, HUMAN SERVICES AND SENIOR  
CITIZENS COMMITTEE

STATEMENT TO  
**SENATE, No. 2049**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MARCH 10, 2022

The Senate Health, Human Services and Senior Citizens Committee reports favorably Senate Bill No. 2049, with committee amendments.

As amended by the committee, this bill establishes minimum Medicaid reimbursement rates for brain injury services. Under this bill, the term “brain injury” includes both a traumatic brain injury and a non-traumatic brain injury. “Traumatic brain injury” means an injury to the brain caused by a blow or jolt to the head or a penetrating head injury or neuro-trauma that disrupts the normal brain function, where continued impairment can be demonstrated. “Non-traumatic brain injury” means an injury to the brain caused by internal factors, such as stroke, aneurysm, tumor, infectious disease, or anoxia, where continued impairment can be demonstrated. Neither term includes brain dysfunction caused by congenital or degenerative disorders, birth trauma, or injuries caused by other circumstances. Brain injury services include community-based services, residential services, day care services, and home care services, regardless of whether the services are provided through the Medicaid fee-for-service delivery system or the managed care delivery system.

Specifically, the bill requires that the Medicaid per diem or encounter reimbursement rates for eligible brain injury services, when such services are provided by an approved brain injury services provider to a Medicaid beneficiary requiring treatment for a brain injury, are to be, at minimum, as follows:

(1) The reimbursement rate for Community Residential Services – Low Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$140 a day, is to be equal to the reimbursement rate for Individuals Supports Services Tier - C provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the Department of Human Services (DHS), currently at \$283.20 per day;

(2) The reimbursement rate for Community Residential Services – Moderate Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$190 a day, is to be equal to the



reimbursement rate for Individuals Supports Services Tier - D provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the DHS, currently at \$396.48 a day;

(3) The reimbursement rate for Community Residential Services – High Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$220 a day, is to be equal to the reimbursement rate for Individuals Supports Services - Tier E provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the DHS, currently at \$509.96 a day; and

(4) The reimbursement rate for Structured Day Program Services provided to a Medicaid beneficiary eligible for brain injury services, currently at \$3.65 for every 15 minutes of services, is to be equal to the reimbursement rate for Day Habilitation Services - Tier D provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the DHS, currently at \$6.91 for every 15 minutes of service.

COMMITTEE AMENDMENTS:

The committee amendments make various technical changes to address grammatical, stylistic, and typographical issues.

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## SENATE, No. 2049 STATE OF NEW JERSEY 220th LEGISLATURE

DATED: MARCH 22, 2022

### SUMMARY

- Synopsis:** Establishes minimum Medicaid reimbursement rates for brain injury services.
- Type of Impact:** Annual Increase in State Costs and Revenue; General Fund.
- Agencies Affected:** Department of Human Services.

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>FY 2023 and Thereafter</u></b>
<b>State Cost Increase</b>	\$16.8 million to \$20.5 million
<b>State Revenue Increase</b>	\$8.4 million to \$10.3 million

- The Office of Legislative (OLS) concludes that the Department of Human Services (DHS) will incur between \$16.8 million and \$20.5 million in additional annual Medicaid expenditures in order to increase the reimbursement rates for brain injury services. As eligible State Medicaid expenditures are reimbursed 50 percent by federal funds, this bill will also increase annual State revenue between \$8.4 million and \$10.3 million.

### BILL DESCRIPTION

This bill requires that the Medicaid per diem or encounter reimbursement rates for eligible brain injury services, when such services are provided by an approved brain injury services provider to a Medicaid beneficiary requiring treatment for a brain injury, are to be, at minimum, as follows:

(1) The reimbursement rate for Community Residential Services – Low Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$140 a day, is to be equal to the reimbursement rate for Individuals Supports Services Tier - C provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the DHS, currently at \$283.20 per day;

(2) The reimbursement rate for Community Residential Services – Moderate Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$190 a day, is to be equal to the reimbursement rate for Individuals Supports Services Tier - D provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the DHS, currently at \$396.48 a day;

(3) The reimbursement rate for Community Residential Services – High Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$220 a day, is to be equal to the reimbursement rate for Individuals Supports Services - Tier E provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the DHS, currently at \$509.96 a day; and

(4) The reimbursement rate for Structured Day Program Services provided to a Medicaid beneficiary eligible for brain injury services, currently at \$3.65 for every 15 minutes of services, is to be equal to the reimbursement rate for Day Habilitation Services - Tier D provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the DHS, currently at \$6.91 for every 15 minutes of service.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received:

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

The OLS concludes that the DHS will incur between \$16.8 million and \$20.5 million in additional annual Medicaid expenditures in order to increase the reimbursement rates for brain injury services. As eligible State Medicaid expenditures are reimbursed 50 percent by federal funds, this bill will also increase annual State revenue between \$8.4 million and \$10.3 million.

The brain injury services described under the bill are reimbursed as home and community based services (HCBS) under the Medicaid Managed Long Term Services and Supports (MLTSS) Program. Under this program, the DHS pays managed care organizations based on a per beneficiary per month capitation rate to cover costs of services. The existing MLTSS monthly capitation rate for HCBS, assuming beneficiaries are dually eligible for Medicare and Medicaid, is \$4,719.80.

The bill proposes increasing rates for brain injury services, on average, by 208 percent. Further, based upon data provided by the department that 304 individuals in the MLTSS program received brain injury services in CY 2014, a number which has been increased and decreased by 10 percent to provide a range of the impacted population for this analysis, it is estimated that the bill would affect the service rates of between 274 and 335 beneficiaries. Using the MLTSS monthly capitation rate for HCBS and imposing a 208 percent increase to these costs, results in a total cost to the State of between \$32.3 million and \$39.5 million - a difference of between \$16.8 million and \$20.5 million from the current estimated expenditures. Assuming a 50 percent federal Medicaid reimbursement, the State cost would be offset by an annual increase in State revenue of between \$8.4 million and \$10.3 million.

The OLS notes that beneficiaries receiving brain injury services represent a small portion of the MLTSS population of nearly 60,000 individuals. When developing capitation rates, the contracted actuary utilizes encounter claims data from the fiscal year that is two years prior to the rate setting period, managed care organization financial reports, and monthly beneficiary data

collected by the organizations and the department for the entire MLTSS population. It is possible that a variety of factors in the capitation rate setting process, which the OLS cannot determine, would influence State costs incurred under this bill.

*Section: Human Services*

*Analyst: Sarah Schmidt  
Senior Research Analyst*

*Approved: Thomas Koenig  
Legislative Budget and Finance Officer*

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.).

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## **SENATE, No. 2049**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 27, 2022

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 2049 (1R).

As amended by the committee, this bill establishes minimum Medicaid reimbursement rates for brain injury services. Under this bill, the term “brain injury” includes both a traumatic brain injury and a non-traumatic brain injury. “Traumatic brain injury” means an injury to the brain caused by a blow or jolt to the head or a penetrating head injury or neuro-trauma that disrupts the normal brain function, where continued impairment can be demonstrated. “Non-traumatic brain injury” means an injury to the brain caused by internal factors, such as stroke, aneurysm, tumor, infectious disease, or anoxia, where continued impairment can be demonstrated. Neither term includes brain dysfunction caused by congenital or degenerative disorders, birth trauma, or injuries caused by other circumstances. Brain injury services include community-based services, residential services, day care services, and home care services, regardless of whether the services are provided through the Medicaid fee-for-service delivery system or the managed care delivery system.

Specifically, the bill requires that the Medicaid per diem or encounter reimbursement rates for eligible brain injury services, when such services are provided by an approved brain injury services provider to a Medicaid beneficiary requiring treatment for a brain injury, are to be, at minimum, as follows:

(1) The reimbursement rate for Community Residential Services – Low Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$140 a day, is to be equal to the reimbursement rate for Individuals Supports Services - Tier B provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the Department of Human Services (DHS), currently at \$169.92 per day;

(2) The reimbursement rate for Community Residential Services – Moderate Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$190 a day, is to be equal to the reimbursement rate for Individuals Supports Services - Tier C

provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the DHS, currently at \$283.20 a day; and

(3) The reimbursement rate for Community Residential Services – High Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$220 a day, is to be equal to the average of the reimbursement rates for Individuals Supports Services – Tiers D and E provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the DHS, currently at \$453.12 a day.

The bill will take effect 30 days after the date of enactment and will apply to services provided on or after the effective date of the bill and to any Medicaid managed care contract executed or renewed on or after the effective date of the bill.

#### COMMITTEE AMENDMENTS:

The committee amendments remove a provision of the bill that required the Medicaid reimbursement rate for Structured Day Program Services provided to a Medicaid beneficiary eligible for brain injury services be equal to the reimbursement rate for Day Habilitation Services – Tier D, as provided by the Division of Developmental Disabilities.

The committee amendments adjust the Division of Developmental Disability Individual Supports Services tiers used to establish the minimum Medicaid reimbursement rates for Community Residential Services provided to a Medicaid beneficiary eligible for brain injury services. In effect, these amendments establish lower minimum reimbursement rates for brain injury services than those established in the bill as introduced.

The committee amendments revise the effective date to occur 30 days after the date of enactment, rather than on July 1 next following the date of enactment.

#### FISCAL IMPACT:

No fiscal information is available on this bill.

# LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

## SENATE, No. 2049 STATE OF NEW JERSEY 220th LEGISLATURE

DATED: JULY 5, 2022

### SUMMARY

- Synopsis:** Establishes minimum Medicaid reimbursement rates for brain injury services.
- Type of Impact:** Annual Increase in State Costs and Revenue; General Fund.
- Agencies Affected:** Department of Human Services.

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>FY 2023 and Thereafter</u></b>
<b>State Cost Increase</b>	\$9.1 million to \$11.2 million
<b>State Revenue Increase</b>	\$4.6 million to \$5.6 million

- The Office of Legislative (OLS) concludes that the Department of Human Services (DHS) will incur between \$9.1 million and \$11.2 million in additional annual Medicaid expenditures in order to increase the reimbursement rates for brain injury services. As eligible State Medicaid expenditures are reimbursed 50 percent by federal funds, this bill will also increase annual State revenue between \$4.6 million and \$5.6 million.

### BILL DESCRIPTION

This bill requires that the Medicaid per diem or encounter reimbursement rates for eligible brain injury services, when such services are provided by an approved brain injury services provider to a Medicaid beneficiary requiring treatment for a brain injury, are to be, at minimum, as follows:

(1) The reimbursement rate for Community Residential Services – Low Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$140 a day, is to be equal to the reimbursement rate for Individuals Supports Services - Tier B provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the DHS, currently at \$169.92 per day;

(2) The reimbursement rate for Community Residential Services – Moderate Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$190 a day, is to be equal to the reimbursement rate for Individuals Supports Services - Tier C provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the DHS, currently at \$283.20 a day; and

(3) The reimbursement rate for Community Residential Services – High Supervision provided to a Medicaid beneficiary eligible for brain injury services, currently at \$220 a day, is to be equal to the average of the reimbursement rates for Individuals Supports Services – Tiers D and E provided to a Medicaid beneficiary eligible for services provided by the Division of Developmental Disabilities in the DHS, currently at \$453.12 a day.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received:

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

The OLS concludes that the DHS will incur between \$9.1 million and \$11.2 million in additional annual Medicaid expenditures in order to increase the reimbursement rates for brain injury services. As eligible State Medicaid expenditures are reimbursed 50 percent by federal funds, this bill will also increase annual State revenue between \$4.6 million and \$5.6 million.

The brain injury services described under the bill are reimbursed as home and community based services (HCBS) under the Medicaid Managed Long Term Services and Supports (MLTSS) Program. Under this program, the DHS pays managed care organizations based on a per beneficiary per month capitation rate to cover costs of services. The existing MLTSS monthly capitation rate for HCBS, assuming beneficiaries are dually eligible for Medicare and Medicaid, is \$4,719.80.

The bill proposes increasing rates for brain injury services, on average, by 159 percent. Further, based upon data provided by the department that 304 individuals in the MLTSS program received brain injury services in CY 2014, a number which has been increased and decreased by 10 percent to provide a range of the impacted population for this analysis, it is estimated that the bill would affect the service rates of between 274 and 335 beneficiaries. Using the MLTSS monthly capitation rate for HCBS and imposing a 159 percent increase to these costs, results in a total cost to the State of between \$24.6 million and \$30.1 million - a difference of between \$9.1 million and \$11.2 million from the current estimated expenditures. Assuming a 50 percent federal Medicaid reimbursement, the State cost would be offset by an annual increase in State revenue of between \$4.6 million and \$5.6 million.

The OLS notes that beneficiaries receiving brain injury services represent a small portion of the MLTSS population of nearly 60,000 individuals. When developing capitation rates, the contracted actuary utilizes encounter claims data from the fiscal year that is two years prior to the rate setting period, managed care organization financial reports, and monthly beneficiary data collected by the organizations and the department for the entire MLTSS population. It is possible that a variety of factors in the capitation rate setting process, which the OLS cannot determine, would influence State costs incurred under this bill.



*Section: Human Services*

*Analyst: Sarah Schmidt  
Senior Research Analyst*

*Approved: Thomas Koenig  
Legislative Budget and Finance Officer*

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.).

# Governor Murphy Takes Action on Legislation

07/29/2022

**TRENTON** – Today, Governor Phil Murphy signed the following bills into law:

**S-144/A-2159 (Diegnan, Beach/Egan, Danielsen, Park)** - Establishes “COVID-19 Frontline Healthcare Worker Memorial Commission.”

**S-1177/A-4032 (Lagana, Gopal/Coughlin)** - Revises out-of-network arbitration process

**S-2677/A-4068 (Pou/Wimberly, Sumter, Reynolds-Jackson)** - Amends requirements for certain mixed use parking projects undertaken by municipal redevelopers under Economic Redevelopment and Growth Grant program; increases total available tax credits by \$25 million

**A-1797/S-1906 (DeAngelo, Dancer, Dunn/Diegnan, Greenstein)** - Clarifies that member of SPRS may receive accidental disability benefit under certain circumstances.

**A3110/S2049 (Jasey, Benson, Reynolds-Jackson/Codey, Schepisi)** - Establishes minimum Medicaid reimbursement rates for brain injury services.

**A-3898/S-2522 (Pintor Marin, Space/Ruiz)** - Makes FY2022 supplemental appropriation of \$3 million for mosquito control.

**A-4193/S-2759 (Greenwald/Singleton)** - Adjusts municipal ballot question for amusement games for future elections and repeals section of law creating office of Amusement Games Control Commissioner