

30:4D-6p and 26:2S-37
LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

LAWS OF: 2020 **CHAPTER:** 30

NJSA: 30:4D-6p and 26:2S-37 (Requires Medicaid and health insurance coverage for certain refills of prescription drugs during state of emergency.)

BILL NO: S2344 (Substituted for A3970)

SPONSOR(S) Nellie Pou and others

DATE INTRODUCED: 4/9/2020

COMMITTEE: **ASSEMBLY:** Appropriations

SENATE: ---

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** 5/14/2020

SENATE: 5/14/2020

DATE OF APPROVAL: 5/15/2020

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (First Reprint enacted) Yes

S2344

SPONSOR'S STATEMENT: (Begins on page 3 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, **may possibly** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

A3970

SPONSOR'S STATEMENT: (Begins on page 3 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, **may possibly** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING:

Yes

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

No

Rwh/cl

P.L. 2020, CHAPTER 30, *approved May 15, 2020*

Senate, No. 2344 (*First Reprint*)

1 AN ACT requiring Medicaid and health insurance coverage for
2 certain prescription drugs during a state of emergency and
3 supplementing P.L.1968, c.413 (C.30:4D-1 et seq.) and
4 P.L.1997, c.192 (C.26:2S-1 et seq.).
5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:
8

9 1. a. Subject to subsection b. of this section and to the extent
10 consistent with clinical guidelines, the State Medicaid and NJ
11 FamilyCare programs shall provide coverage of prescription drug
12 refills even when the covered person has not yet reached the
13 scheduled refill date, provided that the prescription itself would
14 remain valid beyond the refill date, in a manner calculated to ensure
15 an enrollee's ability to maintain at least a 30-day supply, or a 90-
16 day supply of a maintenance medication supply at home ¹but not to
17 exceed a 120 day supply on-hand at any given time¹. ¹The
18 coverage shall be provided based on the authorization for the most
19 recently filled prescription and additional authorization for the refill
20 shall not be required.¹

21 b. The provisions of this section shall ¹**[take] be in**¹ effect if:
22 (1) a state of emergency or public health emergency is declared
23 by the State or federal government, or an emergency supply of a
24 drug is recommended by the Centers for Disease Control and
25 Prevention; and

26 (2) the Commissioner of Human Services determines that an
27 emergency supply of prescription drugs is necessary.

28 c. The coverage shall be provided on an in-network basis to the
29 same extent as for any other refills of prescription drugs, except
30 that:

31 (1) in the event of a drug shortage or access issue, formulary
32 flexibility shall be provided ¹for a covered alternative¹; and

33 (2) no fees shall be imposed for home delivery of the drugs.

34 d. The Commissioner of Human Services shall apply for such
35 State plan amendments or waivers as may be necessary to
36 implement the provisions of this section and to secure federal
37 financial participation for State Medicaid expenditures under the
38 federal Medicaid program.

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:

¹Assembly AAP committee amendments adopted May 4, 2020.

1 e. The Division of Consumer Affairs, in consultation with the
2 Commissioner of Human Services, may develop restrictions on the
3 filling or refilling of prescriptions 'by pharmacists' to address
4 shortage concerns, provided those restrictions shall exclude
5 restricting use for existing conditions to the maximum extent
6 practicable.

7
8 2. a. Subject to subsection b. of this section and to the extent
9 consistent with clinical guidelines, the Commissioner of Banking
10 and Insurance shall require carriers to provide coverage of
11 prescription drug refills even when the covered person has not yet
12 reached the scheduled refill date, provided that the prescription
13 itself would remain valid beyond the refill date 'and the member
14 will be eligible beyond the refill date', in a manner calculated to
15 ensure a subscriber's ability to maintain at least a 30-day supply, or
16 a 90-day supply of a maintenance medication supply at home 'but
17 not to exceed a 120 day supply on-hand at any given time'. 'The
18 coverage shall be provided based on the authorization for the most
19 recently filled prescription and additional authorization for the refill
20 shall not be required.'

21 b. The provisions of this section shall **'[take] be in'** effect if:

22 (1) a state of emergency or public health emergency is declared
23 by the State or federal government, or an emergency supply of a
24 drug is recommended by the Centers for Disease Control and
25 Prevention; and

26 (2) the commissioner determines that an emergency supply of
27 prescription drugs is necessary.

28 c. The coverage shall be provided on an in-network basis to the
29 same extent as for any other refills of prescription drugs under the
30 health benefits plan, except that:

31 (1) in the event of a drug shortage or access issue identified by
32 the commissioner or the Division of Consumer Affairs, the carrier
33 shall provide formulary flexibility 'for a covered alternative'. The
34 cost-sharing for any non-preferred medication shall not exceed the
35 cost-sharing that would be imposed for the preferred medication
36 that is unavailable due to the shortage or access issue; and

37 (2) no fees shall be imposed for home delivery of the drugs.

38 d. The Division of Consumer Affairs, in consultation with the
39 commissioner, may develop restrictions on the filling or refilling of
40 prescriptions 'by pharmacists' to address shortage concerns,
41 provided those restrictions shall exclude restricting use for existing
42 conditions to the maximum extent practicable.

43 e. As used in this section, "carrier" means an insurance
44 company, health service corporation, hospital service corporation,
45 medical service corporation, or health maintenance organization
46 authorized to issue health benefits plans in this State, and shall

S2344 [1R]

3

1 include the State Health Benefits Program and the School
2 Employees' Health Benefits Program.

3

4 3. This act shall take effect immediately.

5

6

7

8

9 Requires Medicaid and health insurance coverage for certain
10 refills of prescription drugs during state of emergency.

SENATE, No. 2344

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED APRIL 9, 2020

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

Senator ROBERT W. SINGER

District 30 (Monmouth and Ocean)

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Co-Sponsored by:

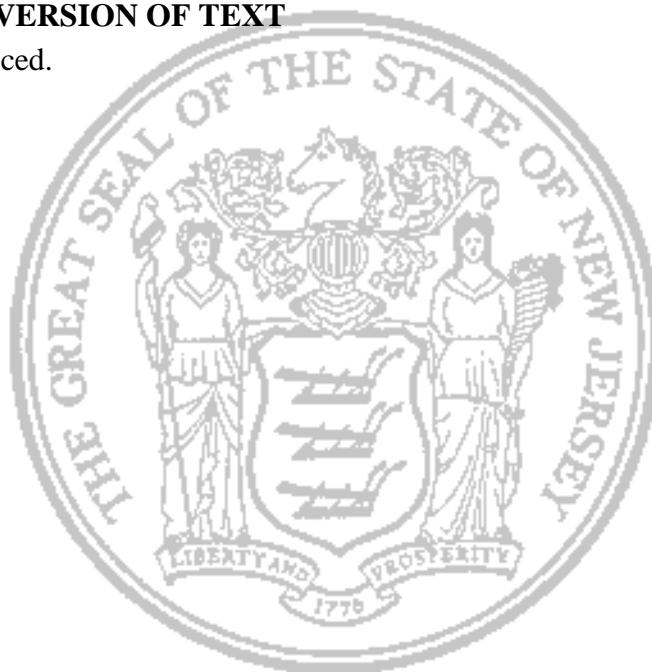
Senators Addiego, Bateman, Brown, Cardinale, O'Scanlon, Pennacchio and Singleton

SYNOPSIS

Requires Medicaid and health insurance coverage for certain refills of prescription drugs during state of emergency.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 4/13/2020)

1 AN ACT requiring Medicaid and health insurance coverage for certain
2 prescription drugs during a state of emergency and supplementing
3 P.L.1968, c.413 (C.30:4D-1 et seq.) and P.L.1997, c.192
4 (C.26:2S-1 et seq.).

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

8
9 1. a. Subject to subsection b. of this section and to the extent
10 consistent with clinical guidelines, the State Medicaid and NJ
11 FamilyCare programs shall provide coverage of prescription drug
12 refills even when the covered person has not yet reached the
13 scheduled refill date, provided that the prescription itself would
14 remain valid beyond the refill date, in a manner calculated to ensure
15 an enrollee's ability to maintain at least a 30-day supply, or a 90-day
16 supply of a maintenance medication supply at home.

17 b. The provisions of this section shall take effect if:

18 (1) a state of emergency or public health emergency is declared
19 by the State or federal government, or an emergency supply of a drug
20 is recommended by the Centers for Disease Control and Prevention;
21 and

22 (2) the Commissioner of Human Services determines that an
23 emergency supply of prescription drugs is necessary.

24 c. The coverage shall be provided on an in-network basis to the
25 same extent as for any other refills of prescription drugs, except that:

26 (1) in the event of a drug shortage or access issue, formulary
27 flexibility shall be provided; and

28 (2) no fees shall be imposed for home delivery of the drugs.

29 d. The Commissioner of Human Services shall apply for such
30 State plan amendments or waivers as may be necessary to implement
31 the provisions of this section and to secure federal financial
32 participation for State Medicaid expenditures under the federal
33 Medicaid program.

34 e. The Division of Consumer Affairs, in consultation with the
35 Commissioner of Human Services, may develop restrictions on the
36 filling or refilling of prescriptions to address shortage concerns,
37 provided those restrictions shall exclude restricting use for existing
38 conditions to the maximum extent practicable.

39
40 2. a. Subject to subsection b. of this section and to the extent
41 consistent with clinical guidelines, the Commissioner of Banking and
42 Insurance shall require carriers to provide coverage of prescription
43 drug refills even when the covered person has not yet reached the
44 scheduled refill date, provided that the prescription itself would
45 remain valid beyond the refill date, in a manner calculated to ensure
46 a subscriber's ability to maintain at least a 30-day supply, or a 90-
47 day supply of a maintenance medication supply at home.

48 b. The provisions of this section shall take effect if:

- 1 (1) a state of emergency or public health emergency is declared
2 by the State or federal government, or an emergency supply of a drug
3 is recommended by the Centers for Disease Control and Prevention;
4 and
5 (2) the commissioner determines that an emergency supply of
6 prescription drugs is necessary.
- 7 c. The coverage shall be provided on an in-network basis to the
8 same extent as for any other refills of prescription drugs under the
9 health benefits plan, except that:
- 10 (1) in the event of a drug shortage or access issue identified by
11 the commissioner or the Division of Consumer Affairs, the carrier
12 shall provide formulary flexibility. The cost-sharing for any non-
13 preferred medication shall not exceed the cost-sharing that would be
14 imposed for the preferred medication that is unavailable due to the
15 shortage or access issue; and
16 (2) no fees shall be imposed for home delivery of the drugs.
- 17 d. The Division of Consumer Affairs, in consultation with the
18 commissioner, may develop restrictions on the filling or refilling of
19 prescriptions to address shortage concerns, provided those
20 restrictions shall exclude restricting use for existing conditions to the
21 maximum extent practicable.
- 22 e. As used in this section, “carrier” means an insurance
23 company, health service corporation, hospital service corporation,
24 medical service corporation, or health maintenance organization
25 authorized to issue health benefits plans in this State, and shall
26 include the State Health Benefits Program and the School Employees'
27 Health Benefits Program.
- 28
- 29 3. This act shall take effect immediately.
- 30

31
32 STATEMENT

33
34 This bill requires carriers (insurance companies, health, hospital,
35 and medical service corporations, health maintenance organizations,
36 and State and School Employees' Health Benefits Program
37 contracts), that offer a health benefits plan in this State which
38 provides benefits for pharmacy services, prescription drugs, or for
39 participation in a prescription drug plan, as well as the State Medicaid
40 program, to provide coverage of prescription drug refills even when
41 the covered person has not yet reached the scheduled refill date,
42 provided that the prescription itself would remain valid beyond the
43 refill date, in a manner calculated to ensure an enrollee's ability to
44 maintain at least a 30-day supply, or a 90-day supply of a
45 maintenance medication supply at home.

46 The provisions of the bill take effect if:

47 (1) a state of emergency or public health emergency is declared
48 by the State or federal government, or an emergency supply of a drug

1 is recommended by the Centers for Disease Control and Prevention;
2 and

3 (2) the Commissioner of Banking and Insurance or, in the case of
4 the State Medicaid program, the Commissioner of Human Services,
5 determines that an emergency supply of prescription drugs is
6 necessary.

7 The coverage is required to be provided to the same extent as for
8 any other refills of prescription drugs, except that:

9 (1) in the event of a drug shortage or access issue, formulary
10 flexibility is required to be provided; and

11 (2) no fees shall be imposed for home delivery of the drugs.

12 The bill also provides that the Division of Consumer Affairs, in
13 consultation with the Commissioner of Banking and Insurance, or, in
14 the case of the State Medicaid program, the Commissioner of Human
15 Services, may develop restrictions on the filling or refilling of
16 prescriptions to address shortage concerns, provided those
17 restrictions shall exclude restricting use for existing conditions to the
18 maximum extent practicable.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2344

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 4, 2020

The Assembly Appropriations Committee releases favorably and with committee amendments Senate Bill No. 2344.

This bill requires carriers (insurance companies, health, hospital, and medical service corporations, health maintenance organizations, and State and School Employees' Health Benefits Program contracts), that offer a health benefits plan in this State which provides benefits for pharmacy services, prescription drugs, or for participation in a prescription drug plan, as well as the State Medicaid program, to provide coverage of prescription drug refills even when the covered person has not yet reached the scheduled refill date, provided that the prescription itself would remain valid beyond the refill date, in a manner calculated to ensure an enrollee's ability to maintain at least a 30-day supply, or a 90-day supply of a maintenance medication supply at home, but not to exceed a 120 day supply on-hand at any given time. The coverage shall be provided based on the authorization for the most recently filled prescription and additional authorization for the refill shall not be required.

The provisions of the bill are in effect if:

(1) a state of emergency or public health emergency is declared by the State or federal government, or an emergency supply of a drug is recommended by the Centers for Disease Control and Prevention; and

(2) the Commissioner of Banking and Insurance or, in the case of the State Medicaid program, the Commissioner of Human Services, determines that an emergency supply of prescription drugs is necessary.

The coverage is required to be provided to the same extent as for any other refills of prescription drugs, except that:

(1) in the event of a drug shortage or access issue, formulary flexibility for a covered alternative is required to be provided; and

(2) no fees shall be imposed for home delivery of the drugs.

The bill also provides that the Division of Consumer Affairs, in consultation with the Commissioner of Banking and Insurance, or, in the case of the State Medicaid program, the Commissioner of Human Services, may develop restrictions on the filling or refilling of prescriptions by pharmacists to address shortage concerns, provided

those restrictions shall exclude restricting use for existing conditions to the maximum extent practicable.

As amended and released by the committee, this bill is the same as Assembly Bill No. 3970, as also amended and released by the committee.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) provide that carriers and the State Medicaid program are not required to provide coverage for the maintenance of medications beyond 120 days;

(2) provide that the coverage shall be provided based on the authorization for the most recently filled prescription and additional authorization for the refill shall not be required;

(3) clarify the circumstances under which the provisions of the bill remain in effect;

(4) provide that, in the event of a drug shortage or access issue, formulary flexibility is required to be provided for a covered alternative; and

(5) provide that the coverage requirements for carriers only apply if the member remains eligible beyond the refill date.

FISCAL IMPACT:

The OLS estimates that this bill may have an indeterminate, minimal impact on State expenditures under the New Jersey FamilyCare program, State Health Benefits Program, and School Employees' Health Benefit Program due to forward shifts in the timing of payment of prescription claims.

To the extent that FamilyCare beneficiaries and covered State health plan members refill certain prescriptions early, whenever the emergency conditions explained in the bill apply, State reimbursements to prescription drug providers may be accelerated. Depending upon the timing and duration of the emergency conditions, the indeterminate expenditure shifts may occur either entirely within the same fiscal year or may span two fiscal years.

The OLS assumes that any State expenditure shift would be unlikely to affect the timing of the payment to the State of federal Medicaid matching funds or pharmaceutical manufacturer rebates. The OLS also anticipates that none of the likely rare expenditure accelerations would affect the total amounts of State expenditures, federal Medicaid reimbursements, or pharmaceutical manufacturer rebates.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2344 STATE OF NEW JERSEY 219th LEGISLATURE

DATED: MAY 12, 2020

SUMMARY

- Synopsis:** Requires Medicaid and health insurance coverage for certain refills of prescription drugs during state of emergency.
- Type of Impact:** Shift in State expenditures.
- Agencies Affected:** Department of Human Services, Department of the Treasury

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Expenditures	Indeterminate Shift		

- The Office of Legislative Services (OLS) estimates that this bill may have an indeterminate, minimal impact on State expenditures under the New Jersey FamilyCare program, State Health Benefits Program (SHBP), and School Employees' Health Benefit Program (SEHBP) due to forward shifts in the timing of payment of prescription claims. To the extent that FamilyCare beneficiaries and covered State health plan members refill certain prescriptions early, whenever the emergency conditions explained in the bill apply, State reimbursements to prescription drug providers may be accelerated. Depending upon the timing and duration of the emergency conditions, the indeterminate expenditure shifts may occur either entirely within the same fiscal year or may span two fiscal years.
- The OLS assumes that any State expenditure shift would be unlikely to affect the timing of the payment to the State of federal Medicaid matching funds or pharmaceutical manufacturer rebates. The OLS also anticipates that none of the likely rare expenditure accelerations would affect the total amounts of State expenditures, federal Medicaid reimbursements, or pharmaceutical manufacturer rebates.

BILL DESCRIPTION

This bill requires carriers that offer a health benefits plan providing benefits for pharmacy services, prescription drugs, or for participation in a prescription drug plan, as well as the State

Medicaid program, to provide coverage of prescription drug refills even when the covered person has not yet reached the scheduled refill date, provided that the prescription itself would remain valid beyond the refill date and the covered person will be eligible beyond the refill date, in a manner calculated to ensure an enrollee's ability to maintain at least a 30-day supply, or a 90-day supply of a maintenance medication supply at home, but not to exceed a 120-day supply at any given time. The coverage is to be based on the authorization for the most recently filled prescription and additional authorization is not required. The provisions of the bill take effect if a state of emergency or public health emergency is declared or an emergency supply of a drug is recommended by the Centers for Disease Control and Prevention and if it is determined that an emergency supply of prescription drugs is necessary.

The coverage is required to be provided to the same extent as for any other refills of prescription drugs, except that in the event of a drug shortage or access issue, formulary flexibility is required to be provided; and no fees shall be imposed for home delivery of the drugs.

The coverage is required to be provided to the same extent as for any other refills of prescription drugs, except that in the event of a drug shortage or access issue, formulary flexibility is required to be provided; and no fees shall be imposed for home delivery of the drugs.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that this bill may cause the State to experience forward shifts in payments of prescription medication claims for New Jersey FamilyCare enrollees and SHBP and SEHBP members whenever the emergency conditions explained in the bill apply. Currently, the State provides prescription drugs for most FamilyCare beneficiaries at no cost and requires minimal cost-sharing for prescription drugs for certain enrollees. Children under the age of 19 whose gross family income is between 150 and 200 percent of the federal poverty level (FPL) are enrolled in FamilyCare – Plan C. The families of these children pay \$1.00 for a one-month supply of a generic version of a prescription medication, and \$5.00 for a one-month supply of a branded prescription drug. FamilyCare - Plan D provides coverage to children under the age of 19 whose gross family income ranges from 200 percent to 350 percent of the FPL, as well as adults earning less than 133 percent of the FPL. FamilyCare - Plan D enrollees are charged a \$5.00 copayment for up to a 34-day supply of prescription drugs, and a \$10.00 copayment for prescriptions that exceed a 34-day supply.

Current State regulations restrict the amount of prescribed medication dispensed at one time as well as the timing of prescription refills under the FamilyCare program. Initial prescriptions are restricted to a 34-day supply of medication, while prescription refills are limited to a 34-day supply, or 100-unit doses of the medication, whichever is greater. Additionally, FamilyCare beneficiaries are prohibited from refilling prescriptions before 75 percent of the prescribed medication is consumed according to the prescriber's orders.

To the extent that FamilyCare beneficiaries and SHBP and SEHBP members may fill prescriptions early, whenever the emergency conditions described in the bill apply, State reimbursements to prescription drug providers may be accelerated. Depending upon the timing and duration of the emergency conditions, these expenditure shifts may occur either entirely within the same fiscal year or may cross fiscal years. However, the total amount of prescription drug

claims reimbursed by the State would not change; although some minimal additional costs to the State may arise if a patient's prescription is changed after being pre-filled. In addition, the OLS assumes that any shift in the timing of State expenditures for prescription drugs would be unlikely to affect the timing of the payment to the State of federal Medicaid matching funds or pharmaceutical manufacturer rebates.

Section: State Government

*Analyst: Kimberly M. Clemmensen
Lead Fiscal Analyst*

Section: Human Services

*Analyst: Anne Cappabianca
Assistant Fiscal Analyst*

*Approved: Frank W. Haines III
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, No. 3970

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 1, 2020

Sponsored by:

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Co-Sponsored by:

Assemblywoman Murphy

SYNOPSIS

Requires Medicaid and health insurance coverage for certain refills of prescription drugs during state of emergency.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/4/2020)

1 AN ACT requiring Medicaid and health insurance coverage for certain
2 prescription drugs during a state of emergency and supplementing
3 P.L.1968, c.413 (C.30:4D-1 et seq.) and P.L.1997, c.192
4 (C.26:2S-1 et seq.).

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

8
9 1. a. Subject to subsection b. of this section and to the extent
10 consistent with clinical guidelines, the State Medicaid and NJ
11 FamilyCare programs shall provide coverage of prescription drug
12 refills even when the covered person has not yet reached the
13 scheduled refill date, provided that the prescription itself would
14 remain valid beyond the refill date, in a manner calculated to ensure
15 an enrollee's ability to maintain at least a 30-day supply, or a 90-day
16 supply of a maintenance medication supply at home.

17 b. The provisions of this section shall take effect if:

18 (1) a state of emergency or public health emergency is declared
19 by the State or federal government, or an emergency supply of a drug
20 is recommended by the Centers for Disease Control and Prevention;
21 and

22 (2) the Commissioner of Human Services determines that an
23 emergency supply of prescription drugs is necessary.

24 c. The coverage shall be provided on an in-network basis to the
25 same extent as for any other refills of prescription drugs, except that:

26 (1) in the event of a drug shortage or access issue, formulary
27 flexibility shall be provided; and

28 (2) no fees shall be imposed for home delivery of the drugs.

29 d. The Commissioner of Human Services shall apply for such
30 State plan amendments or waivers as may be necessary to implement
31 the provisions of this section and to secure federal financial
32 participation for State Medicaid expenditures under the federal
33 Medicaid program.

34 e. The Division of Consumer Affairs, in consultation with the
35 Commissioner of Human Services, may develop restrictions on the
36 filling or refilling of prescriptions to address shortage concerns,
37 provided those restrictions shall exclude restricting use for existing
38 conditions to the maximum extent practicable.

39
40 2. a. Subject to subsection b. of this section and to the extent
41 consistent with clinical guidelines, the Commissioner of Banking and
42 Insurance shall require carriers to provide coverage of prescription
43 drug refills even when the covered person has not yet reached the
44 scheduled refill date, provided that the prescription itself would
45 remain valid beyond the refill date, in a manner calculated to ensure
46 a subscriber's ability to maintain at least a 30-day supply, or a 90-
47 day supply of a maintenance medication supply at home.

48 b. The provisions of this section shall take effect if:

- 1 (1) a state of emergency or public health emergency is declared
2 by the State or federal government, or an emergency supply of a drug
3 is recommended by the Centers for Disease Control and Prevention;
4 and
5 (2) the commissioner determines that an emergency supply of
6 prescription drugs is necessary.
- 7 c. The coverage shall be provided on an in-network basis to the
8 same extent as for any other refills of prescription drugs under the
9 health benefits plan, except that:
- 10 (1) in the event of a drug shortage or access issue identified by
11 the commissioner or the Division of Consumer Affairs, the carrier
12 shall provide formulary flexibility. The cost-sharing for any non-
13 preferred medication shall not exceed the cost-sharing that would be
14 imposed for the preferred medication that is unavailable due to the
15 shortage or access issue; and
16 (2) no fees shall be imposed for home delivery of the drugs.
- 17 d. The Division of Consumer Affairs, in consultation with the
18 commissioner, may develop restrictions on the filling or refilling of
19 prescriptions to address shortage concerns, provided those
20 restrictions shall exclude restricting use for existing conditions to the
21 maximum extent practicable.
- 22 e. As used in this section, “carrier” means an insurance
23 company, health service corporation, hospital service corporation,
24 medical service corporation, or health maintenance organization
25 authorized to issue health benefits plans in this State, and shall
26 include the State Health Benefits Program and the School Employees'
27 Health Benefits Program.
- 28
- 29 3. This act shall take effect immediately.
- 30

31
32 STATEMENT

33
34 This bill requires carriers (insurance companies, health, hospital,
35 and medical service corporations, health maintenance organizations,
36 and State and School Employees' Health Benefits Program
37 contracts), that offer a health benefits plan in this State which
38 provides benefits for pharmacy services, prescription drugs, or for
39 participation in a prescription drug plan, as well as the State Medicaid
40 program, to provide coverage of prescription drug refills even when
41 the covered person has not yet reached the scheduled refill date,
42 provided that the prescription itself would remain valid beyond the
43 refill date, in a manner calculated to ensure an enrollee’s ability to
44 maintain at least a 30-day supply, or a 90-day supply of a
45 maintenance medication supply at home.

46 The provisions of the bill take effect if:

47 (1) a state of emergency or public health emergency is declared
48 by the State or federal government, or an emergency supply of a drug

A3970 REYNOLDS-JACKSON, QUIJANO

1 is recommended by the Centers for Disease Control and Prevention;
2 and

3 (2) the Commissioner of Banking and Insurance or, in the case of
4 the State Medicaid program, the Commissioner of Human Services,
5 determines that an emergency supply of prescription drugs is
6 necessary.

7 The coverage is required to be provided to the same extent as for
8 any other refills of prescription drugs, except that:

9 (1) in the event of a drug shortage or access issue, formulary
10 flexibility is required to be provided; and

11 (2) no fees shall be imposed for home delivery of the drugs.

12 The bill also provides that the Division of Consumer Affairs, in
13 consultation with the Commissioner of Banking and Insurance, or, in
14 the case of the State Medicaid program, the Commissioner of Human
15 Services, may develop restrictions on the filling or refilling of
16 prescriptions to address shortage concerns, provided those
17 restrictions shall exclude restricting use for existing conditions to the
18 maximum extent practicable.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3970

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 4, 2020

The Assembly Appropriations Committee releases favorably and with committee amendments Assembly Bill No. 3970.

This bill requires carriers (insurance companies, health, hospital, and medical service corporations, health maintenance organizations, and State and School Employees' Health Benefits Program contracts), that offer a health benefits plan in this State which provides benefits for pharmacy services, prescription drugs, or for participation in a prescription drug plan, as well as the State Medicaid program, to provide coverage of prescription drug refills even when the covered person has not yet reached the scheduled refill date, provided that the prescription itself would remain valid beyond the refill date, in a manner calculated to ensure an enrollee's ability to maintain at least a 30-day supply, or a 90-day supply of a maintenance medication supply at home, but not to exceed a 120 day supply on-hand at any given time. The coverage shall be provided based on the authorization for the most recently filled prescription and additional authorization for the refill shall not be required.

The provisions of the bill are in effect if:

(1) a state of emergency or public health emergency is declared by the State or federal government, or an emergency supply of a drug is recommended by the Centers for Disease Control and Prevention; and

(2) the Commissioner of Banking and Insurance or, in the case of the State Medicaid program, the Commissioner of Human Services, determines that an emergency supply of prescription drugs is necessary.

The coverage is required to be provided to the same extent as for any other refills of prescription drugs, except that:

(1) in the event of a drug shortage or access issue, formulary flexibility for a covered alternative is required to be provided; and

(2) no fees shall be imposed for home delivery of the drugs.

The bill also provides that the Division of Consumer Affairs, in consultation with the Commissioner of Banking and Insurance, or, in the case of the State Medicaid program, the Commissioner of Human Services, may develop restrictions on the filling or refilling of prescriptions by pharmacists to address shortage concerns, provided

those restrictions shall exclude restricting use for existing conditions to the maximum extent practicable.

As amended and released by the committee, this bill is the same as Senate Bill No. 2344, as also amended and released by the committee.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) provide that carriers and the State Medicaid program are not required to provide coverage for the maintenance of medications beyond 120 days;

(2) provide that the coverage shall be provided based on the authorization for the most recently filled prescription and additional authorization for the refill shall not be required;

(3) clarify the circumstances under which the provisions of the bill remain in effect;

(4) provide that, in the event of a drug shortage or access issue, formulary flexibility is required to be provided for a covered alternative; and

(5) provide that the coverage requirements for carriers only apply if the member remains eligible beyond the refill date.

FISCAL IMPACT:

The OLS estimates that this bill may have an indeterminate, minimal impact on State expenditures under the New Jersey FamilyCare program, State Health Benefits Program, and School Employees' Health Benefit Program due to forward shifts in the timing of payment of prescription claims.

To the extent that FamilyCare beneficiaries and covered State health plan members refill certain prescriptions early, whenever the emergency conditions explained in the bill apply, State reimbursements to prescription drug providers may be accelerated. Depending upon the timing and duration of the emergency conditions, the indeterminate expenditure shifts may occur either entirely within the same fiscal year or may span two fiscal years.

The OLS assumes that any State expenditure shift would be unlikely to affect the timing of the payment to the State of federal Medicaid matching funds or pharmaceutical manufacturer rebates. The OLS also anticipates that none of the likely rare expenditure accelerations would affect the total amounts of State expenditures, federal Medicaid reimbursements, or pharmaceutical manufacturer rebates.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 3970

STATE OF NEW JERSEY 219th LEGISLATURE

DATED: MAY 12, 2020

SUMMARY

- Synopsis:** Requires Medicaid and health insurance coverage for certain refills of prescription drugs during state of emergency.
- Type of Impact:** Shift in State expenditures.
- Agencies Affected:** Department of Human Services, Department of the Treasury

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Expenditures	Indeterminate Shift		

- The Office of Legislative Services (OLS) estimates that this bill may have an indeterminate, minimal impact on State expenditures under the New Jersey FamilyCare program, State Health Benefits Program (SHBP), and School Employees' Health Benefit Program (SEHBP) due to forward shifts in the timing of payment of prescription claims. To the extent that FamilyCare beneficiaries and covered State health plan members refill certain prescriptions early, whenever the emergency conditions explained in the bill apply, State reimbursements to prescription drug providers may be accelerated. Depending upon the timing and duration of the emergency conditions, the indeterminate expenditure shifts may occur either entirely within the same fiscal year or may span two fiscal years.
- The OLS assumes that any State expenditure shift would be unlikely to affect the timing of the payment to the State of federal Medicaid matching funds or pharmaceutical manufacturer rebates. The OLS also anticipates that none of the likely rare expenditure accelerations would affect the total amounts of State expenditures, federal Medicaid reimbursements, or pharmaceutical manufacturer rebates.

BILL DESCRIPTION

This bill requires carriers that offer a health benefits plan providing benefits for pharmacy services, prescription drugs, or for participation in a prescription drug plan, as well as the State

Medicaid program, to provide coverage of prescription drug refills even when the covered person has not yet reached the scheduled refill date, provided that the prescription itself would remain valid beyond the refill date and the covered person will be eligible beyond the refill date, in a manner calculated to ensure an enrollee's ability to maintain at least a 30-day supply, or a 90-day supply of a maintenance medication supply at home, but not to exceed a 120-day supply at any given time. The coverage is to be based on the authorization for the most recently filled prescription and additional authorization is not required. The provisions of the bill take effect if a state of emergency or public health emergency is declared or an emergency supply of a drug is recommended by the Centers for Disease Control and Prevention and if it is determined that an emergency supply of prescription drugs is necessary.

The coverage is required to be provided to the same extent as for any other refills of prescription drugs, except that in the event of a drug shortage or access issue, formulary flexibility is required to be provided; and no fees shall be imposed for home delivery of the drugs.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that this bill may cause the State to experience forward shifts in payments of prescription medication claims for New Jersey FamilyCare enrollees and SHBP and SEHBP members whenever the emergency conditions explained in the bill apply. Currently, the State provides prescription drugs for most FamilyCare beneficiaries at no cost and requires minimal cost-sharing for prescription drugs for certain enrollees. Children under the age of 19 whose gross family income is between 150 and 200 percent of the federal poverty level (FPL) are enrolled in FamilyCare – Plan C. The families of these children pay \$1.00 for a one-month supply of a generic version of a prescription medication, and \$5.00 for a one-month supply of a branded prescription drug. FamilyCare - Plan D provides coverage to children under the age of 19 whose gross family income ranges from 200 percent to 350 percent of the FPL, as well as adults earning less than 133 percent of the FPL. FamilyCare - Plan D enrollees are charged a \$5.00 copayment for up to a 34-day supply of prescription drugs, and a \$10.00 copayment for prescriptions that exceed a 34-day supply.

Current State regulations restrict the amount of prescribed medication dispensed at one time as well as the timing of prescription refills under the FamilyCare program. Initial prescriptions are restricted to a 34-day supply of medication, while prescription refills are limited to a 34-day supply, or 100-unit doses of the medication, whichever is greater. Additionally, FamilyCare beneficiaries are prohibited from refilling prescriptions before 75 percent of the prescribed medication is consumed according to the prescriber's orders.

To the extent that FamilyCare beneficiaries and SHBP and SEHBP members may fill prescriptions early, whenever the emergency conditions described in the bill apply, State reimbursements to prescription drug providers may be accelerated. Depending upon the timing and duration of the emergency conditions, these expenditure shifts may occur either entirely within the same fiscal year or may cross fiscal years. However, the total amount of prescription drug claims reimbursed by the State would not change; although some minimal additional costs to the State may arise if a patient's prescription is changed after being pre-filled. In addition, the OLS assumes that any shift in the timing of State expenditures for prescription drugs would be unlikely

to affect the timing of the payment to the State of federal Medicaid matching funds or pharmaceutical manufacturer rebates.

Section: State Government

*Analyst: Kimberly M. Clemmensen
Lead Fiscal Analyst*

Section: Human Services

*Analyst: Anne Cappabianca
Assistant Fiscal Analyst*

*Approved: Frank W. Haines III
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

05/15/2020

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

A-3942/S-2394 (Mukherji)TRENTON – Today, Governor Phil Murphy signed the following bills into law:

A-3942/S-2394 (Mukherji, Vainieri Huttle, Pintor Marin/Greenstein, Stack) - Requires hospital to permit individual to accompany woman during childbirth.

A-3969/S-2392 (Danielsen, Mukherji, Verrelli/Sarlo) - Allows extension of certain local government timeframes; allows local governments to accept certain payments; allows local governments to conduct certain meetings remotely; adjusts certain property tax distribution and notice requirements.

S-2344/A-3970 (Pou, Singer, Vitale/Reynolds-Jackson, Quijano, Zwicker) - Requires Medicaid and health insurance coverage for certain refills of prescription drugs during state of emergency.

Vainieri Huttle, Pintor Marin/Greenstein, Stack) - Requires hospital to permit individual to accompany woman during childbirth.

A-3969/S-2392 (Danielsen, Mukherji, Verrelli/Sarlo) - Allows extension of certain local government timeframes; allows local governments to accept certain payments; allows local governments to conduct certain meetings remotely; adjusts certain property tax distribution and notice requirements.

S-2344/A-3970 (Pou, Singer, Vitale/Reynolds-Jackson, Quijano, Zwicker) - Requires Medicaid and health insurance coverage for certain refills of prescription drugs during state of emergency.