

SENATE, No. 561

STATE OF NEW JERSEY
218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator NIA H. GILL

District 34 (Essex and Passaic)

SYNOPSIS

"New Jersey Public Option Health Care Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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1 AN ACT establishing a State health insurance public option and
2 supplementing Title 26 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. This act shall be known and may be cited as the "New Jersey
8 Public Option Health Care Act."

9

10 2. The Legislature finds and declares that:

11 a. All residents of the State have the right to health care. While
12 the federal Affordable Care Act brought many improvements in health
13 care and health coverage, it still leaves many New Jerseyans without
14 coverage or with inadequate coverage. New Jerseyans, as individuals,
15 employers, and taxpayers have experienced a rise in the cost of health
16 care and coverage in recent years, including rising premiums,
17 deductibles and co-pays, restricted provider networks and high out-of-
18 network charges.

19 b. Businesses have also experienced increases in the costs of
20 health care benefits for their employees, and many employers are
21 shifting a larger share of the cost of coverage to their employees or
22 dropping coverage entirely. Health care providers are also affected by
23 inadequate health coverage in the State of New Jersey. A large portion
24 of voluntary and public hospitals, health centers and other providers
25 now experience substantial losses due to the provision of care that is
26 uncompensated. Individuals often find that they are deprived of
27 affordable care and choice because of decisions by health plans guided
28 by the plan's economic needs rather than their health care needs.

29 c. Affordable and comprehensive health coverage must be
30 provided to address the fiscal crisis facing the health care system and
31 the State and to ensure that New Jerseyans can exercise their right to
32 health care. It is the intent of the Legislature to create the New Jersey
33 Public Option Health Care Program to provide a universal health plan
34 option available to every New Jerseyan.

35 d. The State shall obtain waivers and other approvals relating to
36 Medicaid, NJ FamilyCare, Medicare, the Affordable Care Act, and any
37 other appropriate federal programs, under which federal funds and
38 other subsidies that are paid to the State of New Jersey are used, as
39 appropriate, to create a public option for New Jerseyans to purchase
40 health insurance.

41 e. If any necessary waiver or approval is not obtained, the State
42 shall use State plan amendments and seek waivers and approvals to
43 maximize, and make as seamless as possible, the use of federal funds
44 to facilitate the New Jersey Public Option Health Care Program.

45 f. In order to promote improved quality of, and access to, health
46 care services and promote improved clinical outcomes, it is the policy
47 of the State to encourage cooperative, collaborative and integrative
48 arrangements among health care providers who will participate in the

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1 New Jersey Public Option Health Care Program, under the active
2 supervision of the Commissioner of Health. It is the intent of the State
3 to supplant competition with such arrangements and regulation only to
4 the extent necessary to accomplish the purposes of this act.

5 g. The Department of Health shall create a New Jersey Public
6 Option Health Care Program that includes as many providers as
7 possible and comes at the lowest possible cost for New Jerseyans
8 shopping for health insurance and that provides an efficient,
9 competitive publicly-run alternative to the private insurance market.

10

11 3. As used in this act:

12 "Affordable Care Act" means the federal "Patient Protection and
13 Affordable Care Act," Pub.L.111-148, as amended by the federal
14 "Health Care and Education Reconciliation Act of 2010," Pub.L.111-
15 152, and any federal rules and regulations adopted pursuant thereto.

16 "Board" means the board of the New Jersey Public Option Health
17 Care Program created pursuant to section 5 of this act.

18 "Commissioner" means the Commissioner of the Department of
19 Health.

20 "Department" means the Department of Health.

21 "Federally-matched public health program" means Medicaid and NJ
22 FamilyCare.

23 "Health care service" means any health care service, including care
24 coordination, included as a benefit under the program.

25 "Medicaid" means the Medicaid program established pursuant to
26 P.L.1968, c.413 (C.30:4D-1 et seq.).

27 "Medicare" means the coverage provided under Title XVIII of the
28 Social Security Act as amended in 1965 or its successor plan or plans.

29 "Member" means an individual who is enrolled in the program.

30 "New Jersey Public Option Trust Health Care Fund" means the
31 New Jersey Public Option Trust Fund established pursuant to section
32 11 of this act.

33 "NJ FamilyCare" means the NJ FamilyCare Program established
34 pursuant to P.L.2005, c.156 (C.30:4J-8 et al.).

35 "Participating provider" means any individual or entity that is a
36 health care provider qualified under section 7 this act that provides
37 health care services to members under the program, or a health care
38 organization.

39 "Program" means the New Jersey Public Option Health Care
40 Program created pursuant to section 4 of this act.

41 "Resident" means an individual whose primary place of abode is in
42 the State, without regard to the individual's immigration status, as
43 determined according to regulations of the commissioner. A
44 "resident" shall include a "small employer," as defined in section 1 of
45 P.L.1992, c.162 (C.17B:27A-17).

46

47 4. a. The New Jersey Public Option Health Care Program is
48 hereby created in the Department of Health. The Commissioner of

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1 Health, in consultation with the Commissioner of Banking and
2 Insurance, shall establish and implement the program pursuant to this
3 act. The program shall provide a comprehensive health insurance
4 coverage option to every resident who enrolls in the program. The
5 health insurance coverage offered by the program shall compete in the
6 market with insurance offered by private health insurers.

7 b. The commissioner shall, to the maximum extent possible,
8 organize, administer and market the program and services as a single
9 program under the name "New Jersey Public Option Health Care
10 Program" or such other name as the commissioner shall determine. In
11 implementing this act, the commissioner shall avoid jeopardizing
12 federal financial participation in Federally-matched public health
13 programs and shall take care to promote public understanding and
14 awareness of available benefits and programs.

15 c. The commissioner shall determine when individuals may begin
16 enrolling in the program. There shall be an implementation period,
17 which shall begin on the date that individuals may begin enrolling in
18 the program and shall end as determined by the commissioner.

19

20 5. a. The New Jersey Public Option Health Care Board is hereby
21 created in the Department of Health. The board shall, at the request of
22 the commissioner, consider any matter to effectuate the provisions and
23 purposes of this act, and may advise the commissioner in that regard;
24 and it may, from time to time, submit to the commissioner any
25 recommendations to effectuate the provisions and purposes of this act.
26 The commissioner may propose regulations under this act and
27 amendments to the act for consideration by the board. The board shall
28 have no executive, administrative or appointive duties except as
29 otherwise provided by law. The board shall have power to establish,
30 and from time to time, amend regulations to effectuate the provisions
31 and purposes of this act, subject to approval by the commissioner.

32 b. The board shall be composed of:

33 (1) the Commissioner of Health, the Commissioner of Banking
34 and Insurance, and the Treasurer, or their designees, as ex officio
35 members;

36 (2) 11 members to be appointed by the Governor as follows:

37 (a) three of whom shall be representatives of health care
38 consumer advocacy organizations which have a Statewide or regional
39 constituency, who have been involved in activities related to health
40 care consumer advocacy, including issues of interest to low- and
41 moderate-income individuals;

42 (b) one of whom shall be a representative of professional
43 organizations representing physicians;

44 (c) one of whom shall be representatives of professional
45 organizations representing licensed or registered health care
46 professionals other than physicians;

47 (d) two of whom shall be representatives of hospitals, and of those
48 two, one of whom shall be a representative of public hospitals;

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- 1 (e) one of whom shall be a representative of community health
2 centers;
- 3 (f) one of whom shall be a representative of health care
4 organizations;
- 5 (g) one of whom shall be a representative of organized labor; and
- 6 (h) one of whom shall have demonstrated expertise in health care
7 finance; and
- 8 (3) six members appointed by the Governor; two of whom to be
9 appointed on the recommendation of the Speaker of the General
10 Assembly; two of whom to be appointed on the recommendation of
11 the President of the Senate; one of whom to be appointed on the
12 recommendation of the Minority Leader of the General Assembly; and
13 one of whom to be appointed on the recommendation of the Minority
14 Leader of the Senate.
- 15 c. Each member of the board shall serve at the pleasure of the
16 Governor, except the ex officio members.
- 17 d. The chair of the board shall be appointed, and may be removed
18 as chair, by the Governor from among the members.
- 19 e. The board shall meet at least four times each calendar year.
20 Meetings shall be held upon the call of the chair and as provided by
21 the board. A majority of the appointed members shall be a quorum of
22 the board, and the affirmative vote of a majority of the members
23 voting, but not less than 10, shall be necessary for any action to be
24 taken by the board. The board may establish an executive committee
25 to exercise any powers or duties of the board as it may provide, and
26 other committees to assist the board or the executive committee. The
27 chair of the board shall chair the executive committee and shall
28 appoint the chair and members of all other committees. The board
29 may appoint one or more advisory committees. Members of advisory
30 committees need not be members of the board.
- 31 f. Members shall serve without compensation but shall be
32 reimbursed for their necessary and actual expenses incurred while
33 engaged in the business of the board.
- 34 g. The board and its committees and advisory committees may
35 request and receive the assistance of the department and any other
36 State or local governmental entity in exercising its powers and duties.
37
- 38 6. a. Every resident of the State shall be eligible and entitled to
39 enroll as a member under the program. The Commissioner of Health,
40 in consultation with the Commissioner of Banking and Insurance, shall
41 establish premiums for which members are responsible and other
42 charges for enrolling in or being a member under the program. The
43 premium shall be determined in a manner to make the program viable,
44 but at the lowest possible cost to members.
- 45 b. The program shall provide comprehensive health coverage to
46 every member, which shall include all health care services required to
47 be covered under any of the following, without regard to whether the

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1 member would otherwise be eligible for or covered by the program or
2 source referred to:

- 3 (1) NJ Family Care;
- 4 (2) Medicaid;
- 5 (3) Medicare;
- 6 (4) the New Jersey Individual Health Coverage Program
7 established pursuant to section 9 of P.L.1992, c.161 (C.17B:27A-10);
- 8 (5) the New Jersey Small Employer Health Benefits Program
9 established pursuant to P.L.1992, c.162 (C.17B:27A-17 et seq.); and
- 10 (6) any additional health care service authorized to be added to the
11 program's benefits by the program.

12 c. The commissioner shall determine premiums, deductibles, co-
13 payments or co-insurance under the program.

14
15 7. a. (1) The commissioner shall establish and maintain
16 procedures and standards for health care providers to be qualified to
17 participate in the program, including but not limited to procedures and
18 standards relating to the revocation, suspension, limitation, or
19 annulment of qualification to participate on a determination that the
20 health care provider is an incompetent provider of specific health care
21 services or has exhibited a course of conduct which is either
22 inconsistent with program standards and regulations or which exhibits
23 an unwillingness to meet such standards and regulations, or is a
24 potential threat to the public health or safety.

25 (2) The procedures and standards required by paragraph (1) of this
26 subsection shall not limit health care provider participation in the
27 program for economic purposes and shall be consistent with good
28 professional practice.

29 (3) Any health care provider who is qualified to participate under
30 Medicaid, NJ FamilyCare or Medicare shall be deemed to be qualified
31 to participate in the program, and any health care provider's
32 revocation, suspension, limitation, or annulment of qualification to
33 participate in any of those programs shall apply to the health care
34 provider's qualification to participate in the program; provided that a
35 health care provider qualified under this paragraph shall follow the
36 procedures to become qualified under the program by the end of the
37 implementation period.

38 b. The commissioner shall establish and maintain procedures and
39 standards for recognizing health care providers located out of the State
40 for purposes of providing coverage under the program for out-of-State
41 health care services.

42 c. The commissioner may establish by regulation payment
43 methodologies for health care services provided to members under the
44 program by participating providers and health care organizations.
45 There may be a variety of different payment methodologies, including
46 those established on a demonstration basis. All payment rates under
47 the program shall be reasonable and reasonably related to the cost of

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- 1 efficiently providing the health care service and assuring an adequate
2 and accessible supply of health care service.
- 3 d. The program shall engage in good faith negotiations with
4 health care providers' representatives including, but not limited to, in
5 relation to rates of payment and payment methodologies.
- 6 e. Notwithstanding any provision of law to the contrary, the
7 commissioner shall provide by regulation for payment methodologies
8 and procedures for paying for drugs provided by pharmacies under the
9 program, in coordination with reimbursement for prescription drugs
10 under section 340B of the federal Public Health Service Act (42
11 U.S.C. s.2566), where applicable, and for prescription drugs provided
12 by health care providers other than pharmacies.
- 13 f. Payment for health care services established under this act shall
14 be considered payment in full. A participating provider shall not
15 charge any rate in excess of the payment established under this act for
16 any health care service under the program provided to a member and
17 shall not solicit or accept payment from any member or third-party for
18 any such service except as otherwise permitted pursuant to this act;
19 provided, however, this subsection shall not preclude the program
20 from acting as a primary or secondary payer in conjunction with
21 another third-party payer where permitted under this act.
- 22 g. The commissioner shall provide by regulation for payment
23 methodologies and procedures for paying for out-of-State health care
24 services.
- 25
- 26 8. a. Every participating provider shall furnish to the program
27 such information to, and permit examination of its records by, the
28 program, as may be reasonably required for purposes of reviewing
29 accessibility and utilization of health care services, quality assurance,
30 and cost containment, the making of payments, and statistical or other
31 studies of the operation of the program or for protection and promotion
32 of public, environmental and occupational health.
- 33 b. In developing requirements and standards and making other
34 policy determinations under this act, the commissioner shall consult
35 with representatives of members, health care providers, care
36 coordinators, health care organizations and other interested parties.
- 37 c. The program shall maintain the confidentiality of all data and
38 other information collected under the program when such data would
39 be normally considered confidential data between a patient and health
40 care provider. Aggregate data of the program which is derived from
41 confidential data but does not violate patient confidentiality shall be
42 public information.
- 43
- 44 9. a. The commissioner, in consultation with the Commissioner
45 of Banking and Insurance, shall seek all federal waivers and other
46 federal approvals and arrangements and submit State plan amendments
47 necessary to operate the program consistent with this act and to
48 maximize access to health care for residents of the State.

1 b. The commissioner shall apply to the United States Secretary of
2 Health and Human Services or other appropriate federal official for all
3 waivers of requirements, and make other arrangements, under
4 Medicare, any federally-matched public health program, the
5 Affordable Care Act, and any other federal programs that provide
6 federal funds for payment for health care services, that are necessary to
7 enable all New Jersey Public Option Health Care Program members to
8 receive all benefits under the program through the program and to
9 enable the State to implement this act and to receive and deposit all
10 federal payments under those programs, where appropriate, including
11 funds that may be provided in lieu of premium tax credits, cost-sharing
12 subsidies, and small business tax credits, in the State Treasury to the
13 credit of the New Jersey Public Option Health Care Trust Fund and to
14 use those funds for the New Jersey Public Option Health Care Health
15 Care Program and other provisions of this act.

16 c. The commissioner may require members, or applicants to be
17 members, to provide information necessary for the program to comply
18 with any waiver or arrangement under this section.

19 d. The commissioner may waive or modify the applicability of
20 provisions of this section relating to any federally-matched public
21 health program or Medicare as necessary to implement any waiver or
22 arrangement under this section or to maximize the benefit to the New
23 Jersey Public Option Health Care Program under this section, provided
24 that the commissioner, in consultation with the State Treasurer, shall
25 determine that such waiver or modification is in the best interests of
26 the members affected by the action and the State.

27 e. The commissioner may apply for coverage under any federally-
28 matched public health program on behalf of any member and enroll
29 the member in the federally-matched public health program or
30 Medicare if the member is eligible for it. Enrollment in a federally-
31 matched public health program or Medicare shall not cause any
32 member to lose any health care service provided by the program or
33 diminish any right the member would otherwise have.

34

35 10. a. The commissioner shall directly, and through contracts with
36 nonprofit organizations, provide:

37 (1) consumer assistance to individuals with respect to enrolling,
38 obtaining health care services, disenrolling, and other matters relating
39 to the program; and

40 (2) health care provider assistance to health care providers
41 providing, and seeking or considering whether to provide, health care
42 services under the program.

43 b. The commissioner shall, directly and through grants to
44 nonprofit entities, conduct programs using data collected through the
45 New Jersey Public Option Health Care Program, to promote and
46 protect public, environmental and occupational health, including
47 cooperation with other data collection and research programs of the
48 department, consistent with this act and otherwise applicable law.

1 11. a. There is established in the Department of the Treasury a
2 nonlapsing revolving fund to be known as the "New Jersey Public
3 Option Health Care Trust Fund." This fund shall be the repository for
4 monies collected pursuant to subsection c. of this section and other
5 monies received as grants or otherwise appropriated for the purposes
6 of the program. The monies in the fund shall be used only for the
7 purpose of supporting the activities of the program and this act.

8 b. The State Treasurer is the custodian of the fund and all
9 disbursements from the fund shall be made by the State Treasurer.
10 The monies in the fund shall be invested and reinvested by the
11 Director of the Division of Investment in the Department of the
12 Treasury as are other trust funds in the custody of the State Treasurer
13 in the manner provided by law. Interest received on the monies in the
14 fund shall be credited to the fund.

15 c. The fund shall be the repository for:

16 (1) all monies obtained from premiums collected pursuant to this
17 act;

18 (2) federal payments received as a result of any waiver of
19 requirements granted or other arrangements agreed to by the United
20 States Secretary of Health and Human Services or other appropriate
21 federal officials for health care programs established under Medicare,
22 any federally-matched public health program, or the Affordable Care
23 Act;

24 (3) the amounts paid by the Department of Health that are
25 equivalent to those amounts that are paid on behalf of residents of this
26 State under Medicare, any federally-matched public health program, or
27 the Affordable Care Act for health benefits which are equivalent to
28 health benefits covered under the program; and

29 (4) State monies, as appropriate, for services and benefits covered
30 under the New Jersey Public Option Health Care Program.

31

32 12. This act shall take effect on the first day of the third month
33 after enactment.

34

35

36

STATEMENT

37

38 This bill, the "New Jersey Public Option Health Care Act,"
39 creates the New Jersey Public Option Health Care Program in the
40 Department of Health. The bill requires the Commissioner of
41 Health, in consultation with the Commissioner of Banking and
42 Insurance, to establish and implement the program, which will
43 provide a comprehensive health insurance coverage option to every
44 State resident who enrolls in the program. The health insurance
45 coverage offered by the program shall compete in the market with
46 insurance offered by private health insurers.

47 The commissioner will determine when individuals may begin
48 enrolling in the program. There shall be an implementation period,

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1 which shall begin on the date that individuals may begin enrolling
2 in the program and shall end as determined by the commissioner.

3 The bill creates the New Jersey Public Option Health Care
4 Board to consider any matter to effectuate the provisions and
5 purposes of the bill, and to advise the commissioner in that regard.
6 The board shall be composed of the Commissioner of Health, the
7 Commissioner of Banking and Insurance, and the Treasurer, or their
8 designees, as ex officio members. In addition, the board will have
9 11 members to be appointed by the Governor:

10 (1) three of whom shall be representatives of health care
11 consumer advocacy organizations which have a Statewide or
12 regional constituency, who have been involved in activities related
13 to health care consumer advocacy, including issues of interest to
14 low- and moderate-income individuals;

15 (2) one of whom shall be a representative of professional
16 organizations representing physicians;

17 (3) one of whom shall be a representative of professional
18 organizations representing licensed or registered health care
19 professionals other than physicians;

20 (4) two of whom shall be representatives of hospitals, and of
21 those two, one of whom shall be a representative of public
22 hospitals;

23 (5) one of whom shall be a representative of community health
24 centers;

25 (6) one of whom shall be a representative of health care
26 organizations;

27 (7) one of whom shall be representatives of organized labor; and

28 (8) one of whom shall have demonstrated expertise in health
29 care finance; and

30 The board will also include six members appointed by the
31 Governor; two of whom to be appointed on the recommendation of
32 the Speaker of the General Assembly; two of whom to be appointed
33 on the recommendation of the President of the Senate; one of whom
34 to be appointed on the recommendation of the Minority Leader of
35 the General Assembly; and one of whom to be appointed on the
36 recommendation of the Minority Leader of the Senate.

37 Members shall serve without compensation but shall be
38 reimbursed for their necessary and actual expenses incurred while
39 engaged in the business of the board.

40 Under the bill, every resident of the State shall be eligible and
41 entitled to enroll as a member under the program. The
42 Commissioner of Health is to establish premiums for which
43 members are responsible and other charges for enrolling in or being
44 a member under the program. The premium shall be determined in
45 a manner to make the program viable, but at the lowest possible
46 cost to members.

47 The bill provides that the program shall provide comprehensive
48 health coverage to every member. The commissioner shall also

1 determine premiums, deductibles, co-payments or co-insurance
2 under the program.

3 The commissioner is also required to establish and maintain
4 procedures and standards for health care providers to be qualified to
5 participate in the program, including but not limited to procedures
6 and standards relating to the revocation, suspension, limitation, or
7 annulment of qualification to participate on a determination that the
8 health care provider is an incompetent provider of specific health
9 care services or has exhibited a course of conduct which is either
10 inconsistent with program standards and regulations or which
11 exhibits an unwillingness to meet such standards and regulations,
12 or is a potential threat to the public health or safety. Such
13 procedures and standards shall not limit health care provider
14 participation in the program for economic purposes and shall be
15 consistent with good professional practice. Any health care
16 provider who is qualified to participate under Medicaid, NJ
17 FamilyCare or Medicare shall be deemed to be qualified to
18 participate in the program, and any health care provider's
19 revocation, suspension, limitation, or annulment of qualification to
20 participate in any of those programs shall apply to the health care
21 provider's qualification to participate in the program; provided that
22 a health care provider qualified in this manner shall follow the
23 procedures to become qualified under the program by the end of the
24 implementation period.

25 The program shall engage in good faith negotiations with health
26 care providers' representatives including, but not limited to, in
27 relation to rates of payment and payment methodologies.

28 Every participating provider is required to furnish to the program
29 such information to, and permit examination of its records by, the
30 program, as may be reasonably required for purposes of reviewing
31 accessibility and utilization of health care services, quality
32 assurance, and cost containment, the making of payments, and
33 statistical or other studies of the operation of the program or for
34 protection and promotion of public, environmental and occupational
35 health.

36 The bill specified that the program shall maintain the
37 confidentiality of all data and other information collected under the
38 program when such data would be normally considered confidential
39 data between a patient and health care provider. Aggregate data of
40 the program which is derived from confidential data but does not
41 violate patient confidentiality shall be public information.

42 The bill provides that the commissioner shall seek all federal
43 waivers and other federal approvals and arrangements and submit
44 State plan amendments necessary to operate the program consistent
45 with the bill and to maximize access to health care for residents of
46 the State. The commissioner shall apply to the Secretary of Health
47 and Human Services or other appropriate federal official for all
48 waivers of requirements, and make other arrangements, under

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1 Medicare, any federally-matched public health program, the
2 Affordable Care Act, and any other federal programs that provide
3 federal funds for payment for health care services, that are
4 necessary to enable all New Jersey Public Option Health Care
5 Program members to receive all benefits under the program through
6 the program and to enable the State to implement the provisions of
7 the bill and to receive and deposit all federal payments under those
8 programs, where appropriate, including funds that may be provided
9 in lieu of premium tax credits, cost-sharing subsidies, and small
10 business tax credits, in the State treasury to the credit of the New
11 Jersey Public Option Health Care Trust Fund and to use those funds
12 for the New Jersey Public Option Health Care Program and other
13 provisions under the bill.

14 The Commissioner shall also directly, and through contracts with
15 not-for-profit organizations, provide:

16 (1) consumer assistance to individuals with respect to enrolling,
17 obtaining health care services, disenrolling, and other matters
18 relating to the program; and

19 (2) health care provider assistance to health care providers
20 providing and seeking or considering whether to provide, health
21 care services under the program, with respect to participating in a
22 health care organization and dealing with a health care organization.

23 The bill establishes in the Department of the Treasury a
24 nonlapsing revolving fund to be known as the “New Jersey Public
25 Option Health Care Trust Fund.” This fund shall be the repository
26 for monies collected under the bill and other monies received as
27 grants or otherwise appropriated for the purposes of the program.
28 The monies in the fund shall be used only for the purpose of
29 supporting the activities of the program and as otherwise provided
30 for in the bill.