

**ASSEMBLY CONCURRENT
RESOLUTION No. 31**

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblywoman ANGELICA M. JIMENEZ

District 32 (Bergen and Hudson)

Assemblywoman SHAVONDA E. SUMTER

District 35 (Bergen and Passaic)

Assemblywoman MILA M. JASEY

District 27 (Essex and Morris)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Co-Sponsored by:

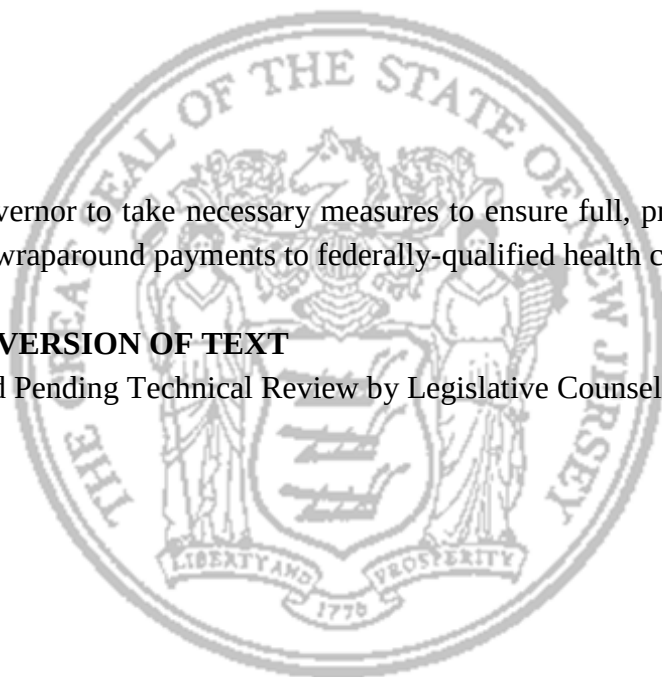
Assemblymen McKeon, Burzichelli and Assemblywoman Tucker

SYNOPSIS

Urges Governor to take necessary measures to ensure full, prompt payment of Medicaid wraparound payments to federally-qualified health centers.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **A CONCURRENT RESOLUTION** urging the Governor to take the
2 necessary measures to ensure full, prompt Medicaid wraparound
3 payments to federally-qualified health centers.
4
5 **WHEREAS**, The Medicaid program, established pursuant to 42 U.S.C.
6 ss.1396 et seq., provides medical assistance to certain low-income
7 people, including families with dependent children, pregnant
8 women, people over 65 years of age, and people who are blind or
9 who have a total or permanent disability, who meet certain income
10 and other eligibility requirements; and
11 **WHEREAS**, The Medicaid program is jointly funded by state and
12 federal governments but is entirely administered by the individual
13 states, which must meet certain federal requirements when
14 implementing that state’s Medicaid program; and
15 **WHEREAS**, States participating in the Medicaid program must offer
16 non-profit federally-qualified health centers (FQHCs), which
17 provide health care services to medically underserved communities;
18 and
19 **WHEREAS**, In New Jersey, FQHCs are reimbursed for Medicaid-
20 eligible claims through the Prospective Payment System (PPS),
21 which assesses a set rate for reimbursement amounts; and
22 **WHEREAS**, New Jersey has adopted a managed care program that
23 provides health care services through managed care organizations
24 (MCOs), which receive prospective payments from the State based
25 on a fixed monthly fee per patient and anticipated use of services;
26 and
27 **WHEREAS**, MCOs in the State contract with FQHCs to provide health
28 care services and reimburse the FQHCs for Medicaid-covered
29 encounters out of the prospective payment funds provided by the
30 State; and
31 **WHEREAS**, Frequently, the contracted-for payments from MCOs to
32 FQHCs are less than the full amount FQHC is entitled to receive
33 under the PPS; in these situations, the State is required by the
34 federal Medicaid statute to make a supplemental payment at least
35 once every four months, known as a “wraparound payment,” to
36 make up the difference between the MCO payment and the full PPS
37 amount; and
38 **WHEREAS**, In 2011, the State Department of Human Services (DHS)
39 announced that it was revising the formula for calculating
40 wraparound payments out of a concern that the formula then in use
41 was resulting in substantial overpayments by the State to FQHCs
42 for possibly invalid Medicaid claims; and
43 **WHEREAS**, The revised formula required that FQHCs report additional
44 information when making reimbursement claims, and additionally
45 required that an MCO have provided payment for a Medicaid-
46 eligible claim as a prerequisite to the State reimbursing the FQHC
47 for the balance of the claim, on the theory that this process would

1 help ensure the validity of any Medicaid claims submitted for
 2 reimbursement; and
 3 **WHEREAS**, The New Jersey Primary Care Association (NJPCA)
 4 brought a lawsuit against the DHS in the United States District
 5 Court of New Jersey claiming the new formula violated the federal
 6 Medicaid statute; and
 7 **WHEREAS**, The district court ruled in favor of the NJPCA and the
 8 State appealed to the Third Circuit Court of Appeals in N.J. Primary
 9 Care Ass'n v. State Dep't of Human Servs., 722 F.3d 527 (3d Cir.
 10 2013); and
 11 **WHEREAS**, The Third Circuit held on appeal that, because it is
 12 possible that MCOs may improperly deny Medicaid-eligible claims,
 13 the State's requirement that wraparound payments be contingent on
 14 prior MCO payment could result in underpayment of wraparound
 15 payments in violation of the federal Medicaid statute requirement
 16 that FQHCs receive full, timely wraparound payments for all
 17 Medicaid-eligible claims; and
 18 **WHEREAS**, The Third Circuit ruling enjoined use of the new
 19 wraparound payment formula absent a process by which an FQHC
 20 may promptly and effectively challenge an adverse MCO payment
 21 determination within the statutorily-mandated time period; and
 22 **WHEREAS**, The NJPCA has indicated that the State is not in
 23 compliance with the Third Circuit Court ruling, and delayed and
 24 underpaid wraparound payments have resulted in cash flow
 25 problems for FQHCs; now, therefore,

26
 27 **BE IT RESOLVED** by the General Assembly of the State of New
 28 Jersey (the Senate concurring):
 29

30 1. The Legislature of the State of New Jersey respectfully urges
 31 the Governor to take all necessary steps, including directing State
 32 departments and agencies to take appropriate action, to ensure the
 33 State is in compliance with the ruling of the United State Third
 34 Circuit Court of Appeals in N.J. Primary Care Ass'n v. State Dep't
 35 of Human Servs., 722 F.3d 527 (3d Cir. 2013).
 36

37 2. Copies of this resolution, as filed with the Secretary of State,
 38 shall be transmitted by the Clerk of the General Assembly or the
 39 Secretary of the Senate to the Governor, the Commissioner of
 40 Human Services, and the Director of the Division of Medical
 41 Assistance and Health Services in the Department of Human
 42 Services.
 43
 44

45 STATEMENT

46
 47 This concurrent resolution urges the Governor to take all
 48 necessary steps, including directing State departments and agencies

1 to take appropriate action, to ensure the State is in compliance with
2 the ruling of the United States Third Circuit Court of Appeals in
3 N.J. Primary Care Ass’n v. State Dep’t of Human Servs., 722 F.3d
4 527 (3d Cir. 2013), which held that the State’s revised formula for
5 calculating wraparound reimbursement payments for Medicaid-
6 eligible services to federally-qualified health centers (FQHCs)
7 violates the requirement in the federal Medicaid statute that the
8 FQHCs receive full, timely wraparound payments for all Medicaid-
9 eligible services.

10 Currently, under the federal Medicaid statute, FQHCs are
11 entitled to a certain level of reimbursement for providing Medicaid-
12 eligible services to patients. When a managed care organization
13 (MCO) does not provide the full level of reimbursement for a
14 Medicaid-eligible claim, the State is required to provide
15 supplementary reimbursement that covers the balance of the full
16 reimbursement amount to which the FQHC is entitled. The State is
17 required to make these supplementary payments, which are known
18 as “wraparound payments,” at least once every four months.

19 In 2011, out of a concern that the formula then in use for
20 calculating wraparound payments may have resulted in significant
21 overpayments to FQHCs, the State revised the formula for
22 calculating wraparound payments to require FQHCs report
23 additional information when submitting claims and to require that
24 an MCO approve and provide payment for a claim as a precondition
25 for the State’s wraparound payment for the balance of the claim.

26 The Third Circuit Court of Appeals found that MCOs may
27 improperly deny Medicaid-eligible claims for any number of
28 reasons, resulting in underpayment of the appropriate wraparound
29 payment amount. Because the federal Medicaid statute requires
30 prompt wraparound payments to fully compensate FQHCs, the
31 court found the risk of underpayment under the revised formula
32 constitutes a violation of the federal Medicaid law, and enjoined
33 implementation of the revised formula.

34 This concurrent resolution respectfully urges the Governor to
35 take all necessary steps to ensure the State is in compliance with the
36 ruling of the United States Third Circuit Court of Appeals.