

NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice!

M. CLAIRE FRENCH
NJAC President
Monmouth County Clerk

JOHN G. DONNADIO
Executive Director

STATE HOUSE NEWS

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BERGEN COUNTY CASE

NJAC's Labor Counsel Joe Hannon with Genova, Burns, Giantomasi, & Webster is preparing an overview of a recent Appellate Division decision that may affect county governments throughout the State. In *Bergen County Police PBA Local 49 v. Donovan*, App. Div. (Carroll, J.S.C., temporarily assigned) (21 pp.), the Court considered the interplay between the Optional County Charter Law, N.J.S.A. 40:41A-1 and N.J.S.A. 40A:9-117, which deals with the compensation of sheriff's employees. Specifically, the Court addressed the following questions: (1) whether the Bergen County Sheriff has the exclusive statutory authority to negotiate salary payments, increases, and other economic benefits with the employees of the Sheriff's Department, subject to the requirements of N.J.S.A. 40A:9-117; and, (2) whether the Court, rather than the New Jersey Public Employment Relations Commission (PERC), was the appropriate forum to adjudicate this dispute. The Court answered in the affirmative to both questions. We'll make sure to share with you Joe Hannon's overview shortly.

PRE-ADJUDICATED INMATES

On June 11th, NJAC is hosting a conference call with the New Jersey County Jail Wardens Association (NJCJWA) and county officials from across the State to discuss the extension of the 24-hour hospital stay exception to pre-adjudicated inmates housed in county jails. NJAC and NJCJWA were planning to meet again with the Director of Medicaid Services to develop an effective process for implementing the above exception and suspending inmate benefits upon incarceration. However, in light of Hudson County's notice of claim filed against the State of New Jersey and Department of Human Services concerning the matter, the State's Attorney General has advised against the Department from meeting with NJAC, its affiliates, and all other counties until the claim is resolved accordingly. Nonetheless, the Director of Medicaid Services shared the Department's proposed solution and settlement recommendation to Hudson County that I've copied in its entirety below.

Statement of Issue: Federal Medicaid regulations prohibit federal financial participation for incarcerated individuals. In 1997, CMS issued guidance to States indicating that an exception to this regulation would be in cases where the otherwise eligible inmate was in a medical institution for greater than 24 hours. For States like NJ, that have elected the optional Medicaid expansion, there is a greater opportunity for claiming inpatient hospital payments for under Medicaid since more incarcerated individuals will be Medicaid eligible but for their incarceration. Some States have operationalized this by “pending or suspending” the adult’s Medicaid eligibility number while incarcerated.

Status of the Issue in NJ Medicaid: New Jersey's Medicaid eligibility system does not have a mechanism to pend or suspend Medicaid eligibility. However, the tentative long-term solution will provide an equivalent through the use of a monthly incarceration file from the AOC and edits to Medicaid's claims processing system. NJ Medicaid will be able to automatically open an eligibility segment for an incarcerated individual that will limit the billing of services to an inpatient hospital stay over 24 hours. This solution is subject to receiving a clean file from AOC, which the agency has not yet received, and making edits to the claims processing system. The agency is several months away from having this solution. CMS approval is not needed for this solution.

Proposed Solution: In the meantime, as an interim solution, the Division of Medical Assistance and Health Services (DMAHS) is proposing to use its longstanding presumptive eligibility (PE) process to allow a hospital to take a simplified application on an inmate, send it to the State for processing, and allow the hospital to get paid for the inmate's hospital stay that is over 24 hours. Training materials are being prepared and DMAHS is ready to launch training for county wardens or their designees and the PE hospital providers. This approach is pending approval from CMS, but DMAHS has had positive feedback from CMS so far regarding its willingness to work with DMAHS on an interim solution. Discussions are ongoing. Once the interim solution is finalized, training will be scheduled with the counties and PE providers. The difference between these approaches is that the interim/presumptive eligibility approach will require an application to be taken at the time of the hospital visit. The longer-term solution will be automated with the use of the AOC file.”

NJAC plans to review the Department’s proposed solution with NJCJWA, the County Welfare Directors Association of New Jersey, and the New Jersey State Association of County Adjusters for their recommendations.

SALE OF COUNTY PROPERTY

On May 21st, the Senate Community and Urban Affairs Committee favorable reported **SENATE, NO. 1582** (*Singer R-Ocean*) to the Senate Budget and Appropriations Committee for consideration. S-1582 would exempt the sale of county property from certain requirements under certain circumstances. Under current law, whenever a county plans to sell real property that it no longer needs, the county must prepare a report: identifying the reasons for the proposed sale; assessing the environmental and recreational impact of that proposed sale; and, assessing the environmental and economic value of the real property proposed to be sold. Current law also requires the county to make the report available to the public and to conduct two public hearings on the proposed sale. The county must provide notice of the hearings by newspaper publication and by mail to owners of property located near the property proposed to be sold.

In summary, this legislation would exclude sales of county property from these requirements if the proposal is to sell property to a local unit of government that is represented by a duly elected governing body. This exclusion would apply to sales to Type II school districts, municipalities, and counties, as well as to any entity created by a municipality or county if the governing body of the entity is comprised of members who are directly elected by the voters. NJAC supports this initiative as it would streamline the sale of county property and reduce the administrative costs associated. The companion version in the General Assembly is **ASSEMBLY, NO. 245** (*Kean S. R- Monmouth/Wisniewski D-Middlesex*) is currently in the Assembly State and Local Government Committee awaiting consideration.

COUNTY PLANNING BOARDS

On May 29th, the General Assembly passed by a vote of 78-0 **ASSEMBLY, NO. 1471** (*Diegnan D-Middlesex/Pinkin D-Middlesex*), which would permit certain alternate members of county planning boards to vote in place of any absent public member. In summary, this legislation would amend the County Planning Act at N.J.S.A. 40:27-1.1 to allow alternate freeholder and county engineer planning board members who regularly attend hearings to vote in place of citizen members who have been absent or otherwise disqualified from the meetings. Current law is more restrictive in that it permits alternate members who have attended hearings to participate in a planning board's decision during the absence or disqualification of a regular member for whom they are an alternate. NJAC generally supports this measure as it would provide greater flexibility for county planning boards to secure a quorum. The Senate companion version **SENATE, NO. 1689** (*Smith D-Middlesex/Van Drew D-Cape May*) is currently in the Senate Community and Urban Affairs Committee awaiting consideration.

HOT ASPHALT PURCHASES

On May 12th, the Assembly State and Local Government Committee favorably reported **ASSEMBLY, NO. 2229** (*Wisniewski D-Middlesex*), which would provide that any bid specification issued by a local contracting unit for the provision of goods or the performance of services under the "Local Public Contracts Law," that includes the purchase or use of 100 or more tons of hot mix asphalt must include a pay item for an asphalt price adjustment reflecting changes in the cost of asphalt cement.

The asphalt price adjustment would be calculated based on the basic asphalt price index as published by the New Jersey Department of Transportation in its "Standard Specifications for Road and Bridge Construction," as those standards may be revised by the Department. The bill is intended to clarify the scope and applicability of similar legislation enacted in 2010 when Governor Corzine signed a law to protect local governments and contractors from fluctuations in the price of asphalt cement, which is a key material in the production of hot mix asphalt. The bill would also reduce the applicability threshold from 1000 tons to 100 tons of hot mix asphalt that is purchased or used. Although NJAC does not oppose this legislation, we have recommended to keep the applicability threshold at 1000 tons as county projects typically require between 750 to 5,000 tons of asphalt. We're optimistic that the sponsor will in fact amend the legislation on the floor of the General Assembly at one of its upcoming voting sessions.

COUNTY MOSQUITO CONTROL RESERVES

NJAC is pleased to report that on May 22nd, Assemblyman Gary Schaer, also Chairman of the Assembly Budget Committee, introduced **ASSEMBLY, NO. 3320**, which would authorize a county by resolution to establish a mosquito control reserve. As previously reported, the Senate companion version **SENATE, NO. 2115** (*Van Drew D-Cape May*) is currently in the Senate Community and Urban Affairs Committee awaiting consideration. NJAC's Board of Directors unanimously adopted this initiative as one of our top legislative priorities as it would stabilize the mosquito control budgeting process and enhance fiscal planning for mosquito control activities. Moreover, a mosquito control reserve would streamline the process for using emergency monies by eliminating the need to issue an overly burdensome bond that a county must provide in full as a deferred change in the next budget year.

INTEREST ARBITRATION

We still have no new news to report on whether the General Assembly plans to consider Governor Chris Christie's conditional veto of legislation that would extend the 2% cap on binding interest arbitration awards through December 31, 2017. Earlier this week, NJAC, the New Jersey State League of Municipalities, the New Jersey Conference of Mayors, and the Urban League sent a joint letter to members of the General Assembly urging them to concur with the conditional veto as it addressed our substantial concerns with the bill as introduced that included: eliminating the "One Bite of the Apple" provision; prohibiting arbitrators from including employee health benefit and workforce reduction cost savings when rendering awards; and, maintaining the random selection of arbitrators.

MARK YOUR CALENDARS FOR THESE UPCOMING EVENTS

- NJAC Board of Directors Meeting - June 27th
- PERS Retirement Planning Workshop - July 10th
- NJAC Night at the Ballpark - July 24th

The Retirement Planning Workshop and Night at the Ballpark are free for county officials, but space is limited so please visit our website at www.njac.org or contact our office at (609) 394-3467 for additional details.

STATE HOUSE TRIVIA

Did you know that Long Branch in Monmouth County was the summer home to seven presidents of the United States?

"A perfect summer day is when the sun is shining, the breeze is blowing, the birds are singing, and the lawn mower is broken." James Dent