

NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice!

BRENDAN GILL
NJAC President
Essex County Freeholder

JOHN G. DONNADIO
Executive Director

STATE HOUSE NEWS

October 18, 2019

VOTE-BY-MAIL

On September 23rd, the NJ Council on Local Mandates considered NJAC's complaint that the 2018 vote-by-mail law constitutes an unfunded State mandate and is unconstitutional. Given that the recently enacted 2019 vote-by-mail law appropriates \$2.0 million to offset the direct expenditures imposed by both laws, which we submit is open to interpretation as noted below, the Council requested NJAC and the Attorney General's office to provide final briefs concerning the actual costs incurred by county governments. NJAC and the Attorney General's office must submit their final case summations by October 23rd where NJAC will establish that both measures: impose mandates on the county clerk of each county; require the use of direct expenditures; do not authorize resources other than property taxes to offset direct expenditures; and, do not fall within one of the limited and narrow exemptions.

NJAC submits that the Legislature's \$2.0 million appropriation is illusory as the monies have been placed in reserve pursuant to **EXECUTIVE ORDER No. 73**. Moreover, the "2019 Vote-by-Mail Application Reimbursement" form, distributed to the county clerk of each county by the Division of Elections, appears only to apply to the opt-out notices sent to voters for the 2019 general election and does not include reimbursement for the 2018 opt-out notices or the ongoing expenses of issuing vote-by-mail ballots to all the voters that voted by mail in the 2016, 2017, and 2018 general elections. As of this writing, the Attorney General's office not has provided any guidance on this matter. NJAC further contends that even if the Treasurer eventually releases the monies, the funding is flawed as it does not contemplate the totality of the expenses the new law imposed, and will continue to impose, on the county clerk of each county, which must issue ... new vote-by-mail ballots in all future general, primary, school, municipal, and fire district elections at a significant expense to property taxpayers.

Special thanks to Hunterdon County Clerk Mary Melfi and Hunterdon County Board of Elections Administrator Beth Thompson for testifying before the Council and to Hunterdon County Counsel Shana Taylor for her continued advice and counsel. All did a terrific job and I appreciate their help and patience a great deal. And, thank you to the county clerks for their greatly appreciated assistance with collecting election expenses.

CODE BLUE AND CODE RED ALERTS

Considering the several pieces of legislation and new laws that affect issuing Code Blue and Code Red alerts intended to provide comfort for at-risk individuals during severe weather events, NJAC has adopted as one of its top legislative priorities, establishing a task force to study and recommend Code Blue and Code Red alert best practices and guidelines.

Counties, municipalities, social service agencies, and non-profit organizations have struggled to implement the 2017 law, which requires county governing bodies, through their offices of emergency management or other appropriate offices, agencies or departments, to establish plans for issuing Code Blue alerts to municipalities, social service agencies, and non-profit organizations that provide services to at-risk individuals and are located within the county's borders. As such, NJAC is seeking sponsors to introduce legislation that would establish a task force to recommend Code Blue and Code Red alert best practices based on the following general parameters: 1) reasonable temperatures for issuing Code Red and Code Blue alerts; 2) clearly defined roles for counties, municipalities, social service agencies, non-profit organizations, and other volunteers; 3) the appropriate use of facilities, staffing levels, fire codes, permits, and other resources; and, 4) a permanent and steady source of funding to offset the costs associated with issuing Code Red and Code Blue alerts.

The task force should include representatives from the following county affiliated organizations: the New Jersey Association of Counties, the New Jersey Association of Human Service Directors, the New Jersey Association of County Emergency Management Coordinators, The New Jersey Association of County Welfare Directors, the New Jersey Association of County Mental Health Administrators, and the New Jersey Sheriff's Association. The task force should also include representatives from the New Jersey State League of Municipalities, the New Jersey Department of Human Services, the New Jersey Department of Community Affairs, the New Jersey Office of Emergency Management, the Office of the State Treasurer, appropriate social service and non-profit organizations, and legislators from both houses and on both sides of the aisle. In general, the task force may meet in person at least (4) times and must deliver a final report to the Legislature within (1) year.

The intent of this important and timely task force would be to establish uniformity in the law that should help provide adequate shelter for homeless individuals during inclement weather in conjunction with existing programs that support permanent housing and self-sufficiency.

PHARMACY BENEFIT MANAGERS

The New Jersey Association of Counties (NJAC), the New Jersey State League of Municipalities (NJLM), and the New Jersey School Boards Association (NJSBA) are respectfully requesting the Legislature to take no action on Governor Murphy's conditional veto of **ASSEMBLY, No. 3717** (*Mukherji D-33/Downey D-11*)(*Greenstein D-14/Gopal D-11*), which would prohibit pharmacy benefit managers from making certain retroactive reductions in claim payments to pharmacies and would further require pharmacy benefit managers to disclose certain product information.

Our collective organizations, which represent all the counties, municipalities, and school districts in the State, are concerned that A-3717 would result in higher health benefit costs for certain local government health plans that offer pharmacy benefits to members. Although the conditional veto would generally exempt Medicaid from its' requirements and the legislation as amended earlier in the legislative process would exempt the State Health Benefits Plan (SHBP), the School Employees Health Benefits Plan (SEHBP), and self-funded health care plans governed by the Employee Retirement Income Security Act (ERISA), A-3137 would not provide the same level of protection to local governing bodies that maintain cost-effective self-insured plans, purchase coverage directly from the fully insured commercial market, or participate in Health Insurance Funds (HIFs), all of which provide premium health benefits to public workers across New Jersey.

Importantly note that pursuant to the United States Department of Labor, *"ERISA does not cover group health plans established or maintained by governmental entities, churches for their employees, or plans which are maintained solely to comply with applicable workers compensation, unemployment, or disability laws. ERISA also does not cover plans maintained outside the United States primarily for the benefit of nonresident aliens or unfunded excess benefit plans."* Since a substantial number of counties, municipalities, and school districts offer employee health benefits coverage through self-insured plans, the commercial market, or HIFs not governed by ERISA, the seemingly arbitrary exclusion of such plans would place an inequitable financial burden on these local governing bodies and their employees.

In general, the bill would prohibit pharmacy benefit managers from retroactively reducing payment on a properly filed claim for payment by a pharmacy. These retroactive reductions in payment are often referred to as direct and indirect remuneration (DIR) fees. Since these fees are commonly applied retroactively, and in many cases months after the claim is made, this process makes it difficult for pharmacies to operate with predictable revenues. More specifically, the bill would provide that, after the date of receipt of a claim for payment made by a pharmacy, a pharmacy benefits manager may not retroactively reduce payment on the claim, either directly or indirectly, through aggregated effective rate, direct or indirect remuneration, quality assurance program, or otherwise, except if the claim is found

not to be a clean claim during the course of a routine audit performed pursuant to an agreement between the pharmacy benefits manager and the pharmacy. Under the bill, when a pharmacy adjudicates a claim at the point of sale, the reimbursement amount provided to the pharmacy by the pharmacy benefits manager would constitute a final reimbursement amount.

LANDFILL GAS TO ENERGY FACILITIES

NJAC is also asking the Legislature to take no action on Governor Murphy's conditional veto of **ASSEMBLY, No. 3726** (*Kennedy D22*)(*Smith D-17/Bateman R-16*), which would require large food waste generators to separate and recycle food waste under certain circumstances.

After nearly five years of advocacy, in February of 2018, the Senate Environment and Energy Committee recognized the need to hold harmless and exempt existing landfill gas to energy facilities (LGTE) that committed considerable public resources to cutting edge recycling and solid waste management activities and amended the bill accordingly. Last minute amendments to the bill approved by the Legislature in June of 2019 provided similar protections to resource recovery facilities that utilize certain anaerobic digestors. Although NJAC has not taken a position on the latter changes, environmentalists strongly oppose the last-minute exemption but have remained neutral on the LGTE exemption.

As has been well documented, Atlantic, Burlington, Cape May, Cumberland, Middlesex, Ocean, Monmouth, Salem, and Sussex counties have invested substantial taxpayer dollars into state of the art LGTE facilities that utilize methane gas produced from decomposing organic food waste to generate renewable Class One electricity under the "Electric Discount and Energy Competition Act." NJAC is concerned that the Governor's conditional veto would ultimately divert critical volumes of decomposing organic food waste from county LGTE facilities and adversely affect the quality and quantity of the gas relied upon – jeopardizing their economic viability. As such, NJAC is asking the Legislature to take no action on the conditional veto of A-3726 as it would cause irreparable harm to county LGTE facilities that have dedicated valuable property taxpayer dollars to cutting edge energy producing, recycling, and solid waste management activities.

NEW RULES FOR GOVERNMENT EMPLOYERS IN NJ ON HOW TO TREAT WORKERS AFFECTED BY DOMESTIC VIOLENCE *Coleen O'Dea, NJ Spotlight, October 17, 2019*

State, county and municipal governments as well as other public employers in New Jersey are expected to treat victims of domestic violence with greater compassion and give them more assistance under a new policy from the New Jersey Civil Service Commission.

The Statewide Domestic Violence Policy for Public Employers sets a uniform standard for dealing with issues that arise when a public worker is a victim or otherwise impacted by domestic violence. The policy was mandated by a law signed in early 2018 by former Gov. Chris Christie just before leaving office. “These new guidelines seek to create an easy, welcoming, and confidential system for all public employees to report domestic violence incidents,” said Deirdre Webster Cobb, chair and CEO of the state Civil Service Commission, in a statement. “Furthermore, the policy will provide protections for domestic violence victims from retaliation by current and future employers for their history with domestic violence.”

According to the statement, the commission formed a task force consisting of government representatives, advocacy groups, and community leaders that formulated the policy unveiled on Monday. It’s unclear, though, exactly who served on this task force or whether it held any public meetings or took testimony, as a spokesman for the commission said he was unable to return a request for comment by deadline. Domestic violence offenses are on the rise in New Jersey, according to the latest data from the New Jersey State Police. The 2016 Domestic Violence Offense Report (of offenses reported by police that year) shows a 3% increase over 2015. That works out to about one domestic violence incident every 8.5 minutes. And advocates say many more incidents are never reported by victims for a host of reasons, including that they do not want a loved one to get into trouble and because they fear greater injury or death if they tell police. About three-quarters of victims are women and about 28% involved or were witnessed by children.

The impacts of domestic violence go far beyond physical and psychological injury and can affect an employee’s work. One goal of the Civil Service Commission policy is to encourage workers who are impacted by domestic violence to turn for help to human resources professionals where they work and to know that their discussions will be kept confidential. Every public employer — not just those covered by state civil service laws — is required under the policy to designate someone to assist victims. This HR representative or other official must undergo special training in the policy provided by the CSC. Michael Cerra, assistant executive director of the New Jersey State League of Municipalities, said his organization did not oppose the legislation when it was being considered and supports efforts to help domestic violence victims. But he questioned whether the policy went through the normal procedure for writing state regulations, which include publication in the New Jersey Register and consideration of public comments before adoption. He also questioned how much consideration was given to how municipalities — especially small ones that probably don’t have a dedicated HR professional on staff — would be able to afford to implement the policy.

“We support the underlying policy objective,” Cerra said. “But I am very much concerned about how small local governments in particular are going to be able to train these people. He said the policy seems to indicate that two people will likely need to be trained because someone always needs to be available to assist victims, including when

the HR representative or main designee may be on vacation. “It is highly recommended that districts, to the extent possible, assign a back-up person for this designation for days when the primary human resources officer is not in the office or is unavailable,” wrote Kathleen Asher in the May/June 2018 edition of *School Leader*, the New Jersey School Boards Association publication. “The holiday season is a particularly difficult time for many families and incidents of domestic violence often increase during holidays and specific events such as the Super Bowl.”

Asher, an attorney with the association, noted that school districts will have to follow the policy. The law allows public employers to adopt their own policies, which can be broader than the state’s, but all must at least follow what the CSC is requiring. According to the policy, an HR representative must immediately respond to an employee’s request related to domestic violence and must provide a safe and confidential location where the employee can discuss the circumstances surrounding the incident and ask for help. It is up to the professional to determine whether there is an imminent and emergent need to call 911 and/or law enforcement. Additionally, public employers must:

- Provide an employee with information about resources for domestic violence victims and a confidential telephone line to make calls for emergency or supportive services, when appropriate, and help the worker secure needed assistance;
- Counsel the employee about the provisions and protections of the New Jersey Security and Financial Empowerment Act, which allows most workers to take 20 days of unpaid leave each year to deal with domestic violence or sexual assault incidents;
- Maintain the confidentiality of the employee and all parties involved, to the extent practical. This could include keeping information about domestic violence incidents in a separate file from a worker’s personnel file;
- Report any incident in which domestic violence involved a sexual touching or sexual assault between state employees to the agency’s Equal Employment Opportunity officer or another designated officer.

The policy also requires all public employers to develop an action plan to identify, respond to, and correct employee performance issues that are caused by domestic violence. Employers must provide “reasonable accommodations” to workers who may have trouble fulfilling their normal duties as a result of an incident. These may include safety measures, a modified work schedule, a transfer or reassignment. And it reiterates protections spelled out in the NJ SAFE ACT that employers cannot retaliate against, terminate or discipline any worker who reports domestic violence incidents. While the policy does not include a date by which public employers must comply, the domestic violence policy training for local HR officials is already available on the CSC’s website

LOW BUDGET RESERVES MAKE NJ VULNERABLE IF ECONOMIC HEADWINDS KICK UP

John Reitmeyer, NJ Spotlight, October 8, 2019

New Jersey and many other states have been able to boost budget reserves during the long recovery from the Great Recession. But that doesn't mean state budgets aren't vulnerable to the next economic downturn — and perhaps New Jersey's more than most because of its still relatively scant budget reserves.

A new analysis from The Pew Charitable Trusts raises several concerns for states as they get ready to face the next possible recession, including how a major downturn could impact already volatile revenue sources like the income tax, which is a major source of funding for New Jersey's budget. Meanwhile, a recent report by Fitch Ratings, a Wall Street credit-rating firm, suggested states could begin to lose out on federal funding if a recession triggers belt-tightening by the federal government. By contrast, New Jersey received millions in aid from the federal government in the aftermath of the 2007-2009 Great Recession, initially helping it avoid major cuts to things like K-12 school aid. The risk could also extend down to local governments, Fitch warned, since they rely on funding from federal and state budgets as well.

“To maintain (credit) ratings, state and local governments would need to demonstrate their ability to manage through a federal deficit reduction in a manner that retains an appropriate level of financial flexibility,” the Fitch report. While nationwide unemployment remains at or near historic lows, economists have begun to see warning signs in other areas, including recent manufacturing cutbacks and a dip in consumer confidence. One way that states prepare for a recession or some other unexpected drop in revenues is by maintaining robust budget reserves that can be used instead of making program cuts or hiking taxes to make up the gap. New Jersey's budget reserves are primarily kept in two funds — the unrestricted Fund Balance, which is more commonly referred to as the “surplus,” and the restricted Surplus Revenue Fund, which is more commonly referred to as the “rainy-day” fund.

The state's reserves were boosted to \$1.276 billion in the budget for fiscal year 2020 that Gov. Phil Murphy signed into law in late June. Included in that total was a \$401 million deposit into the rainy-day fund, which was the state's first since the fund was completely depleted during the Great Recession. Yet even with the overall increase, New Jersey's budget reserves remain at the low end when compared to other states. The 50-state median for budget reserves in FY2019 was 7.5% of annual spending, according to data collected by the National Association of State Budget Officers. But for New Jersey's \$38.7 billion budget for FY2020, the reserves equal 3.4% of total spending.

The Pew analysis, released earlier this month, also notes that recessions often strain state resources and can bring on spending cuts that impact programs and employee levels. In many states, spending on things like higher education and infrastructure have still not recovered from the Great Recession, meaning the next round of cuts would

likely hit other areas. State employee numbers also remain low across the nation even as the economic expansion has progressed. “With state governments leaner in this respect, further cuts during the next recession could hamper their operations significantly,” the Pew analysis said.

Returning to the issue of volatility, Pew also highlighted that sources of revenue gains for many states since the end of the Great Recession have been in areas like investment interest, stock dividends and capital gains, all of which are heavily influenced by the overall health of the economy. “These sources are notably subject to big swings in the stock market, which can often occur during periods of economic distress,” the Pew analysis said. “Because state revenue growth relies on more volatile sources, policymakers may need to plan for steeper declines by accruing more reserves.”

Among the federal spending that could be at risk during a downturn is on the Medicaid program, according to the Fitch report, which was released late last month. Yet demand for Medicaid services often picks up during an economic downturn as more people face difficult personal circumstances, and that in turn could put more pressure on states to make up any gaps. “Even though Medicaid is a mandatory congressional appropriation, meaningful changes to its funding structure cannot be ruled out over the long term, which could reduce overall federal Medicaid funding and raise fiscal burdens on states that choose to offset federal declines,” the Fitch report said. Another lingering concern, according to Fitch, is the federal government’s own debt and deficit, which have increased during President Donald Trump’s tenure despite the long run of generally positive economic conditions. “The effect of longer-term federal deficit reduction on state and local government ratings would depend on the extent of the cuts, the types of functions targeted and the flexibility Fitch expects specific governments to have to counteract federal action,” the Fitch report said.

UPCOMING NJAC EVENTS

We hope you’ll join us on December 20th for NJAC’s “Summit on the Suicide Crisis,” where we’ll examine the alarming increase in suicide rates among teenagers, adults, veterans, and law enforcement professionals. Registration is free for all public officials; however, space is limited, and you *must* register before the event.

STATE HOUSE TRIVIA: *Did you know* that tootsie rolls were the first wrapped candy sold in the United States and remain a very popular Halloween delicacy.

"If opportunity doesn't knock, build a door." Milton Berle