

EXECUTIVE ORDER NO. 277

WHEREAS, access to affordable quality health care is critical to the physical, mental, and economic wellbeing of the residents, families, communities, and businesses in the State; and

WHEREAS, health care and prescription drug cost growth continue to be a challenge nationwide and for New Jersey residents, families, and employers, including the State, and threaten to outpace the growth of the State's economy and residents' wages; and

WHEREAS, the steadily increasing costs of health care and prescription drugs have limited access to quality health care for lower- and middle-income residents and elderly residents alike; and

WHEREAS, the novel Coronavirus disease 2019 (COVID-19) pandemic and the economic fallout it has caused have underscored the importance of equitable and affordable access to quality health care services, treatments, and prescription drugs, while also highlighting inequalities in health outcomes and critical disparities in health care and coverage access, particularly with respect to minority communities and the underserved; and

WHEREAS, at a time when many of our residents have been impacted by job loss and housing and food insecurity, access to more affordable, quality health care has never been more critical; and

WHEREAS, planning for improved consumer affordability, health care quality, integration of health care delivery, reform of payment systems to reward value, cost transparency, and taxpayer savings, achieved through coordination among State agencies, is essential to effectively manage costs and improve health care delivery; and

WHEREAS, the growth of health care expenditures affects the State's budget as a significant portion of State revenue is used to fund public employee and retiree benefits and Medicaid benefits; and

WHEREAS, there is a growing recognition that the efforts to advance affordability, accessibility, and transparency in the health care system are aided and informed by incorporation of whole-person systems change,

and that alignment of alternative payment models can improve quality and reduce the cost of care; and

WHEREAS, it is the policy of this State, as a key part of its efforts to improve health care affordability, accessibility, and transparency, that New Jersey must pursue opportunities Administration-wide and across the public and private sectors to improve health outcomes while reducing the rate of growth of health care costs; and

WHEREAS, on May 30, 2018, the State enacted the "New Jersey Health Insurance Premium Security Act," P.L.2018, c.24, establishing a reinsurance program to reimburse insurers for certain high-cost claims in the insurance market, lowering premiums compared to what they would have been without the program; and

WHEREAS, on June 1, 2018, the State enacted the "Out-of-network Consumer Protection, Transparency, Cost Containment and Accountability Act ("the Act")," P.L.2018, c.32, in which the Legislature declared that it is in the public interest "to reform the health care delivery system in New Jersey to enhance consumer protections, create a system to resolve certain health care billing disputes, [and] contain rising costs"; and

WHEREAS, this Act requires providers and insurers to provide detailed disclosures regarding out-of-network charges, restricts the amount a provider may charge in excess of a deductible, copayment, or coinsurance amount applicable to in-network services pursuant to the covered person's health benefits plan, and implements an arbitration process for out-of-network billing disputes between insurance carriers and providers; and

WHEREAS, on June 28, 2019, the State enacted P.L.2019, c.141, authorizing the Commissioner of the Department of Banking and Insurance ("DOBI") to operate a State-Based Health Exchange in New Jersey, through which residents who do not have coverage from an employer or other program may enroll in minimum essential coverage, and to oversee the State-Based Health Exchange "to ensure the best interests of and protection for consumers of the State"; and

WHEREAS, on January 16, 2020, the State enacted a package of bills that codify into State law the basic protections of the Affordable Care Act, which include establishing protections for no-cost preventative care and contraception, prohibiting exclusions for pre-existing conditions, allowing children to stay on their parents' plan until age 26, and incorporating mental health and maternity care as part of essential benefits; and

WHEREAS, on January 21, 2020, the State enacted P.L.2019, c.472, limiting cost sharing for prescription drugs under certain health plans; and

WHEREAS, on July 31, 2020, the State enacted P.L.2020, c.61, continuing the repealed federal Health Insurance Tax as the New Jersey Health Insurer Assessment, the revenue generated from which is used for the purposes of increasing affordability in the individual market and providing greater access to health insurance to the uninsured; and

WHEREAS, in 2020, the Office of Health Care Affordability and Transparency ("the Office") was formed to help guide the Administration's work on health care affordability and price transparency; and

WHEREAS, the Office works with the DOBI, the Department of Health ("DOH"), the Department of Human Services ("DHS"), and the Department of the Treasury ("Treasury") to advance affordability, accessibility, and transparency in the health care system; and

WHEREAS, on January 28, 2021, I signed Executive Order No. 217, creating an Interagency Health Care Affordability Working Group ("Working Group") consisting of representatives from the DOBI, the DOH, the DHS, the Treasury, and the Division of Consumer Affairs to advise the State on the development of a health care cost growth benchmark and related activities to ensure access to high-quality, affordable, and equitable health care for all New Jerseyans; and

WHEREAS, the Working Group made recommendations for appointments to a Health Care Advisory Group ("Advisory Group"), to serve at the pleasure of the Governor, pursuant to Executive Order No. 217 (2021) that included health care providers, insurers, employers, consumer

advocates, and health care policy leaders to advise the Working Group on the development and implementation of a health care cost growth benchmark; and

WHEREAS, the Working Group and Advisory Group have met within their respective groups at least monthly for more than nine months to develop and advise on the development of the health care cost growth benchmark program; and

WHEREAS, the meetings of the Working Group and Advisory Group have resulted in a framework for a health care cost growth benchmark program, which will promote increased transparency and accountability for health care spending and slow the rate of health care spending growth to make it more affordable and sustainable for families, individuals, employers, and the State; and

WHEREAS, stakeholder involvement through the Advisory Group resulted in a stakeholder compact ("the compact") that memorializes a collective commitment to the health care cost growth benchmark program; and

WHEREAS, the compact establishes a strong, collaborative foundation for the State, providers, and carriers to work toward attaining the health care cost growth benchmark by setting forth stakeholders' commitment to participate in the data collection, verification, analysis, and reporting processes led by the DOBI, and the ongoing efforts to understand the underlying health care cost drivers in New Jersey; and

WHEREAS, a health care cost growth benchmark program will assess health care cost growth for all New Jersey residents with coverage through commercial plans, the Medicaid and Medicare programs, and the State Employee Health Benefits Program ("SHBP") and School Employees' Health Benefits Program ("SEHBP"); and

WHEREAS, the Commissioner of DOBI has access to claims data under various provisions of law, including but not limited to N.J.S.A. 17B:30-30, N.J.S.A. 17B:30-31, N.J.S.A. 52:17B-199, N.J.A.C. 11:24-3.8, N.J.A.C. 11:23-3.2, and N.J.A.C. 11:24B-2.8, which data can help assess

performance relative to a health care cost growth benchmark to further the State's policy of improving health outcomes and reducing the rate of growth of health care costs; and

WHEREAS, monitoring the implementation of a health care cost growth benchmark is necessary to establish transparency and accountability for rising health care costs; and

WHEREAS, a concrete target for limiting health care cost increases will promote collaborative actions by health insurers, healthcare providers and others, and inform effective public policy strategies, to improve health care affordability, accessibility, and transparency for all New Jerseyans;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. It is the policy of the State to slow the rate of health care spending growth by establishing a health care cost growth benchmark for calendar years 2023 through 2027 as follows:

- a. For calendar year 2023, the health care cost growth benchmark shall be set at 3.5 percent annual growth over 2022 total health care expenditures;
- b. For calendar year 2024, the health care cost growth benchmark shall be set at 3.2 percent annual growth over 2023 total health care expenditures;
- c. For calendar year 2025, the health care cost growth benchmark shall be set at 3 percent annual growth over 2024 total health care expenditures;
- d. For calendar year 2026, the health care cost growth benchmark shall be set at 2.8 percent annual growth over 2025 total health care expenditures; and
- e. For calendar year 2027, the health care cost growth benchmark shall be set at 2.8 percent annual growth over 2026 total health care expenditures.

2. For the purposes of this Order, "total health care expenditures" shall mean the annual per capita sum of all health care expenditures in the State from public and private sources, including claims-based and non-claims-based payments to providers, patient cost-sharing amounts, such as deductibles and copayments, and the net cost of private health insurance to New Jersey residents, defined as the difference between health premiums earned and benefits incurred, inclusive of insurers' costs of paying bills, advertising, administrative costs, premium taxes, and profits or losses.

3. This health care cost growth benchmark shall apply across all New Jersey health care markets and populations.

4. The Commissioner of the DOBI, consistent with her statutory authority and this Order, shall monitor health care spending growth across all public and private payers and populations in the State, and report annually to the Governor on such growth.

5. During calendar year 2022, the DOBI shall initiate data collection and coordinate with the Working Group established under Executive Order No. 217 (2021) on analyzing and understanding the data before reporting health care spending and spending growth in aggregate form to promote transparency and facilitate discussion of strategies to make health care more affordable.

6. The DOBI shall compile data necessary to assess performance against the health care cost growth benchmark, which data shall include but shall not be limited to:

- a. Aggregate total medical expenditures for health care services delivered to New Jersey residents. Total medical expenditures shall include claims-based and non-claims-based payments, combined for fully insured plans, the State Medicaid Program, the SHBP, the SEHBP, and self-insured plans;
- b. The net cost of private health insurance to New Jersey residents, defined as the difference between health premiums earned and benefits incurred inclusive of

insurers' costs of paying bills, advertising, administrative costs, premium taxes, and profits or losses;

- c. The aggregate value of pharmacy manufacturer rebates for New Jersey residents; and
- d. Enrolled member months and attributed lives counts for fully insured plans, the State Medicaid Program, the SHBP, the SEHBP, and self-insured plans.

7. The Advisory Group, established pursuant to Paragraph 5 of Executive Order No. 217 (2021), shall be dissolved following the issuance of this Order. The Working Group established by Executive Order No. 217 (2021) shall make recommendations to the Governor regarding State officials and other public members to serve on a Benchmark Implementation Advisory Group to advise the Working Group and the DOBI on the implementation of the health care cost growth benchmark program. The Benchmark Implementation Advisory Group shall be advisory in nature and shall provide recommendations to the Working Group and the DOBI as deemed appropriate by the Working Group and the DOBI. All members of the Benchmark Implementation Advisory Group will serve without compensation and at the pleasure of the Governor.

8. The DOBI shall:

- a. Advise the Governor and Working Group on current and projected trends in health care and the health care industry, particularly as they affect the expenditures and revenues of the State, its residents, and its major industries;
- b. Assess health care cost growth for all New Jersey residents with commercial (insured and self-insured), Medicaid, and Medicare coverage to better understand cost drivers and trends;
- c. Develop, in consultation with the Working Group and Benchmark Implementation Advisory Group, policies and

strategies to support attainment of the health care cost growth benchmark;

- d. Engage relevant parties, including insurers, providers, and community partners to develop strategies to help meet the health care cost growth benchmark that are data-based and practical; and
- e. Review periodically all components of the health care cost growth benchmark methodology, including economic indicators and other conditions, and recommend to the Working Group for its approval whether the forecasted growth rate of health care expenditures has changed in such a material way that it warrants a change in the health care cost growth benchmark.

9. Each department, office, division, or agency of this State is hereby required, to the extent not inconsistent with law, to cooperate fully with the DOBI, within the limits of its statutory authority, and to furnish it with such data as is required to assess performance against the health care cost growth benchmark.

10. The DOBI shall report annually on the performance relative to the health care cost growth benchmark program during the prior calendar year at the following levels: (1) the State; (2) insurance market (e.g., commercial, Medicaid, and Medicare); (3) insurer; and (4) provider entities who are sufficiently large such that performance can be accurately and reliably measured and who engage in total cost of care contracts for a significant proportion of their population served. The DOBI shall also issue a report that identifies factors that contribute to health care cost trends, which factors may include inflationary pressures, out-of-state migration for health care, changes in payer mix, price variation, patterns in prescription drug utilization and pricing, the role of pharmaceutical companies and other suppliers, administrative costs, and regulatory compliance cost.

11. The DOBI may consult with experts or other knowledgeable individuals in the public or private sector on any aspect of its mission outlined in this Order.

12. Nothing in this Order shall be construed to create a private right of action to enforce the requirements outlined herein.

13. This Order shall take effect immediately.

GIVEN, under my hand and seal this
21st day of December,
Two Thousand and Twenty-one, and
of the Independence of the
United States, the Two Hundred
and Forty-Sixth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor