

December 17, 2018

SENATE BILL NO. 3074

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 3074 without my approval.

This bill would require the State to procure a contract for a pharmacy benefits manager ("PBM") for the State Health Benefits Program and the School Employees Health Benefits Program by January 15, 2019. More specifically, under the bill, the State would be required to procure professional services contracts in an expedited manner for PBM-related oversight services, including PBM bid evaluation services, automated reverse auction services, and claims adjudication services on or before that date. The bill, which was passed by the General Assembly on October 29, 2018, and delivered to me later that evening, specifies that the Division of Purchase and Property in the Department of the Treasury shall procure the technology platform required for the reverse auction and related services either by extension of a contract in effect on the effective date of the bill, or by November 1, 2018.

During the legislative process, the State Treasurer expressed strong support for the concept of expediting and maximizing cost savings for the State with respect to pharmacy claims but communicated several serious concerns about the timing and substance of this bill, including its potential to cause litigation and delay that would be detrimental to the achievement of any savings. As the legislative history makes clear, this bill arises out of litigation challenging the winning bid for the PBM contract awarded in 2017, In re Request for Proposals ##17DPP00144, 454 N.J. Super. 527 (App. Div. 2018), and current law already requires the State to procure a PBM to conduct pharmacy claims administration services for the State's health benefits plans pursuant to a very specific, two-stage process. The first stage, procurement of a vendor to provide the technology platform to allow the State to conduct a reverse auction for PBM bidders, was already underway during the legislative process and was

recently completed, with a contract awarded on December 11, 2018. The second stage, the reverse auction itself, cannot be undertaken contemporaneously but rather must be done sequentially, utilizing the vendor selected in the first phase. To be effective, the stage two process necessarily involves voluminous, detailed bids over several rounds of bidding that must be carefully reviewed and analyzed to ensure that the reverse auction competition results in the lowest possible prices and the optimal bid package for the benefit of the State. This second stage will commence promptly in early 2019 and is expected to be concluded by late spring.

I certainly appreciate the intent of the sponsors and supporters of this bill to start realizing cost savings for pharmacy claims as soon as possible. I share their goal and look forward to working together with them as we make progress solving the challenges facing our state. But at the same time, I am concerned that this bill could actually have the opposite effect. Unduly compressing procurement timelines would increase the likelihood of errors that could trigger challenges, litigation, and court-ordered stays of the contract award process. Moreover, the current PBM contract does not expire until January 1, 2020.

Accordingly, I herewith return Senate Bill No. 3074 without my approval.

[seal]

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor