

ASSEMBLY, No. 5540

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 5, 2023

Sponsored by:

Assemblywoman SHANIQUE SPEIGHT

District 29 (Essex)

Assemblyman REGINALD W. ATKINS

District 20 (Union)

SYNOPSIS

Establishes Health Care Workers COVID-19 Supplemental Benefits Program; appropriates \$30 million.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/5/2023)

1 AN ACT concerning workers' compensation for health care workers,
2 supplementing chapter 15 of Title 34 of the Revised Statutes, and
3 making an appropriation.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. a. The Health Care Workers COVID-19 Supplemental
9 Benefits Program is established in the Division of Workers'
10 Compensation in the Department of Labor and Workforce
11 Development to provide supplemental benefits to each eligible
12 health care worker. The supplemental benefits shall be provided
13 from the Second Injury Fund for the time in which an eligible
14 health care worker qualifies for regular compensation awarded
15 pursuant to R.S.34:15-12 equal to 70 percent of the weekly wages
16 received at the time of injury subject to minimum and maximum
17 compensation stated in subsection a. of R.S.34:15-12, but shall not
18 commence until all benefits or compensation which is equal to the
19 health care worker's full salary as required or permitted by law or a
20 collective bargaining agreement have ended. The period in which
21 the supplemental benefits are provided shall continue as long as the
22 health care worker is unable to work because of illness or injury of
23 the worker arising from contracting COVID-19 but shall not exceed
24 a total of 180 weeks. The amount of the supplemental benefits
25 provided pursuant to this section shall be such that the sum of the
26 weekly regular compensation plus the weekly supplemental benefit
27 is equal to 100 percent of the weekly wages received at the time of
28 the injury, except that that sum shall not exceed \$1,800. If the
29 eligible health care worker is a volunteer who, pursuant to
30 R.S.34:15-75, is conclusively presumed to have received a salary
31 sufficient to be entitled to the maximum compensation authorized
32 by R.S.34:15-1 et seq., and compensation of the amount of
33 compensation calculated according to that presumption has been
34 paid to the volunteer healthcare worker, the weekly supplemental
35 benefits shall be such that, the sum of the weekly regular
36 compensation and the weekly supplemental benefit shall be equal to
37 100 percent of the of the amount of weekly wages the volunteer
38 health care worker was presumed, pursuant to R.S. 34:15-75, to
39 have been paid to determine the amount of regular compensation,
40 except that that sum shall not exceed \$1,800. The supplemental
41 benefits shall be provided only during the time the health care
42 worker is unable to work in any employment.

43 b. Supplemental benefits shall not be provided pursuant to this
44 section unless a claim is filed within two years following the end of
45 the public health emergency which was declared by the Governor in
46 Executive Order 103 of 2020 and extended by subsequent executive
47 orders. If a claim for supplemental benefits filed within that two-
48 year period is approved, the benefits shall be rewarded retroactively

1 to the beginning of the supplemental benefit period indicated in
2 subsection a. of this section.

3 c. This section is intended to provide supplemental benefits to
4 eligible health care workers under the circumstances specified in
5 this section, and shall not be construed as reducing, limiting or
6 curtailing any rights of any worker or employee to any benefits
7 provided by R.S.34:15-1 et seq.

8
9 2. a. The commissioner shall, not later than October 31 of
10 2023 and each subsequent year until the commissioner determines
11 that all eligible health care workers have received all supplemental
12 benefits to which they are entitled pursuant to section 1 of
13 P.L. , c. (C.) (pending before the Legislature as this bill),
14 issue to the Legislature and the advisory council established
15 pursuant to pursuant to section 3 of P.L. , c. (C.) (pending
16 before the Legislature as this bill), and make public, a report
17 containing:

18 (1) available information regarding the number of claim
19 petitions with respect to which a determination was rendered by the
20 Division of Workers' Compensation that the claimant is an eligible
21 health care worker entitled to a supplemental benefit pursuant to
22 section 1 of P.L. , c. (C.) (pending before the Legislature as
23 this bill), the total amount of supplemental benefits awarded
24 pursuant to that section, the total anticipated costs, and the accrued
25 costs for the period of the report, of those supplemental benefits;
26 and

27 (2) an estimate of what portion of the funds appropriated
28 pursuant to section 5 of P.L. , c. (C.) (pending before the
29 Legislature as this bill) will be necessary to pay all benefits
30 awarded pursuant to section 1 of P.L. , c. (C.) (pending
31 before the Legislature as this bill), and a request to the Governor
32 and the Legislature for any additional appropriation which may be
33 required to make the payments.

34 b. Supplemental benefits paid pursuant to section 1
35 of P.L. , c. (C.) (pending before the Legislature as this bill)
36 shall not be considered when:

37 (1) making a determination of the aggregate annual surcharge to
38 be levied upon policyholders and self-insured employers pursuant to
39 R.S. 34:15-94; or

40 (2) calculating an employer's Experience Modification Factor,
41 pursuant to the New Jersey Workers' Compensation and Employers
42 Liability and Insurance Manual administered by the Compensation
43 Rating and Inspection Bureau established by section 2 of P.L.1995,
44 c.393 (C.34:15-89.1) and section 1 of P.L.2008, c.97 (C. 34:15-
45 90.1).

46
47 3. a. There is established in the Division of Workers'
48 Compensation in the Department of Labor and Workforce

1 Development the Health Care Workers COVID-19 Supplemental
2 Benefits Program Advisory Council.

3 b. The advisory council shall consist of 12 members as follows:

4 (1) the Commissioner of Labor and Workforce Development or
5 a designee, who shall serve ex officio;

6 (2) the Commissioner of Human Services or a designee, who
7 shall serve ex officio;

8 (3) the Commissioner of Health or a designee, who shall serve
9 ex officio;

10 (4) the Executive Director of the New Jersey Compensation
11 Rating and Inspection Bureau;

12 (5) for each of the following six organizations, one
13 representative selected by the organization from the part of the
14 organization that represents health care workers in New Jersey: the
15 Health Professionals and Allied Employees; the Communications
16 Workers of America; JNESO, the Professional Health Care Union;
17 the Service Employees International Union; the American
18 Federation of State County and Municipal Employees; and the
19 United Steelworkers Union; and

20 (6) two public members appointed by the Governor, each of
21 whom shall have experience serving as a health care worker.

22 c. Public members of the advisory council shall serve until the
23 end of a term of three years and be eligible for reappointment, or
24 until the advisory council is dissolved pursuant to subsection f. of
25 this section, whichever occurs first. Vacancies in the membership
26 shall be filled in the same manner in which the original
27 appointments were made. The members of the advisory council
28 shall serve without compensation, but may, within the limits of
29 funds appropriated or otherwise made available to the council, be
30 reimbursed for actual expenses necessarily incurred by the members
31 in the discharge of their official duties.

32 d. The advisory council shall be entitled to receive assistance
33 and services from any State, county, or municipal department,
34 board, commission, or agency as may be available to it for its
35 purposes. The division shall provide staff and administrative
36 support to the advisory council.

37 e. The advisory council shall organize within 30 days after the
38 appointment of its members. The members shall select one person
39 from among them to serve as the chairperson. The members also
40 shall select a secretary who need not be a member of the advisory
41 council.

42 f. The advisory council shall advise the division on best
43 practices and provide recommendations concerning the
44 administration of the Health Care Workers COVID-19
45 Supplemental Benefits Program. The advisory council shall issue
46 annual reports to the Governor and the Legislature, pursuant to
47 section 2 of P.L.1991, c.164 (C.52:14-19.1), summarizing its
48 activities and providing recommendations for administration of the

1 program. The first annual report shall be issued not later than
2 March 31, 2024, and an annual reports shall be issued not later than
3 March 31 of each subsequent year until the commissioner
4 determines that all eligible health care workers have received all
5 supplemental benefits to which they are entitled pursuant to section
6 1 of P.L. , c. (C.) (pending before the Legislature as this
7 bill). The advisory council shall dissolve on the 30th day after the
8 issuance of its final annual report.

9
10 4. For the purposes of P.L. , c. (C.) (now pending before
11 the Legislature as this bill):

12 “Commissioner” means the “Commissioner of Labor and
13 Workforce Development” or designees of the commissioner.

14 “Eligible health care worker” means a health care worker who is
15 eligible for workers’ compensation because of illness or injury of
16 the worker arising from contracting COVID-19 and it has been
17 determined that the contraction is work-related and compensable
18 under the provisions of R.S.34:15-1 et seq., including a
19 determination made pursuant to section 2 of P.L.2020, c.84
20 (C.34:15-31.12) or section 6 of P.L2019, c.156 (C.34:15-31.7).

21 “Health care worker” means an individual who is employed by a
22 health care facility or is involved in providing medical and other
23 healthcare services, emergency transportation, social services, and
24 other care services, including services provided in health care
25 facilities, residential facilities, or homes.

26 "Health care facility" means any non-federal institution, building
27 or agency, or portion thereof, whether public or private, for profit or
28 nonprofit, that is used, operated or designed to provide health
29 services, medical or dental treatment or nursing, rehabilitative, or
30 preventive care to any person. Health care facility includes, but is
31 not limited to: an ambulatory surgical facility, home health agency,
32 hospice, hospital, infirmary, intermediate care facility, dialysis
33 center, long-term care facility, medical assistance facility, mental
34 health center, paid and volunteer emergency medical services,
35 outpatient facility, public health center, rehabilitation facility,
36 residential treatment facility, skilled nursing facility, and adult day
37 care center. Health care facility also includes, but is not limited to,
38 the following related property when used for or in connection with
39 the foregoing: a laboratory, research facility, pharmacy, laundry
40 facility, health personnel training and lodging facility, patient, guest
41 and health personnel food service facility, and the portion of an
42 office or office building used by persons engaged in health care
43 professions or services.

44
45 5. There is appropriated from the federal “Coronavirus State
46 Fiscal Recovery Fund” established pursuant to the federal
47 “American Rescue Plan Act of 2021”, Pub.L.117-2 to the Second
48 Injury Fund \$30,000,000 for the Health Care Workers COVID-19

1 Supplemental Benefits Program in the Division of Workers'
2 Compensation in Department of Labor and Workforce
3 Development. The commissioner shall use the funds received
4 pursuant to this section exclusively for the provision and
5 administration of supplemental benefits to eligible healthcare
6 workers as set forth in section 1 of P.L. , c. (C.) (pending
7 before the Legislature as this bill), and any expenses of the advisory
8 council established pursuant to section 3 of P.L. , c. (C.)
9 (pending before the Legislature as this bill) and its members
10 deemed necessary by the commissioner. A reasonable portion of
11 the appropriated amount, not to exceed 2.5 percent, may be used for
12 organizational, administrative, and other work and services,
13 including salaries, equipment, services, and materials necessary for
14 the provision and administration of the supplemental benefits.
15 Upon a determination by the commissioner that all eligible health
16 care workers have received all supplemental benefits to which they
17 are entitled pursuant to section 1 of P.L. , c. (C.) (pending
18 before the Legislature as this bill), any of the funds appropriated
19 from the General Fund to the Second Injury Fund for the Health
20 Care Workers COVID-19 Supplemental Benefits Program which
21 remain shall be returned to the federal "Coronavirus State Fiscal
22 Recovery Fund" established pursuant to the federal "American
23 Rescue Plan Act of 2021," Pub.L.117-2.

24

25 6. This act shall take effect immediately.

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27

28

STATEMENT

29

30 This bill establishes the Health Care Workers COVID-19
31 Supplemental Benefits Program in the Division of Workers'
32 Compensation.

33 The bill provides supplemental benefits to health care workers
34 determined to be eligible for workers' compensation because they
35 have contracted COVID-19 in the course of employment. The
36 supplemental benefits are provided for the time in which an eligible
37 healthcare worker qualifies for regular workers' compensation
38 equal to 70 percent of the weekly wages received at the time of
39 injury subject to the stated minimum and maximum compensation
40 levels. The supplemental benefits do not commence until all
41 benefits which are equal to the health care worker's full salary have
42 ended. The supplemental benefits are provided as long as the health
43 care worker is unable to work due to COVID-19 but not more than
44 180 weeks. The amount of the supplemental benefit is such that the
45 sum of the weekly regular workers' compensation plus the weekly
46 supplemental benefit equals 100 percent of the health care worker's
47 weekly wage, except that that sum shall not exceed \$1,800, with

1 similar adjustments made to compensation paid to volunteer health
2 care workers.

3 The bill directs the Commissioner of Labor and Workforce
4 Development to issue annual reports of available information
5 regarding the number of claims by health care workers entitled to
6 the supplemental benefits, the total amount of benefits awarded, the
7 total anticipated and the accrued costs of the benefits, and an
8 estimate of what portion of the funds appropriated for the program
9 will be needed to pay all of the benefits, and a request to the
10 Governor and the Legislature for any additional appropriation
11 which may be required to make the payments. The supplemental
12 benefits are not to be considered in determining the annual
13 surcharge levied on policyholders and self-insured employers for
14 the Second Injury Fund or the experience ratings of individual
15 employers.

16 The bill establishes the Health Care Workers COVID-19
17 Supplemental Benefits Program Advisory Council in the Division
18 of Workers' Compensation to advise the division and provide
19 recommendations concerning the administration of the program.
20 The advisory council will be dissolved, and the annual reports by
21 both the council and the commissioner will cease, upon a
22 determination that that all eligible health care workers have
23 received all supplemental benefits to which they are entitled.

24 The bill appropriates from the General Fund to the Second Injury
25 Fund \$30,000,000 from the Health Care Workers COVID-19
26 Supplemental Benefits Program, to be used for the provision of the
27 supplemental benefits and any necessary expenses of the advisory
28 council.

29 The purpose of this legislation is to assist health care workers,
30 whose public service has rendered them particularly vulnerable to
31 COVID-19, by alleviating long-term economic hardships due to
32 COVID-19. The support provided by the bill is especially
33 important in cases where health care workers become unable to
34 work for long periods of time because of persistent, long-term
35 symptoms following recovery from acute COVID-19, colloquially
36 known as "long COVID."