

ASSEMBLY, No. 2140

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman P. CHRISTOPHER TULLY

District 38 (Bergen and Passaic)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

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Co-Sponsored by:

Assemblywoman Swain

SYNOPSIS

Revises requirements for health care service firms to report financial information to Division of Consumer Affairs.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning health care service firms and amending
2 P.L.2002, c.126 and P.L.2014, c.29.

3

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

6

7 1. Section 1 of P.L.2002, c.126 (C.34:8-45.1) is amended to
8 read as follows:

9 1. a. Notwithstanding any other law or regulation to the
10 contrary, an employment agency required to be licensed pursuant to
11 P.L.1989, c.331 (C.34:8-43 et al.), or any other firm, company,
12 business, agency, or other entity that is not a home health care
13 agency licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) or
14 a hospice licensed pursuant to P.L.1997, c.78 (C.26:2H-79 et seq.),
15 which employs, places, arranges for the placement of, or in any way
16 refers, an individual to provide companion services, health care
17 services, or personal care services in the personal residence of a
18 person with a disability or who is age 60 or older, regardless of the
19 title by which the provider of the services is known, shall be
20 registered as a Health Care Service Firm and shall be subject to the
21 rules and regulations governing Health Care Service Firms adopted
22 by the Division of Consumer Affairs in the Department of Law and
23 Public Safety. The Division of Consumer Affairs is authorized to
24 enforce the health care service firm registration requirement, and
25 the provisions of P.L.1989, c.331 (C.34:8-43 et al.), upon any
26 person whose operations are subject to this section, whether the
27 operations include the direct employment of individuals, the use of
28 an Internet website or application, or any other process or business
29 model.

30 As used in this section:

31 "Companion services" means non-medical, basic supervision and
32 socialization services which do not include assistance with activities
33 of daily living, and which are provided in the individual's home.
34 Companion services may include the performance of household
35 chores.

36 "Health care services" means any services rendered for the
37 purpose of maintaining or restoring an individual's physical or
38 mental health or any health-related services, and for which a license
39 or certification is required as a pre-condition to the rendering of
40 such services.

41 "Personal care services" means services performed by licensed or
42 certified personnel for the purpose of assisting an individual with
43 activities of daily living that may involve physical contact.
44 Services include, but are not limited to, bathing, toileting,

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

transferring, dressing, grooming, and assistance with ambulation, exercise, or other aspects of personal hygiene.

b. (Deleted by amendment, P.L.2014, c.29)

c. As a condition of being registered under P.L.1989, c.331 (C.34:8-43 et al.), a health care service firm shall obtain within 12 months of registration accreditation from an accrediting body that is recognized by the Commissioner of Human Services as an accrediting body for homemaker agencies participating in the Medicaid program, as set forth at N.J.A.C.10:60-1.2. For purposes of accreditation pursuant to this subsection, the accrediting body shall apply the standards set forth in N.J.A.C.13:37-14.1 et seq. and N.J.A.C.13:45B-13.1 et seq., as applicable.

d. As a condition of registration under P.L.1989, c.331 (C.34:8-43 et al.) **【, every】** :

(1) All health care service firms shall annually submit to the director financial statements prepared by the firm, which shall be consistent with the firm's tax filing with the State for the year covered by the financial statements.

(2) In addition to the financial statements required pursuant to paragraph (1) of this subsection, a health care service firm that receives more than \$250,000 as part of the New Jersey Medicaid Personal Care Assistance program shall submit to the director an audit the third calendar year after registration and every third year thereafter.

(3) In addition to the financial statements required pursuant to paragraph (1) of this subsection, a health care service firm that generates \$10 million or more in gross income in a year shall submit to the director an audit for that year.

(4) (a) In addition to the financial statements required pursuant to paragraph (1) of this subsection, a health care service firm that receives less than \$250,000 as part of the New Jersey Medicaid Personal Care Assistance program and that generates \$1 million or more, but less than \$10 million, in gross income in a year shall submit to the director a report for that year prepared by an independent third-party practitioner based on a review of the firm's financial statements and records, general management, and internal controls, which review shall be conducted in compliance with the standards and procedures developed by the director pursuant to subsection b. of section 2 of P.L.2014, c.29 (C.34:8-45.1a).

(b) If the division makes adverse findings against a firm upon review of a report submitted pursuant to subparagraph (a) of this paragraph, the director shall order such corrective action as the director deems appropriate, and, upon compliance with or completion of the corrective action, shall require the firm to obtain a separate review of the firm's data for that year, which shall be conducted by a different independent third-party practitioner than the one that furnished the original report, and shall be based on the

1 standards and procedures developed by the director pursuant to
2 subsection b. of section 2 of P.L.2014, c.29 (C.34:8-45.1a). The
3 firm shall additionally be required to submit to the director an audit
4 for the calendar year next following the year for which the adverse
5 finding was made, regardless of the firm's gross income for the
6 year.

7 **【The】** An audit required pursuant to this paragraph shall be
8 conducted by a certified public accountant licensed by the State of
9 New Jersey and shall encompass an examination of the subject
10 firm's financial records, financial statements, the general
11 management of its operations, and its internal control systems. The
12 audit shall include an audit report with an unqualified opinion and
13 shall be accompanied by any management letters prepared by the
14 auditor in connection with the audit commenting on the internal
15 controls or management practices of the health care service firm.
16 The audit shall be divided into two components: compliance and
17 financial. The compliance component of the audit shall evaluate the
18 firm's compliance with relevant laws and regulations governing
19 health care service firms. The financial component shall include an
20 audit of the financial statements and accompanying notes, as
21 specified in the Statements on Auditing Standards issued by the
22 American Institute of Certified Public Accountants.

23 e. In addition to any other penalty provided by law, a person
24 shall be liable for a penalty of \$500 per day for each day that the
25 person continues to operate a firm without registering as required
26 under this section. The penalty shall be collected by the Director of
27 the Division of Consumer Affairs in a summary proceeding in
28 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
29 c.274 (C.2A:58-10 et seq.).

30 (cf: P.L.2019, c.48, s.1)

31
32 2. Section 2 of P.L.2014, c.29 (C.34:8-45.1a) is amended to
33 read as follows:

34 2. a. The Director of the Division of Consumer Affairs in the
35 Department of Law and Public Safety shall enter into a
36 memorandum of understanding with an accrediting body chosen by
37 the director through appropriate procurement processes authorized
38 to accredit a health care service firm pursuant to subsection c. of
39 section 1 of P.L.2002, c.126 (C.34:8-45.1). The memorandum of
40 understanding shall establish the standards for accreditation and for
41 reporting the results of audits performed pursuant to subsection d.
42 of section 1 of P.L.2002, c.126 to the Division.

43 b. The director shall, in consultation with representatives of
44 health care service firms registered with the division, develop an
45 agreed-upon set of standards and procedures for independent third
46 party practitioners to review health care service firm financial
47 statements and records, general management, and internal controls

1 pursuant to paragraph (4) of subsection d. of section 1 of P.L.2002,
2 c.126 (C.34:8-45.1). At a minimum, the standards and procedures
3 developed pursuant to this subsection shall address:

4 (1) the minimum educational, training, and professional
5 certification qualifications for independent third party practitioners
6 performing reviews of health care service firm financial statements
7 and records;

8 (2) the data points and metrics to be included in a review of a
9 health care service firm's financial statements and records, general
10 management, and internal controls which shall include, at a
11 minimum, verification of the accreditation and licensing status of
12 the firm; review of the firm's ownership structure; review of
13 contracts and funding sources as well as payments, cash
14 transactions, and reconciliation of account balances; review of the
15 adequacy of the firm's insurance coverage; review of billing
16 practices and invoices to ensure the adequacy of supporting
17 documentation and the inclusion of appropriate authorizations;
18 review of any history of litigation involving the firm, regulatory
19 actions taken against the firm, or past audits of the firm; review of
20 the use of independent contractors; and review of large transactions
21 and liabilities that exceed a specified percentage of the firm's total
22 billings or liabilities, as appropriate; and

23 (3) the thresholds and requirements for the division to make an
24 adverse finding and take corrective action against a firm based upon
25 a review of an independent third party report concerning the firm's
26 financial statements and records.

27 (cf: P.L.2014, c.29, s.2)

28
29 3. The Director of the Division of Consumer Affairs in the
30 Department of Law and Public Safety shall, pursuant to the
31 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
32 seq.), adopt rules and regulations as shall be necessary to implement
33 the provisions of this act.

34
35 4. This act shall take effect immediately.

36 37 38 STATEMENT

39
40 This bill will revise the requirements for reviewing the financial
41 statements and records of health care service firms. Current law
42 requires all health care service firms to complete annual audits,
43 which are to be submitted to the Director of the Division of
44 Consumer Affairs in the Department of Law and Public Safety
45 every three years.

46 Under the bill, all health care service firms will be required to
47 submit financial statements prepared by the firm to the director,

1 which statements are to be consistent with the firm's tax filings
2 with the State. Additionally, any health care service firm that
3 receives more than \$250,000 as part of the New Jersey Medicaid
4 Personal Care Assistance program will continue to be subject to the
5 current annual audit requirement, and health care service firms that
6 generate \$10 million or more in gross revenue in a year will be
7 required to submit an audit for that year.

8 For health care service firms with gross revenue for the year that
9 is between \$1 million \$10 million, and which receive less than
10 \$250,000 as part of the New Jersey Medicaid Personal Care
11 Assistance program, the firms will, in lieu of an audit, be required
12 to submit a report for that year to the director that is prepared by an
13 independent third party practitioner based on a review of the health
14 care service firm's financial statements and records, general
15 management, and internal controls.

16 In the event that the division makes adverse findings against a
17 health care service firm upon review of its independent third party
18 report, the director will order corrective action by the firm,
19 followed by a separate review of the firm's data for the year, to be
20 performed by a different independent third party practitioner than
21 the one that performed the original review. The firm will
22 additionally be required to submit an audit for the following year,
23 regardless of the firm's gross income in that year.

24 The director, in consultation with representatives of registered
25 health care service firms, will be required to develop standards and
26 procedures for the independent third party review of health care
27 service firm financial statements and records, general management,
28 and internal controls. At a minimum, the standards and procedures
29 will address the minimum educational, training, and professional
30 certification qualifications for practitioners performing the reviews;
31 the data points and metrics to be included in a review; and the
32 thresholds and requirements for the division to make an adverse
33 finding and take corrective action against a firm.

34 It is the sponsor's belief that the current annual audit requirement
35 presents an undue financial burden on smaller health care service
36 firms, and that the tiered system of financial review established
37 under the bill will help preserve the integrity of health care service
38 firm billing and financial practices while minimizing the financial
39 impact of compliance on smaller and mid-sized firms.