

[First Reprint]

ASSEMBLY, No. 2140

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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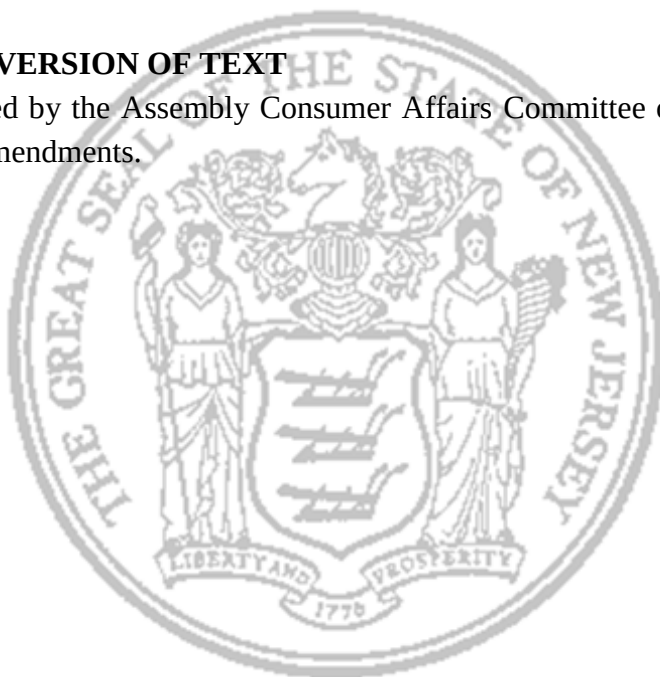
Assemblywoman Swain

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Consumer Affairs Committee on October 19, 2020, with amendments.



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

28 As used in this section:

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

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

38 "Personal care services" means services performed by licensed or
39 certified personnel for the purpose of assisting an individual with
40 activities of daily living that may involve physical contact. Services
41 include, but are not limited to, bathing, toileting, transferring, dressing,
42 grooming, and assistance with ambulation, exercise, or other aspects of
43 personal hygiene.

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

45 c. As a condition of being registered under P.L.1989, c.331
46 (C.34:8-43 et al.), a health care service firm shall obtain within 12

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ACO committee amendments adopted October 19, 2020.

1 months of registration accreditation from an accrediting body that is
2 recognized by the Commissioner of Human Services as an accrediting
3 body for homemaker agencies participating in the Medicaid program,
4 as set forth at N.J.A.C.10:60-1.2. For purposes of accreditation
5 pursuant to this subsection, the accrediting body shall apply the
6 standards set forth in N.J.A.C.13:37-14.1 et seq. and N.J.A.C.13:45B
7 13.1 et seq., as applicable.

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

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

14 (2) In addition to the financial statements required pursuant to
15 paragraph (1) of this subsection, a health care service firm that
16 receives more than \$250,000 ¹[as part] for the provision¹ of ¹[the]¹
17 New Jersey Medicaid Personal Care Assistance ¹[program] services¹
18 shall submit to the director an audit the third calendar year after ¹the
19 date of¹ registration ¹or on December 30, 2022, whichever date is
20 later,¹ and every third year thereafter.

21 (3) In addition to the financial statements required pursuant to
22 paragraph (1) of this subsection, a health care service firm that
23 generates \$10 million or more in gross income in a year shall submit to
24 the director an audit for that year ¹, except that an audit required by
25 this paragraph shall not be required to be submitted prior to December
26 30, 2022¹.

27 (4) (a) In addition to the financial statements required pursuant to
28 paragraph (1) of this subsection, a health care service firm that
29 receives less than \$250,000 ¹[as part] for the provision¹ of ¹[the]¹
30 New Jersey Medicaid Personal Care Assistance ¹[program] services¹
31 and that generates \$1 million or more, but less than \$10 million, in
32 gross income in a year shall submit to the director a report for that year
33 ¹, except that a report required by this paragraph shall not be required
34 to be submitted prior to December 30, 2022. The report shall be¹
35 prepared by an independent third-party practitioner based on a review
36 of the firm's financial statements and records, general management,
37 and internal controls, which review shall be conducted in compliance
38 with the standards and procedures developed by the director pursuant
39 to subsection b. of section 2 of P.L.2014, c.29 (C.34:8-45.1a).

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

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

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

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

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

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

41 b. The director shall, in consultation with representatives of
42 health care service firms registered with the division, develop an
43 agreed-upon set of standards and procedures for independent third
44 party practitioners to review health care service firm financial
45 statements and records, general management, and internal controls
46 pursuant to paragraph (4) of subsection d. of section 1 of
47 P.L.2002, c.126 (C.34:8-45.1). At a minimum, the standards and
48 procedures developed pursuant to this subsection shall address:

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

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

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

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

25
26 3. The Director of the Division of Consumer Affairs in the
27 Department of Law and Public Safety shall, pursuant to the
28 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
29 seq.), adopt rules and regulations as shall be necessary to implement
30 the provisions of this act.

31
32 4. This act shall take effect immediately.