

ASSEMBLY, No. 4446

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JULY 23, 2020

Sponsored by:

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

Co-Sponsored by:

**Assemblyman Chiaravalloti, Assemblywomen Murphy, Sumter,
Assemblyman Mejia, Assemblywomen Jasey, Downey, Lampitt, Lopez and
Assemblyman Freiman**

SYNOPSIS

Requires certain provisions in State contracts for delivery of publicly financed mental health, behavioral health, and addiction services.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/29/2020)

1 AN ACT concerning State contracts for social services and
2 supplementing Title 30 of the Revised Statutes.

3

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

6

7 1. The Legislature hereby finds and declares that:

8 a. Publicly financed mental health, behavioral health, and
9 addiction services are critical to the health, safety, and well-being of
10 the people of New Jersey, and comprise an integral and essential
11 component of the State's health and safety network in which the
12 taxpayers invest significant resources and public funds.

13 b. The COVID-19 pandemic and the economic devastation
14 resulting from its outbreak has, and will continue to cause, increased
15 demand for the public provision of these services. Periods of
16 economic shock, insecurity, social isolation, and pandemics increase
17 demand for and reliance on these State-funded essential services.

18 c. The Legislature intends to ensure the uninterrupted delivery
19 of essential mental health, behavioral health, and addiction services
20 to its most vulnerable citizens and to ensure such services are
21 delivered efficiently. The State has a proprietary interest in ensuring
22 efficiency and quality in the delivery of these services through
23 licensed community-based organizations and providers, with which
24 the State contracts through the Department of Human Services and
25 the Department of Children and Families. The State's proprietary
26 interest in these services includes ensuring their uninterrupted
27 delivery by contracted providers licensed by the State.

28 d. The COVID-19 pandemic forces recognition of the significant
29 health and safety risks undertaken by the individuals who provide
30 these essential health services to the public on behalf of the State.
31 The State has a responsibility to ensure the workers delivering the
32 services are provided adequate equipment, resources, and protections
33 to ensure their safety, the safety of the recipients of these services,
34 and the safety of the surrounding community. The providers
35 contracted by the State to provide these services must ensure, as a
36 condition of contracting with the State, ready access to rapid testing
37 for the presence of COVID-19, adoption and adherence to policies
38 for the prevention of infection by COVID-19 by workers and
39 recipients, and the provision of adequate personal protective
40 equipment.

41 e. In administering its mental health, behavioral health, and
42 addiction services public health program, it is in the State's interest
43 to ensure the individuals who are employed to deliver the services
44 are entitled to raise concerns, issues, and problems, and have full
45 exercise of their liberty of speech and conscience without fear of
46 reprisal or retaliation.

1 f. The aforementioned interests are best accomplished by
2 requiring all contracts renewed or entered into after the effective date
3 of this act between providers and the State, acting through the
4 Department of Human Services and Department of Children and
5 Families, and divisions thereof, for the provision and delivery of
6 behavioral health, mental health, and addiction services to contain,
7 as a material condition of its contract, terms requiring:

8 (1) adoption and adherence to a policy sufficient to ensure service
9 providers, service recipients, and the surrounding community are
10 protected from infection and the spread of COVID-19; and

11 (2) certification of a commitment to ensure the uninterrupted
12 delivery of services caused by labor-management disputes, and the
13 recovery of costs to the taxpayers caused by any such interruptions.
14

15 2. a. Any contract entered into or renewed by the Department
16 of Human Services or the Department of Children and Families with
17 a private contractor for the provision of mental health, behavioral
18 health, or addiction services shall contain a commitment that the
19 contracted services shall not be disrupted or delayed by labor
20 disputes. The commitment shall provide for the execution of an
21 agreement between the contractor and any labor organization that
22 represents or seeks to represent the employees of the private
23 contractor that meets the requirements set forth herein with respect
24 to employees delivering the essential services contracted by the
25 departments.

26 b. The commitment required pursuant to this section shall be a
27 condition of contracting with the departments and may be satisfied
28 through one or more of the following contractual commitments made
29 on the part of the contractor through the term of the contract as a
30 condition of receiving or renewing the contract:

31 (1) An agreement between the contractor and any exclusive
32 representative labor organization representing the employees
33 performing the contracted services that contains a provision
34 prohibiting economic or industrial action on the part of all parties and
35 includes a process for the resolution of disputes between them.

36 (2) An agreement between the contractor and any labor
37 organization seeking to represent the employees performing the
38 contracted services that includes a provision prohibiting the parties
39 from causing, promoting, or encouraging economic, industrial, or
40 other disruptive activity on the part of the contractor or employees
41 performing services under the contract, and includes a procedure for
42 resolution of disputes between parties.

43 (3) Any other agreement or binding obligation to be maintained
44 through the term of the contract that provides a comparable
45 commitment as paragraphs (1) or (2) of this subsection.

46 c. The contractual commitments required under this section
47 shall be made a binding provision of any contract subject to this
48 section. Any contract subject to this section that is awarded or

1 renewed shall include a provision providing for reimbursement to the
2 department of the actual costs to the department arising from the
3 inadequacy of the commitment provided by the contractor.

4 d. Prior to awarding or renewing any contract subject to this
5 section, the departments shall determine whether there has been any
6 prior disruption in the provision of the services provided by the
7 contractor.

8 The commissioners shall consider any submissions by any
9 interested party in making the determination, that shall be provided
10 to the contractor for response. If a dispute exists with respect to
11 either condition, the commissioners shall refer the matter to the State
12 Treasurer to conduct a hearing and make findings of fact which shall
13 be considered by the commissioners in making any award or renewal.

14 e. Any interested person may provide notice to the
15 commissioner of the pertinent department of a refusal by a contractor
16 to adhere to its contractual commitments required by this act. Upon
17 filing of such a notice, the commissioner shall commence an
18 investigation and, upon finding of a failure or breach, shall cancel or
19 decline to renew the contract. Such findings shall be reviewable,
20 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
21 (C.52:14B-1 et seq.). The pertinent contract shall not be awarded or
22 renewed until the conclusion of such proceedings, but may be
23 maintained on a month-to-month basis. The provisions of this
24 subsection shall be limited solely to the issue of adherence to the
25 contractual commitment made by the contractor and accepted by the
26 departments as a condition of the contract, and is neither exclusive
27 nor preclusive as to any claim under the "Conscientious Employee
28 Protection Act," P.L.1986, c.105 (C.34:19-1 et seq.), or the "New
29 Jersey False Claims Act," P.L.2007, c.265 (C.2A:32C-1 et seq.).

30 f. As used in this section, "labor organization" means a labor
31 organization that is the collective bargaining representative of not
32 less than 1,000 employees in the State of New Jersey that serve in
33 similar classifications or provide similar services as those provided
34 by the employees performing the contract for the Department of
35 Human Services or the Department of Children and Families.

36
37 3. a. A contract entered into or renewed after the effective date
38 of this act for the services described in subsection a. of section 2 of
39 this act shall contain a COVID-19 containment and mitigation
40 commitment that adequately ensures the safety of the contractors'
41 employees, service recipients, and surrounding community. The
42 commissioners of the departments shall jointly adopt a model written
43 commitment to which contractors shall ascribe to provide for regular
44 COVID-19 testing, training, reporting, and the provision of adequate
45 personal protective equipment.

46 b. Prior to awarding or renewing any contract subject to this
47 section, the departments shall determine:

1 (1) whether there has been any prior disruption in the provision
2 of the services provided by the contractor; and

3 (2) any prior failures to contain, limit, or mitigate the spread of
4 COVID-19 among the contractor's employees or service recipients.

5 The commissioners shall consider any submissions by any
6 interested party in making the determination, that shall be provided
7 to the contractor for response. If a dispute exists with respect to
8 either condition, the commissioners shall refer the matter to the State
9 Treasurer to conduct a hearing and make findings of fact which shall
10 be considered by the commissioners in making any award or renewal.

11
12 4. This act shall take effect on the 91st day following enactment
13 and section 3 of this act shall expire on the 366th day following the
14 end of the public health emergency and state of emergency declared
15 by the Governor in Executive Order No. 103 of 2020.

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18 STATEMENT

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20 This bill ensures and improves the delivery of publicly financed
21 mental and behavioral health and addiction services to the people of
22 New Jersey. The bill does this by mitigating the possibility of
23 interruption of service delivery and protecting service providers,
24 service recipients, and the surrounding community from the spread
25 of the novel coronavirus.

26 Publicly financed mental health, behavioral health, and addiction
27 services are critical to the health, safety, and well-being of the people
28 of New Jersey, and comprise an integral and essential component of
29 the State's health and safety network in which the taxpayers invest
30 significant resources and public funds. Despite the COVID-19
31 pandemic, the Legislature intends to ensure the uninterrupted
32 delivery of essential mental health, behavioral health, and addiction
33 services to its most vulnerable citizens, and to ensure such services
34 are delivered efficiently.

35 This bill requires that any contract entered into or renewed by the
36 Department of Human Services or the Department of Children and
37 Families with a private contractor for the provision of mental health,
38 behavioral health, or addiction services will contain a commitment
39 that the contracted services will not be disrupted or delayed by labor
40 disputes. The commitment may be satisfied by: (1) an agreement
41 between the contractor and any exclusive representative labor
42 organization representing the employees performing the contracted
43 services that contains a provision prohibiting economic or industrial
44 action on the part of all parties and includes a process for the
45 resolution of disputes between them; (2) an agreement between the
46 contractor and any labor organization seeking to represent the

1 employees performing the contracted services that includes a
2 provision prohibiting the parties from causing, promoting, or
3 encouraging economic, industrial, or other disruptive activity on the
4 part of the contractor or employees performing services under the
5 contract, and includes a procedure for resolution of disputes between
6 parties; or (3) any other agreement or binding obligation to be
7 maintained through the term of the contract that provides a
8 comparable commitment as paragraphs (1) or (2). The bill provides
9 the departments the opportunity to discover prior disruptions in
10 service from contractors and a means to address any disputes through
11 the State Treasurer.

12 The bill also adds a temporary section requiring State contracts to
13 contain a COVID-19 containment and mitigation commitment. The
14 section allows for additional protections concerning COVID-19 in
15 such contracts or a review of past failures to implement appropriate
16 COVID-19 safety guidelines.

17 The bill would take effect on the 91st day following enactment
18 and the section concerning contracts requiring a COVID-19
19 containment and mitigation commitment would expire one year
20 following the end of the public health emergency and state of
21 emergency declared by the Governor.