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SENATE, No. 848

STATE OF NEW JERSEY

219th LEGISLATURE

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Sponsored by:
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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 Senate Commerce Committee on January 27, 2020, with amendments.

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

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

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

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

As used in this section:

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

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

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

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:
[1]Senate SCM committee amendments adopted January 27, 2020.

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 **1[**as part**]** for the provision**1** of **1[**the**]1** New Jersey Medicaid Personal Care Assistance **1[**program**]** services**1** 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 **1[**as part**]** for the provision**1** of **1[**the**]1** New Jersey Medicaid Personal Care Assistance **1[**program**]** services**1** 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 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). The firm shall additionally be required to submit to the director an audit for the calendar year next following the year for which the adverse finding was made, regardless of the firm's gross income for the year.

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

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

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

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

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

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

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

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

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

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

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

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

4. This act shall take effect immediately.