

SENATE, No. 2177

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

SYNOPSIS

Provides for oversight of DHS contracts with providers serving persons with developmental disabilities.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning contracting by the Department of Human
2 Services and 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. As used in this act:

8 "Commissioner" means the Commissioner of Human Services.

9 "Department" means the Department of Human Services.

10 "Division" means the Division of Developmental Disabilities in
11 the Department of Human Services.

12 "Expenditure report" means a report which contains summary
13 information for each budgetary category specified in a contract,
14 including, but not limited to, equipment, personnel, supplies, and
15 general and administrative costs.

16 "Negative contracting action" means conditional renewal, non-
17 renewal, imposition of a probationary period or termination of a
18 contract, and also includes nonpayment pending compliance with
19 corrective or remedial action specified by the Department of Human
20 Services.

21 "Office of the State Comptroller" or "office" means the office
22 established pursuant to P.L.2007, c.52 (C.52:15C-1 et seq.).

23 "Provider" means a for-profit or nonprofit entity that is under
24 contract with the Department of Human Services to provide
25 services to persons with developmental disabilities.

26 "Services" means services as defined in section 3 of P.L.1977,
27 c.82 (C.30:6D-3).

28

29 2. a. The Commissioner of Human Services shall require a
30 provider to submit to the Division of Developmental Disabilities, no
31 later than 30 days after the end of a quarter or at more frequent
32 intervals as specified by the department, an expenditure report for
33 each contract for services for persons with developmental
34 disabilities the provider has entered into with the department.

35 b. If a provider fails to submit an expenditure report for a
36 contract pursuant to this section, such contract shall be subject to
37 negative contracting action.

38 c. The Office of the State Comptroller shall review, on a
39 random basis, and the division shall review, on an ongoing basis,
40 expenditure reports submitted to the division pursuant to this
41 section and include in their reviews, at a minimum, an analysis of
42 whether:

43 (1) an expenditure contained in the report and identified by the
44 division or office is appropriate and reasonable;

45 (2) proper documentation is available to support the
46 expenditure; and

47 (3) expenditures for general and administrative costs are within
48 the 10 percent limit specified in section 3 of this act.

1 d. The office shall conduct the review required by this section
2 and submit a report of its findings pursuant to P.L.2007, c.52
3 (C.52:15C-1 et seq.).

4
5 3. a. A contract for services for persons with developmental
6 disabilities entered into between the department and a provider on
7 or after the effective date of this act, including the renewal of a
8 contract entered into prior to the effective date, shall stipulate that
9 the expenditure of State funds for general and administrative costs
10 shall not exceed 10 percent of the provider's annual expenditure of
11 State contract funds.

12 b. In the case of a provider whose contract is in effect on the
13 effective date of this act and whose general and administrative
14 expenses exceed the 10 percent limit specified in this section, the
15 department shall attempt to modify the contract to limit general and
16 administrative costs to 10 percent, in accordance with this section.

17 c. If a provider exceeds the 10 percent limit on general and
18 administrative costs stipulated in a contract entered into with the
19 department, such contract shall be subject to negative contracting
20 action.

21
22 4. The director of the division, or the director's designee, shall
23 review a provider's performance to determine whether services for
24 which the provider is under contract with the department are being
25 performed, and whether the provider's performance contributes to
26 the success of a person with a developmental disability in attaining
27 the goals and objectives specified in the person's individualized
28 habilitation plan developed pursuant to section 10 of P.L.1977, c.82
29 (C.30:6D-10), in accordance with the provisions of this section.

30 a. A contract administrator shall, at least once every 12
31 months, conduct an unannounced visit of a provider to review
32 whether the provider is performing the services specified in the
33 provider's contract and whether those services are contributing to
34 the success of a person with a developmental disability in attaining
35 the goals and objectives specified in the person's individualized
36 habilitation plan. The contract administrator shall summarize the
37 findings of the visit in a report which shall be submitted to the
38 director, or the director's designee, no later than 30 days following
39 the date of the visit.

40 b. Prior to renewal of a contract of a provider, the director, or
41 the director's designee, shall evaluate the report submitted pursuant
42 to subsection a. of this section and the summary of the results from
43 the survey about the provider, as specified in section 5 of this act.

44 c. If the director, or the director's designee, after evaluating a
45 report of an unannounced visit and a summary of the results from
46 the survey about a provider, determines that persons with
47 developmental disabilities are not succeeding in attaining the goals
48 and objectives specified in their individualized habilitation plans as

1 a result of the provider's inability to contribute to the success of a
2 person with a developmental disability in attaining those goals and
3 objectives, the contract of that provider shall not be renewed and
4 may be subject to other negative contract action, as appropriate.

5
6 5. a. The division shall prepare a form to survey: (1) the
7 employees and other persons who perform contracted services on
8 behalf of a provider for persons with developmental disabilities
9 eligible for services from the division; and (2) the parents or legal
10 guardians of the persons with developmental disabilities receiving
11 those services from the provider. The survey shall provide the
12 employees and other persons who perform the contracted services,
13 and the parents or guardians, with an opportunity to provide
14 feedback to the division about the ability of the provider to provide
15 services that contribute to the success of a person with a
16 developmental disability in attaining the goals and objectives
17 specified in the person's individualized habilitation plan.

18 b. The division shall distribute the survey form to a provider
19 who shall require completion of the form by an employee and any
20 other person who performs contracted services for persons with
21 developmental disabilities on behalf of the provider.

22 c. The division shall distribute the form to a parent or legal
23 guardian of a person with a developmental disability receiving
24 services from that provider.

25 d. An employee or other person performing contracted services
26 on behalf of a provider and a parent or legal guardian shall submit
27 the completed survey form to the division. The division shall
28 compile, review, and issue a summary of the results of the survey,
29 which shall be included in a determination whether to renew a
30 contract of a provider or take negative contracting action against a
31 provider, in accordance with subsection c. of section 4 of this act.

32
33 6. Before taking negative contracting action pursuant to this
34 act, the department shall give notice to a provider personally or by
35 mail to the last known address of the provider with return receipt
36 requested. The notice shall afford the provider the opportunity to
37 be heard and to contest the department's action. The hearing shall
38 be conducted in accordance with the "Administrative Procedure
39 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

40
41 7. The department shall examine the feasibility of adopting an
42 outcome-based contracting payment system for the division that
43 specifies desired outcomes for persons with developmental
44 disabilities receiving services from a provider under contract with
45 the department, and confers payment to the provider as the persons
46 with developmental disabilities who are receiving services from the
47 provider reach pre-defined steps along the way to achieving the
48 specified desired outcomes.

1 8. The Commissioner of Human Services shall adopt rules and
2 regulations, pursuant to the "Administrative Procedure Act,"
3 P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the provisions of
4 this act.

5
6 9. This act shall take effect on the first day of the seventh
7 month next following the date of enactment, but the Commissioner
8 of Human Services may take such anticipatory administrative action
9 in advance thereof as shall be necessary for the implementation of
10 this act.

11
12
13 STATEMENT
14

15 This bill provides for oversight of the contracts the Department
16 of Human Services (DHS) enters into with providers serving
17 persons with developmental disabilities who are eligible for
18 services from the Division of Developmental Disabilities (DDD).
19 In August 2009, the Office of the State Comptroller issued a report
20 concerning DDD entitled "A Performance Audit of Oversight of
21 Third-Party Contracts," which raised several concerns and made
22 recommendations to DHS about contracts for DDD services. This
23 bill addresses some of those concerns and recommendations by
24 establishing requirements for provider expenditure reports, a 10
25 percent cap on providers' general and administrative costs, and
26 provider performance reviews, in order to ensure that State funds
27 are spent on services that help improve outcomes for persons with
28 developmental disabilities.

29 Specifically, the bill provides that, with regard to expenditure
30 reports, the Commissioner of Human Services is to require a
31 provider of services to persons with developmental disabilities to
32 submit to DDD, no later than 30 days after the end of a quarter or at
33 more frequent intervals as specified by DHS, an expenditure report
34 for each contract the provider has entered into with DHS. If a
35 provider fails to submit the report, the provider's contract would be
36 subject to "negative contracting action," which is defined in the bill
37 as conditional renewal, non-renewal, imposition of a probationary
38 period, or termination of a contract, and also includes nonpayment
39 pending compliance with corrective or remedial action. The Office
40 of the State Comptroller, on a random basis, and the DDD, on an
41 ongoing basis, are to review expenditure reports and include in their
42 reviews, at a minimum, an analysis of whether: an expenditure
43 contained in the report and identified by the office is appropriate
44 and reasonable; proper documentation is available to support an
45 expenditure; and expenditures for general and administrative costs
46 are within the 10 percent limit specified in the bill. The office
47 would conduct the review and submit a report of its findings
48 pursuant to P.L.2007, c.52 (C.52:15C-1 et seq.).

1 With regard to the 10 percent cap on general and administrative
2 costs, the bill provides that a contract entered into on or after the
3 effective date of the bill, including renewal of an earlier contract, is
4 to stipulate that the expenditure of State funds for general and
5 administrative costs of the provider shall not exceed 10 percent of
6 the provider's annual expenditure of State contract funds. In the
7 case of a provider whose contract is in effect on the bill's effective
8 date and whose general and administrative expenses exceed 10
9 percent, DHS is to attempt to modify the contract to include the 10
10 percent cap. If a provider exceeds the 10 percent cap stipulated in a
11 contract, the contract would be subject to negative contracting
12 action.

13 With regard to performance reviews, the bill requires the
14 Director of DDD, or the director's designee, to review a provider's
15 performance to determine whether services for which the provider
16 is under contract are being performed and whether the provider's
17 performance contributes to the success of a person with a
18 developmental disability in attaining the goals and objectives
19 specified in the person's individualized habilitation plan developed
20 pursuant to section 10 of P.L.1977, c.82 (C.30:6D-10).
21 Specifically, a contract administrator will be required, at least once
22 every 12 months, to conduct an unannounced visit of a provider to
23 review whether the provider is performing the services specified in
24 the provider's contract and whether those services are contributing
25 to the success of a person with a developmental disability in
26 attaining the goals and objectives specified in the person's
27 individualized habilitation plan. The contract administrator is to
28 summarize the findings of the visit in a report to be submitted to the
29 director, or the director's designee, no later than 30 days following
30 the date of the visit.

31 Prior to renewal of a provider's contract, the director, or the
32 director's designee, will be required to evaluate the contract
33 administrator's report and a summary of the results from a survey
34 of: 1) the provider's employees; 2) other persons providing services
35 on behalf of the provider; and 3) the parents and legal guardians of
36 persons with developmental disabilities who are receiving services
37 from the provider. DDD is to prepare a survey form for completion
38 by these persons. The survey is to provide these persons with an
39 opportunity to provide feedback to the division about the ability of
40 the provider to provide services that contribute to the success of a
41 person with a developmental disability in attaining the goals and
42 objectives specified in the person's individualized habilitation plan.
43 If, after the evaluation of a report of an unannounced visit and the
44 review of the provider's survey results, the division director, or the
45 director's designee, determines that persons with developmental
46 disabilities are not succeeding in attaining the goals and objectives
47 specified in their individualized habilitation plans as a result of the
48 provider's inability to contribute to the success of a person with a

1 developmental disability in attaining those goals and objectives, the
2 provider's contract may not be renewed and may be subject to other
3 negative contract action, as appropriate;

4 Before taking negative contracting action, DHS will be required
5 to give notice to a provider, either personally or by mail to the last
6 known address of the provider with return receipt requested. The
7 notice would afford the provider the opportunity to be heard and to
8 contest the department's action.

9 DHS will be required to examine the feasibility of adopting an
10 outcome-based contracting payment system for DDD that specifies
11 desired outcomes for persons with developmental disabilities
12 receiving services from a provider and that confers payment to the
13 provider as the persons with developmental disabilities who are
14 receiving services reach pre-defined steps or "milestones" along the
15 way to achieving the specified desired outcomes. This type of
16 payment system, known as the "Milestone Payment System," is
17 used in about 15 other states, including, Oklahoma, Massachusetts,
18 Texas, and New York.