

SENATE, No. 2708

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JULY 22, 2020

Sponsored by:

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Senators Ruiz, Diegnan, Sacco, Singleton, Turner, Vitale, Pou,

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.

47 f. The aforementioned interests are best accomplished by
48 requiring all contracts renewed or entered into after the effective date

S2708 SWEENEY, CODEY

1 of this act between providers and the State, acting through the
2 Department of Human Services and Department of Children and
3 Families, and divisions thereof, for the provision and delivery of
4 behavioral health, mental health, and addiction services to contain,
5 as a material condition of its contract, terms requiring:

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

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

12

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

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

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

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

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

44 c. The contractual commitments required under this section
45 shall be made a binding provision of any contract subject to this
46 section. Any contract subject to this section that is awarded or
47 renewed shall include a provision providing for reimbursement to the

1 department of the actual costs to the department arising from the
2 inadequacy of the commitment provided by the contractor.

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

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

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

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

35
36 3. a. A contract entered into or renewed after the effective date
37 of this act for the services described in subsection a. of section 2 of
38 this act shall contain a COVID-19 containment and mitigation
39 commitment that adequately ensures the safety of the contractors'
40 employees, service recipients, and surrounding community. The
41 commissioners of the departments shall jointly adopt a model written
42 commitment to which contractors shall ascribe to provide for regular
43 COVID-19 testing, training, reporting, and the provision of adequate
44 personal protective equipment.

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

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

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

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

9
10 4. This act shall take effect on the 91st day following enactment
11 and section 3 of this act shall expire on the 366th day following the
12 end of the public health emergency and state of emergency declared
13 by the Governor in Executive Order No. 103 of 2020.

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16 STATEMENT

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

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

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

S2708 SWEENEY, CODEY

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1 contract, and includes a procedure for resolution of disputes between
2 parties; or (3) any other agreement or binding obligation to be
3 maintained through the term of the contract that provides a
4 comparable commitment as paragraphs (1) or (2). The bill provides
5 the departments the opportunity to discover prior disruptions in
6 service from contractors and a means to address any disputes through
7 the State Treasurer.

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

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