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SENATE, No. 4048

STATE OF NEW JERSEY

219th LEGISLATURE

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SYNOPSIS

Concerns employment security during changes in control of health care entities.

CURRENT VERSION OF TEXT

As reported by the Senate Health, Human Services and Senior Citizens Committee on January 6, 2022, with amendments.

(Sponsorship Updated As Of: 12/9/2021)

AN ACT concerning [1]changes in control of[1] health care entities [1]**[**and collective bargaining**]**[1] and supplementing [1]**[**chapter 12 of Title 34 of the Revised Statutes**]** P.L1966, c.113 (C.34:11-56a et seq.)[1].

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

1. a. [1]**[**As used in this section, "health care entity" means a health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a staffing registry, or a home care services agency as defined in section 1 of P.L.1947, c.262 (C.45:11-23).**]** Not less than 30 days before a change in control, a former health care entity employer shall: provide the successor health care entity employer, and any collective bargaining representative the employees may have, a list containing the name, address, date of hire, phone number, wage rate, and employment classification of each eligible employee employed at the affected health care entity; inform all eligible employees of their rights provided by this section; and post, in a conspicuous location or locations accessible to all employees, a notice setting forth the rights provided by this section.[1]

b. Any contract or agreement that provides for [1]**[**the sale or transfer of ownership or**]** a change in[1] control of a health care entity shall provide [1]that[1]:

(1) [1]**[**if employees of the health care entity are covered by an unexpired collective bargaining agreement, that the provisions of the collective bargaining agreement shall remain in effect until the existing expiration date of the agreement or a date six months after the full effectuation of the sale or transfer, whichever is later; and

(2) that wages and benefits, including health care, paid time off, retirement, and education benefits, of all eligible employees of the health care entity who are not covered by an unexpired collective bargaining agreement shall not be reduced or diminished during the transitional period ending six months after the full effectuation of the sale or transfer.**]** the successor health care entity employer shall, during a transitional period of not less than six months following the change in control, offer each eligible employee employment during the transitional period with no reduction of wages and with no reduction of the total value of benefits, including health care, paid time off, retirement, and education benefits, with the offer being made in writing and remaining open for at least 10 business days from the date of the offer;

(2) an eligible employee retained pursuant to this section shall not be discharged without cause during the transitional period,

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 SHH committee amendments adopted January 6, 2022.

except that a successor employer may lay off eligible employees if the employer finds that fewer employees are needed, but only if the choice of employees to be retained is based on seniority and experience, and laid off employees are offered any positions that are subsequently restored;

(3) at the end of the transitional period, the successor employer shall perform a written performance evaluation for each retained eligible employee, and offer the employee continued employment if an employee's performance during that period was satisfactory; and

(4) a successor employer shall retain a written record of each offer of employment and each evaluation made pursuant to this subsection, for not less than three years from the date of the offer or evaluation, with each record including the name, address, date of hire, phone number, wage rate, and employment classification of the employee, and provided to the employee or representative of the employee upon request.[1]

c. All parties to a contract or agreement covered by this section, and all health care entities [1]**[**sold or transferred**]** subject to a change in control[1] pursuant to a contract or agreement covered by this section, shall comply with all provisions that are required by this section to be included in the contract or agreement pursuant to subsection b. of this section, regardless of whether those provisions are expressly included in the contract or agreement.

d. Notwithstanding the foregoing, [1]no[1] action taken pursuant to and in compliance with a collective bargaining agreement entered into by an exclusive representative of employees of a health care entity [1]**[**sold or transferred**]** subject to a change in control[1] pursuant to a contract or agreement covered by this section shall [1]**[**not**]**[1] be considered a violation of this section. [1]Nothing in this section shall be construed as limiting, delaying, or preventing, including during the transitional period: the recognition of a collective bargaining representative of the employees by a successor health care entity employer; or collective bargaining between the successor health care entity employer and the collective bargaining representative.[1]

e. An [1]eligible[1] employee who has been affected by a violation of this section may bring an action in any court of competent jurisdiction against any party to a contract or agreement covered by this section and any health care entity [1]**[**sold or transferred**]** subject to a change in control[1] pursuant to a contract or agreement covered by this section for violation of any obligation imposed by this section. The court shall have authority to order injunctive relief to prevent or remedy a violation of any obligation imposed by this section[1], including, if an eligible employee is discharged in violation of the provisions of this section, the ordering that the employee be reinstated[1]. If the court finds that, by reason of a violation of any obligation imposed by this section, a plaintiff has suffered a loss of wages or benefits, the court shall award back pay

for all losses of wages and benefits, the costs of benefits the health care entity or other defendant would have incurred for benefits lost by the plaintiff, expenses incurred by the plaintiff as a result of the lost benefits, and an amount equal to back pay as liquidated damages.

f. The court shall award a plaintiff prevailing in an action brought pursuant to subsection e. of this section reasonable attorneys' fees.

[1]g. As used in this section:

"Change in control" means: any sale, assignment, transfer, contribution or other disposition of all or substantially all of the assets used in a health care entity's operations; or any sale, assignment, transfer, contribution or other disposition of a controlling interest in the health care entity, including by consolidation, merger, or reorganization, of the health care entity or any person who controls the health care entity; or any other event or sequence of events, including a purchase, sale, or termination of a management contract or lease, that causes the identity of the health care entity employer to change, but shall not include a change in control in which both the former health care entity employer and the successor health care employer are government entities. A change in control shall be defined to occur on the date of execution of the document effectuating the change.

"Eligible employee" means: any person employed at an affected health care entity during the 90-day period immediately preceding a change in control of a health care entity; or any person formerly employed at the health care entity who retains recall rights under an agreement with the former health care entity employer, except that an "eligible employee" shall not include a managerial employee.

"Former health care entity employer" means any health care entity employer who owns, controls, or operates a health care entity prior to a change in control of the entity.

"Government entity" means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.

"Health care entity" means a health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a staffing registry, or a home care services agency as defined in section 1 of P.L.1947, c.262 (C.45:11-23). "Health care entity employer" means any person who owns, controls or operates a health care entity that has one or more eligible employees.

"Managerial employee" means an employee who is exempt from the overtime requirements of the New Jersey State Wage and Hour Law, P.L.1966, c.113 (C.34:11-56a et seq.), because the employee is an executive employee.

"Successor health care entity employer" or "successor employer" means a health care entity employer who owns, controls or operates a health care entity after a change in control of the entity.

h. The provisions of this section shall be deemed to be severable and if any subsection, paragraph, sentence or other portion of this section is for any reason held or declared by any court of competent jurisdiction to be unconstitutional or preempted by federal law, or the applicability of that portion to any person or facility is held invalid, the remainder of this section shall not thereby be deemed to be unconstitutional, preempted, or invalid.[1]

2. This act shall take effect [1]⟦immediately⟧ on the 90th day after enactment[1] and shall apply to contracts or agreements for the sale or transfer of health care entities entered into on or after the effective date of this act.