

ASSEMBLY, No. 1828

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblywoman BRITNEE N. TIMBERLAKE

District 34 (Essex and Passaic)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Co-Sponsored by:

Assemblyman Holley

SYNOPSIS

Establishes system for portable benefits for workers who provide services to consumers through contracting agents.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 10/19/2020)

1 AN ACT concerning portable benefits for certain workers and
2 supplementing Title 34 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 “Contracting agent” means a business, organization, corporation,
9 limited liability company, partnership, sole proprietor, or any other
10 entity that facilitates the provision of services by workers to
11 consumers seeking the services and makes payments to workers,
12 where the provision of services is taxed as an independent
13 contractor, using Form 1099.

14 “Department” means the Department of Labor and Workforce
15 Development.

16 “Principal” means a person or company engaged in the business
17 of manufacturing, who:

18 a. manufactures, produces, imports, or distributes a product for
19 wholesale;

20 b. contracts with a sales representative to solicit orders for the
21 product; and

22 c. compensates the sales representative in whole or in part by
23 commission.

24 “Qualified benefit provider” means a nonprofit benefit provider
25 that is eligible to provide benefits to workers of contracting agents
26 pursuant to this act.

27 “Worker” means a person who provides services to consumers
28 through a contracting agent. “Worker” shall not mean:

29 a. any person who contracts to solicit orders in New Jersey as
30 the sales representative of a principal; or

31 b. any person subject to a collective bargaining agreement that
32 specifies wages, terms and conditions of employment.

33

34 2. a. Contracting agents that have facilitated the provision of
35 services by at least 50 individual workers in a consecutive 12-
36 month period shall contribute funds to qualified benefit providers to
37 provide benefits to the workers of the contracting agents. The
38 requirement to contribute funds under this act only applies when the
39 services are provided to consumers located in this State.

40 b. (1) The contribution amount shall be the lesser of 25 percent
41 of the total fee collected from the consumer for each transaction of
42 services provided or six dollars for every hour that the worker
43 provided services to the consumer. If determined per hour, then the
44 determination shall be prorated per minute.

45 (2) The contribution amount required under this section may be
46 added to the invoice or billing submitted to the consumer for the
47 services.

1 c. Contributions shall be made to the qualified benefit provider
2 on no less than a monthly basis and no later than 15 days after the
3 end of the month in which the services were provided.

4 d. Contributions shall indicate the assigned amount per worker
5 per transaction, according to the following:

6 (1) if a single worker provided services for a transaction, the
7 entire contribution is assigned to that worker; or

8 (2) if multiple workers provided services for a transaction, the
9 contribution is assigned proportionately to those workers.

10
11 3. a. Based on the contributions received under section 2 of
12 this act, qualified benefit providers shall ensure that benefits are
13 provided to workers as set forth in this section.

14 b. Qualified benefit providers shall provide workers'
15 compensation insurance pursuant to chapter 15 of Title 34 of the
16 Revised Statutes to those workers entitled to benefits based on
17 contributions made under section 2 of this act.

18 c. In addition to workers' compensation insurance, qualified
19 benefit providers shall provide some or all of the benefits set forth
20 in this subsection. Qualified benefit providers shall solicit input
21 from workers on their benefits, and shall allow workers to choose
22 from available benefits or allocate the contributions among the
23 following benefits:

24 (1) health insurance, including but not limited to subsidies to
25 purchase health insurance;

26 (2) paid time off;

27 (3) retirement benefits; and

28 (4) other benefits determined by the qualified benefit providers,
29 on behalf of the workers.

30 d. Qualified benefit providers may use up to five percent of the
31 contribution funds received for administration of benefits.

32
33 4. A worker entitled to benefits under this act shall select a
34 qualified benefit provider and shall be given the option to change
35 that selected qualified benefit provider once per year. Workers
36 shall be provided information regarding available qualified benefit
37 providers in a format that allows them to easily select their chosen
38 qualified benefit provider.

39
40 5. The department shall adopt rules for organizations to
41 become qualified benefit providers. At a minimum, the rules
42 governing qualified benefit providers shall require that the
43 following criteria are met:

44 a. the organization shall be a nonprofit organization, operating
45 under 26 U.S.C. s.501(c)(3) federal tax status;

46 b. at least one-half of the organization's board of directors shall
47 be comprised of workers performing work for customers of

1 contracting agents or representatives of bona fide independent
2 organizations of those workers;

3 c. the organization shall be independent from all business
4 entities, organizations, corporations, or individuals that would
5 pursue any financial interest in conflict with that of the workers;

6 d. all action of the organization regarding providing benefits
7 shall be for the sole purpose of maximizing benefits to the covered
8 workers;

9 e. the board of directors of the organization shall hold a
10 fiduciary duty to the workers with respect to provision of the
11 benefits; and

12 f. the organization shall demonstrate adequate viability and
13 financial sufficiency as determined by the department. At a
14 minimum, the organization shall have:

15 (1) cash reserves in a sufficient amount, as determined by the
16 department;

17 (2) liability coverage for an amount determined by the
18 department;

19 (3) access to bonding; and

20 (4) other demonstrated competencies as determined by the
21 department.

22

23 6. The department shall establish rules to implement and
24 administer this act, including rules for:

25 a. monitoring compliance of contracting agents;

26 b. monitoring qualified benefit providers, including the ability
27 to remove providers that are out of compliance with the criteria
28 established under this act;

29 c. establishing a fee on contracting agents to fund the
30 department's compliance efforts;

31 d. administering workers' compensation coverage for workers
32 under this act; and

33 e. providing procedures for workers to select qualified benefit
34 providers, to change their selections annually, and to receive notices
35 of the right to select different qualified benefit providers.

36

37 7. In addition to remedies provided by the department to a
38 worker for a contracting agent's noncompliance, a worker may
39 bring a private cause of action against a contracting agent for the
40 contracting agent's failure to comply with the contribution
41 requirements under section 2 of this act.

42

43 8. The requirements on contracting agents and the benefits
44 provided to workers under this act shall not be considered in
45 determinations of a worker's employment status or a contracting
46 agent's employment relationship to the worker under R.S.43:21-19.

1 The bill provides that qualified benefit providers may use up to
2 five percent of the contribution funds received for administration of
3 benefits.

4 A worker entitled to benefits under the bill must select a qualified
5 benefit provider and must be given the option to change that selected
6 qualified benefit provider once per year. Workers are to be provided
7 information regarding available qualified benefit providers in a format
8 that allows them to easily select their chosen qualified benefit
9 provider.

10 The bill requires the Department of Labor and Workforce
11 Development to adopt rules for organizations to become qualified
12 benefit providers. At a minimum, the rules governing qualified benefit
13 providers must require that the following criteria are met:

14 (1) the organization must be a nonprofit organization, operating
15 under 26 U.S.C. s.501(c)(3) federal tax status;

16 (2) at least one-half of the organization's board of directors must
17 be comprised of workers performing work for customers of
18 contracting agents or representatives of bona fide independent
19 organizations of those workers;

20 (3) the organization must be independent from all business
21 entities, organizations, corporations, or individuals that would pursue
22 any financial interest in conflict with that of the workers;

23 (4) all action of the organization regarding providing benefits must
24 be for the sole purpose of maximizing benefits to the covered workers;

25 (5) the board of directors of the organization must hold a fiduciary
26 duty to the workers with respect to provision of the benefits; and

27 (6) the organization must demonstrate adequate viability and
28 financial sufficiency as determined by the department. At a minimum,
29 the organization must have cash reserves, liability coverage, access to
30 bonding, and any other demonstrated competencies as determined by
31 the department.

32 The bill requires the Department of Labor and Workforce
33 Development to establish rules to implement and administer the bill,
34 including rules for monitoring contracting agents and qualified benefit
35 providers, establishing fees on contracting agents to fund compliance
36 efforts, administering workers' compensation coverage for workers,
37 and providing procedures for workers to select and change qualified
38 benefit providers.

39 In addition to remedies provided by the department to a worker for
40 a contracting agent's noncompliance, a worker may bring a private
41 cause of action against a contracting agent for the contracting agent's
42 failure to comply with the bill's contribution requirements.

43 The bill also provides that the requirements on contracting agents
44 and the benefits provided to workers are not to be considered in
45 determinations of a worker's employment status or a contracting
46 agent's employment relationship to the worker under the State
47 unemployment law.

1 The bill provides that any person who contracts to solicit orders in
2 New Jersey as the sales representative of a principal or any person who
3 is subject to a collective bargaining agreement that specifies wages,
4 terms and conditions of employment is not subject to the requirements
5 of the bill.