

[Second Reprint]

SENATE, No. 848

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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Senator VIN GOPAL

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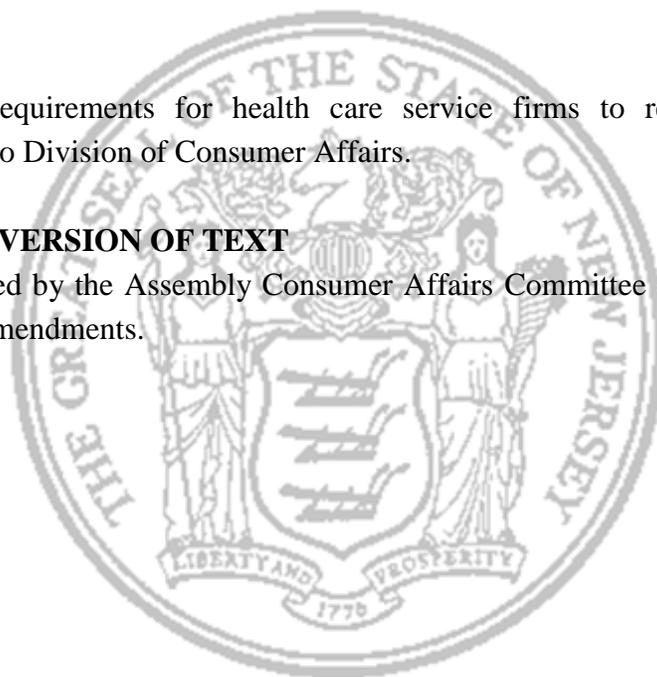
Assemblywoman Swain

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 Assembly Consumer Affairs Committee on October 19, 2020, with amendments.



(Sponsorship Updated As Of: 10/29/2020)

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

3

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

6

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

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

29 As used in this section:

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

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

39 "Personal care services" means services performed by licensed or
40 certified personnel for the purpose of assisting an individual with
41 activities of daily living that may involve physical contact. Services
42 include, but are not limited to, bathing, toileting, transferring, dressing,
43 grooming, and assistance with ambulation, exercise, or other aspects of
44 personal hygiene.

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:

¹Senate SCM committee amendments adopted January 27, 2020.

²Assembly ACO committee amendments adopted October 19, 2020.

- 1 b. (Deleted by amendment, P.L.2014, c.29)
- 2 c. As a condition of being registered under P.L.1989, c.331
3 (C.34:8-43 et al.), a health care service firm shall obtain within 12
4 months of registration accreditation from an accrediting body that is
5 recognized by the Commissioner of Human Services as an accrediting
6 body for homemaker agencies participating in the Medicaid program,
7 as set forth at N.J.A.C.10:60-1.2. For purposes of accreditation
8 pursuant to this subsection, the accrediting body shall apply the
9 standards set forth in N.J.A.C.13:37-14.1 et seq. and N.J.A.C.13:45B-
10 13.1 et seq., as applicable.
- 11 d. As a condition of registration under P.L.1989, c.331 (C.34:8-43
12 et al.) **[, every]** :
- 13 (1) All health care service firms shall annually submit to the
14 director financial statements prepared by the firm, which shall be
15 consistent with the firm's tax filing with the State for the year covered
16 by the financial statements.
- 17 (2) In addition to the financial statements required pursuant to
18 paragraph (1) of this subsection, a health care service firm that
19 receives more than \$250,000 ¹[as part] for the provision¹ of ¹[the]¹
20 New Jersey Medicaid Personal Care Assistance ¹[program] services¹
21 shall submit to the director an audit the third calendar year after ²the
22 date of² registration ²or on December 30, 2022, whichever date is
23 later,² and every third year thereafter.
- 24 (3) In addition to the financial statements required pursuant to
25 paragraph (1) of this subsection, a health care service firm that
26 generates \$10 million or more in gross income in a year shall submit to
27 the director an audit for that year ², except that an audit required by
28 this paragraph shall not be required to be submitted prior to December
29 30, 2022² .
- 30 (4) (a) In addition to the financial statements required pursuant to
31 paragraph (1) of this subsection, a health care service firm that
32 receives less than \$250,000 ¹[as part] for the provision¹ of ¹[the]¹
33 New Jersey Medicaid Personal Care Assistance ¹[program] services¹
34 and that generates \$1 million or more, but less than \$10 million, in
35 gross income in a year shall submit to the director a report for that year
36 ², except that a report required by this paragraph shall not be required
37 to be submitted prior to December 30, 2022. The report shall be²
38 prepared by an independent third-party practitioner based on a review
39 of the firm's financial statements and records, general management,
40 and internal controls, which review shall be conducted in compliance
41 with the standards and procedures developed by the director pursuant
42 to subsection b. of section 2 of P.L.2014, c.29 (C.34:8-45.1a).
- 43 (b) If the division makes adverse findings against a firm upon
44 review of a report submitted pursuant to subparagraph (a) of this
45 paragraph, the director shall order such corrective action as the
46 director deems appropriate, and, upon compliance with or completion
47 of the corrective action, shall require the firm to obtain a separate

1 review of the firm's data for that year, which shall be conducted by a
2 different independent third-party practitioner than the one that
3 furnished the original report, and shall be based on the standards and
4 procedures developed by the director pursuant to subsection b. of
5 section 2 of P.L.2014, c.29 (C.34:8-45.1a). The firm shall additionally
6 be required to submit to the director an audit for the calendar year next
7 following the year for which the adverse finding was made, regardless
8 of the firm's gross income for the year.

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

25 e. In addition to any other penalty provided by law, a person shall
26 be liable for a penalty of \$500 per day for each day that the person
27 continues to operate a firm without registering as required under this
28 section. The penalty shall be collected by the Director of the Division
29 of Consumer Affairs in a summary proceeding in accordance with the
30 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et
31 seq.).
32 (cf: P.L.2019, c.48, s.1)

33
34 2. Section 2 of P.L.2014, c.29 (C.34:8-45.1a) is amended to
35 read as follows:

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

45 b. The director shall, in consultation with representatives of
46 health care service firms registered with the division, develop an
47 agreed-upon set of standards and procedures for independent third
48 party practitioners to review health care service firm financial

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

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

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

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

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

29

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

35

36 4. This act shall take effect immediately.