

# SENATE LABOR COMMITTEE

## STATEMENT TO

### **SENATE, No. 943**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: FEBRUARY 13, 2020

The Senate Labor Committee reports favorably, and with committee amendments, Senate Bill No. 943.

This bill establishes a system to provide portable benefits to workers who provide services to consumers through contracting agents. The bill defines a “contracting agent” as a business entity that facilitates the provision of services by workers to consumers and makes payments to workers, with the workers providing the services being taxed as independent contractors.

The bill requires contracting agents that facilitate the provision of services by at least 50 individual workers over a 12-month period to contribute funds to qualified benefit providers to provide benefits to the workers. The requirement to contribute funds only applies if the services are provided to consumers located in this State.

The contribution amount must be the lesser of 25 percent of the total fee collected from the consumer for each transaction of services provided or six dollars for every hour in which the worker provided the services. The contribution amount may be added to the invoice or billing submitted to the consumer for the services.

The bill requires contributions to be made to the qualified benefit provider on no less than a monthly basis and no later than 15 days after the end of the month in which the services were provided.

Qualified benefit providers are required to use the contributions to provide benefits to workers as set forth in the bill. The providers are required to provide workers’ compensation insurance to workers entitled to workers’ compensation benefits, and other approved occupational accident insurance to workers who are not entitled to workers’ compensation benefits.

In addition to workers’ compensation insurance or occupational accident insurance, qualified benefit providers must provide some or all of the following benefits, as selected by the workers: health insurance, paid time off, retirement benefits, or other benefits determined by the providers, except that if a worker elects not to receive any of those benefits, an amount equal to one half of the contribution is to be provided as compensation to the worker. Up to five percent of the contributions may be used for administration.

A worker entitled to benefits under the bill must select a qualified benefit provider and be allowed to change the qualified benefit provider once per year.

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

1. the organization must be a nonprofit organization, operating under 26 U.S.C. s.501(c)(3) federal tax status;
2. at least one-half of the organization's board of directors must be comprised of workers performing work for customers of contracting agents or representatives of bona fide independent organizations of those workers;
3. the organization must be independent from all business entities, organizations, corporations, or individuals that would pursue any financial interest in conflict with that of the workers;
4. all actions of the organization regarding worker benefits must be for the sole purpose of maximizing those benefits;
5. the board of directors of the organization must hold a fiduciary duty to the workers with respect to provision of the benefits; and
6. the organization must demonstrate viability and financial sufficiency as determined by the department. At a minimum, the organization must have cash reserves, liability coverage, access to bonding, and any other competencies as determined by the department.

The bill requires the department to establish rules to implement and administer the bill, including rules for monitoring contracting agents and qualified benefit providers, establishing fees on contracting agents to fund compliance efforts, administering workers' compensation coverage, and providing procedures for workers to select and change providers.

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

The bill also provides that the bill's requirements on contracting agents and the benefits provided to workers may not be considered in determinations of a worker's employment status under the State unemployment law.

Committee Amendments:

The amendments adopted by the committee:

1. Clarify that workers are entitled to choose the qualified benefit providers they use;
2. Require, if a worker is not eligible for workers' compensation coverage, that the qualified benefit provider provide other occupational accident insurance which satisfies minimum standards

established by regulation by the Commissioner of Banking and Insurance;

3. Require the Department of Labor and Workforce Development to prepare, post on its website, and make available upon request, a list of qualified benefit providers, and update the list annually; and

4. Permit a worker to elect to not receive any of the benefits indicated by the bill other than workers' compensation or occupational accident insurance, in which case an amount equal to one half of the contribution required under the bill shall be provided as compensation to the worker.