

[First Reprint]

**SENATE, No. 2708**

---

**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

---

INTRODUCED JULY 22, 2020

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**Senator RICHARD J. CODEY**

**District 27 (Essex and Morris)**

**Assemblyman DANIEL R. BENSON**

**District 14 (Mercer and Middlesex)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Assemblyman ANTHONY S. VERRELLI**

**District 15 (Hunterdon and Mercer)**

**Co-Sponsored by:**

**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 amended on December 17, 2020 by the General Assembly pursuant to the Governor's recommendations.

**(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  
 10 of 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,  
 15 increased demand for the public provision of these services.  
 16 Periods of economic shock, insecurity, social isolation, and  
 17 pandemics increase demand for and reliance on these <sup>1</sup>**['State-**  
 18 **funded'] essential services <sup>1</sup>funded or administered by the State<sup>1</sup>.**

19 c. The Legislature intends to ensure the uninterrupted delivery  
 20 of essential mental health, behavioral health, and addiction services  
 21 to its most vulnerable citizens and to ensure such services are  
 22 delivered efficiently. The State has a proprietary interest in  
 23 ensuring efficiency and quality in the delivery of these services  
 24 through licensed community-based organizations and providers,  
 25 with which the State contracts through the Department of Human  
 26 Services and the Department of Children and Families. The State's  
 27 proprietary interest in these services includes ensuring their  
 28 uninterrupted delivery by contracted providers licensed by the  
 29 State.

30 d. The COVID-19 pandemic forces recognition of the  
 31 significant health and safety risks undertaken by the individuals  
 32 who provide these essential health services to the public on behalf  
 33 of the State. The State has a responsibility to ensure the <sup>1</sup>**['workers**  
 34 **delivering the services are provided adequate equipment, resources,**  
 35 **and protections to ensure their safety,']** resources it provides to  
 36 community-based organizations and providers with which it  
 37 contracts support<sup>1</sup> the safety of the <sup>1</sup>employees and<sup>1</sup> recipients of  
 38 these services <sup>1</sup>**['.']** <sup>1</sup>**['and the safety of the surrounding**  
 39 **community. The providers contracted by the State to provide these**  
 40 **services must ensure, as a condition of contracting with the State,**  
 41 **ready access to rapid testing for the presence of COVID-19,**  
 42 **adoption and adherence to policies for the prevention of infection**  
 43 **by COVID-19 by workers and recipients, and the provision of**  
 44 **adequate personal protective equipment.']**<sup>1</sup>

**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:

<sup>1</sup>Assembly amendments adopted in accordance with Governor's recommendations December 17, 2020.

1 e. In administering its mental health, behavioral health, and  
2 addiction services public health program, it is in the State's interest  
3 to ensure the individuals who are employed to deliver the services  
4 are entitled to raise concerns, issues, and problems, and have full  
5 exercise of their liberty of speech and conscience without fear of  
6 reprisal or retaliation.

7 f. The aforementioned interests are best accomplished by  
8 requiring all contracts renewed or entered into after the effective  
9 date of this act between providers and the State, acting through the  
10 Department of Human <sup>1</sup>~~Services~~ Services' Division of Mental  
11 Health and Addiction Services<sup>1</sup> and Department of Children and  
12 Families <sup>1</sup>~~], and divisions thereof,]~~<sup>1</sup> for the provision and delivery  
13 of behavioral health, mental health, and addiction services to  
14 <sup>1</sup>~~contain, as a material condition of its contract, terms requiring]~~  
15 require<sup>1</sup> :

16 (1) adoption and adherence to a policy sufficient to ensure  
17 service providers <sup>1</sup>~~],]~~ and<sup>1</sup> service recipients <sup>1</sup>~~], and the~~  
18 ~~surrounding community]~~<sup>1</sup> are protected from infection and the  
19 spread of COVID-19; and

20 (2) certification of a commitment to ensure the uninterrupted  
21 delivery of services caused by labor-management disputes <sup>1</sup>~~], and~~  
22 ~~the]~~ <sup>1</sup>~~recovery of costs to the taxpayers caused by any such~~  
23 ~~interruptions.]~~<sup>1</sup>  
24

25 2. a. <sup>1</sup>~~Any contract entered into or renewed by]~~ Where a  
26 labor organization represents or seeks to represent the employees of  
27 a covered provider, the maintenance of a labor harmony agreement,  
28 or a commitment comparable to a labor harmony agreement, with  
29 the labor organization representing or seeking to represent  
30 employees of the covered provider shall be an ongoing material  
31 condition of maintaining a contract with<sup>1</sup> the Department of Human  
32 <sup>1</sup>~~Services~~ Services' Division of Mental Health and Addiction  
33 Services<sup>1</sup> or the Department of Children and Families <sup>1</sup>~~with a~~  
34 ~~private contractor]~~<sup>1</sup> for the provision of mental health, behavioral  
35 health, or addiction services <sup>1</sup>~~shall contain a commitment that~~  
36 ~~the]~~ <sup>1</sup>~~contracted services shall not be disrupted or delayed by~~  
37 ~~labor disputes. The commitment shall provide for the execution of~~  
38 ~~an agreement between the contractor and any labor organization~~  
39 ~~that represents or seeks to represent the employees of the private~~  
40 ~~contractor that meets the requirements set forth herein with respect~~  
41 ~~to employees delivering the essential services contracted by the~~  
42 ~~departments.~~

43 b. The commitment required pursuant to this section shall be a  
44 condition of contracting with the departments and may be satisfied  
45 through one or more of the following contractual commitments

1 made on the part of the contractor through the term of the contract  
2 as a condition of receiving or renewing the contract:

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

8 (2) An agreement between the contractor and any labor  
9 organization seeking to represent the employees performing the  
10 contracted services that includes a provision prohibiting the parties  
11 from causing, promoting, or encouraging economic, industrial, or  
12 other disruptive activity on the part of the contractor or employees  
13 performing services under the contract, and includes a procedure for  
14 resolution of disputes between parties.】 b. To satisfy the  
15 requirements of this section, a covered provider entering into or  
16 renewing a contract with the Department of Human Services'  
17 Division of Mental Health and Addiction Services or the  
18 Department of Children and Families shall, no later than 90 days  
19 after the effective date of the contract, either:

20 (1) submit an attestation, signed by a labor organization, stating  
21 that the covered provider has entered into a labor harmony  
22 agreement with such labor organization;

23 (2) submit an attestation stating that the employees of the  
24 covered provider are not currently represented by a labor  
25 organization and that no labor organization has sought to represent  
26 the covered provider's employees during the 90-day period  
27 following the covered provider entering into or renewing a contract  
28 for services with the department after the effective date of this act  
29 and up to the time of submission; or<sup>1</sup>

30 (3) <sup>1</sup>【Any other】 submit an attestation, signed by a labor  
31 organization, stating that the provider has entered into an<sup>1</sup>  
32 agreement or binding obligation to be maintained through the term  
33 of the contract that provides a <sup>1</sup>【comparable】<sup>1</sup> commitment <sup>1</sup>【as  
34 paragraphs (1) or (2) of this subsection】 comparable to a labor  
35 harmony agreement, as defined in section 4 of P.L. c (C. )  
36 (pending before the Legislature as this bill)<sup>1</sup> .

37 <sup>1</sup>【c. The contractual commitments required under this section  
38 shall be made a binding provision of any contract subject to this  
39 section. Any contract subject to this section that is awarded or  
40 renewed shall include a provision providing for reimbursement to  
41 the】 c. Where a labor organization seeks to represent the  
42 employees of a covered provider after the expiration of the 90-day  
43 period following the effective date of the contract, the labor  
44 organization shall provide notice to the applicable department  
45 regarding such efforts. The covered provider shall then submit an  
46 attestation signed by the labor organization to the applicable

1 department no later than 90 days after the date of notice stating that  
2 it has entered into:

3 (1) a labor harmony agreement with such labor organization; or

4 (2) an agreement or binding obligation to be maintained through  
5 the term of the contract that provides a commitment comparable to  
6 a labor harmony agreement, as defined in section 4 of P.L. c. (C. )  
7 (pending before the Legislature as this bill).

8 d. The failure to submit an attestation as required pursuant to  
9 subsections b. and c. of this section shall result in financial recovery  
10 and a corrective action plan issued by the applicable department.  
11 Should the provider not adhere to the terms of the corrective action  
12 plan, the applicable department shall cancel or not renew the  
13 contract upon the applicable department obtaining a replacement  
14 provider to assume the contract or otherwise provide the services.  
15 The applicable department may grant an extension to the deadlines  
16 in subsections b. and c. of this section based upon extenuating  
17 circumstances or for good cause shown. An extension shall be  
18 warranted pursuant to subsection b. if a labor organization seeks to  
19 represent a covered provider's employees after the contract is  
20 renewed or entered into but within the 90-day period following the  
21 effective date of the contract.<sup>1</sup>

22 <sup>1</sup>department of the actual costs to the department arising from the  
23 inadequacy of the commitment provided by the contractor.

24 d. Prior to awarding or renewing any contract subject to this  
25 section, the departments shall determine whether there has been any  
26 prior disruption in the provision of the services provided by the  
27 contractor.

28 The commissioners shall consider any submissions by any  
29 interested party in making the determination, that shall be provided  
30 to the contractor for response. If a dispute exists with respect to  
31 either condition, the commissioners shall refer the matter to the  
32 State Treasurer to conduct a hearing and make findings of fact  
33 which shall be considered by the commissioners in making any  
34 award or renewal.<sup>1</sup>

35 e. Any interested person may provide notice to the  
36 commissioner of the <sup>1</sup>~~pertinent~~ applicable<sup>1</sup> department of a  
37 <sup>1</sup>~~refusal~~ failure<sup>1</sup> by a <sup>1</sup>~~contractor~~ covered provider<sup>1</sup> to adhere  
38 to <sup>1</sup>~~its contractual commitments required by this act~~ the  
39 requirements of this section<sup>1</sup> . Upon filing of such a notice, the  
40 commissioner <sup>1</sup>may review and make findings, or, in consultation  
41 with the Commissioner of Labor and Workforce Development, the  
42 State Board of Mediation, or both, as appropriate,<sup>1</sup> shall commence  
43 an investigation <sup>1</sup>~~and, upon~~ . Upon<sup>1</sup> finding <sup>1</sup>~~of a failure or~~  
44 breach,<sup>1</sup> that a covered provider failed to adhere to the requirements  
45 of this section, the commissioner of the applicable department shall  
46 take corrective action which may include a corrective action plan,  
47 financial recovery and cost recoupment, and cancelling or declining

1 to renew the contract. Should the covered provider fail to engage in  
2 or complete corrective action, the commissioner of the applicable  
3 department<sup>1</sup> shall cancel or decline to renew the contract. Such  
4 findings shall be reviewable, pursuant to the "Administrative  
5 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The  
6 <sup>1</sup>~~["pertinent contract shall not be awarded or renewed]~~  
7 commissioner of the applicable department shall not take corrective  
8 action<sup>1</sup> until the conclusion of such proceedings <sup>1</sup>~~["~~, but may be  
9 maintained on a month-to-month basis<sup>1</sup> ~~"]~~. The provisions of this  
10 subsection shall be limited solely to the issue of adherence to the  
11 contractual commitment made by the contractor and accepted by the  
12 departments as a condition of the contract, and is neither exclusive  
13 nor preclusive as to any claim under the "Conscientious Employee  
14 Protection Act," P.L.1986, c.105 (C.34:19-1 et seq.), or the "New  
15 Jersey False Claims Act," P.L.2007, c.265 (C.2A:32C-1 et seq.).

16 <sup>1</sup>~~["~~f. As used in this section, "labor organization" means a labor  
17 organization that is the collective bargaining representative of not  
18 less than 1,000 employees in the State of New Jersey that serve in  
19 similar classifications or provide similar services as those provided  
20 by the employees performing the contract for the Department of  
21 Human Services or the Department of Children and Families.<sup>1</sup>~~"]~~  
22

23 3. a. A contract entered into or renewed after the effective date  
24 of this act for the services described in <sup>1</sup>~~["~~subsection a. of<sup>1</sup>~~"]~~ section  
25 2 of this act shall contain a COVID-19 <sup>1</sup>~~["~~containment and  
26 mitigation<sup>1</sup>~~"]~~ health and safety<sup>1</sup> commitment that <sup>1</sup>requires the  
27 covered provider to make a good faith effort to comply with  
28 minimum health and safety protocols issued by the applicable  
29 department to<sup>1</sup> adequately <sup>1</sup>~~["~~ensures<sup>1</sup>~~"]~~ ensure<sup>1</sup> the safety of the  
30 <sup>1</sup>~~["~~contractors<sup>1</sup>~~"]~~ covered providers<sup>1</sup> employees, <sup>1</sup>and<sup>1</sup> service  
31 recipients <sup>1</sup>~~["~~, and surrounding community. The<sup>1</sup> ~~"]~~ <sup>1</sup>  
32 <sup>1</sup>~~["~~commissioners of the departments shall jointly adopt a model  
33 written commitment to which contractors shall ascribe to provide  
34 for regular COVID-19 testing, training, reporting, and the provision  
35 of adequate personal protective equipment.<sup>1</sup>~~"]~~  
36

37 b. Prior to awarding or renewing any contract subject to this  
38 section, the departments shall <sup>1</sup>~~["~~determine:<sup>1</sup>~~"]~~ collect information as  
39 to whether there have been<sup>1</sup>  
40

41 <sup>1</sup>~~["~~(1) whether there has been any prior disruption in the  
42 provision of the services provided by the contractor; and<sup>1</sup>~~"]~~  
43

44 <sup>1</sup>~~["~~(2)<sup>1</sup> any prior failures to <sup>1</sup>demonstrate a good faith effort to<sup>1</sup>  
45 contain, limit, or mitigate the spread of COVID-19 among the  
46 <sup>1</sup>~~["~~contractor's<sup>1</sup>~~"]~~ covered provider's<sup>1</sup> employees or service  
recipients.

47 The <sup>1</sup>~~["~~commissioners<sup>1</sup>~~"]~~ commissioner of the applicable  
48 department<sup>1</sup> shall consider any submissions by any interested party

1 in making the determination, that shall be provided to the  
2 <sup>1</sup>~~contractor~~ covered provider<sup>1</sup> for response. <sup>1</sup>~~If a dispute exists~~  
3 ~~with respect to~~ The commissioner of the applicable department  
4 shall take into account such failures prior to awarding or renewing  
5 any contract and, at a minimum, require submission of a corrective  
6 plan to contain, limit, or mitigate the spread of COVID-19 cases.  
7 Should a provider fail to implement a plan or repeatedly fail to  
8 demonstrate good faith efforts to contain, limit, or mitigate the  
9 spread of COVID-19, the commissioner shall take action, including  
10 financial penalties or cancellation or non-renewal of the contract.<sup>1</sup>  
11 <sup>1</sup>~~either condition, the commissioners shall refer the matter to the~~  
12 ~~State Treasurer to conduct a hearing and make findings of fact~~  
13 ~~which shall be considered by the commissioners in making any~~  
14 ~~award or renewal.~~<sup>1</sup>

15

16 <sup>1</sup>4. As used in this act:17 ‘Covered employee’ means any regular full-time or regular part-  
18 time employee who principally works for a covered provider and  
19 who performs or provides any type of work to deliver those services  
20 to individuals who are eligible to receive those services.21 ‘Covered provider’ means the entity entering into a Contract  
22 with the Department of Human Services’ Division of Mental Health  
23 and Addiction Services or the Department of Children and Families  
24 to provide mental health, behavioral health, and addiction services  
25 that employs more than 10 covered employees.26 ‘Labor harmony agreement’ means an agreement between a  
27 provider and any exclusive representative labor organization which  
28 represents or seeks to represent employees performing services  
29 under contract with the Department of Human Services’ Division of  
30 Mental Health and Addiction Services or the Department of  
31 Children and Families that contains a provision prohibiting  
32 economic or industrial action on the part of all parties and includes  
33 a process for the resolution of disputes between them.34 ‘Labor organization’ means a labor organization that is the  
35 collective bargaining representative of not less than 1,000  
36 employees in the State of New Jersey that serve in similar  
37 classifications or provide similar services as those provided by the  
38 employees performing the contract for the Department of Human  
39 Services’ Division of Mental Health and Addiction Services or the  
40 Department of Children and Families contemplated in this act.<sup>1</sup>

41

42 <sup>1</sup>~~4.~~ <sup>1</sup>5. <sup>1</sup>This act shall take effect on <sup>1</sup>~~the 91st day following~~  
43 ~~enactment~~ July 1, 2021 and shall apply to all contracts entered into  
44 or renewed on or after the effective date.<sup>1</sup> <sup>1</sup>~~and section~~ Section<sup>1</sup> 3  
45 of this act shall expire on the 366th day following the end of the  
46 public health emergency and state of emergency declared by the  
47 Governor in Executive Order No. 103 of 2020.