

ASSEMBLY, No. 2266

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED FEBRUARY 4, 2016

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Provides for oversight of DHS contracts with providers serving persons with developmental disabilities.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning contracting by the Department of Human
2 Services and 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. As used in this act:

8 "Commissioner" means the Commissioner of Human Services.

9 "Department" means the Department of Human Services.

10 "Division" means the Division of Developmental Disabilities in
11 the Department of Human Services.

12 "Expenditure report" means a report which contains summary
13 information for each budgetary category specified in a contract,
14 including, but not limited to, equipment, personnel, supplies, and
15 general and administrative costs.

16 "Negative contracting action" means conditional renewal, non-
17 renewal, imposition of a probationary period or termination of a
18 contract, and also includes nonpayment pending compliance with
19 corrective or remedial action specified by the Department of Human
20 Services.

21 "Office of the State Comptroller" or "office" means the office
22 established pursuant to P.L.2007, c.52 (C.52:15C-1 et seq.).

23 "Provider" means a for-profit or nonprofit entity that is under
24 contract with the Department of Human Services to provide
25 services to persons with developmental disabilities.

26 "Services" means services as defined in section 3 of P.L.1977,
27 c.82 (C.30:6D-3).

28

29 2. a. The Commissioner of Human Services shall require a
30 provider to submit to the Division of Developmental Disabilities, no
31 later than 30 days after the end of a quarter or at more frequent
32 intervals as specified by the department, an expenditure report for
33 each contract for services for persons with developmental
34 disabilities the provider has entered into with the department.

35 b. If a provider fails to submit an expenditure report for a
36 contract pursuant to this section, such contract shall be subject to
37 negative contracting action.

38 c. The Office of the State Comptroller shall review on a
39 random basis and the division on an ongoing basis, expenditure
40 reports submitted to the division pursuant to this section and include
41 in their reviews, at a minimum, an analysis of whether:

42 (1) an expenditure contained in the report and identified by the
43 division or office is appropriate and reasonable;

44 (2) proper documentation is available to support the
45 expenditure; and

46 (3) expenditures for general and administrative costs are within
47 the 10 percent limit specified in section 3 of this act.

1 d. The office shall conduct the review required by this section
2 and submit a report of its findings pursuant to P.L.2007,
3 c.52 (C.52:15C-1 et seq.).
4

5 3. a. A contract for services for persons with developmental
6 disabilities entered into between the department and a provider on
7 or after the effective date of this act, including the renewal of a
8 contract entered into prior to the effective date, shall stipulate that
9 the expenditure of State funds for general and administrative costs
10 shall not exceed 10 percent of the provider's annual expenditure of
11 State contract funds.

12 b. In the case of a provider whose contract is in effect on the
13 effective date of this act and whose general and administrative
14 expenses exceed the 10 percent limit specified in this section, the
15 department shall attempt to modify the contract to limit general and
16 administrative costs to 10 percent, in accordance with this section.

17 c. If a provider exceeds the 10 percent limit on general and
18 administrative costs stipulated in a contract entered into with the
19 department, such contract shall be subject to negative contracting
20 action.
21

22 4. The director of the division, or his designee, shall review a
23 provider's performance to determine whether services for which the
24 provider is under contract with the department are being performed,
25 and whether the provider's performance contributes to the success
26 of a person with a developmental disability attaining the goals and
27 objectives specified in the person's individualized habilitation plan
28 developed pursuant to section 10 of P.L.1977, c.82 (C.30:6D-10), in
29 accordance with the provisions of this section.

30 a. A contract administrator shall, at least once every 12
31 months, conduct an unannounced visit of a provider to review
32 whether the provider is performing the services specified in the
33 provider's contract and whether those services are contributing to
34 the success of a person with a developmental disability attaining the
35 goals and objectives specified in the person's individualized
36 habilitation plan. The contract administrator shall summarize the
37 findings of the visit in a report which shall be submitted to the
38 director, or his designee, no later than 30 days following the date of
39 the visit.

40 b. Prior to renewal of a contract of a provider, the director, or
41 his designee, shall evaluate the report submitted pursuant to
42 subsection a. of this section and the summary of the results from the
43 survey about the provider, as specified in section 5 of this act.

44 c. If the director, or his designee, after evaluating a report of an
45 unannounced visit and a summary of the results from the survey
46 about a provider, determines that persons with developmental
47 disabilities are not succeeding in attaining the goals and objectives
48 specified in their individualized habilitation plans as a result of the

1 provider's inability to contribute to the success of a person with a
2 developmental disability attaining those goals and objectives, the
3 contract of that provider shall not be renewed and may be subject to
4 other negative contract action, as appropriate.

5
6 5. a. The division shall prepare a form to survey: (1) the
7 employees and other persons who perform contracted services on
8 behalf of a provider for persons with developmental disabilities
9 eligible for services from the division; and (2) the parents or legal
10 guardians of the persons with developmental disabilities receiving
11 those services from the provider. The survey shall provide the
12 employees and other persons who perform the contracted services
13 and the parents or guardians, with an opportunity to provide
14 feedback to the division about the ability of the provider to provide
15 services that contribute to the success of a person with a
16 developmental disability attaining the goals and objectives specified
17 in the person's individualized habilitation plan.

18 b. The division shall distribute the survey form to a provider
19 who shall require completion of the form by an employee and any
20 other person who performs contracted services for persons with
21 developmental disabilities on behalf of the provider.

22 c. The division shall distribute the form to a parent or legal
23 guardian of a person with a developmental disability receiving
24 services from that provider.

25 d. An employee or other person performing contracted services
26 on behalf of a provider and a parent or legal guardian shall submit
27 the completed survey form to the division. The division shall
28 compile, review, and issue a summary of the results of the survey,
29 which shall be included in a determination whether to renew a
30 contract of a provider or take negative contracting action against a
31 provider, in accordance with subsection c. of section 4 of this act.

32
33 6. Before taking negative contracting action pursuant to this
34 act, the department shall give notice to a provider personally or by
35 mail to the last known address of the provider with return receipt
36 requested. The notice shall afford the provider the opportunity to
37 be heard and to contest the department's action. The hearing shall
38 be conducted in accordance with the "Administrative Procedure
39 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

40
41 7. The department shall examine the feasibility of adopting an
42 outcome-based contracting payment system for the division that
43 specifies desired outcomes for persons with developmental
44 disabilities receiving services from a provider under contract with
45 the department, and confers payment to the provider as the persons
46 with developmental disabilities who are receiving services from the
47 provider reach pre-defined steps along the way to achieving the
48 specified desired outcomes.

1 8. The Commissioner of Human Services shall adopt rules and
2 regulations pursuant to the "Administrative Procedure Act,"
3 P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the provisions of
4 this act.

5
6 9. This act shall take effect on the first day of the seventh
7 month next following, but the Commissioner of Human Services
8 may take such anticipatory administrative action in advance thereof
9 as shall be necessary for the implementation of this act.

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11
12 STATEMENT

13
14 This bill provides for oversight of the contracts the Department
15 of Human Services (DHS) enters into with providers serving
16 persons with developmental disabilities who are eligible for
17 services from the Division of Developmental Disabilities (DDD).
18 In August 2009, the Office of the State Comptroller issued a report
19 concerning DDD entitled "A Performance Audit of Oversight of
20 Third-Party Contracts," which raised several concerns and made
21 recommendations to DHS about contracts for DDD services. This
22 bill addresses some of those concerns and recommendations by
23 establishing requirements for provider expenditure reports, a 10
24 percent cap on providers' general and administrative costs, and
25 performance reviews of providers, in order to ensure that State
26 funds are spent on services that help improve outcomes for persons
27 with developmental disabilities.

28 Specifically, the bill provides that:

- 29 • With regard to expenditure reports, the Commissioner of Human
30 Services would require a provider of services to persons with
31 developmental disabilities to submit to DDD, no later than 30
32 days after the end of a quarter or at more frequent intervals as
33 specified by DHS, an expenditure report for each contract the
34 provider has entered into with DHS. If a provider fails to
35 submit the report, the provider's contract would be subject to
36 "negative contracting action," which is defined in the bill as
37 conditional renewal, non-renewal, imposition of a probationary
38 period or termination of a contract, and also includes
39 nonpayment pending compliance with corrective or remedial
40 action;

41 -- The Office of the State Comptroller on a random basis and
42 DDD on an ongoing basis, would review expenditure reports
43 and include in their reviews, at a minimum, an analysis of
44 whether: an expenditure contained in the report and identified
45 by the office is appropriate and reasonable; proper
46 documentation is available to support an expenditure; and
47 expenditures for general and administrative costs are within the
48 10 percent limit specified in the bill. The office would conduct

- 1 the review and submit a report of its findings pursuant to
2 P.L.2007, c.52 (C.52:15C-1 et seq.);
- 3 • With regard to the 10 percent cap on general and administrative
4 costs, a contract entered into on or after the effective date of the
5 bill, including renewal of an earlier contract, would stipulate
6 that the expenditure of State funds for general and
7 administrative costs of the provider shall not exceed 10 percent
8 of the provider's annual expenditure of State contract funds;
9 -- In the case of a provider whose contract is in effect on the
10 effective date of the bill and whose general and administrative
11 expenses exceed 10 percent, DHS would attempt to modify the
12 contract to include the 10 percent cap; and
13 -- If a provider exceeds the 10 percent cap stipulated in a
14 contract, the contract would be subject to negative contracting
15 action;
 - 16 • With regard to performance reviews, the Director of DDD, or his
17 designee, would review a provider's performance to determine
18 whether services for which the provider is under contract are
19 being performed, and whether the provider's performance
20 contributes to the success of a person with a developmental
21 disability attaining the goals and objectives specified in the
22 person's individualized habilitation plan developed pursuant to
23 section 10 of P.L.1977, c.82 (C.30:6D-10). Specifically,
24 -- A contract administrator must, at least once every 12 months,
25 conduct an unannounced visit of a provider to review whether
26 the provider is performing the services specified in the
27 provider's contract and whether those services are contributing
28 to the success of a person with a developmental disability
29 attaining the goals and objectives specified in the person's
30 individualized habilitation plan. The contract administrator
31 would summarize the findings of the visit in a report to be
32 submitted to the director, or his designee, no later than 30 days
33 following the date of the visit;
34 -- Prior to renewal of a contract of a provider, the director, or
35 his designee, would evaluate the contract administrator's report
36 and a summary of the results from a survey of the provider's
37 employees, other persons providing services on behalf of the
38 provider, and the parents and legal guardians of persons with
39 developmental disabilities receiving services from the provider;
40 -- DDD would prepare a survey form for completion by the
41 employees and other persons who perform services and the
42 parents or legal guardians. The survey would provide these
43 persons with an opportunity to provide feedback to the division
44 about the ability of the provider to provide services that
45 contribute to the success of a person with a developmental
46 disability attaining the goals and objectives specified in the
47 person's individualized habilitation plan; and

- 1 -- If the division director, or his designee, after the evaluation of
2 a report of an unannounced visit and a summary of the results
3 from the survey about a provider, determines that persons with
4 developmental disabilities are not succeeding in attaining the
5 goals and objectives specified in their individualized habilitation
6 plans as a result of the provider's inability to contribute to the
7 success of a person with a developmental disability attaining
8 those goals and objectives, the contract of that provider shall not
9 be renewed and may be subject to other negative contract action,
10 as appropriate;
- 11 • Before taking negative contracting action, DHS must give notice
12 to a provider personally or by mail to the last known address of
13 the provider with return receipt requested. The notice would
14 afford the provider the opportunity to be heard and to contest
15 the department's action. The hearing would be conducted in
16 accordance with the "Administrative Procedure Act," P.L.1968,
17 c.410 (C.52:14B-1 et seq.); and
 - 18 • DHS shall examine the feasibility of adopting an outcome-based
19 contracting payment system for DDD that specifies desired
20 outcomes for persons with developmental disabilities receiving
21 services from a provider, and confers payment to the provider as
22 the persons with developmental disabilities who are receiving
23 services reach pre-defined steps or "milestones" along the way
24 to achieving the specified desired outcomes. This type of
25 payment system, known as the "Milestone Payment System," is
26 used in about 15 other states, including, Oklahoma,
27 Massachusetts, Texas, and New York.