

§§1,2,4  
C.30:1-1.2a to  
30:1-1.2c  
§3 T&E and Note  
§5 Note

P.L. 2021, CHAPTER 1, *approved January 15, 2021*  
Senate, No. 2708 (*First Reprint*)

- 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**<sup>1</sup> 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,**<sup>1</sup> resources it provides to

**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 community-based organizations and providers with which it  
 2 contracts support<sup>1</sup> the safety of the employees and<sup>1</sup> recipients of  
 3 these services <sup>1</sup> **].** <sup>1</sup> **and the safety of the surrounding**  
 4 community. The providers contracted by the State to provide these  
 5 services must ensure, as a condition of contracting with the State,  
 6 ready access to rapid testing for the presence of COVID-19,  
 7 adoption and adherence to policies for the prevention of infection  
 8 by COVID-19 by workers and recipients, and the provision of  
 9 adequate personal protective equipment.]<sup>1</sup>

10 e. In administering its mental health, behavioral health, and  
 11 addiction services public health program, it is in the State's interest  
 12 to ensure the individuals who are employed to deliver the services  
 13 are entitled to raise concerns, issues, and problems, and have full  
 14 exercise of their liberty of speech and conscience without fear of  
 15 reprisal or retaliation.

16 f. The aforementioned interests are best accomplished by  
 17 requiring all contracts renewed or entered into after the effective  
 18 date of this act between providers and the State, acting through the  
 19 Department of Human <sup>1</sup> **[Services]** Services' Division of Mental  
 20 Health and Addiction Services<sup>1</sup> and Department of Children and  
 21 Families <sup>1</sup> **],** and divisions thereof,]<sup>1</sup> for the provision and delivery  
 22 of behavioral health, mental health, and addiction services to  
 23 <sup>1</sup> **[contain, as a material condition of its contract, terms requiring]**  
 24 require<sup>1</sup> :

25 (1) adoption and adherence to a policy sufficient to ensure  
 26 service providers <sup>1</sup> **],** and<sup>1</sup> service recipients <sup>1</sup> **],** and the  
 27 surrounding community]<sup>1</sup> are protected from infection and the  
 28 spread of COVID-19; and

29 (2) certification of a commitment to ensure the uninterrupted  
 30 delivery of services caused by labor-management disputes <sup>1</sup> **],** and  
 31 the]<sup>1</sup> <sup>1</sup> **[recovery of costs to the taxpayers caused by any such**  
 32 **interruptions.]**<sup>1</sup>

33  
 34 2. a. <sup>1</sup> **[Any contract entered into or renewed by]** Where a  
 35 labor organization represents or seeks to represent the employees of  
 36 a covered provider, the maintenance of a labor harmony agreement,  
 37 or a commitment comparable to a labor harmony agreement, with  
 38 the labor organization representing or seeking to represent  
 39 employees of the covered provider shall be an ongoing material  
 40 condition of maintaining a contract with<sup>1</sup> the Department of Human  
 41 <sup>1</sup> **[Services]** Services' Division of Mental Health and Addiction  
 42 Services<sup>1</sup> or the Department of Children and Families <sup>1</sup> **[with a**  
 43 **private contractor]**<sup>1</sup> for the provision of mental health, behavioral  
 44 health, or addiction services <sup>1</sup> **[shall contain a commitment that**  
 45 **the].** <sup>1</sup> **[contracted services shall not be disrupted or delayed by**  
 46 **labor disputes. The commitment shall provide for the execution of**

1 an agreement between the contractor and any labor organization  
2 that represents or seeks to represent the employees of the private  
3 contractor that meets the requirements set forth herein with respect  
4 to employees delivering the essential services contracted by the  
5 departments.

6 b. The commitment required pursuant to this section shall be a  
7 condition of contracting with the departments and may be satisfied  
8 through one or more of the following contractual commitments  
9 made on the part of the contractor through the term of the contract  
10 as a condition of receiving or renewing the contract:

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

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

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

31 (2) submit an attestation stating that the employees of the  
32 covered provider are not currently represented by a labor  
33 organization and that no labor organization has sought to represent  
34 the covered provider’s employees during the 90-day period  
35 following the covered provider entering into or renewing a contract  
36 for services with the department after the effective date of this act  
37 and up to the time of submission; or<sup>1</sup>

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

45 <sup>1</sup>【c. The contractual commitments required under this section  
46 shall be made a binding provision of any contract subject to this  
47 section. Any contract subject to this section that is awarded or

1 renewed shall include a provision providing for reimbursement to  
2 the] c. Where a labor organization seeks to represent the  
3 employees of a covered provider after the expiration of the 90-day  
4 period following the effective date of the contract, the labor  
5 organization shall provide notice to the applicable department  
6 regarding such efforts. The covered provider shall then submit an  
7 attestation signed by the labor organization to the applicable  
8 department no later than 90 days after the date of notice stating that  
9 it has entered into:

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

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

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

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

31 d. Prior to awarding or renewing any contract subject to this  
32 section, the departments shall determine whether there has been any  
33 prior disruption in the provision of the services provided by the  
34 contractor.

35 The commissioners shall consider any submissions by any  
36 interested party in making the determination, that shall be provided  
37 to the contractor for response. If a dispute exists with respect to  
38 either condition, the commissioners shall refer the matter to the  
39 State Treasurer to conduct a hearing and make findings of fact  
40 which shall be considered by the commissioners in making any  
41 award or renewal.]<sup>1</sup>

42 e. Any interested person may provide notice to the  
43 commissioner of the <sup>1</sup>[pertinent] applicable<sup>1</sup> department of a  
44 <sup>1</sup>[refusal] failure<sup>1</sup> by a <sup>1</sup>[contractor] covered provider<sup>1</sup> to adhere  
45 to <sup>1</sup>[its contractual commitments required by this act] the  
46 requirements of this section<sup>1</sup> . Upon filing of such a notice, the  
47 commissioner <sup>1</sup>may review and make findings, or, in consultation

1 with the Commissioner of Labor and Workforce Development, the  
 2 State Board of Mediation, or both, as appropriate,<sup>1</sup> shall commence  
 3 an investigation <sup>1</sup>**【and, upon】** . Upon<sup>1</sup> finding <sup>1</sup>**【of a failure or**  
 4 **breach,】** that a covered provider failed to adhere to the requirements  
 5 of this section, the commissioner of the applicable department shall  
 6 take corrective action which may include a corrective action plan,  
 7 financial recovery and cost recoupment, and cancelling or declining  
 8 to renew the contract. Should the covered provider fail to engage in  
 9 or complete corrective action, the commissioner of the applicable  
 10 department<sup>1</sup> shall cancel or decline to renew the contract. Such  
 11 findings shall be reviewable, pursuant to the “Administrative  
 12 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.). The  
 13 <sup>1</sup>**【pertinent contract shall not be awarded or renewed】**  
 14 commissioner of the applicable department shall not take corrective  
 15 action<sup>1</sup> until the conclusion of such proceedings <sup>1</sup>**【**, but may be  
 16 maintained on a month-to-month basis<sup>1</sup> **】** . The provisions of this  
 17 subsection shall be limited solely to the issue of adherence to the  
 18 contractual commitment made by the contractor and accepted by the  
 19 departments as a condition of the contract, and is neither exclusive  
 20 nor preclusive as to any claim under the “Conscientious Employee  
 21 Protection Act,” P.L.1986, c.105 (C.34:19-1 et seq.), or the “New  
 22 Jersey False Claims Act,” P.L.2007, c.265 (C.2A:32C-1 et seq.).

23 <sup>1</sup>**【f. As used in this section, “labor organization” means a labor**  
 24 **organization that is the collective bargaining representative of not**  
 25 **less than 1,000 employees in the State of New Jersey that serve in**  
 26 **similar classifications or provide similar services as those provided**  
 27 **by the employees performing the contract for the Department of**  
 28 **Human Services or the Department of Children and Families.】**<sup>1</sup>  
 29

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

43 b. Prior to awarding or renewing any contract subject to this  
 44 section, the departments shall <sup>1</sup>**【determine:】** collect information as  
 45 to whether there have been<sup>1</sup>

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

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

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

23  
24       <sup>1</sup>4. As used in this act:

25       'Covered employee' means any regular full-time or regular part-  
26 time employee who principally works for a covered provider and  
27 who performs or provides any type of work to deliver those services  
28 to individuals who are eligible to receive those services.

29       'Covered provider' means the entity entering into a Contract  
30 with the Department of Human Services' Division of Mental Health  
31 and Addiction Services or the Department of Children and Families  
32 to provide mental health, behavioral health, and addiction services  
33 that employs more than 10 covered employees.

34       'Labor harmony agreement' means an agreement between a  
35 provider and any exclusive representative labor organization which  
36 represents or seeks to represent employees performing services  
37 under contract with the Department of Human Services' Division of  
38 Mental Health and Addiction Services or the Department of  
39 Children and Families that contains a provision prohibiting  
40 economic or industrial action on the part of all parties and includes  
41 a process for the resolution of disputes between them.

42       'Labor organization' means a labor organization that is the  
43 collective bargaining representative of not less than 1,000  
44 employees in the State of New Jersey that serve in similar  
45 classifications or provide similar services as those provided by the  
46 employees performing the contract for the Department of Human

1 Services' Division of Mental Health and Addiction Services or the  
2 Department of Children and Families contemplated in this act.<sup>1</sup>  
3

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

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12

13

14 Requires certain provisions in State contracts for delivery of  
15 publicly financed mental health, behavioral health, and addiction  
16 services.