SENATE, No. 2177



STATE OF NEW JERSEY

219th LEGISLATURE



INTRODUCED MARCH 16, 2020

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



An Act concerning contracting by the Department of Human Services and supplementing Title 30 of the Revised Statutes.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. As used in this act:

"Commissioner" means the Commissioner of Human Services.

"Department" means the Department of Human Services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. If the director, or the director’s designee, after evaluating a report of an unannounced visit and a summary of the results from the survey about a provider, determines that persons with developmental disabilities are not succeeding in attaining the goals and objectives specified in their individualized habilitation plans as a result of the provider's inability to contribute to the success of a person with a developmental disability in attaining those goals and objectives, the contract of that provider shall not be renewed and may be subject to other negative contract action, as appropriate.

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

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

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

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

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

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

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

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

STATEMENT

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

Specifically, the bill provides that, with regard to expenditure reports, the Commissioner of Human Services is to require a provider of services to persons with developmental disabilities to submit to DDD, no later than 30 days after the end of a quarter or at more frequent intervals as specified by DHS, an expenditure report for each contract the provider has entered into with DHS. If a provider fails to submit the report, the provider's contract would be subject to "negative contracting action," which is defined in the bill as conditional renewal, non-renewal, imposition of a probationary period, or termination of a contract, and also includes nonpayment pending compliance with corrective or remedial action. The Office of the State Comptroller, on a random basis, and the DDD, on an ongoing basis, are to review expenditure reports and include in their reviews, at a minimum, an analysis of whether: an expenditure contained in the report and identified by the office is appropriate and reasonable; proper documentation is available to support an expenditure; and expenditures for general and administrative costs are within the 10 percent limit specified in the bill. The office would conduct the review and submit a report of its findings pursuant to P.L.2007, c.52 (C.52:15C-1 et seq.).

With regard to the 10 percent cap on general and administrative costs, the bill provides that a contract entered into on or after the effective date of the bill, including renewal of an earlier contract, is to stipulate that the expenditure of State funds for general and administrative costs of the provider shall not exceed 10 percent of the provider's annual expenditure of State contract funds. In the case of a provider whose contract is in effect on the bill’s effective date and whose general and administrative expenses exceed 10 percent, DHS is to attempt to modify the contract to include the 10 percent cap. If a provider exceeds the 10 percent cap stipulated in a contract, the contract would be subject to negative contracting action.

With regard to performance reviews, the bill requires the Director of DDD, or the director’s designee, to review a provider's performance to determine whether services for which the provider is under contract are being performed and whether the provider's performance contributes to the success of a person with a developmental disability in attaining the goals and objectives specified in the person's individualized habilitation plan developed pursuant to section 10 of P.L.1977, c.82 (C.30:6D-10). Specifically, a contract administrator will be required, at least once every 12 months, to conduct an unannounced visit of a provider to review whether the provider is performing the services specified in the provider's contract and whether those services are contributing to the success of a person with a developmental disability in attaining the goals and objectives specified in the person's individualized habilitation plan. The contract administrator is to summarize the findings of the visit in a report to be submitted to the director, or the director’s designee, no later than 30 days following the date of the visit.

Prior to renewal of a provider’s contract, the director, or the director’s designee, will be required to evaluate the contract administrator's report and a summary of the results from a survey of: 1) the provider's employees; 2) other persons providing services on behalf of the provider; and 3) the parents and legal guardians of persons with developmental disabilities who are receiving services from the provider. DDD is to prepare a survey form for completion by these persons. The survey is to provide these persons with an opportunity to provide feedback to the division about the ability of the provider to provide services that contribute to the success of a person with a developmental disability in attaining the goals and objectives specified in the person's individualized habilitation plan. If, after the evaluation of a report of an unannounced visit and the review of the provider’s survey results, the division director, or the director’s designee, determines that persons with developmental disabilities are not succeeding in attaining the goals and objectives specified in their individualized habilitation plans as a result of the provider's inability to contribute to the success of a person with a developmental disability in attaining those goals and objectives, the provider’s contract may not be renewed and may be subject to other negative contract action, as appropriate;

Before taking negative contracting action, DHS will be required to give notice to a provider, either personally or by mail to the last known address of the provider with return receipt requested. The notice would afford the provider the opportunity to be heard and to contest the department's action.

DHS will be required to examine the feasibility of adopting an outcome-based contracting payment system for DDD that specifies desired outcomes for persons with developmental disabilities receiving services from a provider and that confers payment to the provider as the persons with developmental disabilities who are receiving services reach pre-defined steps or "milestones" along the way to achieving the specified desired outcomes. This type of payment system, known as the "Milestone Payment System," is used in about 15 other states, including, Oklahoma, Massachusetts, Texas, and New York.