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2020 NJ S 2708	**Author:** Sweeney **Version:** Enacted - Pamphlet Law **Version Date:** 01/15/2021

CHAPTER 1

An Act concerning State contracts for social services and supplementing Title 30 of the Revised Statutes.

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

C.30:1-1.2a Findings, declarations relative to State contracts for social services.

1. The Legislature hereby finds and declares that:

a. Publicly financed mental health, behavioral health, and addiction services are critical to the health, safety, and well-being of the people of New Jersey, and comprise an integral and essential component of the State's health and safety network in which the taxpayers invest significant resources and public funds.

b. The COVID-19 pandemic and the economic devastation resulting from its outbreak has, and will continue to cause, increased demand for the public provision of these services. Periods of economic shock, insecurity, social isolation, and pandemics increase demand for and reliance on these essential services funded or administered by the State.

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

d. The COVID-19 pandemic forces recognition of the significant health and safety risks undertaken by the individuals who provide these essential health services to the public on behalf of the State. The State has a responsibility to ensure the resources it provides to community-based organizations and providers with which it contracts support the safety of the employees and recipients of these services.

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

f. The aforementioned interests are best accomplished by requiring all contracts renewed or entered into after the effective date of this act between providers and the State, acting through the Department of Human Services' Division of Mental Health and Addiction Services and Department of Children and Families for the provision and delivery of behavioral health, mental health, and addiction services to require:

(1) adoption and adherence to a policy sufficient to ensure service providers and service recipients are protected from infection and the spread of COVID-19; and

(2) certification of a commitment to ensure the uninterrupted delivery of services caused by labor-management disputes.

C.30:1-1.2b Certain conditions for maintaining contract.

2. a. Where a labor organization represents or seeks to represent the employees of a covered provider, the maintenance of a labor harmony agreement, or a commitment comparable to a labor harmony agreement, with the labor organization representing or seeking to represent employees of the covered provider shall be an ongoing material condition of maintaining a contract with the Department of Human Services' Division of Mental Health and Addiction Services or the Department of Children and Families for the provision of mental health, behavioral health, or addiction services.

b. To satisfy the requirements of this section, a covered provider entering into or renewing a contract with the Department of Human Services' Division of Mental Health and Addiction Services or the Department of Children and Families shall, no later than 90 days after the effective date of the contract, either:

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

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

(3) submit an attestation, signed by a labor organization, stating that the provider has entered into an agreement or binding obligation to be maintained through the term of the contract that provides a commitment comparable to a labor harmony agreement, as defined in section 4 of P.L.2021, c.1 (C.30:1-1.2c).

c. Where a labor organization seeks to represent the employees of a covered provider after the expiration of the 90-day period following the effective date of the contract, the labor organization shall provide notice to the applicable department regarding such efforts. The covered provider shall then submit an attestation signed by the labor organization to the applicable department no later than 90 days after the date of notice stating that it has entered into:

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

(2) an agreement or binding obligation to be maintained through the term of the contract that provides a commitment comparable to a labor harmony agreement, as defined in section 4 of P.L.2021, c.1 (C.30:1-1.2c).

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

e. Any interested person may provide notice to the commissioner of the applicable department of a failure by a covered provider to adhere to the requirements of this section. Upon filing of such a notice, the commissioner may review and make findings, or, in consultation with the Commissioner of Labor and Workforce Development, the State Board of Mediation, or both, as appropriate, shall commence an investigation. Upon finding that a covered provider failed to adhere to the requirements of this section, the commissioner of the applicable department shall take corrective action which may include a corrective action plan, financial recovery and cost recoupment, and cancelling or declining to renew the contract. Should the covered provider fail to engage in or complete corrective action, the commissioner of the applicable department shall cancel or decline to renew the contract. Such findings shall be reviewable, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The commissioner of the applicable department shall not take corrective action until the conclusion of such proceedings. The provisions of this subsection shall be limited solely to the issue of adherence to the contractual commitment made by the contractor and accepted by the departments as a condition of the contract, and is neither exclusive nor preclusive as to any claim under the "Conscientious Employee Protection Act," P.L.1986, c.105 (C.34:19-1 et seq.), or the "New Jersey False Claims Act," P.L.2007, c.265 (C.2A:32C-1 et seq.).

3. a. A contract entered into or renewed after the effective date of this act for the services described in section 2 of this act shall contain a COVID-19 health and safety commitment that requires the covered provider to make a good faith effort to comply with minimum health and safety protocols issued by the applicable department to adequately ensure the safety of the covered providers' employees, and service recipients.

b. Prior to awarding or renewing any contract subject to this section, the departments shall collect information as to whether there have been any prior failures to demonstrate a good faith effort to contain, limit, or mitigate the spread of COVID-19 among the covered provider's employees or service recipients.

The commissioner of the applicable department shall consider any submissions by any interested party in making the determination, that shall be provided to the covered provider for response. The commissioner of the applicable department shall take into account such failures prior to awarding or renewing any contract and, at a minimum, require submission of a corrective plan to contain, limit, or mitigate the spread of COVID-19 cases. Should a provider fail to implement a plan or repeatedly fail to demonstrate good faith efforts to contain, limit, or mitigate the spread of COVID-19, the commissioner shall take action, including financial penalties or cancellation or non-renewal of the contract.

C.30:1-1.2c Definitions relative to State contracts for social services.

4. As used in this act:

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

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

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

'Labor organization' means a labor organization that is the collective bargaining representative of not less than 1,000 employees in the State of New Jersey that serve in similar classifications or provide similar services as those provided by the employees performing the contract for the Department of Human Services' Division of Mental Health and Addiction Services or the Department of Children and Families contemplated in this act.

5. This act shall take effect on July 1, 2021 and shall apply to all contracts entered into or renewed on or after the effective date. Section 3 of this act shall expire on the 366th day following the end of the public health emergency and state of emergency declared by the Governor in Executive Order No. 103 of 2020.

Approved January 15, 2021.

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