

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

end

P.L. 2022, CHAPTER 101, *approved August 18, 2022*
Senate, No. 315 (*Second Reprint*)

1 AN ACT concerning ¹changes in control of¹ health care entities
2 ¹[and collective bargaining]¹ and supplementing ¹[chapter 12 of
3 Title 34 of the Revised Statutes] P.L.1965, c.173 (C.34:11-4.1 et
4 seq.)¹ .

5
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8
9 1. a. ¹[As used in this section, "health care entity" means a
10 health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-
11 1 et seq.), a staffing registry, or a home care services agency as
12 defined in section 1 of P.L.1947, c.262 (C.45:11-23)] Not less than
13 30 days before a change in control, a former health care entity
14 employer shall: provide the successor health care entity employer,
15 and any collective bargaining representative the employees may
16 have, a list containing the name, address, date of hire, phone
17 number, wage rate, and employment classification of each eligible
18 employee employed at the affected health care entity; inform all
19 eligible employees of their rights provided by this section; and post,
20 in a conspicuous location or locations accessible to all employees, a
21 notice setting forth the rights provided by this section¹ .

22 b. ¹[Any contract or agreement that provides for the sale or
23 transfer of ownership or] No change in¹ control of a health care
24 entity shall ¹[provide] be made without a contract or agreement
25 between the former health care entity employer and the successor
26 health care entity employer which providers that¹ :

27 (1) ¹[if employees of the health care entity are covered by an
28 unexpired collective bargaining agreement, that the provisions of
29 the collective bargaining agreement shall remain in effect until the
30 existing expiration date of the agreement or a date six months after
31 the full effectuation of the sale or transfer, whichever is later; and

32 (2) that wages and benefits, including health care, paid time off,
33 retirement, and education benefits, of all eligible employees of the
34 health care entity who are not covered by an unexpired collective
35 bargaining agreement shall not be reduced or diminished during the
36 transitional period ending six months after the full effectuation of

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:

¹Senate SHH committee amendments adopted February 3, 2022.

²Senate floor amendments adopted March 24, 2022.

1 the sale or transfer] the successor health care entity employer shall
2 offer employment during a transitional period of not less than
3 ²[six] four² months following the change in control to each eligible
4 employee, with no reduction of wages or paid time off, and no
5 reduction of the total value of benefits, including health care,
6 retirement, and education benefits, provided that:

7 (a) the offer shall be made in writing and remain open for at
8 least 10 business days from the date of the offer;

9 (b) during the transition period, the successor health care entity
10 shall offer all available employment positions to eligible employees
11 who had previously held the positions until the available
12 employment positions are filled or until no more eligible employees
13 are available; and

14 (c) if, at the time of the change in control and throughout the
15 transition period, the total number of employment positions is less
16 than the total number of eligible employees, the choice of
17 employees to be employed shall be based on seniority and
18 experience;

19 (2) an eligible employee retained pursuant to this section shall
20 not be discharged without cause during the transitional period,
21 except that a successor employer may lay off eligible employees if
22 the employer reduces the total number of employees, including at
23 the time of the change in control, but only if the choice of
24 employees to be retained is based on seniority and experience, and
25 the laid off employees are offered any positions they had previously
26 held that are subsequently restored during the transitional period;

27 (3) at the end of the transitional period, the successor employer
28 shall perform a written performance evaluation for each retained
29 eligible employee, and offer the employee continued employment if
30 an employee's performance during that period was satisfactory; and

31 (4) a successor employer shall retain, and provide to the
32 employee or representative of the employee upon request, a written
33 record of each offer of employment and each evaluation made
34 pursuant to this subsection, for not less than three years from the
35 date of the offer or evaluation, with each record including the name,
36 address, date of hire, phone number, wage rate, and employment
37 classification of the employee¹.

38 c. All parties to a contract or agreement covered by this
39 section, and all health care entities ¹[sold or transferred] subject to
40 a change in control¹ pursuant to a contract or agreement covered by
41 this section, shall comply with all provisions that are required by
42 this section to be included in the contract or agreement pursuant to
43 subsection b. of this section, regardless of whether those provisions
44 are expressly included in the contract or agreement.

45 d. Notwithstanding the foregoing, ¹no¹ action taken pursuant to
46 and in compliance with a collective bargaining agreement entered
47 into by an exclusive representative of employees of a health care

1 entity ~~["sold or transferred"]~~ subject to a change in control¹ pursuant
2 to a contract or agreement covered by this section shall ~~["not"]~~¹ be
3 considered a violation of this section. Nothing in this section shall
4 be construed as limiting, delaying, or preventing, including during
5 the transitional period: the recognition of a collective bargaining
6 representative of the employees by a successor health care entity
7 employer; or collective bargaining between the successor health
8 care entity employer and the collective bargaining representative.¹

9 e. ~~["An employee who has been affected by a violation of this~~
10 ~~section may bring an action in any court of competent jurisdiction~~
11 ~~against any party to a contract or agreement covered by this section~~
12 ~~and any health care entity sold or transferred pursuant to a contract~~
13 ~~or agreement covered by this section for violation of any obligation~~
14 ~~imposed by this section. The court shall have authority to order~~
15 ~~injunctive relief to prevent or remedy a violation of any obligation~~
16 ~~imposed by this section. If the court finds that, by reason of a~~
17 ~~violation of any obligation imposed by this section, a plaintiff has~~
18 ~~suffered a loss of wages or benefits, the court shall award back pay~~
19 ~~for all losses of wages and benefits, the costs of benefits the health~~
20 ~~care entity or other defendant would have incurred for benefits lost~~
21 ~~by the plaintiff, expenses incurred by the plaintiff as a result of the~~
22 ~~lost benefits, and an amount equal to back pay as liquidated~~
23 ~~damages.~~

24 f. The court shall award a plaintiff prevailing in an action
25 brought pursuant to subsection e. of this section reasonable
26 attorneys' fees.] An employer who violates the provisions of this
27 section shall be subject to the sanctions, and an employee affected
28 by the violation shall have the remedies, provided by law for
29 violations of P.L.1965, c.173 (C.34:11-4.1 et seq.).²For the
30 purposes of determining penalties and remedies imposed pursuant
31 to section 10 of P.L.1965, c.173 (C.34:11-4.10) for violations of
32 this section:

33 (1) a failure to pay an employee wages, paid time off, or the
34 value of benefits, as required by subsection b. of this section, shall
35 be regarded as a failure to pay the full amount of wages for the
36 purposes of section 10 of P.L.1965, c.173 (C.34:11-4.10), and the
37 remedies for the failure to pay paid time off or the value of benefits
38 shall be made in the same manner as remedies for unpaid wages;

39 (2) a discharge of an employee, or failure to offer employment
40 or retain in employment an employee, in violation of subsection b.
41 of this section shall be regarded as retaliation against the employee
42 for the purposes of section 10 of P.L.1965, c.173 (C.34:11-4.10);
43 and

44 (3) in a civil action brought before a court by the employee, the
45 court shall have authority to order injunctive or other permanent
46 equitable relief, including, but not limited to, immediate

1 reinstatement of any employee discharged or not retained in
2 violation of this section.²

3 f. As used in this section:

4 “Change in control” means: any sale, assignment, transfer,
5 contribution or other disposition of all or substantially all of the
6 assets used in a health care entity’s operations; or any sale,
7 assignment, transfer, contribution or other disposition of a
8 controlling interest in the health care entity, including by
9 consolidation, merger, or reorganization, of the health care entity or
10 any person who controls the health care entity; or any event or
11 sequence of events, including a purchase, sale, or termination of a
12 management contract or lease, that causes the identity of the health
13 care entity employer to change, but shall not include a change in
14 control in which both the former health care entity employer and the
15 successor health care employer are government entities. A change
16 in control shall be defined to occur on the date of execution of the
17 document effectuating the change.

18 “Eligible employee” means: any person employed at an affected
19 health care entity during the 90-day period immediately preceding a
20 change in control of a health care entity; or any person formerly
21 employed at the health care entity who retains recall rights under an
22 agreement with the former health care entity employer, except that
23 an “eligible employee” shall not include any managerial employee,
24 and shall not include any person who was discharged with cause by
25 the former health care entity or successor health care entity during
26 that 90-day period.

27 “Former health care entity employer” means any employer of
28 eligible employees who owns, controls, or operates a health care
29 entity where the eligible employees are employed prior to a change
30 in control of the entity.

31 “Government entity” means the State of New Jersey, any of its
32 political subdivisions, any authority created by the Legislature of
33 the State of New Jersey, and any instrumentality or agency of the
34 State of New Jersey or of any of its political subdivisions.

35 “Health care entity” means a health care facility licensed
36 pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a staffing registry,
37 or a home care services agency as defined in section 1 of P.L.1947,
38 c.262 (C.45:11-23). If a health care entity is part of a larger facility
39 which includes facilities which are not licensed pursuant to
40 P.L.1971, c.136 (C.26:2H-1 et seq.), the portion of the facility
41 which is not licensed shall not be regarded as a “health care entity”
42 for the purposes of this section.

43 “Managerial employee” means an employee who is exempt from
44 the overtime requirements of the New Jersey State Wage and Hour
45 Law, P.L.1966, c.113 (C.34:11-56a et seq.), because the employee
46 is an executive employee.

47 “Successor health care entity employer” means any employer of
48 eligible employees who owns, controls, or operates a health care

1 entity where the eligible employees are employed after a change in
2 control of the entity.

3 g. The provisions of this section shall be deemed to be
4 severable and if any subsection, paragraph, sentence or other
5 portion of this section is for any reason held or declared by any
6 court of competent jurisdiction to be unconstitutional or preempted
7 by federal law, or the applicability of that portion to any person or
8 facility is held invalid, the remainder of this section shall not
9 thereby be deemed to be unconstitutional, preempted, or invalid.¹

10
11 2. This act shall take effect ¹**【immediately】** on the 90th day
12 after enactment¹ and shall apply to contracts or agreements for
13 ¹**【the sale or transfer】** changes in control¹ of health care entities
14 entered into on or after the effective date of this act.

15
16
17
18

19 _____
20 Requires contracts for sale of certain health care entities to
21 preserve employee wages and benefits and to honor collective
bargaining agreements.

SENATE, No. 315

STATE OF NEW JERSEY 220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator RICHARD J. CODEY

District 27 (Essex and Morris)

Co-Sponsored by:

Senators Diegnan, Gopal and Stack

SYNOPSIS

Requires contracts for sale of certain health care entities to preserve employee wages and benefits and to honor collective bargaining agreements.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning health care entities and collective bargaining
2 and supplementing chapter 12 of Title 34 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. a. As used in this section, "health care entity" means a
8 health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1
9 et seq.), a staffing registry, or a home care services agency as
10 defined in section 1 of P.L.1947, c.262 (C.45:11-23).

11 b. Any contract or agreement that provides for the sale or
12 transfer of ownership or control of a health care entity shall
13 provide:

14 (1) if employees of the health care entity are covered by an
15 unexpired collective bargaining agreement, that the provisions of
16 the collective bargaining agreement shall remain in effect until the
17 existing expiration date of the agreement or a date six months after
18 the full effectuation of the sale or transfer, whichever is later; and

19 (2) that the wages and benefits, including health care, paid time
20 off, retirement, and education benefits, of non-managerial
21 employees of the health care entity who are not covered by an
22 unexpired collective bargaining agreement shall not be reduced or
23 diminished during the period ending six months after the full
24 effectuation of the sale or transfer.

25 c. All parties to a contract or agreement covered by this
26 section, and all health care entities sold or transferred pursuant to a
27 contract or agreement covered by this section, shall comply with all
28 provisions that are required by this section to be included in the
29 contract or agreement pursuant to subsection b. of this section,
30 regardless of whether those provisions are expressly included in the
31 contract or agreement.

32 d. Notwithstanding the foregoing, action taken pursuant to and
33 in compliance with a collective bargaining agreement entered into
34 by an exclusive representative of employees of a health care entity
35 sold or transferred pursuant to a contract or agreement covered by
36 this section shall not be considered a violation of this section.

37 e. An employee who has been affected by a violation of this
38 section may bring an action in any court of competent jurisdiction
39 against any party to a contract or agreement covered by this section
40 and any health care entity sold or transferred pursuant to a contract
41 or agreement covered by this section for violation of any obligation
42 imposed by this section. The court shall have authority to order
43 injunctive relief to prevent or remedy a violation of any obligation
44 imposed by this section. If the court finds that, by reason of a
45 violation of any obligation imposed by this section, a plaintiff has
46 suffered a loss of wages or benefits, the court shall award back pay
47 for all losses of wages and benefit pay, the costs of benefits the
48 health care entity or other defendant would have incurred for

1 benefits lost by the plaintiff, expenses incurred by the plaintiff as a
2 result of the lost benefits, and an amount equal to back pay as
3 liquidated damages.

4 f. The court shall award a plaintiff prevailing in an action
5 brought pursuant to subsection e. of this section reasonable
6 attorneys' fees.

7
8 2. This act shall take effect immediately and shall apply to
9 contracts or agreements for the sale or transfer of health care
10 entities entered into on or after the effective date of this act.

11
12
13 STATEMENT

14
15 This bill provides that contracts or agreements for the sale or
16 transfer of a health care entity will not affect the wages, benefits, or
17 terms of a collective bargaining agreement in place for a certain period
18 following the sale or transfer. As used in the bill, "health care entity"
19 means a licensed health care facility, a staffing registry, or a home care
20 services agency.

21 Specifically, the bill provides that any contract or agreement that
22 provides for the sale or transfer of ownership or control of a health
23 care entity will provide:

24 1) if employees of the health care entity are covered by an
25 unexpired collective bargaining agreement, that the provisions of the
26 collective bargaining agreement will remain in effect until the existing
27 expiration date of the agreement or a date six months after the full
28 effectuation of the sale or transfer, whichever is later; and

29 2) that the wages and benefits, including health care, paid time
30 off, retirement, and education benefits, of non-managerial employees
31 of the health care entity who are not covered by an unexpired
32 collective bargaining agreement will not be reduced or diminished
33 during the period ending six months after the full effectuation of the
34 sale or transfer.

35 All parties to a contract or agreement for the sale or transfer of a
36 health care entity will be required to comply with all provisions that
37 are required under the bill to be included in the contract or agreement,
38 regardless of whether those provisions are expressly included in the
39 contract or agreement.

40 Action taken pursuant to and in compliance with a collective
41 bargaining agreement entered into by an exclusive representative of
42 employees of a health care entity sold or transferred pursuant to a
43 contract or agreement to which the bill applies will not be considered a
44 violation of the requirements of the bill.

45 An employee who has been affected by a violation of the
46 requirements of the bill may bring an action in any court of competent
47 jurisdiction against any party to a contract or agreement that is subject
48 to the requirements of the bill, including a health care entity that is

S315 VITALE, CODEY

1 being sold or transferred pursuant to the contract or agreement. The
2 court may order injunctive relief to prevent or remedy a violation of
3 the requirements of the bill and, if the court finds the plaintiff suffered
4 a loss of wages or benefits, the court is to award back pay for all losses
5 of wages and benefit pay, the costs of benefits the health care entity or
6 other defendant would have incurred for benefits lost by the plaintiff,
7 expenses incurred by the plaintiff as a result of the lost benefits, and an
8 amount equal to back pay as liquidated damages. Courts are also to
9 award a prevailing plaintiff reasonable attorneys' fees.

10 The bill will take effect immediately and apply to contracts or
11 agreements for the sale or transfer of health care entities entered into
12 on or after the effective date of the bill.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 315

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 3, 2022

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 315.

As amended by the committee, this bill requires that any change in control of a health care entity be made by a contract or agreement which provides certain protections for employees regarding their wages, benefits, and employment in connection with the change in control.

The bill requires any agreement for the change in control, unless both the former and successor health care entity employers are governmental employers, to require that all eligible employees be offered employment during a six-month transitional period; that none of them be discharged except in a reduction of the work force, and then only on the basis of seniority and only if the laid off workers are offered employment if the positions are restored; and that employees be given written evaluations of their work during the transitional period and retained if their work is satisfactory.

No action taken pursuant to a collective bargaining agreement entered into by an exclusive representative of employees of a health care entity subject to an change of control is a violation of the bill, and the bill does not limit, delay, or prevent the recognition of an employee collective bargaining representative; or collective bargaining between the successor health care entity employer and the representative.

Employers who violate the provisions of the bill are subject to the sanctions, and an employee affected by the violation have the remedies, provided by law for violations of P.L.1965, c.173 (C.34:11-4.1 et seq.).

The bill will take effect on the 90th day after enactment and apply to contracts or agreements for the sale or transfer of health care entities entered into on or after the effective date of the bill.

As used in the bill, "health care entity" means a licensed health care facility, a staffing registry, or a home care services agency.

This bill was pre-filed for introduction in the 2022-2023 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS:

The amendments adopted by the committee:

1. Remove the provisions of the bill which require a collective bargaining agreement in effect before the change in control to remain in effect after the change;
2. Exempt agreements in which both the former and successor health care entity employers are governmental employers;
3. Add the requirements: that all eligible employees be offered employment during a six-month transitional period; that none of them be discharged except in a reduction of the work force, and then only on the basis of seniority and only if the laid off workers are offered employment if the positions are restored; and that employees are given written evaluations of their work during the transitional period and retained if their work is satisfactory;
4. Add the requirement that both the former entity and successor entity are required disclose information about employees, as needed to facilitate the implementation of the bill to each other and to employees and employee representatives;
5. Add language providing that the bill does not delay or prevent recognition of collective bargaining representatives or of collective bargaining, including in the transitional period;
6. Add definitions of “change of control”, “eligible employee”, and “managerial employee”;
7. Add a provision specifying that an employer who violates the provisions of the bill is subject to the sanctions, and an employee affected by the violation has the remedies, provided by law for violations of P.L.1965, c.173 (C.34:11-4.1 et seq.); and
8. Have the bill take effect on the 90th day after enactment.

STATEMENT TO

[First Reprint]

SENATE, No. 315

with Senate Floor Amendments
(Proposed by Senator VITALE)

ADOPTED: MARCH 24, 2022

These amendments reduce the minimum length of transitional period provided by the bill from six months to four months.

The amendment also clarify that for the purposes of determining penalties and remedies imposed by the State wage payment law (P.L.1965, c.173 (C.34:11-4.10))("WPL") for violations of the bill:

1. a failure to pay an employee wages, paid time off, or the value of benefits as required by the bill is regarded as a failure to pay the full amount of wages for the purposes of the WPL;
2. any discharge of, or failure to offer employment or retain in employment, an employee in violation of the bill is regarded as retaliation against the employee for the purposes of the WPL; and
3. in a civil action brought before a court by the employee, the court has the authority to order injunctive or other permanent equitable relief, including immediate reinstatement of any employee discharged or not retained in violation of the bill.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[Second Reprint]

SENATE, No. 315

STATE OF NEW JERSEY

DATED: JUNE 27, 2022

The Assembly Budget Committee reports favorably Senate Bill No. 315 (2R).

This bill requires that any change in control of a health care entity be made by a contract or agreement which provides certain protections for employees regarding their wages, benefits, and employment in connection with the change in control.

The bill requires any agreement for the change in control, unless both the former and successor health care entity employers are governmental employers, to require that all eligible employees be offered employment during a six-month transitional period; that none of them be discharged except in a reduction of the work force, and then only on the basis of seniority and only if the laid off workers are offered employment if the positions are restored; and that employees be given written evaluations of their work during the transitional period and retained if their work is satisfactory.

No action taken pursuant to a collective bargaining agreement entered into by an exclusive representative of employees of a health care entity subject to an change of control is a violation of the bill, and the bill does not limit, delay, or prevent the recognition of an employee collective bargaining representative; or collective bargaining between the successor health care entity employer and the representative.

Employers who violate the provisions of the bill are subject to the sanctions, and an employee affected by the violation have the remedies, provided by law for violations of P.L.1965, c.173 (C.34:11-4.1 et seq.).

The bill will take effect on the 90th day after enactment and apply to contracts or agreements for the sale or transfer of health care entities entered into on or after the effective date of the bill.

As used in the bill, "health care entity" means a licensed health care facility, a staffing registry, or a home care services agency.

As reported by the committee, Senate Bill No. 315 (2R) is identical to Assembly Bill No. 3684, which was amended reported by the committee on this date.

FISCAL IMPACT:

Fiscal information for this bill is currently unavailable.

ASSEMBLY, No. 3684

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED MARCH 21, 2022

Sponsored by:

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

SYNOPSIS

Concerns employment security during changes in control of health care entities.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning changes in control of health care entities and
2 supplementing P.L.1966, c.113 (C.34:11-56a et seq.).
3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:
6

7 1. a. Not less than 30 days before a change in control, a former
8 health care entity employer shall: provide the successor health care
9 entity employer, and any collective bargaining representative the
10 employees may have, a list containing the name, address, date of
11 hire, phone number, wage rate, and employment classification of
12 each eligible employee employed at the affected health care entity;
13 inform all eligible employees of their rights provided by this
14 section; and post, in a conspicuous location or locations accessible
15 to all employees, a notice setting forth the rights provided by this
16 section.

17 b. Any contract or agreement that provides for a change in
18 control of a health care entity shall provide that:

19 (1) the successor health care entity employer shall, during a
20 transitional period of not less than six months following the change
21 in control, offer each eligible employee employment during the
22 transitional period with no reduction of wages and with no
23 reduction of the total value of benefits, including health care, paid
24 time off, retirement, and education benefits, with the offer being
25 made in writing and remaining open for at least 10 business days
26 from the date of the offer;

27 (2) an eligible employee retained pursuant to this section shall
28 not be discharged without cause during the transitional period,
29 except that a successor employer may lay off eligible employees if
30 the employer finds that fewer employees are needed, but only if the
31 choice of employees to be retained is based on seniority and
32 experience, and laid off employees are offered any positions that are
33 subsequently restored;

34 (3) at the end of the transitional period, the successor employer
35 shall perform a written performance evaluation for each retained
36 eligible employee, and offer the employee continued employment if
37 an employee's performance during that period was satisfactory; and

38 (4) a successor employer shall retain a written record of each
39 offer of employment and each evaluation made pursuant to this
40 subsection, for not less than three years from the date of the offer or
41 evaluation, with each record including the name, address, date of
42 hire, phone number, wage rate, and employment classification of
43 the employee, and provided to the employee or representative of the
44 employee upon request.

45 c. All parties to a contract or agreement covered by this
46 section, and all health care entities subject to a change in control
47 pursuant to a contract or agreement covered by this section, shall
48 comply with all provisions that are required by this section to be

1 included in the contract or agreement pursuant to subsection b. of
2 this section, regardless of whether those provisions are expressly
3 included in the contract or agreement.

4 d. Notwithstanding the foregoing, no action taken pursuant to
5 and in compliance with a collective bargaining agreement entered
6 into by an exclusive representative of employees of a health care
7 entity subject to a change in control pursuant to a contract or
8 agreement covered by this section shall be considered a violation of
9 this section. Nothing in this section shall be construed as limiting,
10 delaying, or preventing, including during the transitional period: the
11 recognition of a collective bargaining representative of the
12 employees by a successor health care entity employer; or collective
13 bargaining between the successor health care entity employer and
14 the collective bargaining representative.

15 e. An eligible employee who has been affected by a violation
16 of this section may bring an action in any court of competent
17 jurisdiction against any party to a contract or agreement covered by
18 this section and any health care entity subject to a change in control
19 pursuant to a contract or agreement covered by this section for
20 violation of any obligation imposed by this section. The court shall
21 have authority to order injunctive relief to prevent or remedy a
22 violation of any obligation imposed by this section, including, if an
23 eligible employee is discharged in violation of the provisions of this
24 section, the ordering that the employee be reinstated. If the court
25 finds that, by reason of a violation of any obligation imposed by
26 this section, a plaintiff has suffered a loss of wages or benefits, the
27 court shall award back pay for all losses of wages and benefits, the
28 costs of benefits the health care entity or other defendant would
29 have incurred for benefits lost by the plaintiff, expenses incurred by
30 the plaintiff as a result of the lost benefits, and an amount equal to
31 back pay as liquidated damages.

32 f. The court shall award a plaintiff prevailing in an action
33 brought pursuant to subsection e. of this section reasonable
34 attorneys' fees.

35 g. As used in this section:

36 "Change in control" means: any sale, assignment, transfer,
37 contribution or other disposition of all or substantially all of the
38 assets used in a health care entity's operations; or any sale,
39 assignment, transfer, contribution or other disposition of a
40 controlling interest in the health care entity, including by
41 consolidation, merger, or reorganization, of the health care entity or
42 any person who controls the health care entity; or any other event or
43 sequence of events, including a purchase, sale, or termination of a
44 management contract or lease, that causes the identity of the health
45 care entity employer to change, but shall not include a change in
46 control in which both the former health care entity employer and the
47 successor health care employer are government entities. A change

1 in control shall be defined to occur on the date of execution of the
2 document effectuating the change.

3 "Eligible employee" means: any person employed at an affected
4 health care entity during the 90-day period immediately preceding a
5 change in control of a health care entity; or any person formerly
6 employed at the health care entity who retains recall rights under an
7 agreement with the former health care entity employer, except that
8 an "eligible employee" shall not include a managerial employee.

9 "Former health care entity employer" means any health care
10 entity employer who owns, controls, or operates a health care entity
11 prior to a change in control of the entity.

12 "Government entity" means the State of New Jersey, any of its
13 political subdivisions, any authority created by the Legislature of
14 the State of New Jersey and any instrumentality or agency of the
15 State of New Jersey or of any of its political subdivisions.

16 "Health care entity" means a health care facility licensed
17 pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a staffing registry,
18 or a home care services agency as defined in section 1 of P.L.1947,
19 c.262 (C.45:11-23).

20 "Health care entity employer" means any person who owns,
21 controls or operates a health care entity that has one or more
22 eligible employees.

23 "Managerial employee" means an employee who is exempt from
24 the overtime requirements of the New Jersey State Wage and Hour
25 Law, P.L.1966, c.113 (C.34:11-56a et seq.), because the employee
26 is an executive employee.

27 "Successor health care entity employer" or "successor employer"
28 means a health care entity employer who owns, controls or operates
29 a health care entity after a change in control of the entity.

30 h. The provisions of this section shall be deemed to be
31 severable and if any subsection, paragraph, sentence or other
32 portion of this section is for any reason held or declared by any
33 court of competent jurisdiction to be unconstitutional or preempted
34 by federal law, or the applicability of that portion to any person or
35 facility is held invalid, the remainder of this section shall not
36 thereby be deemed to be unconstitutional, preempted, or invalid.

37

38 2. This act shall take effect on the 90th day after enactment and
39 shall apply to contracts or agreements for the sale or transfer of
40 health care entities entered into on or after the effective date of this
41 act.

42

43

44

STATEMENT

45

46 This bill provides that agreements for the change in control of a
47 health care entity provides certain protections for employees regarding

1 their wages, benefits, and employment in connection with any change
2 in control of a health care facility.

3 The bill requires any agreement for the change in control, unless
4 both the former and successor health care entity employers are
5 governmental employers, to provide that all eligible employees be
6 offered employment during a six-month transitional period; that no
7 eligible employees be discharged except in a reduction of the work
8 force, and then only on the basis of seniority and only if the laid off
9 workers are offered employment if the positions are restored; and that
10 employees be given written evaluations of their work during the
11 transitional period and retained if their work is satisfactory.

12 No action taken pursuant to a collective bargaining agreement
13 entered into by an exclusive representative of employees of a health
14 care entity subject to an change of control is a violation of the bill, and
15 the bill does not limit, delay, or prevent, including during the
16 transitional period: the recognition of an employee collective
17 bargaining representative; or collective bargaining between the
18 successor health care entity employer and the representative.

19 An employee who has been affected by a violation of the
20 requirements of the bill may bring an action in any court of competent
21 jurisdiction against any party to a contract or agreement that is subject
22 to the requirements of the bill, including a health care entity that is
23 subject to a change in control pursuant to the contract or agreement.
24 The court may order injunctive relief to prevent or remedy a violation
25 of the requirements of the bill and, if the court finds the plaintiff
26 suffered a loss of wages or benefits, the court is to award back pay for
27 all losses of wages and benefit pay, the costs of benefits the health care
28 entity or other defendant would have incurred for benefits lost by the
29 plaintiff, expenses incurred by the plaintiff as a result of the lost
30 benefits, and an amount equal to back pay as liquidated damages.
31 Courts are also to award a prevailing plaintiff reasonable attorneys'
32 fees.

33 The bill will take effect on the 90th day after enactment and apply
34 to contracts or agreements for the sale or transfer of health care entities
35 entered into on or after the effective date of the bill.

36 As used in the bill, "health care entity" means a licensed health
37 care facility, a staffing registry, or a home care services agency.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3684

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 27, 2022

The Assembly Budget Committee reports favorably and with committee amendments Assembly Bill No. 3684.

As amended by the committee, this bill requires that, not less than 30 days before a change in control, a former health care entity employer will be required to provide the successor health care entity employer, and any collective bargaining representative the employees may have, a list containing the name, address, date of hire, phone number, wage rate, and employment classification of each eligible employee employed at the affected health care entity, as well as to inform all eligible employees of their rights established under the bill and post, in a conspicuous location or locations accessible to all employees, a notice setting forth those rights.

Under the bill as amended, no change in control of a health care entity will be made without a contract or agreement between the former health care entity employer and the successor health care entity employer which provides that the successor health care entity employer will offer employment during a transitional period of not less than four months following the change in control to each eligible employee, with no reduction of wages or paid time off, and no reduction of the total value of benefits, including health care, paid time off, retirement, and education benefits, provided that: 1) the offer is to be made in writing and remain open for at least 10 business days from the date of the offer; 2) during the transition period, the successor health care entity is to offer all available employment positions to eligible employees who had previously held the positions until the available employment positions are filled or until no more eligible employees are available; and 3) if, at the time of the change in control and throughout the transition period, the total number of employment positions is less than the total number of eligible employees, the choice of employees to be employed is to be based on seniority and experience.

An eligible employee retained under the bill may not be discharged without cause during the transitional period, except that a successor employer may lay off eligible employees if the employer reduces the total number of employees, including at the time of the change in control, but only if the choice of employees to be retained is based on

seniority and experience, and laid off employees are offered any positions they had previously held that are subsequently restored during the transitional period.

At the end of the transitional period, the successor employer will be required to perform a written performance evaluation for each retained eligible employee, and offer the employee continued employment if an employee's performance during that period was satisfactory. The successor employer will be required to retain, and provide to the employee or representative of the employee upon request, a written record of each offer of employment and each evaluation made, for not less than three years from the date of the offer or evaluation, with each record including the name, address, date of hire, phone number, wage rate, and employment classification of the employee.

The bill specifies that all parties to a contract or agreement covered by the bill, and all health care entities subject to a change in control pursuant to a contract or agreement covered by the bill, are to comply with the requirements of the bill as they pertain to the contract or agreement, regardless of whether those provisions are expressly included in the contract or agreement. The bill further specifies that no action taken pursuant to and in compliance with a collective bargaining agreement entered into by an exclusive representative of employees of a health care entity subject to a change in control pursuant to a contract or agreement covered by the bill will be considered a violation of the bill, and nothing in the bill is to be construed as limiting, delaying, or preventing, including during the transitional period: the recognition of a collective bargaining representative of the employees by a successor health care entity employer; or collective bargaining between the successor health care entity employer and the collective bargaining representative.

An employer who violates the provisions of the bill will be subject to the sanctions, and an employee affected by the violation shall have the remedies, provided by law for violations of P.L.1965, c.173 (C.34:11-4.1 et seq.). For the purposes of determining penalties and remedies imposed pursuant to section 10 of P.L.1965, c.173 (C.34:11-4.10) for violations of the bill:

- 1) a failure to pay an employee wages, paid time off, or the value of benefits will be regarded as a failure to pay the full amount of wages for the purposes of section 10 of P.L.1965, c.173 (C.34:11-4.10), and the remedies for the failure to pay paid time off or the value of benefits will be made in the same manner as remedies for unpaid wages;

- 2) a discharge of an employee, or failure to offer employment or retain in employment an employee, will be regarded as retaliation against the employee for the purposes of section 10 of P.L.1965, c.173 (C.34:11-4.10); and

3) in a civil action brought before a court by the employee, the court will have authority to order injunctive or other permanent equitable relief, including, but not limited to, immediate reinstatement of any employee discharged or not retained in violation of this section.

The bill defines “change in control” to mean: any sale, assignment, transfer, contribution or other disposition of all or substantially all of the assets used in a health care entity’s operations; or any sale, assignment, transfer, contribution or other disposition of a controlling interest in the health care entity, including by consolidation, merger, or reorganization, of the health care entity or any person who controls the health care entity; or any other event or sequence of events, including a purchase, sale, or termination of a management contract or lease, that causes the identity of the health care entity employer to change, but shall not include a change in control in which both the former health care entity employer and the successor health care employer are government entities. A change in control shall be defined to occur on the date of execution of the document effectuating the change.

The bill defines “eligible employee” to mean: any person employed at an affected health care entity during the 90-day period immediately preceding a change in control of a health care entity; or any person formerly employed at the health care entity who retains recall rights under an agreement with the former health care entity employer, except that an “eligible employee” does not include a managerial employee and does not include any person who was discharged with cause by the former health care entity or successor health care entity during that 90-day period.

The bill specifies that its provisions are to be deemed to be severable, and if any subsection, paragraph, sentence or other portion of the bill is for any reason held or declared by any court of competent jurisdiction to be unconstitutional or preempted by federal law, or the applicability of that portion to any person or facility is held invalid, the remainder of the bill will not thereby be deemed to be unconstitutional, preempted, or invalid.

As amended and reported by the committee, Assembly Bill No. 3684 is identical to Senate Bill No. 315 (2R), which was amended reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments revise the bill to provide that it supplement P.L.1965, c.173 (C.34:11-4.1 et seq.), which sets forth requirements employer pay practices, rather than the P.L.1966, c.113 (C.34:11-56a et seq.), the “New Jersey State Wage and Hour Law.”

The committee amendments reduce the transitional period under the bill from six months following a change in control to four months.

The committee amendments establish certain criteria for successor employers to offer employment to eligible employees, including

requiring the offer be in writing and remain open for at least 10 days, to restrict offers to eligible employees until all previously-held positions are filled or no more eligible employees are available, and to require the selection of employees to be employed to be based on seniority and experience.

The committee amendments revise the standard for when a successor employer may lay off eligible employees, from when fewer employees are needed to when the employer reduces the total number of employees.

The committee amendments replace the penalties that apply for a violation of the bill from a general action for civil relief to various actions that apply under current law with regard to unpaid wages and retaliation.

The committee amendments revise the definition of “eligible employee” to provide that the term does not apply to any employee discharged with cause within 90 days before the change in control.

The committee amendments revise the definition of “health care entity” to provide that, if the entity is part of a larger facility, the bill only applies to those portions of the facility that are licensed by the Department of Health as a health care facility.

The committee amendments make various technical changes involving grammar and syntax.

The committee amendments revise the synopsis to reflect the changes made by the committee.

FISCAL IMPACT:

Fiscal information on this bill is currently unavailable.

Governor Murphy Signs Legislation to Protect Employees During Changes in Ownership of Health Care Entities

08/18/2022

TRENTON – Governor Phil Murphy today signed [S-315](#) which establishes employment protections for workers in the health care sector when there is a change in control of their health care entity employer. The bill requires any change in control to be made via a contract or agreement between the parties, that preserves the wages, benefits, and employment status of current employees.

“New Jersey is a state that both values the contributions of our health care workers and stands by the right of all workers to fair wages and employment practices,” **said Governor Murphy**. “With this law, we will eliminate the uncertainty many health care workers face during transfers of ownership by implementing the wage, benefit, and employment protections these dedicated employees deserve. Ensuring continuity of employment for existing workers will not only benefit employees of a health care entity, but ensure continuity of care for the many patients who have come to rely on the critical services provided by the health care professionals they know and trust.”

Under the new law, non-governmental health care entities must offer continued employment to all eligible employees for at least four months following the transfer of control, without any reduction in wages, paid time off, or the total value of their benefits – including health care, retirement, and education benefits. All available jobs must be offered in writing to current employees who previously held that position, until all positions are filled or there are no more eligible employees available.

Employees who are retained as a result of this policy may not be let go during the four-month transitional period, unless the successor employer downsizes the total number of positions – in which case priority must be given to employees based on seniority and experience. At the end of the transitional period, the employer must conduct a written performance evaluation of each employee they retained during the transitional period and offer to keep them on board if that employee’s performance was satisfactory.

These rules apply to sales, transfers, and other arrangements that change the control of a health care entity, including consolidations, mergers, and reorganizations. Employers found in violation of these requirements will be subject to penalties for noncompliance.

Sponsors of the bill include Senators Joseph Vitale and Richard Codey, and Assemblyman Wayne DeAngelo.

“Throughout the coronavirus pandemic, and since then, those who show up every day to staff our hospitals, clinics, nursing homes and health care facilities, and to administer care to the sick and dying stand among our bravest essential workers,” **said Senator Vitale, who is also Chair of the Senate Health, Human Services and Senior Citizens Committee**. “We owe them our undying gratitude, certainly, but we also must honor their commitment by ensuring they are treated humanely and fairly as employees. This legislation will make sure of that, and make sure their wages and benefits are protected, regardless of the volatility in and around the health care industry.”

“Our front-line workers in the health care industry risked their lives to provide care to sick and in some cases dying patients during the height of the coronavirus pandemic,” **said Senator Codey**. “Those same workers have a right to expect their wages and benefits are going to be protected, and be insulated from any structural change that might come from the consolidation of health care entities.”

“We must honor collective bargaining agreements and ensure the workers of new jersey are always treated fairly,” **said Assemblyman DeAngelo**. “This law will ensure workers rights are protected through company takeovers and transfers of ownership.”

“We appreciate Governor Murphy and prime sponsors Senator Joseph Vitale, Senator Richard Codey, and Assemblyman Wayne DeAngelo for recognizing the need for this legislation in our state and working together to pass this bill into law,” **said Rhina Molina, Executive Vice President of 1199SEIU New Jersey**. “It is designed to preserve labor standards for essential healthcare workers and ensure continuity of care for residents. Nursing home workers deserve a chance to adjust when their

workplace is sold, and nursing home residents deserve uninterrupted high-quality care. We look forward to continuing to work with the Murphy administration and the Legislature to secure justice for frontline healthcare workers, patients, and all New Jersey residents.”