

34:8-45.1 & 34:8-45.1a
LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2020 **CHAPTER:** 132

NJSA: 34:8-45.1 & 34:8-45.1a (Revises requirements for health care service firms to report financial information to Division of Consumer Affairs.)

BILL NO: S848 (Substituted for A2140)

SPONSOR(S) Nellie Pou and others

DATE INTRODUCED: 1/14/2020

COMMITTEE: **ASSEMBLY:** Consumer Affairs

SENATE: Commerce

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** 10/29/2020

SENATE: 10/29/2020

DATE OF APPROVAL: 12/14/2020

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Second Reprint enacted) Yes

S848

INTRODUCED BILL (INCLUDES SPONSOR'S STATEMENT): Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

A2140

INTRODUCED BILL (INCLUDES SPONSOR'S STATEMENT): Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

RWH/CL

P.L. 2020, CHAPTER 132, *approved December 14, 2020*
Senate, No. 848 (*Second Reprint*)

1 AN ACT concerning health care service firms and amending
2 P.L.2002, c.126 and P.L.2014, c.29.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 1 of P.L.2002, c.126 (C.34:8-45.1) is amended to read
8 as follows:

9 1. a. Notwithstanding any other law or regulation to the contrary,
10 an employment agency required to be licensed pursuant to P.L.1989,
11 c.331 (C.34:8-43 et al.), or any other firm, company, business, agency,
12 or other entity that is not a home health care agency licensed pursuant
13 to P.L.1971, c.136 (C.26:2H-1 et seq.) or a hospice licensed pursuant
14 to P.L.1997, c.78 (C.26:2H-79 et seq.), which employs, places,
15 arranges for the placement of, or in any way refers, an individual to
16 provide companion services, health care services, or personal care
17 services in the personal residence of a person with a disability or who
18 is age 60 or older, regardless of the title by which the provider of the
19 services is known, shall be registered as a Health Care Service Firm
20 and shall be subject to the rules and regulations governing Health Care
21 Service Firms adopted by the Division of Consumer Affairs in the
22 Department of Law and Public Safety. The Division of Consumer
23 Affairs is authorized to enforce the health care service firm registration
24 requirement, and the provisions of P.L.1989, c.331 (C.34:8-43 et al.),
25 upon any person whose operations are subject to this section, whether
26 the operations include the direct employment of individuals, the use of
27 an Internet website or application, or any other process or business
28 model.

29 As used in this section:

30 "Companion services" means non-medical, basic supervision and
31 socialization services which do not include assistance with activities of
32 daily living, and which are provided in the individual's home.
33 Companion services may include the performance of household
34 chores.

35 "Health care services" means any services rendered for the purpose
36 of maintaining or restoring an individual's physical or mental health or
37 any health-related services, and for which a license or certification is
38 required as a pre-condition to the rendering of such services.

39 "Personal care services" means services performed by licensed or
40 certified personnel for the purpose of assisting an individual with
41 activities of daily living that may involve physical contact. Services

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 SCM committee amendments adopted January 27, 2020.

²Assembly ACO committee amendments adopted October 19, 2020.

1 include, but are not limited to, bathing, toileting, transferring, dressing,
2 grooming, and assistance with ambulation, exercise, or other aspects of
3 personal hygiene.

4 b. (Deleted by amendment, P.L.2014, c.29)

5 c. As a condition of being registered under P.L.1989, c.331
6 (C.34:8-43 et al.), a health care service firm shall obtain within 12
7 months of registration accreditation from an accrediting body that is
8 recognized by the Commissioner of Human Services as an accrediting
9 body for homemaker agencies participating in the Medicaid program,
10 as set forth at N.J.A.C.10:60-1.2. For purposes of accreditation
11 pursuant to this subsection, the accrediting body shall apply the
12 standards set forth in N.J.A.C.13:37-14.1 et seq. and N.J.A.C.13:45B-
13 13.1 et seq., as applicable.

14 d. As a condition of registration under P.L.1989, c.331 (C.34:8-43
15 et al.) **], every]** :

16 (1) All health care service firms shall annually submit to the
17 director financial statements prepared by the firm, which shall be
18 consistent with the firm's tax filing with the State for the year covered
19 by the financial statements.

20 (2) In addition to the financial statements required pursuant to
21 paragraph (1) of this subsection, a health care service firm that
22 receives more than \$250,000 ¹[as part] for the provision¹ of ¹[the]¹
23 New Jersey Medicaid Personal Care Assistance ¹[program] services¹
24 shall submit to the director an audit the third calendar year after ²the
25 date of² registration ²or on December 30, 2022, whichever date is
26 later,² and every third year thereafter.

27 (3) In addition to the financial statements required pursuant to
28 paragraph (1) of this subsection, a health care service firm that
29 generates \$10 million or more in gross income in a year shall submit to
30 the director an audit for that year ², except that an audit required by
31 this paragraph shall not be required to be submitted prior to December
32 30, 2022² .

33 (4) (a) In addition to the financial statements required pursuant to
34 paragraph (1) of this subsection, a health care service firm that
35 receives less than \$250,000 ¹[as part] for the provision¹ of ¹[the]¹
36 New Jersey Medicaid Personal Care Assistance ¹[program] services¹
37 and that generates \$1 million or more, but less than \$10 million, in
38 gross income in a year shall submit to the director a report for that year
39 ², except that a report required by this paragraph shall not be required
40 to be submitted prior to December 30, 2022. The report shall be²
41 prepared by an independent third-party practitioner based on a review
42 of the firm's financial statements and records, general management,
43 and internal controls, which review shall be conducted in compliance
44 with the standards and procedures developed by the director pursuant
45 to subsection b. of section 2 of P.L.2014, c.29 (C.34:8-45.1a).

46 (b) If the division makes adverse findings against a firm upon
47 review of a report submitted pursuant to subparagraph (a) of this

1 paragraph, the director shall order such corrective action as the
2 director deems appropriate, and, upon compliance with or completion
3 of the corrective action, shall require the firm to obtain a separate
4 review of the firm's data for that year, which shall be conducted by a
5 different independent third-party practitioner than the one that
6 furnished the original report, and shall be based on the standards and
7 procedures developed by the director pursuant to subsection b. of
8 section 2 of P.L.2014, c.29 (C.34:8-45.1a). The firm shall additionally
9 be required to submit to the director an audit for the calendar year next
10 following the year for which the adverse finding was made, regardless
11 of the firm's gross income for the year.

12 **【The】** An audit required pursuant to this paragraph shall be
13 conducted by a certified public accountant licensed by the State of
14 New Jersey and shall encompass an examination of the subject firm's
15 financial records, financial statements, the general management of its
16 operations, and its internal control systems. The audit shall include an
17 audit report with an unqualified opinion and shall be accompanied by
18 any management letters prepared by the auditor in connection with the
19 audit commenting on the internal controls or management practices of
20 the health care service firm. The audit shall be divided into two
21 components: compliance and financial. The compliance component of
22 the audit shall evaluate the firm's compliance with relevant laws and
23 regulations governing health care service firms. The financial
24 component shall include an audit of the financial statements and
25 accompanying notes, as specified in the Statements on Auditing
26 Standards issued by the American Institute of Certified Public
27 Accountants.

28 e. In addition to any other penalty provided by law, a person shall
29 be liable for a penalty of \$500 per day for each day that the person
30 continues to operate a firm without registering as required under this
31 section. The penalty shall be collected by the Director of the Division
32 of Consumer Affairs in a summary proceeding in accordance with the
33 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et
34 seq.).

35 (cf: P.L.2019, c.48, s.1)

36
37 2. Section 2 of P.L.2014, c.29 (C.34:8-45.1a) is amended to
38 read as follows:

39 2. a. The Director of the Division of Consumer Affairs in the
40 Department of Law and Public Safety shall enter into a
41 memorandum of understanding with an accrediting body chosen by
42 the director through appropriate procurement processes authorized
43 to accredit a health care service firm pursuant to subsection c. of
44 section 1 of P.L.2002, c.126 (C.34:8-45.1). The memorandum of
45 understanding shall establish the standards for accreditation and for
46 reporting the results of audits performed pursuant to subsection d.
47 of section 1 of P.L.2002, c.126 to the Division.

1 b. The director shall, in consultation with representatives of
2 health care service firms registered with the division, develop an
3 agreed-upon set of standards and procedures for independent third
4 party practitioners to review health care service firm financial
5 statements and records, general management, and internal controls
6 pursuant to paragraph (4) of subsection d. of section 1 of P.L.2002,
7 c.126 (C.34:8-45.1). At a minimum, the standards and procedures
8 developed pursuant to this subsection shall address:

9 (1) the minimum educational, training, and professional
10 certification qualifications for independent third party practitioners
11 performing reviews of health care service firm financial statements
12 and records;

13 (2) the data points and metrics to be included in a review of a
14 health care service firm’s financial statements and records, general
15 management, and internal controls which shall include, at a
16 minimum, verification of the accreditation and licensing status of
17 the firm; review of the firm’s ownership structure; review of
18 contracts and funding sources as well as payments, cash
19 transactions, and reconciliation of account balances; review of the
20 adequacy of the firm’s insurance coverage; review of billing
21 practices and invoices to ensure the adequacy of supporting
22 documentation and the inclusion of appropriate authorizations;
23 review of any history of litigation involving the firm, regulatory
24 actions taken against the firm, or past audits of the firm; review of
25 the use of independent contractors; and review of large transactions
26 and liabilities that exceed a specified percentage of the firm’s total
27 billings or liabilities, as appropriate; and

28 (3) the thresholds and requirements for the division to make an
29 adverse finding and take corrective action against a firm based upon
30 a review of an independent third party report concerning the firm’s
31 financial statements and records.

32 (cf: P.L.2014, c.29, s.2)

33
34 3. The Director of the Division of Consumer Affairs in the
35 Department of Law and Public Safety shall, pursuant to the
36 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
37 seq.), adopt rules and regulations as shall be necessary to implement
38 the provisions of this act.

39
40 4. This act shall take effect immediately.

41
42
43
44
45 Revises requirements for health care service firms to report
46 financial information to Division of Consumer Affairs.

SENATE, No. 848

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

Senator VIN GOPAL

District 11 (Monmouth)

SYNOPSIS

Revises requirements for health care service firms to report financial information to Division of Consumer Affairs.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning health care service firms and amending
2 P.L.2002, c.126 and P.L.2014, c.29.

3

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

6

7 1. Section 1 of P.L.2002, c.126 (C.34:8-45.1) is amended to
8 read as follows:

9 1. a. Notwithstanding any other law or regulation to the
10 contrary, an employment agency required to be licensed pursuant to
11 P.L.1989, c.331 (C.34:8-43 et al.), or any other firm, company,
12 business, agency, or other entity that is not a home health care
13 agency licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) or
14 a hospice licensed pursuant to P.L.1997, c.78 (C.26:2H-79 et seq.),
15 which employs, places, arranges for the placement of, or in any way
16 refers, an individual to provide companion services, health care
17 services, or personal care services in the personal residence of a
18 person with a disability or who is age 60 or older, regardless of the
19 title by which the provider of the services is known, shall be
20 registered as a Health Care Service Firm and shall be subject to the
21 rules and regulations governing Health Care Service Firms adopted
22 by the Division of Consumer Affairs in the Department of Law and
23 Public Safety. The Division of Consumer Affairs is authorized to
24 enforce the health care service firm registration requirement, and
25 the provisions of P.L.1989, c.331 (C.34:8-43 et al.), upon any
26 person whose operations are subject to this section, whether the
27 operations include the direct employment of individuals, the use of
28 an Internet website or application, or any other process or business
29 model.

30 As used in this section:

31 "Companion services" means non-medical, basic supervision and
32 socialization services which do not include assistance with activities
33 of daily living, and which are provided in the individual's home.
34 Companion services may include the performance of household
35 chores.

36 "Health care services" means any services rendered for the
37 purpose of maintaining or restoring an individual's physical or
38 mental health or any health-related services, and for which a license
39 or certification is required as a pre-condition to the rendering of
40 such services.

41 "Personal care services" means services performed by licensed or
42 certified personnel for the purpose of assisting an individual with
43 activities of daily living that may involve physical contact. Services
44 include, but are not limited to, bathing, toileting, transferring,

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.

1 dressing, grooming, and assistance with ambulation, exercise, or
2 other aspects of personal hygiene.

3 b. (Deleted by amendment, P.L.2014, c.29)

4 c. As a condition of being registered under P.L.1989, c.331
5 (C.34:8-43 et al.), a health care service firm shall obtain within 12
6 months of registration accreditation from an accrediting body that is
7 recognized by the Commissioner of Human Services as an
8 accrediting body for homemaker agencies participating in the
9 Medicaid program, as set forth at N.J.A.C.10:60-1.2. For purposes
10 of accreditation pursuant to this subsection, the accrediting body
11 shall apply the standards set forth in N.J.A.C.13:37-14.1 et seq. and
12 N.J.A.C.13:45B-13.1 et seq., as applicable.

13 d. As a condition of registration under P.L.1989, c.331 (C.34:8-
14 43 et al.) **【, every】** :

15 (1) All health care service firms shall annually submit to the
16 director financial statements prepared by the firm, which shall be
17 consistent with the firm's tax filing with the State for the year
18 covered by the financial statements.

19 (2) In addition to the financial statements required pursuant to
20 paragraph (1) of this subsection, a health care service firm that
21 receives more than \$250,000 as part of the New Jersey Medicaid
22 Personal Care Assistance program shall submit to the director an
23 audit the third calendar year after registration and every third year
24 thereafter.

25 (3) In addition to the financial statements required pursuant to
26 paragraph (1) of this subsection, a health care service firm that
27 generates \$10 million or more in gross income in a year shall
28 submit to the director an audit for that year.

29 (4) (a) In addition to the financial statements required pursuant
30 to paragraph (1) of this subsection, a health care service firm that
31 receives less than \$250,000 as part of the New Jersey Medicaid
32 Personal Care Assistance program and that generates \$1 million or
33 more, but less than \$10 million, in gross income in a year shall
34 submit to the director a report for that year prepared by an
35 independent third-party practitioner based on a review of the firm's
36 financial statements and records, general management, and internal
37 controls, which review shall be conducted in compliance with the
38 standards and procedures developed by the director pursuant to
39 subsection b. of section 2 of P.L.2014, c.29 (C.34:8-45.1a).

40 (b) If the division makes adverse findings against a firm upon
41 review of a report submitted pursuant to subparagraph (a) of this
42 paragraph, the director shall order such corrective action as the
43 director deems appropriate, and, upon compliance with or
44 completion of the corrective action, shall require the firm to obtain
45 a separate review of the firm's data for that year, which shall be
46 conducted by a different independent third-party practitioner than
47 the one that furnished the original report, and shall be based on the
48 standards and procedures developed by the director pursuant to

1 subsection b. of section 2 of P.L.2014, c.29 (C.34:8-45.1a). The
2 firm shall additionally be required to submit to the director an audit
3 for the calendar year next following the year for which the adverse
4 finding was made, regardless of the firm's gross income for the
5 year.

6 **【The】** An audit required pursuant to this paragraph shall be
7 conducted by a certified public accountant licensed by the State of
8 New Jersey and shall encompass an examination of the subject
9 firm's financial records, financial statements, the general
10 management of its operations, and its internal control systems. The
11 audit shall include an audit report with an unqualified opinion and
12 shall be accompanied by any management letters prepared by the
13 auditor in connection with the audit commenting on the internal
14 controls or management practices of the health care service firm.
15 The audit shall be divided into two components: compliance and
16 financial. The compliance component of the audit shall evaluate the
17 firm's compliance with relevant laws and regulations governing
18 health care service firms. The financial component shall include an
19 audit of the financial statements and accompanying notes, as
20 specified in the Statements on Auditing Standards issued by the
21 American Institute of Certified Public Accountants.

22 e. In addition to any other penalty provided by law, a person
23 shall be liable for a penalty of \$500 per day for each day that the
24 person continues to operate a firm without registering as required
25 under this section. The penalty shall be collected by the Director of
26 the Division of Consumer Affairs in a summary proceeding in
27 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
28 c.274 (C.2A:58-10 et seq.).
29 (cf: P.L.2019, c.48, s.1)

30
31 2. Section 2 of P.L.2014, c.29 (C.34:8-45.1a) is amended to
32 read as follows:

33 2. a. The Director of the Division of Consumer Affairs in the
34 Department of Law and Public Safety shall enter into a
35 memorandum of understanding with an accrediting body chosen by
36 the director through appropriate procurement processes authorized
37 to accredit a health care service firm pursuant to subsection c. of
38 section 1 of P.L.2002, c.126 (C.34:8-45.1). The memorandum of
39 understanding shall establish the standards for accreditation and for
40 reporting the results of audits performed pursuant to subsection d.
41 of section 1 of P.L.2002, c.126 to the Division.

42 b. The director shall, in consultation with representatives of
43 health care service firms registered with the division, develop an
44 agreed-upon set of standards and procedures for independent third
45 party practitioners to review health care service firm financial
46 statements and records, general management, and internal controls
47 pursuant to paragraph (4) of subsection d. of section 1 of P.L.2002,

1 c.126 (C.34:8-45.1). At a minimum, the standards and procedures
2 developed pursuant to this subsection shall address:

3 (1) the minimum educational, training, and professional
4 certification qualifications for independent third party practitioners
5 performing reviews of health care service firm financial statements
6 and records;

7 (2) the data points and metrics to be included in a review of a
8 health care service firm's financial statements and records, general
9 management, and internal controls which shall include, at a
10 minimum, verification of the accreditation and licensing status of
11 the firm; review of the firm's ownership structure; review of
12 contracts and funding sources as well as payments, cash
13 transactions, and reconciliation of account balances; review of the
14 adequacy of the firm's insurance coverage; review of billing
15 practices and invoices to ensure the adequacy of supporting
16 documentation and the inclusion of appropriate authorizations;
17 review of any history of litigation involving the firm, regulatory
18 actions taken against the firm, or past audits of the firm; review of
19 the use of independent contractors; and review of large transactions
20 and liabilities that exceed a specified percentage of the firm's total
21 billings or liabilities, as appropriate; and

22 (3) the thresholds and requirements for the division to make an
23 adverse finding and take corrective action against a firm based upon
24 a review of an independent third party report concerning the firm's
25 financial statements and records.

26 (cf: P.L.2014, c.29, s.2)

27

28 3. The Director of the Division of Consumer Affairs in the
29 Department of Law and Public Safety shall, pursuant to the
30 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
31 seq.), adopt rules and regulations as shall be necessary to implement
32 the provisions of this act.

33

34 4. This act shall take effect immediately.

35

36

37

STATEMENT

38

39 This bill will revise the requirements for reviewing the financial
40 statements and records of health care service firms. Current law
41 requires all health care service firms to complete annual audits,
42 which are to be submitted to the Director of the Division of
43 Consumer Affairs in the Department of Law and Public Safety
44 every three years.

45 Under the bill, all health care service firms will be required to
46 submit financial statements prepared by the firm to the director,
47 which statements are to be consistent with the firm's tax filings
48 with the State. Additionally, any health care service firm that

1 receives more than \$250,000 as part of the New Jersey Medicaid
2 Personal Care Assistance program will continue to be subject to the
3 current annual audit requirement, and health care service firms that
4 generate \$10 million or more in gross revenue in a year will be
5 required to submit an audit for that year.

6 For health care service firms with gross revenue for the year that
7 is between \$1 million \$10 million, and which receive less than
8 \$250,000 as part of the New Jersey Medicaid Personal Care
9 Assistance program, the firms will, in lieu of an audit, be required
10 to submit a report for that year to the director that is prepared by an
11 independent third party practitioner based on a review of the health
12 care service firm's financial statements and records, general
13 management, and internal controls.

14 In the event that the division makes adverse findings against a
15 health care service firm upon review of its independent third party
16 report, the director will order corrective action by the firm,
17 followed by a separate review of the firm's data for the year, to be
18 performed by a different independent third party practitioner than
19 the one that performed the original review. The firm will
20 additionally be required to submit an audit for the following year,
21 regardless of the firm's gross income in that year.

22 The director, in consultation with representatives of registered
23 health care service firms, will be required to develop standards and
24 procedures for the independent third party review of health care
25 service firm financial statements and records, general management,
26 and internal controls. At a minimum, the standards and procedures
27 will address the minimum educational, training, and professional
28 certification qualifications for practitioners performing the reviews;
29 the data points and metrics to be included in a review; and the
30 thresholds and requirements for the division to make an adverse
31 finding and take corrective action against a firm.

32 It is the sponsor's belief that the current annual audit requirement
33 presents an undue financial burden on smaller health care service
34 firms, and that the tiered system of financial review established
35 under the bill will help preserve the integrity of health care service
36 firm billing and financial practices while minimizing the financial
37 impact of compliance on smaller and mid-sized firms.

ASSEMBLY CONSUMER AFFAIRS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 848

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 19, 2020

The Assembly Consumer Affairs Committee reports favorably and with committee amendments Senate Bill No. 848 (1R).

As amended and reported by the committee, this bill will revise the requirements for reviewing the financial statements and records of health care service firms. Current law requires all health care service firms to complete annual audits, which are to be submitted to the Director of the Division of Consumer Affairs in the Department of Law and Public Safety every three years.

Under the bill, all health care service firms will be required to submit financial statements prepared by the firm to the director, which statements are to be consistent with the firm's tax filings with the State. Additionally, any health care service firm that receives more than \$250,000 for the provision of New Jersey Medicaid Personal Care Assistance services will continue to be subject to the current annual audit requirement, and health care service firms that generate \$10 million or more in gross revenue in a year will be required to submit an audit for that year.

For health care service firms with gross revenue for the year that is between \$1 million and \$10 million, and which receive less than \$250,000 for the provision of New Jersey Medicaid Personal Care Assistance services, the firms will, in lieu of an audit, be required to submit a report for that year to the director that is prepared by an independent third party practitioner based on a review of the health care service firm's financial statements and records, general management, and internal controls.

In the event that the division makes adverse findings against a health care service firm upon review of its independent third party report, the director will order corrective action by the firm, followed by a separate review of the firm's data for the year, to be performed by a different independent third party practitioner than the one that performed the original review. The firm will additionally be required to submit an audit for the following year, regardless of the firm's gross income in that year.

The director, in consultation with representatives of registered health care service firms, will be required to develop standards and procedures for the independent third party review of health care service firm financial statements and records, general management, and internal controls. At a minimum, the standards and procedures will address the minimum educational, training, and professional certification qualifications for practitioners performing the reviews; the data points and metrics to be included in a review; and the thresholds and requirements for the division to make an adverse finding and take corrective action against a firm.

As reported by the committee, Senate Bill No. 848 (1R) is identical to Assembly Bill No. 2140, which also was reported by the committee on this same date.

COMMITTEE AMENDMENTS

The committee amendments provide that certain audits and a financial report required to be submitted under the bill would not commence being due for submission until on or after December 30, 2022, as the case may be.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 848

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 27, 2020

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 848.

This bill will revise the requirements for reviewing the financial statements and records of health care service firms. Current law requires all health care service firms to complete annual audits, which are to be submitted to the Director of the Division of Consumer Affairs in the Department of Law and Public Safety every three years.

Under the bill, all health care service firms will be required to submit financial statements prepared by the firm to the director, which statements are to be consistent with the firm's tax filings with the State. Additionally, any health care service firm that receives more than \$250,000 for the provision of New Jersey Medicaid Personal Care Assistance services will continue to be subject to the current annual audit requirement, and health care service firms that generate \$10 million or more in gross revenue in a year will be required to submit an audit for that year.

For health care service firms with gross revenue for the year that is between \$1 million \$10 million, and which receive less than \$250,000 for the provision of New Jersey Medicaid Personal Care Assistance services, the firms will, in lieu of an audit, be required to submit a report for that year to the director that is prepared by an independent third party practitioner based on a review of the health care service firm's financial statements and records, general management, and internal controls.

In the event that the division makes adverse findings against a health care service firm upon review of its independent third party report, the director will order corrective action by the firm, followed by a separate review of the firm's data for the year, to be performed by a different independent third party practitioner than the one that performed the original review. The firm will additionally be required to submit an audit for the following year, regardless of the firm's gross income in that year.

The director, in consultation with representatives of registered health care service firms, will be required to develop standards and procedures for the independent third party review of health care

service firm financial statements and records, general management, and internal controls. At a minimum, the standards and procedures will address the minimum educational, training, and professional certification qualifications for practitioners performing the reviews; the data points and metrics to be included in a review; and the thresholds and requirements for the division to make an adverse finding and take corrective action against a firm.

This bill was pre-filed for introduction in the 2020-2021 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS:

The committee amended the bill to make technical changes to the bill, to clarify that certain provisions of the bill apply to health care service firms that receive funds for the provision of New Jersey Medicaid Personal Care Assistance services.

ASSEMBLY, No. 2140

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman P. CHRISTOPHER TULLY

District 38 (Bergen and Passaic)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman ROY FREIMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Co-Sponsored by:

Assemblywoman Swain

SYNOPSIS

Revises requirements for health care service firms to report financial information to Division of Consumer Affairs.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



A2140 TULLY, VAINIERI HUTTLE

2

1 AN ACT concerning health care service firms and amending
2 P.L.2002, c.126 and P.L.2014, c.29.

3

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

6

7 1. Section 1 of P.L.2002, c.126 (C.34:8-45.1) is amended to
8 read as follows:

9 1. a. Notwithstanding any other law or regulation to the
10 contrary, an employment agency required to be licensed pursuant to
11 P.L.1989, c.331 (C.34:8-43 et al.), or any other firm, company,
12 business, agency, or other entity that is not a home health care
13 agency licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) or
14 a hospice licensed pursuant to P.L.1997, c.78 (C.26:2H-79 et seq.),
15 which employs, places, arranges for the placement of, or in any way
16 refers, an individual to provide companion services, health care
17 services, or personal care services in the personal residence of a
18 person with a disability or who is age 60 or older, regardless of the
19 title by which the provider of the services is known, shall be
20 registered as a Health Care Service Firm and shall be subject to the
21 rules and regulations governing Health Care Service Firms adopted
22 by the Division of Consumer Affairs in the Department of Law and
23 Public Safety. The Division of Consumer Affairs is authorized to
24 enforce the health care service firm registration requirement, and
25 the provisions of P.L.1989, c.331 (C.34:8-43 et al.), upon any
26 person whose operations are subject to this section, whether the
27 operations include the direct employment of individuals, the use of
28 an Internet website or application, or any other process or business
29 model.

30 As used in this section:

31 "Companion services" means non-medical, basic supervision and
32 socialization services which do not include assistance with activities
33 of daily living, and which are provided in the individual's home.
34 Companion services may include the performance of household
35 chores.

36 "Health care services" means any services rendered for the
37 purpose of maintaining or restoring an individual's physical or
38 mental health or any health-related services, and for which a license
39 or certification is required as a pre-condition to the rendering of
40 such services.

41 "Personal care services" means services performed by licensed or
42 certified personnel for the purpose of assisting an individual with
43 activities of daily living that may involve physical contact.
44 Services include, but are not limited to, bathing, toileting,

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.

1 transferring, dressing, grooming, and assistance with ambulation,
2 exercise, or other aspects of personal hygiene.

3 b. (Deleted by amendment, P.L.2014, c.29)

4 c. As a condition of being registered under P.L.1989, c.331
5 (C.34:8-43 et al.), a health care service firm shall obtain within 12
6 months of registration accreditation from an accrediting body that is
7 recognized by the Commissioner of Human Services as an
8 accrediting body for homemaker agencies participating in the
9 Medicaid program, as set forth at N.J.A.C.10:60-1.2. For purposes
10 of accreditation pursuant to this subsection, the accrediting body
11 shall apply the standards set forth in N.J.A.C.13:37-14.1 et seq. and
12 N.J.A.C.13:45B-13.1 et seq., as applicable.

13 d. As a condition of registration under P.L.1989, c.331 (C.34:8-
14 43 et al.) **【, every】** :

15 (1) All health care service firms shall annually submit to the
16 director financial statements prepared by the firm, which shall be
17 consistent with the firm's tax filing with the State for the year
18 covered by the financial statements.

19 (2) In addition to the financial statements required pursuant to
20 paragraph (1) of this subsection, a health care service firm that
21 receives more than \$250,000 as part of the New Jersey Medicaid
22 Personal Care Assistance program shall submit to the director an
23 audit the third calendar year after registration and every third year
24 thereafter.

25 (3) In addition to the financial statements required pursuant to
26 paragraph (1) of this subsection, a health care service firm that
27 generates \$10 million or more in gross income in a year shall
28 submit to the director an audit for that year.

29 (4) (a) In addition to the financial statements required pursuant
30 to paragraph (1) of this subsection, a health care service firm that
31 receives less than \$250,000 as part of the New Jersey Medicaid
32 Personal Care Assistance program and that generates \$1 million or
33 more, but less than \$10 million, in gross income in a year shall
34 submit to the director a report for that year prepared by an
35 independent third-party practitioner based on a review of the firm's
36 financial statements and records, general management, and internal
37 controls, which review shall be conducted in compliance with the
38 standards and procedures developed by the director pursuant to
39 subsection b. of section 2 of P.L.2014, c.29 (C.34:8-45.1a).

40 (b) If the division makes adverse findings against a firm upon
41 review of a report submitted pursuant to subparagraph (a) of this
42 paragraph, the director shall order such corrective action as the
43 director deems appropriate, and, upon compliance with or
44 completion of the corrective action, shall require the firm to obtain
45 a separate review of the firm's data for that year, which shall be
46 conducted by a different independent third-party practitioner than
47 the one that furnished the original report, and shall be based on the

1 standards and procedures developed by the director pursuant to
2 subsection b. of section 2 of P.L.2014, c.29 (C.34:8-45.1a). The
3 firm shall additionally be required to submit to the director an audit
4 for the calendar year next following the year for which the adverse
5 finding was made, regardless of the firm's gross income for the
6 year.

7 **【The】** An audit required pursuant to this paragraph shall be
8 conducted by a certified public accountant licensed by the State of
9 New Jersey and shall encompass an examination of the subject
10 firm's financial records, financial statements, the general
11 management of its operations, and its internal control systems. The
12 audit shall include an audit report with an unqualified opinion and
13 shall be accompanied by any management letters prepared by the
14 auditor in connection with the audit commenting on the internal
15 controls or management practices of the health care service firm.
16 The audit shall be divided into two components: compliance and
17 financial. The compliance component of the audit shall evaluate the
18 firm's compliance with relevant laws and regulations governing
19 health care service firms. The financial component shall include an
20 audit of the financial statements and accompanying notes, as
21 specified in the Statements on Auditing Standards issued by the
22 American Institute of Certified Public Accountants.

23 e. In addition to any other penalty provided by law, a person
24 shall be liable for a penalty of \$500 per day for each day that the
25 person continues to operate a firm without registering as required
26 under this section. The penalty shall be collected by the Director of
27 the Division of Consumer Affairs in a summary proceeding in
28 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
29 c.274 (C.2A:58-10 et seq.).
30 (cf: P.L.2019, c.48, s.1)

31

32 2. Section 2 of P.L.2014, c.29 (C.34:8-45.1a) is amended to
33 read as follows:

34 2. a. The Director of the Division of Consumer Affairs in the
35 Department of Law and Public Safety shall enter into a
36 memorandum of understanding with an accrediting body chosen by
37 the director through appropriate procurement processes authorized
38 to accredit a health care service firm pursuant to subsection c. of
39 section 1 of P.L.2002, c.126 (C.34:8-45.1). The memorandum of
40 understanding shall establish the standards for accreditation and for
41 reporting the results of audits performed pursuant to subsection d.
42 of section 1 of P.L.2002, c.126 to the Division.

43 b. The director shall, in consultation with representatives of
44 health care service firms registered with the division, develop an
45 agreed-upon set of standards and procedures for independent third
46 party practitioners to review health care service firm financial
47 statements and records, general management, and internal controls

1 pursuant to paragraph (4) of subsection d. of section 1 of P.L.2002,
2 c.126 (C.34:8-45.1). At a minimum, the standards and procedures
3 developed pursuant to this subsection shall address:

4 (1) the minimum educational, training, and professional
5 certification qualifications for independent third party practitioners
6 performing reviews of health care service firm financial statements
7 and records;

8 (2) the data points and metrics to be included in a review of a
9 health care service firm's financial statements and records, general
10 management, and internal controls which shall include, at a
11 minimum, verification of the accreditation and licensing status of
12 the firm; review of the firm's ownership structure; review of
13 contracts and funding sources as well as payments, cash
14 transactions, and reconciliation of account balances; review of the
15 adequacy of the firm's insurance coverage; review of billing
16 practices and invoices to ensure the adequacy of supporting
17 documentation and the inclusion of appropriate authorizations;
18 review of any history of litigation involving the firm, regulatory
19 actions taken against the firm, or past audits of the firm; review of
20 the use of independent contractors; and review of large transactions
21 and liabilities that exceed a specified percentage of the firm's total
22 billings or liabilities, as appropriate; and

23 (3) the thresholds and requirements for the division to make an
24 adverse finding and take corrective action against a firm based upon
25 a review of an independent third party report concerning the firm's
26 financial statements and records.

27 (cf: P.L.2014, c.29, s.2)

28
29 3. The Director of the Division of Consumer Affairs in the
30 Department of Law and Public Safety shall, pursuant to the
31 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
32 seq.), adopt rules and regulations as shall be necessary to implement
33 the provisions of this act.

34
35 4. This act shall take effect immediately.

36
37
38 STATEMENT

39
40 This bill will revise the requirements for reviewing the financial
41 statements and records of health care service firms. Current law
42 requires all health care service firms to complete annual audits,
43 which are to be submitted to the Director of the Division of
44 Consumer Affairs in the Department of Law and Public Safety
45 every three years.

46 Under the bill, all health care service firms will be required to
47 submit financial statements prepared by the firm to the director,

1 which statements are to be consistent with the firm's tax filings
2 with the State. Additionally, any health care service firm that
3 receives more than \$250,000 as part of the New Jersey Medicaid
4 Personal Care Assistance program will continue to be subject to the
5 current annual audit requirement, and health care service firms that
6 generate \$10 million or more in gross revenue in a year will be
7 required to submit an audit for that year.

8 For health care service firms with gross revenue for the year that
9 is between \$1 million \$10 million, and which receive less than
10 \$250,000 as part of the New Jersey Medicaid Personal Care
11 Assistance program, the firms will, in lieu of an audit, be required
12 to submit a report for that year to the director that is prepared by an
13 independent third party practitioner based on a review of the health
14 care service firm's financial statements and records, general
15 management, and internal controls.

16 In the event that the division makes adverse findings against a
17 health care service firm upon review of its independent third party
18 report, the director will order corrective action by the firm,
19 followed by a separate review of the firm's data for the year, to be
20 performed by a different independent third party practitioner than
21 the one that performed the original review. The firm will
22 additionally be required to submit an audit for the following year,
23 regardless of the firm's gross income in that year.

24 The director, in consultation with representatives of registered
25 health care service firms, will be required to develop standards and
26 procedures for the independent third party review of health care
27 service firm financial statements and records, general management,
28 and internal controls. At a minimum, the standards and procedures
29 will address the minimum educational, training, and professional
30 certification qualifications for practitioners performing the reviews;
31 the data points and metrics to be included in a review; and the
32 thresholds and requirements for the division to make an adverse
33 finding and take corrective action against a firm.

34 It is the sponsor's belief that the current annual audit requirement
35 presents an undue financial burden on smaller health care service
36 firms, and that the tiered system of financial review established
37 under the bill will help preserve the integrity of health care service
38 firm billing and financial practices while minimizing the financial
39 impact of compliance on smaller and mid-sized firms.

ASSEMBLY CONSUMER AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2140

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 19, 2020

The Assembly Consumer Affairs Committee reports favorably and with committee amendments Assembly Bill No. 2140.

As amended and reported by the committee, this bill will revise the requirements for reviewing the financial statements and records of health care service firms. Current law requires all health care service firms to complete annual audits, which are to be submitted to the Director of the Division of Consumer Affairs in the Department of Law and Public Safety every three years.

Under the bill, all health care service firms will be required to submit to the director financial statements prepared by the firm, which are consistent with the firm's State tax filings. Additionally, any health care service firm that receives more than \$250,000 for the provision of New Jersey Medicaid Personal Care Assistance services will continue to be subject to the current annual audit requirement, and health care service firms that generate \$10 million or more in gross revenue in a year will be required to submit an audit for that year.

Health care service firms with gross revenue for the year that is between \$1 million and \$10 million which receive less than \$250,000 for the provision of New Jersey Medicaid Personal Care Assistance services would, in lieu of an audit, be required to submit a report for that year to the director that is prepared by an independent third party practitioner based on a review of the health care service firm's financial statements and records, general management, and internal controls.

In the event that the division makes adverse findings against a health care service firm upon review of its independent third party report, the director will order corrective action by the firm, followed by a separate review of the firm's data for the year, to be performed by a different independent third party practitioner than the one that performed the original review. The firm will additionally be required to submit an audit for the following year, regardless of the firm's gross income in that year.

The director, in consultation with representatives of registered health care service firms, will be required to develop standards and procedures for the independent third party review of health care

service firm financial statements and records, general management, and internal controls. At a minimum, the standards and procedures will address the minimum educational, training, and professional certification qualifications for practitioners performing the reviews; the data points and metrics to be included in a review; and the thresholds and requirements for the division to make an adverse finding and take corrective action against a firm.

This bill was pre-filed for introduction in the 2020-2021 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

As reported by the committee, Assembly Bill No. 2140 is identical to Senate Bill No. 848 (1R), which also was reported by the committee on this same date.

COMMITTEE AMENDMENTS

The committee amendments provide that certain audits and a financial report required to be submitted under the bill would not commence being due for submission until on or after December 30, 2022, as the case may be. Additionally, there are technical amendments to the bill, which clarify that certain provisions of the bill apply to health care service firms that receive funds for the provision of New Jersey Medicaid Personal Care Assistance Services.

Governor Murphy Takes Action on Legislation

12/14/2020

TRENTON - Today, Governor Murphy signed the following bills into law:

S-848/A-2140 (Pou, Gopal, Tully/Vainieri Huttie, Freiman) - Revises requirements for health care service firms to report financial information to Division of Consumer Affairs.

S-2465/A-4143 (Sweeney/Conaway, Giblin, Jimenez) - "New Jersey Health Care Transparency Act."

A-543/S-2582 (Jimenez, Giblin, Vainieri Huttie/Gopal, Pou) - Revises psychologist training requirements.

A-4282/S-2566 (Pinkin, Karabinchak, Benson, Vainieri Huttie, DeCroce/Diegnan, Gopal, Vitale) - Requires long term care facilities and hospitals to maintain minimum supply of personal protective equipment.

A-4442/S-2755 (Downey, Benson, Houghtaling/Gopal, Bucco) - Authorizes individuals who have passed road test to use driving permit to operate motor vehicle for 60 days during COVID-19 public health emergency.

Governor Murphy conditionally vetoed the following bills:

S-2354/A-3920 (Greenstein, Oroho/Bramnick, Freiman, Speight) - Prohibits cancellation or nonrenewal of certain insurance policies and insurance premium finance agreements for a period of at least 60 days under certain circumstances after declaration of public health emergency, or state of emergency, or both.

[Copy of Statement](#)

S-2708/A-4446 (Sweeney, Codey/Benson, Vainieri Huttie, Verrelli) - Requires certain provisions in State contracts for delivery of publicly financed mental health, behavioral health, and addiction services.

[Copy of Statement](#)

Governor Murphy absolute vetoed the following bill:

S-1957/A-3756 (Greenstein, Oroho/DePhillips, Zwicker, Speight) - Supports activities of New Jersey Manufacturing Extension Program, Inc.

[Copy of Statement](#)