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LAW/RWH

[First Reprint]

SENATE, No. 3080

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED NOVEMBER 23, 2009

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Senator RICHARD J. CODEY

District 27 (Essex)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblyman JOSEPH V. EGAN

District 17 (Middlesex and Somerset)

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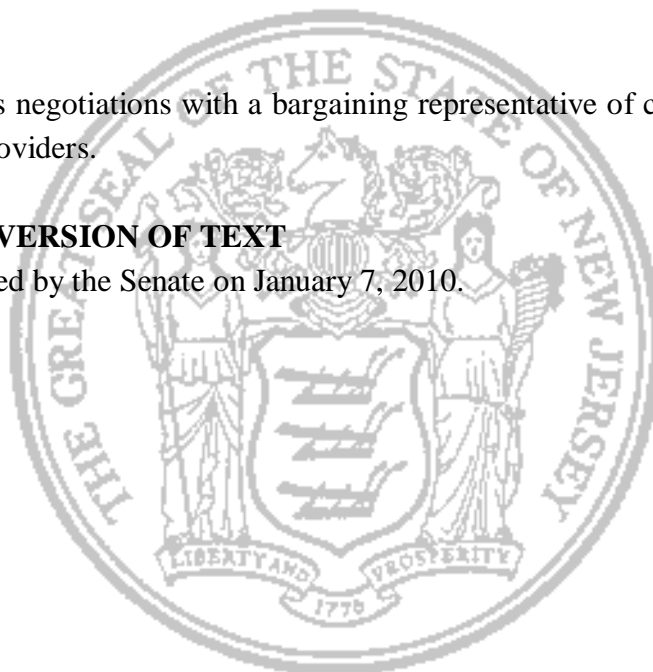
Senator Baroni

SYNOPSIS

Authorizes negotiations with a bargaining representative of community care residential providers.

CURRENT VERSION OF TEXT

As amended by the Senate on January 7, 2010.



(Sponsorship Updated As Of: 1/12/2010)

1 AN ACT concerning community care residential providers.

2

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

5

6 1. The Legislature finds and declares that:

7 a. Community care residential providers for adults with
8 developmental disabilities in the State of New Jersey, as defined by
9 N.J.A.C.10:44B-1.3, provide an essential service by providing care
10 and training to adults with developmental disabilities;

11 b. The State, through the Department of Human Services, is
12 vested with the regulatory authority, including but not limited to the
13 establishment of reimbursement rates, and the administrative
14 oversight responsibility for the licensing of facilities and operation
15 of community care residential provider homes;

16 c. Pursuant to its statutory and regulatory authority, the
17 Department of Human Services is authorized to contract with a
18 qualified third party agency or entity to provide oversight with
19 respect to various administrative functions, including but not
20 limited to the processing of board payments and/or cost-of-care
21 payments to community care residential providers;

22 d. To ensure quality standards of care, it is in the public
23 interest for the State to maintain community care residential
24 provider homes for adults with developmental disabilities and to
25 encourage the recruitment and retention of community care
26 residential providers that are delivering these vital services; and

27 e. A majority of community care residential providers have
28 authorized the Communications Workers of America, AFL-CIO
29 (CWA) to be their exclusive representative through individually-
30 signed authorizations and the New Jersey State Board of Mediation
31 has certified CWA to represent community care residential
32 providers.

33

34 2. a. The Commissioner of the New Jersey Department of
35 Human Services, on behalf of the State of New Jersey, shall meet in
36 good faith with the CWA, as the recognized exclusive majority
37 representative of all community care residential providers, for the
38 purpose of entering into a written agreement, or negotiating a
39 renewal or extension, with any agreed upon modifications, of any
40 agreement in effect upon or after the effective date of this act,
41 regarding reimbursement rates, payment procedures, benefits,
42 health and safety conditions and any other matters that would
43 improve recruitment and retention of qualified community care
44 residential providers and the quality of the programs they provide,
45 subject to the provisions of this section. Although community care

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 floor amendments adopted January 7, 2010.

1 residential providers are not State employees, the subjects which
2 may be included in an agreement shall be consistent with the areas
3 which are considered negotiable for public employees who are
4 subject to the provisions of the “New Jersey Employer-Employee
5 Relations Act,” P.L.1941, c.100 (C.34:13A-1 et seq.). Nothing in
6 this act shall require that an agreement be reached on any particular
7 matter provided the parties act in good faith.

8 b. The purpose of this section is to permit community care
9 residential providers to select an exclusive majority representative
10 to represent them as provided in this section. This act is intended
11 by the Legislature to provide state action immunity under federal
12 and state antitrust laws for any action of the State, or joint action of
13 community care residential providers and their exclusive majority
14 representative, to the extent those actions are authorized by this act.
15 The protections and prohibitions regarding unfair practices provided
16 by section 1 of P.L.1974, c.123 (C.34:13A-5.4) shall apply to any
17 community care residential providers subject to this act, to the State
18 as their employer, and to their employee organizations,
19 representatives or agents.

20 c. Any agreement entered into, renewed or extended pursuant
21 to this section shall be embodied in writing and shall be binding
22 upon the State of New Jersey, and shall provide for the payment of
23 union dues and representation fees in a manner consistent with the
24 provisions of the “New Jersey Employer-Employee Relations Act,”
25 P.L.1974, c.123 (C.34:13A-1 et seq.) which apply to the payment of
26 union dues and representation fees by public employees.
27

28 3. No provision of this act or provision of any agreement
29 entered into, renewed or extended pursuant to this act shall be
30 construed as:

31 a. Interfering with the rights of the Department of Human
32 Services to place or remove clients from the homes of community
33 care residential providers;

34 b. Interfering with the rights of individuals with developmental
35 disabilities or their parents or guardians, including the right to
36 change placements;

37 c. Granting community care residential providers any right to
38 engage in a strike or collective cessation of the delivery of ‘[child
39 care]’ services; or

40 d. Granting community care residential providers status as
41 employees of the State for the purposes of the ‘[New] “New”
42 Jersey Tort Claims ‘[Ac.] Act,’” N.J.S.59:1-1 et seq., the New
43 Jersey “Temporary Disability Benefits Law,” P.L.1948, c.110
44 (C.43:21-25 et seq.), the New Jersey “unemployment compensation
45 law” ‘[R.S.43:21-1 et seq.]’, and the Workers
46 Compensation Law ‘[R.S.34:15-1 et seq.]’, nor status as
47 employees of the State for any other purposes except for purposes

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4

1 indicated in section 1 of this act, including selecting representatives
2 to negotiate and enter into agreements with the State as provided in
3 that section.

4

5 4. No action may be taken under this act that would derogate
6 from the status, functions or authority of the Department of Human
7 Services in its capacity as Lead Agency, or in any other capacity, in
8 the placement and care of persons with developmental disabilities.

9

10 5. This act shall take effect immediately.

SENATE, No. 3080

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED NOVEMBER 23, 2009

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Senator RICHARD J. CODEY

District 27 (Essex)

Co-Sponsored by:

Senator Baroni

SYNOPSIS

Authorizes negotiations with a bargaining representative of community care residential providers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/8/2010)

1 AN ACT concerning community care residential providers.

2

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

5

6 1. The Legislature finds and declares that:

7 a. Community care residential providers for adults with
8 developmental disabilities in the State of New Jersey, as defined by
9 N.J.A.C.10:44B-1.3, provide an essential service by providing care
10 and training to adults with developmental disabilities;

11 b. The State, through the Department of Human Services, is
12 vested with the regulatory authority, including but not limited to the
13 establishment of reimbursement rates, and the administrative
14 oversight responsibility for the licensing of facilities and operation
15 of community care residential provider homes;

16 c. Pursuant to its statutory and regulatory authority, the
17 Department of Human Services is authorized to contract with a
18 qualified third party agency or entity to provide oversight with
19 respect to various administrative functions, including but not
20 limited to the processing of board payments and/or cost-of-care
21 payments to community care residential providers;

22 d. To ensure quality standards of care, it is in the public
23 interest for the State to maintain community care residential
24 provider homes for adults with developmental disabilities and to
25 encourage the recruitment and retention of community care
26 residential providers that are delivering these vital services; and

27 e. A majority of community care residential providers have
28 authorized the Communications Workers of America, AFL-CIO
29 (CWA) to be their exclusive representative through individually-
30 signed authorizations and the New Jersey State Board of Mediation
31 has certified CWA to represent community care residential
32 providers.

33

34 2.a. The Commissioner of the New Jersey Department of Human
35 Services, on behalf of the State of New Jersey, shall meet in good
36 faith with the CWA, as the recognized exclusive majority
37 representative of all community care residential providers, for the
38 purpose of entering into a written agreement, or negotiating a
39 renewal or extension, with any agreed upon modifications, of any
40 agreement in effect upon or after the effective date of this act,
41 regarding reimbursement rates, payment procedures, benefits,
42 health and safety conditions and any other matters that would
43 improve recruitment and retention of qualified community care
44 residential providers and the quality of the programs they provide,
45 subject to the provisions of this section. Although community care
46 residential providers are not State employees, the subjects which
47 may be included in an agreement shall be consistent with the areas
48 which are considered negotiable for public employees who are

1 subject to the provisions of the “New Jersey Employer-Employee
2 Relations Act,” P.L.1941, c.100 (C.34:13A-1 et seq.). Nothing in
3 this act shall require that an agreement be reached on any particular
4 matter provided the parties act in good faith.

5 b. The purpose of this section is to permit community care
6 residential providers to select an exclusive majority representative
7 to represent them as provided in this section. This act is intended
8 by the Legislature to provide state action immunity under federal
9 and state antitrust laws for any action of the State, or joint action of
10 community care residential providers and their exclusive majority
11 representative, to the extent those actions are authorized by this act.
12 The protections and prohibitions regarding unfair practices provided
13 by section 1 of P.L.1974, c.123 (C.34:13A-5.4) shall apply to any
14 community care residential providers subject to this act, to the State
15 as their employer, and to their employee organizations,
16 representatives or agents.

17 c. Any agreement entered into, renewed or extended pursuant
18 to this section shall be embodied in writing and shall be binding
19 upon the State of New Jersey, and shall provide for the payment of
20 union dues and representation fees in a manner consistent with the
21 provisions of the “New Jersey Employer-Employee Relations Act,”
22 P.L.1974, c.123 (C.34:13A-1 et seq.) which apply to the payment of
23 union dues and representation fees by public employees.
24

25 3. No provision of this act or provision of any agreement
26 entered into, renewed or extended pursuant to this act shall be
27 construed as:

28 a. Interfering with the rights of the Department of Human
29 Services to place or remove clients from the homes of community
30 care residential providers;

31 b. Interfering with the rights of individuals with developmental
32 disabilities or their parents or guardians, including the right to
33 change placements;

34 c. Granting community care residential providers any right to
35 engage in a strike or collective cessation of the delivery of child
36 care services; or

37 d. Granting community care residential providers status as
38 employees of the State for the purposes of the New Jersey Tort
39 Claims Act, N.J.S.59:1-1 et seq., the New Jersey “Temporary
40 Disability Benefits Law,” P.L.1948, c. 110 (C. 43:21-25 et seq.), the
41 New Jersey “unemployment compensation law” (R.S.43:21-1 et
42 seq.), and the Workers Compensation Law (R.S.34:15-1 et seq.),
43 nor status as employees of the State for any other purposes except
44 for purposes indicated in section 1 of this act, including selecting
45 representatives to negotiate and enter into agreements with the State
46 as provided in that section.

1 4. No action may be taken under this act that would derogate
2 from the status, functions or authority of the Department of Human
3 Services in its capacity as Lead Agency, or in any other capacity, in
4 the placement and care of persons with developmental disabilities.

5

6 5. This act shall take effect immediately.

7

8

9 STATEMENT

10

11 This bill authorizes the Commissioner of the Department of
12 Human Services to negotiate on behalf of the State with a
13 recognized exclusive majority representative of all community care
14 residential providers to enter into an agreement, or negotiate a
15 renewal or extension of any existing agreement, regarding
16 reimbursement rates, payment procedures, benefits, health and
17 safety conditions and any other matter that would improve
18 recruitment and retention of qualified community care residential
19 providers and the quality of the programs they provide.

20 The bill provides that the subjects which may be included in an
21 agreement be consistent with the areas which are considered
22 negotiable pursuant to the New Jersey Employer-Employee
23 Relations Act. The bill does not require that an agreement be
24 reached on any particular matter, provided the parties act in good
25 faith.

26 Any agreement under the bill is required to be in writing, be
27 binding upon the State, and provide for the payment of union dues
28 and representation fees.

29 The purpose of the bill is to permit community care residential
30 providers to select an exclusive majority representative to represent
31 them. The bill is to provide state action immunity under federal and
32 state antitrust law for any actions of the State, or joint actions of
33 community care residential providers and their exclusive majority
34 representative, to the extent those actions are authorized by the bill.
35 Community care residential providers are given the same
36 protections against unfair practices as are provided to public
37 employees.

38 The bill is not intended to:

39 a. Interfere with the rights of the Department of Human
40 Services to place or remove clients from the homes of community
41 care residential providers;

42 b. Interfere with the rights of individuals with developmental
43 disabilities or their parents or guardians, including the right to
44 change placements;

45 c. Grant community care residential providers the right to
46 strike; or

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5

- 1 d. Grant community care residential providers status as
- 2 employees of the State for any purpose other than the bargaining
- 3 rights provided by the bill.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 3080

STATE OF NEW JERSEY

DATED: DECEMBER 7, 2009

The Senate Labor Committee reports favorably Senate Bill No. 3080.

This bill authorizes the Commissioner of the Department of Human Services to negotiate on behalf of the State with a recognized exclusive majority representative of all community care residential providers to enter into an agreement, or negotiate a renewal or extension of any existing agreement, regarding reimbursement rates, payment procedures, benefits, health and safety conditions and any other matter that would improve recruitment and retention of qualified community care residential providers and the quality of the programs they provide.

The bill provides that the subjects which may be included in an agreement be consistent with the areas which are considered negotiable pursuant to the New Jersey Employer-Employee Relations Act. The bill does not require that an agreement be reached on any particular matter, provided the parties act in good faith.

Any agreement under the bill is required to be in writing, be binding upon the State, and provide for the payment of union dues and representation fees.

The purpose of the bill is to permit community care residential providers to select an exclusive majority representative to represent them. The bill is to provide state action immunity under federal and state antitrust law for any actions of the State, or joint actions of community care residential providers and their exclusive majority representative, to the extent those actions are authorized by the bill. Community care residential providers are given the same protections against unfair practices as are provided to public employees.

The bill is not intended to:

a. Interfere with the rights of the Department of Human Services to place or remove clients from the homes of community care residential providers;

b. Interfere with the rights of individuals with developmental disabilities or their parents or guardians, including the right to change placements;

c. Grant community care residential providers the right to strike;
or

d. Grant community care residential providers status as employees of the State for any purpose other than the bargaining rights provided by the bill.

STATEMENT TO

SENATE, No. 3080

with Senate Floor Amendments
(Proposed by Senator SWEENEY)

ADOPTED: JANUARY 7, 2010

These Senate amendments remove an incorrect reference to the type of services subject to the provisions of the bill. The amendments also make technical corrections to the various statutes cross-referenced in the bill.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4263

STATE OF NEW JERSEY

DATED: JANUARY 4, 2010

The Assembly Labor Committee reports favorably Assembly Bill No. 4263.

This bill authorizes the Commissioner of the Department of Human Services to negotiate on behalf of the State with a recognized exclusive majority representative of all community care residential providers to enter into an agreement, or negotiate a renewal or extension of any existing agreement, regarding reimbursement rates, payment procedures, benefits, health and safety conditions and any other matter that would improve recruitment and retention of qualified community care residential providers and the quality of the programs they provide.

The bill provides that the subjects which may be included in an agreement be consistent with the areas which are considered negotiable pursuant to the New Jersey Employer-Employee Relations Act. The bill does not require that an agreement be reached on any particular matter, provided the parties act in good faith.

Any agreement under the bill is required to be in writing, be binding upon the State, and provide for the payment of union dues and representation fees.

The purpose of the bill is to permit community care residential providers to select an exclusive majority representative to represent them. The bill is intended to provide State action immunity under federal and State antitrust laws for any actions of the State, or joint actions of community care residential providers and their exclusive majority representative, to the extent those actions are authorized by the bill. Community care residential providers are given the same protections against unfair labor practices as are provided to public employees.

The bill is not intended to:

- a. Interfere with the rights of the Department of Human Services to place or remove clients from the homes of community care residential providers;
 - b. Interfere with the rights of individuals with developmental disabilities or their parents or guardians, including the right to change placements;
 - c. Grant community care residential providers the right to strike;
- or

d. Grant community care residential providers status as employees of the State for any purpose other than the bargaining rights provided by the bill.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4263

STATE OF NEW JERSEY

DATED: JANUARY 4, 2010

The Assembly Labor Committee reports favorably Assembly Bill No. 4263.

This bill authorizes the Commissioner of the Department of Human Services to negotiate on behalf of the State with a recognized exclusive majority representative of all community care residential providers to enter into an agreement, or negotiate a renewal or extension of any existing agreement, regarding reimbursement rates, payment procedures, benefits, health and safety conditions and any other matter that would improve recruitment and retention of qualified community care residential providers and the quality of the programs they provide.

The bill provides that the subjects which may be included in an agreement be consistent with the areas which are considered negotiable pursuant to the New Jersey Employer-Employee Relations Act. The bill does not require that an agreement be reached on any particular matter, provided the parties act in good faith.

Any agreement under the bill is required to be in writing, be binding upon the State, and provide for the payment of union dues and representation fees.

The purpose of the bill is to permit community care residential providers to select an exclusive majority representative to represent them. The bill is intended to provide State action immunity under federal and State antitrust laws for any actions of the State, or joint actions of community care residential providers and their exclusive majority representative, to the extent those actions are authorized by the bill. Community care residential providers are given the same protections against unfair labor practices as are provided to public employees.

The bill is not intended to:

a. Interfere with the rights of the Department of Human Services to place or remove clients from the homes of community care residential providers;

b. Interfere with the rights of individuals with developmental disabilities or their parents or guardians, including the right to change placements;

c. Grant community care residential providers the right to strike;
or

d. Grant community care residential providers status as employees of the State for any purpose other than the bargaining rights provided by the bill.

STATEMENT TO
ASSEMBLY, No. 4263

with Assembly Floor Amendments
(Proposed by Assemblywoman QUIJANO)

ADOPTED: JANUARY 7, 2010

These Assembly amendments remove an incorrect reference to the type of services subject to the provisions of the bill. The amendments also make technical corrections to the various statutes cross-referenced in the bill.