

December 14, 2020

SENATE BILL NO. 2708

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 2708 with my recommendations for reconsideration.

This bill would require that any contract entered into or renewed by the Department of Human Services ("DHS") or the Department of Children and Families ("DCF") with a private contractor for the provision of mental health, behavioral health, or addiction services contain a commitment that the contracted services will not be disrupted or delayed by labor disputes. That commitment would require every provider to enter into a labor harmony agreement - an agreement that would prevent both management and labor from engaging in certain disruptive activities and would require both parties to agree to a dispute resolution process - with a collective bargaining representative that represents or seeks to represent the provider's employees at the time the provider renews or enters into a contract with either DHS or DCF. The bill would require the commissioners to decline to enter into or renew such a contract if such a labor harmony agreement is not in place.

Additionally, the bill would require these contracts to contain a Coronavirus disease 2019 ("COVID-19") containment and mitigation commitment. Failures to implement appropriate COVID-19 safety guidelines, including past failures, would again result in potential contract termination.

I commend the bill's sponsors for promoting goals that I share - protecting reasonable access for labor unions to organize and encouraging amicable labor-management relationships. We have realized clear and tangible benefits from strengthening the presence of labor across all sectors, including in the industry implicated by this legislation. Appropriate compensation, protections, and workforce supports attract high quality workers, which in turn lead to the provision of high-quality care. Our essential workers, who have continued to provide critical care for individuals throughout the pandemic, deserve the opportunity to access these benefits. And in the settings of mental health,

behavioral health, and addiction services, where the State depends on contracts with reliable providers, labor harmony agreements can help protect the State's proprietary interest in efficient delivery of services.

We must, however, balance those goals against the need to ensure continuity of care and maintain a sufficient number of providers for the vulnerable population of individuals serviced by this workforce, and I am concerned that automatic non-renewal or cancellation of contracts could result in gaps in the availability of mental health, behavioral health, and addiction services. Further, the bill tasks DHS and DCF with reviewing information regarding labor-management relations. Neither department is equipped to manage this responsibility, particularly in the abbreviated timeframes currently contemplated in the bill. This could delay the contracting process and divert strained departmental resources, potentially further compromising the State's ability to provide this critical care.

To protect against these unintended outcomes, and with the support of our partners in labor, I am recommending revisions to the bill that would leave intact the central purpose of the bill while also instituting additional safeguards to ensure the State can continue to serve these critical populations. This includes an attestation process that would allow providers, with the approval of their collective bargaining representatives, the ability to certify that they have entered in a labor harmony agreement with a union after entering into or renewing a contract with the State. Where a provider fails to attest without a valid reason, the respective commissioner would institute corrective action to encourage immediate compliance. My proposed amendments would then require the respective commissioner to terminate the contract if the provider continues to violate the requirements of the bill. Where issues arise regarding the provider's compliance with the requirements of the bill, I am recommending that the commissioners of DHS and DCF consult with the commissioner of the Department of Labor and Workforce

Development, the State Board of Mediation, or both, as they are better equipped to consider labor-management issues.

I am further recommending modest revisions to the portion of the bill relating to contractual protections against COVID-19 to require providers to commit to make a good faith effort to comply with all applicable COVID-19 health and safety protocols that protect workers and service recipients alike. The commissioners would be directed to review potential violations of this commitment in making decisions about contract renewal. Finally, I am amending the effective date to better align with the current timeline for provider contracts and avoid disruption of multi-year contracts.

Therefore, I herewith return Senate Bill No. 2708 and recommend that it be amended as follows:

<u>Page 2, Section 1, Line 17:</u>	Delete "State funded"
<u>Page 2, Section 1, Line 17:</u>	After services insert "funded or administered by the State"
<u>Page 2, Section 1, Line 31:</u>	After "ensure the" insert "resources it provides to community-based organizations and providers with which it contracts support"
<u>Page 2, Section 1, Lines 31-33:</u>	Delete "workers delivering the services are provided adequate equipment, resources, and protections to ensure their safety,"
<u>Page 2, Section 1, Line 33:</u>	After "of the" insert "employees and"
<u>Page 2, Section 1, Line 33:</u>	After "services" delete "," and insert "."
<u>Page 2, Section 1, Lines 34-40:</u>	Delete in their entirety
<u>Page 3, Section 1, Line 2:</u>	Delete "Services" and insert "Services' Division of Mental Health and Addiction Services"
<u>Page 3, Section 1, Line 3:</u>	Delete ", and divisions thereof,"
<u>Page 3, Section 1, Lines 4-5:</u>	Delete "contain, as a material condition of its contract, terms requiring" and insert "require"
<u>Page 3, Section 1, Line 7:</u>	After "providers" delete "," and insert "and"
<u>Page 3, Section 1, Line 7:</u>	Delete ", and the surrounding community"

<u>Page 3, Section 1, Line 10:</u>	Delete ", and the" and insert "."
<u>Page 3, Section 1, Line 11:</u>	Delete in its entirety
<u>Page 3, Section 2, Line 13:</u>	Delete "Any contract entered into or renewed by" and insert "Where a labor organization represents or seeks to represent the employees of a covered provider, the maintenance of a labor harmony agreement, or a commitment comparable to a labor harmony agreement, with the labor organization representing or seeking to represent employees of the covered provider shall be an ongoing material condition of maintaining a contract with"
<u>Page 3, Section 2, Line 14:</u>	Delete "Services" and insert "Services' Division of Mental Health and Addiction Services"
<u>Page 3, Section 2, Lines 14-15:</u>	Delete "with a private contractor"
<u>Page 3, Section 2, Line 16:</u>	Delete "shall contain a commitment that the" and insert "."
<u>Page 3, Section 2, Lines 17-40:</u>	<p>Delete in their entirety and insert "b. To satisfy the requirements of this section, a covered provider entering into or renewing a contract with the Department of Human Services' Division of Mental Health and Addiction Services or the Department of Children and Families shall, no later than 90 days after the effective date of the contract, either:</p> <p>(1) submit an attestation, signed by a labor organization, stating that the covered provider has entered into a labor harmony agreement with such labor organization;</p> <p>(2) submit an attestation stating that the employees of the covered provider are not currently represented by a labor organization and that no labor organization has sought to represent the covered provider's employees during the 90-day period following the covered provider entering into or renewing a contract for services with the department after the effective date of this act and up to the time of submission; or"</p>

Page 3, Section 2, Line 41:

Delete "Any other" and insert "submit an attestation, signed by a labor organization, stating that the provider has entered into an"

Page 3, Section 2, Line 42:

Delete "comparable"

Page 3, Section 2, Line 43:

Delete "as paragraphs (1) or (2) of this subsection" and insert "comparable to a labor harmony agreement, as defined in section 4 of P.L. c (C.) (pending before the Legislature as this bill)"

Page 3, Section 2, Lines 44-47:

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

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

(2) an agreement or binding obligation to be maintained through the term of the contract that provides a commitment comparable to a labor harmony agreement, as defined in section 4 of P.L. c (C.) (pending before the Legislature as this bill).

d. The failure to submit an attestation as required pursuant to subsections b. and c. of this section shall result in financial recovery and a corrective action plan issued by the applicable department. Should the provider not adhere to the terms of the corrective action plan, the applicable department shall cancel or not renew the contract upon the applicable department obtaining a replacement provider to assume the contract or otherwise provide the services. The applicable department may grant an extension to the deadlines in subsections b. and c. of this section based upon extenuating circumstances or for good cause shown. An extension shall be warranted pursuant to subsection b. if a labor

organization seeks to represent a covered provider's employees after the contract is renewed or entered into but within the 90-day period following the effective date of the contract."

- Page 4, Section 2, Lines 1-12: Delete in their entirety
- Page 4, Section 2, Line 14: Delete "pertinent" and insert "applicable"
- Page 4, Section 2, Line 14: Delete "refusal" and insert "failure"
- Page 4, Section 2, Line 14: Delete "contractor" and insert "covered provider"
- Page 4, Section 2, Line 15: Delete "its contractual commitments required by this act" and insert "the requirements of this section"
- Page 4, Section 2, Line 16: After "commissioner" insert "may review and make findings, or, in consultation with the Commissioner of Labor and Workforce Development, the State Board of Mediation, or both, as appropriate,"
- Page 4, Section 2, Line 17: After "investigation" delete "and, upon" and insert ". Upon"
- Page 4, Section 2, Line 17: Delete "of a failure or breach," and insert "that a covered provider failed to adhere to the requirements of this section, the commissioner of the applicable department shall take corrective action which may include a corrective action plan, financial recovery and cost recoupment, and cancelling or declining to renew the contract. Should the covered provider fail to engage in or complete corrective action, the commissioner of the applicable department"
- Page 4, Section 2, Lines 20-21: Delete "pertinent contract shall not be awarded or renewed" and insert "commissioner of the applicable department shall not take corrective action"
- Page 4, Section 2, Lines 21-22: Delete ", but may be maintained on a month-to-month basis"
- Page 4, Section 2, Lines 29-34: Delete in their entirety
- Page 4, Section 3, Line 37: Delete "subsection a. of"
- Page 4, Section 3, Line 38: Delete "containment and mitigation" and insert "health and safety"

<u>Page 4, Section 3, Line 39:</u>	After "that" insert "requires the covered provider to make a good faith effort to comply with minimum health and safety protocols issued by the applicable department to"
<u>Page 4, Section 3, Line 39:</u>	Delete "ensures" and insert "ensure"
<u>Page 4, Section 3, Line 39:</u>	Delete "contractors'" and insert "covered providers'"
<u>Page 4, Section 3, Line 40:</u>	After "employees," insert "and"
<u>Page 4, Section 3, Line 40:</u>	Delete ", and surrounding community. The" and insert "."
<u>Page 4, Section 3, Lines 41-44:</u>	Delete in their entirety
<u>Page 4, Section 3, Line 46:</u>	Delete "determine:" and insert "collect information as to whether there have been"
<u>Page 4, Section 3, Lines 47-48:</u>	Delete in their entirety
<u>Page 5, Section 3, Line 1:</u>	Delete "(2)"
<u>Page 5, Section 3, Line 1:</u>	After "to" insert "demonstrate a good faith effort to"
<u>Page 5, Section 3, Line 2:</u>	Delete "contractor's" and insert "covered provider's"
<u>Page 5, Section 3, Line 3:</u>	Delete "commissioners" and insert "commissioner of the applicable department"
<u>Page 5, Section 3, Line 5:</u>	Delete "contractor" and insert "covered provider"
<u>Page 5, Section 3, Line 5:</u>	Delete "If a dispute exists with respect to" and insert "The commissioner of the applicable department shall take into account such failures prior to awarding or renewing any contract and, at a minimum, require submission of a corrective plan to contain, limit, or mitigate the spread of COVID-19 cases. Should a provider fail to implement a plan or repeatedly fail to demonstrate good faith efforts to contain, limit, or mitigate the spread of COVID-19, the commissioner shall take action, including financial penalties or cancellation or non-renewal of the contract."
<u>Page 5, Section 3, Lines 6-8:</u>	Delete in their entirety

Page 5, Line 9:

Insert new section:

"4. As used in this act:

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

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

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

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

Page 5, Section 4, Line 10:

Delete "4." and insert "5."

Page 5, Section 4, Line 10:

Delete "the 91st day following enactment" and insert "July 1, 2021 and shall apply to all contracts entered into or renewed on or after the effective date."

Page 5, Section 4, Line 11:

Delete "and section" and insert
"Section"

[seal]

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor