

January 2021

Client Advisory

New Legislation Revises Requirements for Health Care Service Firms to Report Financial Information to Division of Consumer Affairs

On December 14, 2020, Governor Phil Murphy signed new legislation (S-848/A-2140) into law revising requirements for New Jersey health care service firms to report financial information to the Division of Consumer Affairs ("Division"). Health care service firms are agencies, registered with the Division that place or arrange for the placement of personnel to provide health care or personal care services in the residence of an individual. P.L. 2020 c.132 took effect immediately and, among other things, replaces the prior triennial audit requirement for some health care service firms and extends to December 31, 2022, the earliest deadline for those firms that will still be required to file them.

Under prior law, as reflected in the Division's regulations at § 13:45B-13.5A, all health care service firms were required to complete audits, which were to be submitted to the Director of the Division in the Department of Law and Public Safety every three years. The deadline for existing firms to file their first audit would have been May 21, 2021. Providers were understandably concerned with the law given its onerous requirements that audits be conducted by a certified public accountant licensed in New Jersey; include an examination of the health care service firm's financial records, financial statements, general management of its operations and internal control systems; include an audit report with an unqualified opinion; and be accompanied by any management letters prepared by the auditor in connection with the audit. Moreover, audits must contain both a compliance and a financial component.

This new legislation changes the prior schema in a number of substantial ways, which are summarized below:

- The legislation imposes a new administrative burden on all health care service firms, which will now be required to submit financial statements to the Director **annually**. In what may be an attempt to ease that burden, the legislation dictates that the submitted financial statements be consistent with the firm's tax filings with the State for the year covered by the financial statements.
- Fortunately, for smaller firms concerned about the cost associated with producing financial and compliance audits, the triennial audit requirement now only applies to larger health care service firms, i.e. those that receive **more than \$250,000 for the provision of New Jersey Medicaid Personal Care Assistance services**.
- On the other hand, 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.
- Moreover, in addition to annual financial statements, health care service firms with gross revenue for the year **between \$1 million and \$10 million**, and which receive **less than \$250,000** for the provision of New Jersey Medicaid Personal Care Assistance services will, in lieu of an audit, be required to submit an independent third-party report for that year to the Director to be developed based on a review of the health care service firm's financial statements and records, general management, and internal controls. In the event the Director makes an adverse finding based off of the report, the Director shall order corrective action and, upon achieving compliance, the health care service firm must obtain a separate review of the data for the year. The firm must also submit an audit for the calendar year following the year the adverse finding was made, regardless of the firm's gross income for that year.
- Finally, the law requires the Director to develop standards and procedures for independent third-party practitioners to review 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 (including verification of accreditation/licensing status, ownership structure, contracts and funding sources, review of litigation and/or regulatory

actions taken against the firm, among other metrics); and the thresholds and requirements for the division to make an adverse finding and take corrective action against a firm.

Ultimately, the legislation will give the State of New Jersey further oversight of the financial information of health care service firms operating in the state. The new legislation, however, does not address a number of critical questions, e.g. the period of time the audit has to cover; what to do if an entity's fiscal year does not run concurrent with the calendar year; and whether reimbursement for services not provided under an entity's health care service firm registration must be included in determining the annual income of a firm. Whether the Division will address these questions when rulemaking in accordance with the new law remains to be seen.

Archer's health care attorneys are available to assist health care service firms with these questions and any other inquiries regarding the legislation. Please contact [Robert Fogg](mailto:rfogg@archerlaw.com) at 609-580-3702 or rfogg@archerlaw.com, [Lisa Albright](mailto:lalbright@archerlaw.com) at 609-580-3710 or lalbright@archerlaw.com, [Lauren Peterson](mailto:lpeterson@archerlaw.com) at 215-246-3172 or lpeterson@archerlaw.com, or any member of Archer's Health Care Group.

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