



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

SB2035

Introduced 2/9/2023, by Sen. Javier L. Cervantes

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Ensuring Essential Services Act. Provides that the purpose of the Act is to ensure the State meets its obligation to provide certain essential services for individuals with developmental disabilities at consistent quality levels in accordance with its waiver agreement with the Centers for Medicare and Medicaid Services, all while allocating scarce taxpayer resources. Provides that any contract entered into between the Department of Human Services and an agency shall include a provision assuring the State of the uninterrupted delivery of the contracted-for services. Provides that such assurance shall provide that the agency has entered into a binding labor peace agreement with any labor organization that is the exclusive representative of the agency's frontline and direct support staff or, where no exclusive representation has been established, that the agency has or will enter into an agreement with any labor organization that seeks to become the agency's frontline and direct support staff's exclusive representative. Provides that the assurance shall become a condition of any contract entered into, renewed, or amended on or after the effective date of the Act. Requires the Department of Healthcare and Family Services to, no later than 90 days after the effective date of the Act, apply to the Centers for Medicare and Medicaid Services for a waiver or State Plan amendment to allow implementation of the contracting requirements. Requires the Department of Human Services, no later than 60 days after the effective date of the Act, to adopt rules implementing the requirements of the Act. Contains provisions on contract requirements for Department of Human Services' contracts; enforcement of contractual assurances; remedial actions for noncompliance; and other matters. Effective June 1, 2023.

LRB103 27491 KTG 53865 b

1 AN ACT concerning essential services for persons with  
2 developmental disabilities.

3 **Be it enacted by the People of the State of Illinois,**  
4 **represented in the General Assembly:**

5 Section 1. Short title. This Act may be cited as the  
6 Ensuring Essential Services Act.

7 Section 5. Findings and purposes.

8 (a) The General Assembly finds that the State of Illinois  
9 administers a program for the provision of home and  
10 community-based support services for individuals with  
11 developmental disabilities (IDD) in accordance with a waiver  
12 program agreement entered into between the State and the  
13 Centers for Medicare and Medicaid Services. Pursuant to a  
14 consent decree entered in *Ligas v. Hamos*, Case No.  
15 1:05-cv-04331 (N.D. Ill.), the State is required to implement  
16 sufficient measures to ensure the availability of IDD  
17 services, supports, and other resources of sufficient quality,  
18 scope, and variety to meet the State's obligations under the  
19 consent decree and the implementation plan consistent with  
20 such choices. The number of individuals served each year by  
21 the program is based on available State appropriation levels.

22 The General Assembly finds that the Department of Human  
23 Services is designated as the State agency having primary

1 responsibility for overseeing the delivery of habilitation  
2 services to individuals with developmental disabilities under  
3 the program, and in that capacity procures services for  
4 approximately 27,000 Illinoisans who, together with their  
5 families and guardians, depend on the daily and uninterrupted  
6 provision of these services so that they can attend to the  
7 necessities of life. An interruption in the delivery of  
8 services under the program would have disastrous consequences  
9 for participants, their families, and their communities.

10 The General Assembly finds that effects of the ongoing  
11 COVID-19 pandemic, which has claimed hundreds of thousands of  
12 American lives and disrupted the distribution of essential  
13 services to the most needy inhabitants of the State has  
14 affected the provision of services in unforeseen ways,  
15 exacerbating already existing labor shortage high turnover,  
16 and causing labor unrest and stoppages.

17 The General Assembly finds that there currently exists an  
18 acute shortage of frontline and direct support staff  
19 indicating that the agencies with which the State has  
20 contracted to provide IDD services under the program have  
21 inadequately ensured the training, retention, and recruitment  
22 of the workforce necessary to meet the State's obligations  
23 under the program, and such shortage and existing labor  
24 conditions escalate the probability of disruptions in the  
25 delivery of essential services owing to labor disputes and  
26 employee dissatisfaction.

1           The General Assembly finds that as a procurer of services  
2 comprising the program the State administers, either in the  
3 form of purchase of service contracts, grants, or otherwise,  
4 that the State has a proprietary interest in assuring the  
5 delivery of quality, reliable, and uninterrupted provision of  
6 services to individuals receiving benefits under the program.

7           The General Assembly finds that a strike, labor dispute,  
8 or other inability to deliver essential service under the  
9 program would be costly to the State as it struggles to fill  
10 the gap to provide these essential services, due to the  
11 excessive cost of locating alternative treatment options on an  
12 emergent basis, including, but not limited to, the need to pay  
13 substantial overtime to employees at public hospitals which  
14 would be forced to admit increasing numbers of patients as a  
15 matter of last resort. Such disruptions would have  
16 consequential and dire effects on program recipients, their  
17 families, and guardians.

18           The General Assembly finds that agreements between  
19 employers and labor organizations to refrain from resolving  
20 labor disputes through economic action promote the efficient  
21 and uninterrupted delivery of services. Such agreements are  
22 common and have been adopted within the behavioral health and  
23 disability support industries. A program of labor management  
24 cooperation has proven effective in addressing issues related  
25 to establishing appropriate wages and compensation, improving  
26 quality of care, increasing worker retention, reducing

1 workforce turnover, and mitigating the likelihood of service  
2 disruption.

3 (b) The purpose of this Act is to ensure the State meets  
4 its obligation to provide these essential services at  
5 consistent quality levels in accordance with its waiver  
6 agreement with the Centers for Medicare and Medicaid Services,  
7 all while allocating scarce taxpayer resources. The State, as  
8 procurer of home and community-based support services, has  
9 determined to take steps to ensure the uninterrupted delivery  
10 of services to individuals receiving IDD services under the  
11 program.

12 Section 10. Definitions. As used in this Act:

13 "Agency" means a private entity, including a non-profit  
14 corporation, other than a corporation established in  
15 accordance with the Religious Corporation Act, that has  
16 contracted with the Department of Human Services to provide  
17 direct care services under the Home and Community-Based  
18 Services Waiver Program for Persons with Developmental  
19 Disabilities.

20 "Comptroller" means the Comptroller of the State of  
21 Illinois and its agents or designees.

22 "Contract" means the written agreement entered into  
23 between an agency and the Department of Human Services (or any  
24 other State entity) establishing the terms and conditions for  
25 the provision of, and payment for services under the program,

1 and shall include, but is not limited to, fee-for-service,  
2 service purchase contracts, or grants.

3 "Frontline and direct support staff" means an employee of  
4 an agency who performs the direct care, support, educational,  
5 training and case management, and other services integral to  
6 the delivery of the services required of the agency under its  
7 contract with the Department of Human Services and funded by  
8 the program. This includes, but is not limited to, direct  
9 support personnel, qualified intellectual disability  
10 personnel, employment specialists, and early intervention  
11 specialists.

12 "Labor peace agreement" means a written agreement between  
13 an agency and a labor organization that contains, at a  
14 minimum, provisions under which the parties agree to refrain  
15 from actions intended to or having the effect of disrupting or  
16 interrupting services and also provides for an expedient  
17 mechanism for the binding resolution of disputes between them.

18 "Labor organization" means an organization defined under  
19 29 U.S.C. 152(5) that has as its members frontline and direct  
20 support staff.

21 "Program" means the Home and Community-Based Services  
22 Waiver Program for Adults with Developmental Disabilities that  
23 is funded through a waiver authorized under Section 1915(c) of  
24 the federal Social Security Act and that is administered by  
25 the Department of Human Services' Division of Developmental  
26 Disabilities. Services under the program include, but are not

1 limited to, community integrated living arrangements,  
2 community living facilities of 16 or fewer individuals,  
3 home-based support services, day programs, and therapies.  
4 "Program" also includes newly developed programs and settings  
5 that are funded through the Home and Community-Based Services  
6 Waiver Program for Persons with Developmental Disabilities.

7 "Secretary" means the Secretary of Human Services.

8 Section 15. Assurance of uninterrupted delivery of  
9 services.

10 (a) Any contract entered into between the Department of  
11 Human Services and an agency shall include a provision  
12 assuring the State of the uninterrupted delivery of the  
13 contracted-for services.

14 (b) The assurance required under subsection (a) shall  
15 provide that the agency has entered into a binding labor peace  
16 agreement with any labor organization that is the exclusive  
17 representative of the agency's frontline and direct support  
18 staff or, where no exclusive representation has been  
19 established, that the agency has or will enter into an  
20 agreement with any labor organization that seeks to become the  
21 agency's frontline and direct support staff's exclusive  
22 representative.

23 (c) The assurance required under subsection (a) shall  
24 become a condition of any contract entered into, renewed, or  
25 amended on or after the effective date of this Act.

1 Section 20. Implementation.

2 (a) To the extent necessary to effectuate the requirements  
3 of this Act, the Department of Healthcare and Family Services  
4 shall submit the necessary application to the federal Centers  
5 for Medicare and Medicaid Services for a waiver or State Plan  
6 amendment to allow implementation of the contracting  
7 requirements established in this Act. The application shall be  
8 submitted no later than 90 days after the effective date of  
9 this Act. The provisions of this Act shall apply during the  
10 pendency of any such application.

11 (b) No later than 60 days after the effective date of this  
12 Act, the Department of Human Services shall adopt rules  
13 implementing the requirements of this Act. Specifically, the  
14 Department of Human Services shall adopt contract addenda  
15 terms and attestations sufficient to satisfy the requirements  
16 of this Section and a means of informing agencies of the  
17 requirements of the Act and any other rules necessary to  
18 implement Section 25.

19 (c) The Department of Human Services shall include in each  
20 contract and in each solicitation for a contract:

21 (1) a requirement that the agency comply with all  
22 applicable requirements under this Act and any rules  
23 adopted in accordance with this Act, and that such  
24 requirements constitute a material term of the contract;  
25 and



1 (2) a provision providing that:

2 (A) failure to comply with the requirements of  
3 this Section may constitute a material breach by the  
4 agency of the terms of the contract;

5 (B) such failure shall be determined by the  
6 Comptroller; and

7 (C) if the agency receives written notice of a  
8 breach and fails to cure such breach, the State shall  
9 have the right to pursue any rights or remedies  
10 available under the terms of the contract or under  
11 applicable law, including termination of the contract  
12 attendant to transition of services to qualified  
13 agencies.

14 (d) The Department of Human Services shall amend 59 Ill.  
15 Adm. Code Part 120 to clarify that compliance with this Act  
16 shall be a requirement for both initial certification and  
17 recertification with respect to services provided by frontline  
18 and direct support staff under the program.

19 Section 25. Enforcement.

20 (a) The contractual assurance required under Section 15  
21 shall be a qualification to participate in the program and a  
22 continuing obligation of each agency during the term of its  
23 contract.

24 (b) Each agency shall report to the Department of Human  
25 Services, on a form to be adopted by the Department of Human

1 Services, its compliance with the contractual assurance  
2 required under this Act at each of the following times:

3 (1) if the assurance gives rise to an obligation on  
4 the part of an agency to enter into a labor peace agreement  
5 and such agency has not entered into such an agreement;

6 (2) if an agency's existing agreement meeting the  
7 requirements of a labor peace agreement lapses or expires;  
8 and

9 (3) on the anniversary date of the contract's  
10 effective date.

11 The report shall include a copy of any agreement that  
12 satisfies the assurance or shall state in writing or shall be  
13 signed under penalty of perjury that the agency is unaware of  
14 any circumstances giving rise to an obligation to enter into  
15 any labor peace agreement.

16 (c) If an agency fails to submit to the Department of Human  
17 Services the reports required under this Section, or if the  
18 Department of Human Services otherwise learns of a failure on  
19 the part of an agency to meet its contractual obligations, the  
20 Department of Human Services shall take the following remedial  
21 actions:

22 (1) Inform the agency and the Comptroller of its lack  
23 of compliance and provide a 30-day notice to correct the  
24 deficiency.

25 (2) Investigate and assist the agency by providing a  
26 plan of correction.

1           (3) If, after 30 days from the date of the Department  
2 of Human Services' notice, it is determined the agency is  
3 out of compliance, the Department of Human Services shall  
4 issue a notice of nonrenewal to the agency, which shall  
5 provide the basis for the disqualification, upon which the  
6 Department of Human Services shall ensure continuity of  
7 care, transition of services, and placement referrals to  
8 qualified agencies upon the expiration of the term of the  
9 contract. The Department of Human Services shall notify  
10 the Comptroller of the notice of nonrenewal within 14  
11 days.

12           (4) The Department of Human Services shall require  
13 that an agency that receives a notice of nonrenewal shall  
14 be ineligible for recertification or relicensure, provided  
15 the agency is afforded notice and an opportunity to appeal  
16 in accordance with the processes under Subpart C of Part  
17 104 of Title 89 of the Illinois Administrative Code, the  
18 sole issue at hearing, in which any interested party may  
19 participate, shall be whether the agency is in compliance  
20 with the requirements of this Act.

21           (5) After receiving a notice of nonrenewal for an  
22 Agency, the Comptroller shall cease distribution of all  
23 State funds to the Agency. The Comptroller shall continue  
24 to withhold payments unless and until the Agency  
25 successfully appeals the notice of nonrenewal as described  
26 in paragraph (4).

1           Section 30. Severability. If any provision of this Act or  
2           its application to any person or circumstance is held invalid,  
3           the invalidity of that provision or application does not  
4           affect other provisions or applications of this Act that can  
5           be given effect without the invalid provision or application.

6           Section 35. Construction of Act. Nothing in this Act shall  
7           be construed to require any agency to enter into an agreement  
8           that contains terms or under circumstances that violate the  
9           National Labor Relations Act, 29 U.S.C. 151 et seq., as  
10          amended.

11          Section 99. Effective date. This Act takes effect June 1,  
12          2023.