



House of Representatives

General Assembly

File No. 403

February Session, 2022

Substitute House Bill No. 5225

House of Representatives, April 11, 2022

The Committee on Human Services reported through REP. ABERCROMBIE of the 83rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT PROHIBITING CLAWBACK OF CERTAIN FUNDS RETAINED BY NONPROFIT PROVIDERS OF HUMAN SERVICES UNDER CONTRACT WITH STATE AGENCIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2022*) (a) As used in this section, (1)
2 "private provider organization" has the same meaning as provided in
3 section 4-70b of the general statutes, (2) "human services" means services
4 provided under contract with a state agency that directly support the
5 health, safety and welfare of residents who may have conditions that
6 include, but are not limited to, intellectual, physical or mental
7 disabilities or autism spectrum disorder, (3) "state agency" has the same
8 meaning as provided in section 1-79 of the general statutes, and (4)
9 "attempt to recover or otherwise offset" means (A) efforts to recoup
10 excess funds at the end of each contract term or fiscal year, (B)
11 reductions in contracted amounts for the same or similar services from
12 one contract period to the next contract period, or (C) demands for other
13 reimbursement of state funds from such organization.

14 (b) Subject to the provisions of subsection (c) of this section and
15 within available appropriations, each state agency that contracts with a
16 nonprofit private provider organization to provide human services shall
17 establish an incentive program that allows such nonprofit organization
18 that otherwise meets contractual requirements to retain any excess
19 funds from the contracted cost for services at the end of a contract term.
20 No state agency shall attempt to recover or otherwise offset funds
21 retained by such nonprofit organization from the contracted cost for
22 services, provided such nonprofit organization (1) meets its contractual
23 obligations with such state agency, and (2) reports to the contracting
24 state agency in a time and manner such agency prescribes on how excess
25 funds retained from the contracted cost for services were reinvested to
26 strengthen quality of human services, invest in deferred maintenance
27 and make asset improvements.

28 (c) Notwithstanding the provisions of subsection (b) of this section, a
29 state agency shall not allow a nonprofit private provider organization
30 that contracts with the state to provide human services to retain excess
31 funds from the contracted cost for services under a contract funded in
32 whole, or in part, with federal funds when allowing such organization
33 to retain such funds will jeopardize federal funding or reimbursement
34 for such contract.

35 Sec. 2. (NEW) (*Effective July 1, 2022*) The Commissioner of
36 Developmental Services, in consultation with the Secretary of the Office
37 of Policy and Management, may extend the provisions of section 1 of
38 this act to other providers with which the Department of Developmental
39 Services contracts, provided they (1) meet their contractual obligations
40 with the commissioner, and (2) submit reports to the commissioner in a
41 time and manner the commissioner prescribes on how excess funds they
42 retained from the contracted cost for services were reinvested to
43 strengthen quality of human services, invest in deferred maintenance
44 and make asset improvements.

45 Sec. 3. Section 4-216 of the 2022 supplement to the general statutes is
46 repealed and the following is substituted in lieu thereof (*Effective July 1,*

47 2022):

48 (a) No state agency may execute a personal service agreement having
49 a cost of more than fifty thousand dollars or a term of more than one
50 year, without the approval of the secretary. A state agency may apply
51 for an approval by submitting the following information to the
52 secretary: (1) A description of the services to be purchased and the need
53 for such services; (2) an estimate of the cost of the services and the term
54 of the agreement; (3) whether the services are to be on-going; (4)
55 whether the state agency has contracted out for such services during the
56 preceding two years and, if so, the name of the contractor, term of the
57 agreement with such contractor and the amount paid to the contractor;
58 (5) whether any other state agency has the resources to provide the
59 services; (6) whether the agency intends to purchase the services by
60 competitive negotiation and, if not, why; and (7) whether it is possible
61 to purchase the services on a cooperative basis with other state agencies.
62 The secretary shall approve or disapprove an application within fifteen
63 business days after receiving it and any necessary supporting
64 information, provided if the secretary does not act within such
65 fifteen-day period the application shall be deemed to have been
66 approved. The secretary shall immediately notify the Auditors of Public
67 Accounts of any application which the secretary receives for approval
68 of a personal services agreement for audit services and give said
69 auditors an opportunity to review the application during such fifteen-
70 day period and advise the secretary as to whether such audit services
71 are necessary and, if so, could be provided by said auditors.

72 (b) Each personal service agreement having a cost of more than fifty
73 thousand dollars or a term of more than one year shall be based on
74 competitive negotiation or competitive quotations, unless the state
75 agency purchasing the personal services applies to the secretary for a
76 waiver from such requirement and the secretary grants the waiver in
77 accordance with the guidelines adopted under section 4-215.

78 [(c) The secretary shall establish an incentive program for nonprofit
79 providers of human services that shall (1) allow providers who

80 otherwise meet contractual requirements to retain any savings realized
 81 by the providers from the contracted cost for services, and (2) provide
 82 that future contracted amounts from the state for the same types of
 83 services are not reduced solely to reflect savings achieved in previous
 84 contracts by such providers. For purposes of this subsection, "nonprofit
 85 providers of human services" includes, but is not limited to, nonprofit
 86 providers of services to persons with intellectual, physical or mental
 87 disabilities or autism spectrum disorder. Any nonprofit provider of
 88 human services allowed to retain savings under the incentive program
 89 shall submit a report to the secretary on how excess funds were
 90 reinvested to strengthen quality, invest in deferred maintenance and
 91 make asset improvements.]

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2022	New section
Sec. 2	July 1, 2022	New section
Sec. 3	July 1, 2022	4-216

Statement of Legislative Commissioners:

In Section 1(b), "that provides" was changed to "to provide" and "contracted cost" was changed to "contracted cost for services" for clarity and consistency; in Section 1(c), "provider organization" was changed to "provider organization that contracts with the state to provide human services" and "of services" was changed to "for services" for consistency; and in Section 2, the designator "(a)" was deleted and "cost of services" was changed to "cost for services" for consistency.

HS *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: See Below

Municipal Impact: None

Explanation

The bill eliminates an existing incentive program established by the Office of Policy and Management (OPM) for state-contracted nonprofit providers of human services and replaces it with a similar incentive program for each state agency with such contracts.

The bill could preclude future savings to the state to the extent additional state agencies participate in the program, which enables providers to retain excess funds from the contracted cost for services.

The Department of Developmental Services (DDS) accounts for nearly 40% of all private provider contract payments¹ and has historically cost settled with its contracted providers after the close of the fiscal year. This has either resulted in the agency retaining the savings or sharing it with providers depending on the cost settlement policy at the time. Currently, and unchanged by the bill, DDS is participating in the OPM program and any savings is required to go to the provider.

State agencies that contract on a fee for service basis and do not cost

¹ Office of Policy and Management Report to the General Assembly – Purchase of Service Contracts FY 21. Nine executive branch agencies have such contracted services: DCF, DOC, DDS, DMHAS, DPH, DSS, ADS DOH and OEC and are included in the report.

settle, are not anticipated to be impacted by the program.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 5225*****AN ACT PROHIBITING CLAWBACK OF CERTAIN FUNDS RETAINED BY NONPROFIT PROVIDERS OF HUMAN SERVICES UNDER CONTRACT WITH STATE AGENCIES.*****SUMMARY**

This bill requires state agencies that contract with a private provider organization to provide human services to, within available appropriations, establish an incentive program that allows the providers to retain any excess funds from the contracted services cost at the end of the contract term, if they otherwise meet the contract requirements. The bill also eliminates a similar incentive program for nonprofit human services providers administered by the Office of Police Management (OPM) under current law. By law, “human services” are services directly supporting the health, welfare, and safety of residents who may have conditions including intellectual, physical or mental disabilities, or autism spectrum disorder.

The bill prohibits a state agency from attempting to recover or otherwise offset these retained funds, as long as the provider meets its contract obligations with the agency and reports to the agency on how the excess funds were reinvested to (1) strengthen the quality of human services, (2) invest in deferred maintenance, and (3) make asset improvements. The provider must report at a time and in the way the agency prescribes.

Under current law’s program, providers meeting their contractual requirements may retain any savings realized from the contracted services cost and must report to the OPM secretary on how the funds were reinvested to strengthen quality, invest in deferred maintenance, and make asset improvements. In addition, future state contracts for the same types of services cannot be reduced solely to reflect these previous

savings.

Under the bill, a state agency must not allow a provider to retain excess funds under a contract funded in whole, or in part, with federal funds, if doing so will jeopardize federal funding or reimbursement for the contract.

The bill’s requirements apply to any office; department; board; council; commission; institution; higher education constituent unit; technical education and career school; or other agency in the executive, legislative, or judicial branch of state government.

It defines “private provider organization” as a nonstate entity that is either a nonprofit or proprietary corporation or partnership that receives funds from the state, and may receive federal or other funds, to provide direct health or human services to agency clients.

It also authorizes the Department of Developmental Services (DDS) commissioner, in consultation with the OPM secretary, to extend the incentive program to other DDS-contracted providers, if they meet the program criteria.

EFFECTIVE DATE: July 1, 2022

COMMITTEE ACTION

Human Services Committee

Joint Favorable Substitute

Yea 20 Nay 0 (03/24/2022)