

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY, No. 1109

**STATE OF NEW JERSEY**

Sponsored by Assemblywoman VAINIERI HUTTLE and Assemblyman SCHAER

AN ACT concerning individuals with developmental disabilities, designated as Stephen Komninos' Law, supplementing Title 30 of the Revised Statutes, and amending P.L.2010, c.5.

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

1. (New section) The Commissioner of Human Services, or the commissioner's designee, shall designate employees of the Department of Human Services, who are not employees of a State developmental center but may be case managers employed by the department or an agency under contract with the department, as applicable, to conduct at least three unannounced site visits annually to randomly check whether the individuals with developmental disabilities who are receiving services from a program, facility, or living arrangement licensed or funded by the department, other than a community care residence which is subject to visits pursuant to section 7 of P.L.2012, c.69 (C.30:6D-5.13), are at risk of, or are being subjected to, abuse, neglect, or exploitation by a caregiver, and report the same pursuant to section 3 of P.L.2010, c.5 (C.30:6D-75).

2. (New section) a. The Commissioner of Human Services, or the commissioner's designee, shall designate staff to notify the guardian or authorized family member of an individual with a developmental disability receiving services from a program, facility, community care residence, or living arrangement licensed or funded by the department of any physical injury to the individual with a developmental disability, as soon as possible, but no later than 24 hours after the occurrence of the injury.

b. A provider or licensee, as applicable, of a program, facility, community care residence, or living arrangement licensed or funded

**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.**

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by the department shall notify the guardian or authorized family member of an individual with a developmental disability receiving services from the provider or licensee of any physical injury to the individual with a developmental disability as soon as possible, but not more than two hours after the occurrence of the injury, unless there is an extraordinary circumstance which prevents such notification in which case the provider or licensee shall notify the guardian or authorized family member as soon as possible, but not more than eight hours after the occurrence of the injury.

c. Notifications pursuant to this section shall be in person, or by telephone, and other electronic means shall be used to follow up the telephoned notification.

d. As used in this section "authorized family member" means a relative of the individual with a developmental disability authorized by the individual's guardian, or by the individual if the individual is his own guardian, to receive information pursuant to this section.

3. (New section) Within 48 hours of receipt of a report of an incident involving physical injury, or abuse or neglect as those terms are defined in section 2 of P.L.2010, c.5 (C.30:6D-74), in a program, facility, community care residence, or living arrangement licensed or funded by the Department of Human Service for an individual with a developmental disability, the Commissioner of Human Services shall send an employee of the department, who is not an employee of a State developmental center but may be a case manager employed by the department or an agency under contract with the department, as applicable, to the location of the reported incident to verify the level of severity of the incident.

4. Section 2 of P.L.2010, c.5 (C.30:6D-74) is amended to read as follows:

2. As used in this act:

"Abuse" means wrongfully inflicting or allowing to be inflicted physical abuse, sexual abuse, or verbal or psychological abuse or mistreatment by a caregiver upon an individual with a developmental disability.

"Authorized family member" means a relative of the individual with a developmental disability authorized by the individual's guardian, or by the individual if the individual is his own guardian, to receive information pursuant to P.L.2010, c.5 (C.30:6D-73 et seq.).

"Caregiver" means a person who receives State funding, directly or indirectly, in whole or in part, to provide services or supports, or both, to an individual with a developmental disability; except that "caregiver" shall not include an immediate family member of a person with a developmental disability.

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"Central registry" means the Central Registry of Offenders Against Individuals with Developmental Disabilities established pursuant to **[this act]** P.L.2010, c.5 (C.30:6D-73 et seq.).

"Commissioner" means the Commissioner of Human Services.

"Department" means the Department of Human Services.

"Developmental disability" means developmental disability as defined in section 3 of P.L.1977, c.82 (C.30:6D-3).

"Exploitation" means the act or process of a caregiver using an individual with a developmental disability or his resources for another person's profit or advantage.

"Intimate parts" means the following body parts of a person: sexual organs, genital area, anal area, inner thigh, groin, buttock, or breast.

"Lewdness" means the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of a caregiver or an individual with a developmental disability, or any flagrantly lewd and offensive act which the caregiver knows or reasonably expects is likely to be observed by an individual with a developmental disability.

"Neglect" shall consist of any of the following acts by a caregiver on an individual with a developmental disability: willfully failing to provide proper and sufficient food, clothing, maintenance, medical care, or a clean and proper home; or failure to do or permit to be done any act necessary for the well-being of an individual with a developmental disability.

"Physical abuse" means a physical act directed at an individual with a developmental disability by a caregiver of a type that causes one or more of the following: pain, injury, anguish, or suffering. Such acts include, but are not limited to, the individual with a developmental disability being kicked, pinched, bitten, punched, slapped, hit, pushed, dragged, or struck with a thrown or held object.

"Sexual abuse" means an act or attempted act of lewdness, sexual contact, or sexual penetration between a caregiver and an individual with a developmental disability. Any form of sexual contact or activity between a caregiver and an individual with a developmental disability, absent marriage, domestic partnership, or civil union, is sexual abuse, regardless of whether the individual with a developmental disability gives consent or the caregiver is on or off duty.

"Sexual contact" means an intentional touching by a caregiver or individual with a developmental disability, either directly or through clothing, of the intimate parts of the individual with a developmental disability or the caregiver for the purpose of sexually arousing or sexually gratifying the caregiver. Sexual contact of the caregiver with himself must be in view of the

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individual with a developmental disability whom the caregiver knows to be present.

"Sexual penetration" means vaginal intercourse, cunnilingus, fellatio, or anal intercourse between a caregiver and an individual with a developmental disability or insertion of the hand, finger, or object into the anus or vagina, either by the caregiver or upon the caregiver's instruction.

"Verbal or psychological abuse or mistreatment" means any verbal or non-verbal act or omission by a caregiver that inflicts one or more of the following: emotional harm; mental distress; or invocation of fear, humiliation, intimidation, or degradation to an individual with a developmental disability. Examples include, but are not limited to: bullying; ignoring need; verbal assault; use of racial or ethnic slurs; or intimidating gestures, such as shaking a fist at an individual with a developmental disability.

(cf: P.L.2010, c.5, s.2)

5. Section 3 of P.L.2010, c.5 (C.30:6D-75) is amended to read as follows:

3. a. (1) A case manager or case manager's supervisor in the department, a person employed or volunteering in a program, facility, community care residence, or living arrangement licensed or funded by the department, a person conducting an unannounced site visit pursuant to section 1 of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the Legislature as this bill), or a person providing community-based services with indirect State funding to a person with a developmental disability, as applicable, having reasonable cause to believe that an individual with a developmental disability has been subjected to abuse, neglect, or exploitation by a caregiver shall report the same immediately to the department by telephone or otherwise, and if appropriate the department shall notify, as soon as possible but no later than 24 hours after the occurrence of the abuse, neglect, or exploitation, the guardian or authorized family member of the individual with a developmental disability who was the subject of the abuse, neglect, or exploitation.

(2) Such report, where possible, shall contain the name and address of the individual with a developmental disability and the caregiver responsible for the care, custody, or control of the individual with a developmental disability, and the guardian, or other person having custody and control of the individual and, if known, the condition of the individual with a developmental disability, the nature and possible extent of the individual's injuries, maltreatment, abuse, neglect or exploitation, including any evidence of previous injuries, maltreatment, abuse, neglect, or exploitation, and any other information that the person believes may be helpful with respect to the injuries, maltreatment, abuse, neglect, or

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exploitation of the individual with a developmental disability and the identity of the alleged offender.

b. Within the department, the commissioner shall:

(1) maintain a unit to receive and prioritize such reports **[,]**;

(2) provide for verification of the unit's prioritization of the reports by sending an employee or case manager to the appropriate location within 48 hours to verify the level of severity of the report, pursuant to section 3 of P.L. , c. (C. )(pending before the Legislature as this bill);

(3) initiate appropriate responses through timely and appropriate investigative activities **[,]**;

(4) alert appropriate staff **[,]**; and

(5) ensure that findings are reported in a uniform and timely manner.

c. (1) A person employed or volunteering in a program, facility, community care residence, or living arrangement licensed or funded by the department, or a person providing community-based services with indirect State funding to a person with a developmental disability, as applicable, who fails to report an act of abuse, neglect, or exploitation against an individual with a developmental disability while having reasonable cause to believe that such an act has been committed, is a disorderly person.

(2) A case manager or case manager's supervisor in the department who fails to report an act of abuse, neglect, or exploitation of an individual with a developmental disability while having reasonable cause to believe that such an act has been committed, shall be guilty of a **[disorderly person's offense]** crime of the fourth degree, unless the abuse, neglect, or exploitation results in the death of an individual with a developmental disability, in which case the case manager or case manager's supervisor shall be guilty of a crime of the **[fourth]** third degree.

d. In addition to any penalty imposed pursuant to this section, a person convicted under this section shall be subject to a penalty in the amount of \$350 for each day that the abuse, neglect, or exploitation was not reported, payable to the Treasurer of the State of New Jersey, which shall be used by the department to fund the provision of food and care to individuals with developmental disabilities residing in community care residences.

e. A case manager or case manager's supervisor who is charged with failure to report an act of abuse, neglect, or exploitation of an individual with a developmental disability while having reasonable cause to believe that such an act has been committed, shall be temporarily reassigned to duties that do not involve contact with individuals with developmental disabilities or other vulnerable populations and shall be terminated from employment if convicted.

In the case of a case manager or case manager's supervisor who is employed by the department, the case manager or supervisor shall

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retain any available right of review by the Civil Service Commission.

(cf: P.L.2012, c.69, s.9)

6. Section 4 of P.L.2010, c.5 (C.30:6D-76) is amended to read as follows:

4. a. Upon receipt of a report pursuant to section 3 of **[this act]** P.L.2010, c.5 (C.30:6D-75), the department shall designate an entity, as established by the commissioner, that shall immediately take such action as shall be necessary to ensure the safety of the individual with a developmental disability and to that end may request appropriate assistance from local and State law enforcement officials or contact Adult Protective Services to provide assistance in accordance with the provisions of P.L.1993, c.249 (C.52:27D-406 et seq.). The guardian of the individual with a developmental disability also shall be authorized to request appropriate assistance from local and State law enforcement officials.

b. The commissioner shall adopt rules and regulations necessary to provide for an investigation of a reported incident and subsequent substantiation or non-substantiation of an allegation of abuse, neglect, or exploitation of an individual with a developmental disability by a caregiver, **[by]** which shall include: (1) maintaining a Special Response Unit to investigate serious unusual incidents, as defined by applicable rules and regulations, in facilities or community programs licensed, contracted, or regulated by the department and a unit to investigate incidents that occur in State developmental centers; and (2) providing an opportunity for a guardian or authorized family member to submit information to facilitate an investigation and to represent the individual and be informed of the progress of the investigation. During its investigation of an allegation of abuse, neglect, or exploitation of an individual with a developmental disability by a caregiver, the Special Response Unit or the unit designated to investigate incidents that occur in a State developmental center, as applicable, shall make a good faith effort to notify the caregiver of the possibility of the caregiver's inclusion on the registry, and give the caregiver an opportunity to respond to the department concerning the allegation. A guardian of an individual with a developmental disability, upon request, may be permitted to attend or observe the investigation, unless the attendance or observation would impede the investigation.

c. The Special Response Unit, the department, or other investigating entity shall forward to the commissioner, or the commissioner's designee, a substantiated incident of abuse, neglect, or exploitation of an individual with a developmental disability for inclusion of an offending caregiver on the central registry. The Special Response Unit, the department, or other investigating entity

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shall also forward to the commissioner, or the commissioner's designee, all unsubstantiated incidents of abuse, neglect, or exploitation of an individual with a developmental disability. As soon as possible, and no later than 14 days after receipt of the incident of abuse, neglect, or exploitation, the commissioner or the commissioner's designee shall review the incident. The offending caregiver of a substantiated incident shall be included on the central registry as expeditiously as possible. The Special Response Unit shall retain a record of all unsubstantiated incidents.

d. Upon the initiation of an investigation, the department shall: (1) ensure that any communication concerning the alleged abuse, neglect, or exploitation of an individual with a developmental disability between a caregiver, case manager of the caregiver, the case manager's supervisor, or a person at the appropriate Regional Office of the Division of Developmental Disabilities is identified, safeguarded from loss or destruction, and maintained in a secure location; and (2) contact the Office of the Attorney General, which shall determine whether to participate in the investigation.

e. The Special Response Unit shall issue a written report of the investigation that includes the conclusions of the unit, the rationale for the conclusion, and a detailed summary of any communication secured pursuant to subsection d. of this section. The report shall also include an assessment of the role of any case manager of a caregiver or the case manager's supervisor, if applicable, in the allegation of abuse, neglect, or exploitation, and a recommendation about whether any civil or criminal action should be brought against the case manager or supervisor. The report shall be made part of the record for review in any civil or criminal proceeding that may ensue.

A written summary of the conclusions of the investigation shall be provided to the guardian or authorized family member of the individual with a developmental disability who is the subject of the alleged abuse, neglect, or exploitation.

f. A licensed provider in another state shall be permitted access to the central registry.

(cf: P.L.2012, c.69, s.10)

7. Section 5 of P.L.2010, c.5 (C.30:6D-77) is amended to read as follows:

5. a. There is established a Central Registry of Offenders Against Individuals with Developmental Disabilities in the department.

b. The commissioner shall adopt rules and regulations that define the procedures and standards for inclusion of an offending caregiver on the central registry, and for notification of such inclusion to the caregiver and to the guardian or authorized family member of the individual with a developmental disability who was

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the subject of the abuse, neglect, or exploitation that led to the caregiver's inclusion on the central registry. The commissioner or the commissioner's designee shall designate staff to notify the guardian or authorized family member of the individual of any action taken by the department to remediate a condition that may have contributed to the occurrence of the abuse, neglect, or exploitation of the individual.

(1) For inclusion on the central registry in the case of a substantiated incident of abuse, the caregiver shall have acted with intent, recklessness, or careless disregard to cause or potentially cause injury to an individual with a developmental disability.

(2) For inclusion on the central registry in the case of a substantiated incident of neglect, the caregiver shall have acted with gross negligence, recklessness, or in a pattern of behavior that causes or potentially causes harm to an individual with a developmental disability.

(3) In the case of a substantiated incident of exploitation, the commissioner shall establish a dollar amount for inclusion on the central registry.

c. The commissioner also shall adopt rules and regulations:

(1) necessary to provide for an appeals process, through the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), of the commissioner's determination to include an alleged offending caregiver's name on the central registry. The commissioner's determination shall be a final agency decision subject to review by the Appellate Division of the Superior Court;

(2) concerning the dissemination of information in the central registry;

(3) that will prohibit persons included on the central registry from employment in facilities or programs of the Division of Developmental Disabilities in the department and those facilities or programs licensed, contracted, or regulated by the department, or from providing community-based services with indirect State funding to persons with developmental disabilities; and

(4) necessary to provide for the removal of a person's name from the central registry. A person may apply for removal of his name to the commissioner after a period of five years of being placed on the central registry. The person shall affirmatively demonstrate to the commissioner clear and convincing evidence of rehabilitation, using the provisions of P.L.1968, c.282 (C.2A:168A-1 et seq.) as a guide.

d. The commissioner may adopt rules and regulations that will allow bona fide employers serving vulnerable populations to inquire of the department if potential or current employees are included on the central registry, consistent with federal and State privacy and confidentiality laws.

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e. No information received in the central registry shall be considered as a public or government record within the meaning of P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et al.).

(cf: P.L.2010, c.5, s.5)

8. Section 6 of P.L.2010, c.5 (C.30:6D-78) is amended to read as follows:

6. All records of a report made pursuant to **【this act】** section 3 of P.L.2010, c.5 (C.30:6D-75), all information obtained by the department in investigating such reports, and all reports of findings forwarded to the central registry pursuant to **【this act】** P.L.2010, c.5 (C.30:6D-73 et seq.) shall be kept confidential and may be disclosed only insofar as information is shared with a guardian in connection with a guardian's attendance or observation of an investigative interview pursuant to subsection b. of section 4 of P.L.2010, c.5 (C.30:6D-76) or under circumstances expressly authorized by rules and regulations promulgated by the commissioner.

The department shall only disclose information that is relevant to the purpose for which the information is required or is shared in connection with a guardian's attendance or observation of an investigative interview pursuant to subsection b. of section 4 of P.L.2010, c.5 (C.30:6D-76); except that the department shall not disclose information which would likely endanger the life, safety, or physical or emotional well-being of an individual with a developmental disability or the life or safety of any other person, or which may compromise the integrity of a department investigation, civil or criminal investigation, or judicial proceeding. If the department denies access to specific information on this basis, the requesting entity may seek disclosure through the Superior Court. Nothing in **【this act】** P.L.2010, c.5 (C.30:6D-73 et seq.) shall be construed to permit the disclosure of any information deemed confidential by federal or State law.

(cf: P.L.2010, c.5, s.6)

9. The Commissioner of Human Services, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations necessary to effectuate the purposes of this act.

10. This act shall take effect on the first day of the seventh month next following the date of enactment, but the Commissioner of Human Services may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

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Provides protections for individuals with developmental disabilities through accountability and transparency; designated as "Stephen Komninos' Law."

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