

CHAPTER 5

AN ACT concerning persons with developmental disabilities and supplementing chapter 6D of Title 30 of the Revised Statutes.

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

C.30:6D-73 Findings, declarations relative to persons with developmental disabilities.

1. The Legislature finds and declares that:

a. It is in the public interest for the State to provide for the protection of individuals with developmental disabilities by identifying those caregivers who have wrongfully caused them injury;

b. The safety of individuals with developmental disabilities receiving care from State-operated facilities or programs, from those facilities or programs licensed, contracted, or regulated by the Department of Human Services, or from State-funded community-based services shall be of paramount concern;

c. It is the intent of this legislation to assure that the lives of innocent individuals with developmental disabilities are immediately safeguarded from further injury and possible death and that the legal rights of such persons are fully protected; and

d. Therefore, this act establishes a Central Registry of Offenders Against Individuals with Developmental Disabilities in the Department of Human Services to prevent caregivers who become offenders against individuals with developmental disabilities from working with individuals with developmental disabilities.

C.30:6D-74 Definitions relative to persons with developmental disabilities.

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.

"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.

"Central registry" means the Central Registry of Offenders Against Individuals with Developmental Disabilities established pursuant to this act.

"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 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.

C.30:6D-75 Report of abuse required.

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

b. Within the department, the commissioner shall maintain a unit to receive and prioritize such reports, initiate appropriate responses through timely and appropriate investigative activities, alert appropriate staff, and ensure that findings are reported in a uniform and timely manner.

c. 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.

C.30:6D-76 Actions by department after receiving report.

4. a. Upon receipt of a report pursuant to section 3 of this act, 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.).

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 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. 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 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.

c. The Special Response Unit, the department, or other investigating entity shall forward to the commissioner, or his 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.

C.30:6D-77 Central Registry of Offenders Against Individuals with Developmental Disabilities.

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.

(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.

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.).

C.30:6D-78 Records of report deemed confidential; exceptions.

6. All records of a report made pursuant to this act, all information obtained by the department in investigating such reports, and all reports of findings forwarded to the central registry pursuant to this act shall be kept confidential and may be disclosed only 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; 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 shall be construed to permit the disclosure of any information deemed confidential by federal or State law.

C.30:6D-79 Emergency telephone service.

7. The department shall maintain, at all times, an emergency telephone service for the receipt of calls involving a report, complaint, or allegation of abuse, neglect, or exploitation against an individual with a developmental disability.

C.30:6D-80 Immunity from liability, discrimination.

8. A person acting pursuant to this act in the making of a report under this act shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed. Such a person shall have the same immunity with respect to testimony given in any judicial proceeding resulting from the report. A person who reports or causes to report in good faith an allegation of abuse, neglect, or exploitation pursuant to this act and as a result thereof is discharged from employment or in any manner discriminated against with respect to

compensation, hire, tenure, or terms, conditions or privileges of employment, may file a cause of action for appropriate relief in the Superior Court in the county in which the discharge or alleged discrimination occurred or in the county of the person's primary residence. If the court finds that the person was discharged or discriminated against as a result of the person's reporting an allegation of abuse, neglect, or exploitation pursuant to this act, the court may grant reinstatement of employment with back pay or other legal or equitable relief.

C.30:6D-81 Report to Governor, Legislature.

9. The Commissioner of Human Services shall study and assess the Central Registry of Offenders Against Individuals with Developmental Disabilities, and report two years after the effective date of this act to the Governor, and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), on the viability of extending the central registry to cover other populations served by the department.

C.30:6D-82 Rules, regulations, reporting procedures.

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

11. This act shall take effect on the 180th day after 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.

Approved April 30, 2010.