

CHAPTER 213

AN ACT concerning individuals with developmental disabilities, amending P.L.2010, c.5, and supplementing Chapter 6 of Title 9 of the Revised Statutes.

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

1. Section 1 of P.L.2010, c.5 (C.30:6D-73) is amended to read as follows:

C.30:6D-73 Findings, declarations relative to individuals 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 Children and Families, 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 individuals 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.

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

C.30:6D-74 Definitions relative to individuals 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 an individual with a developmental disability.

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

"Children's System of Care" means the Division of Children's System of Care in the Department of Children and Families.

"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.

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

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

4. a. Upon receipt of a report pursuant to section 3 of 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 18 years of age or older 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 18 years of age or older with a developmental disability by a caregiver, by maintaining an Office of Investigation 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 18 years of age or older with a developmental disability by a caregiver, the Office of Investigation 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 Office of Investigation, 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 18 years of age or older with a developmental disability for inclusion of an offending caregiver on the central registry. The Office of Investigation, the department, or other investigating entity shall also forward to the commissioner, or the commissioner's designee, all unsubstantiated incidents of abuse, neglect, or exploitation of an individual 18 years of age or older 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 Office of Investigation 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 18 years of age or older with a developmental disability between a caregiver, case manager of the caregiver, the case manager's supervisor, including a care manager or supervisor under contract with the Children's System of Care, or a person at the appropriate Community Services Office of the Division of Developmental Disabilities or the Children's System of Care 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 Office of Investigation shall issue a written report of the investigation that includes the conclusions of the office, 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 18 years of age or older 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.

g. The department, Office of Investigation, or other investigative entity shall forward to the Commissioner of Children and Families, or to the commissioner's designee, copies of the investigative reports involving any individual over the age of 18 with a developmental disability who is the subject of an investigation and is receiving services from the Children's System of Care. The reports may be used by the Department of Children and Families, as appropriate, to initiate or support contracting, licensing, or other corrective actions.

h. The department, the Office of Investigation, the Institutional Abuse Investigation Unit, and any other investigative entity may share, with and among each other, investigative records involving an individual with a developmental disability who is the subject of an investigation of an incident of abuse, neglect, or exploitation pursuant to section 3 of P.L.2010, c.5 (C.30:6D-75) or an investigation of child abuse or neglect pursuant to section 4 of P.L.1971, c.437 (C.9:6-8.11).

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

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 individuals 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.).

f. The Commissioner of Children and Families shall adopt rules and regulations, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to prohibit a person who is included on the central registry from being employed at the Department of Children and Families, or in any facility or program that is licensed, contracted, regulated, or funded by the Department of Children and Families.

C.9:6-8.10f Check of abuse registry relative to individuals seeking employment.

5. a. The Department of Children and Families shall conduct a check of its child abuse registry for each person who is seeking employment at the Department of Children and Families, or in any facility or program that is licensed, contracted, regulated, or funded by the Department of Children and Families, or who is seeking employment in any facility or program that is licensed, contracted, or regulated by the Department of Human Services to provide community-based services to individuals with developmental disabilities, in order to determine if the person is included on the child abuse registry as a substantiated perpetrator of child abuse or neglect.

b. The Commissioner of Children and Families shall adopt rules and regulations, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to prohibit a person who is included on the child abuse registry from being employed at the Department of Children and Families, or in any facility or program that is licensed, contracted, regulated, or funded by the Department of Children and Families.

c. The Commissioner of Human Services shall adopt rules and regulations, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to prohibit a person who is included on the child abuse registry from: (1) being employed in any facility or program that is licensed, contracted, regulated, or funded by the Department of Human Services to serve individuals with developmental disabilities; and (2) providing community-based services with indirect State funding to individuals with developmental disabilities.

6. This act shall take effect on the first day of the sixth month following the date of enactment.

Approved August 7, 2017.