

[SECOND CORRECTED COPY]

CHAPTER 238

AN ACT concerning individuals with developmental disabilities, designated as Stephen Komminos' Law, supplementing Title 30 of the Revised Statutes, and amending various parts of the statutory law.

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

C.30:6D-9.1 Definitions relative to community-based residential programs.

1. As used in sections 1 through 6 of P.L.2017, c.238 (C.30:6D-9.1 et seq.):

“Abuse” means the same as that term is defined by section 2 of P.L.2010, c.5 (C.30:6D-74).

“Commissioner” means the Commissioner of Human Services.

“Community-based residential program” or “residential program” means a group home or supervised apartment, which is licensed and regulated by the department.

“Day program” means a program that is certified to provide day habilitation services or sheltered workshops for individuals with developmental disabilities.

“Department” means the Department of Human Services.

“Department employee” means a direct employee of the Department of Human Services, or an employee of a department-funded case management agency.

“Developmental disability” means the same as that term is defined by section 3 of P.L.1977, c.82 (C.30:6D-3).

“Direct care staff member” means a person 18 years of age or older who is employed by a program, facility, or living arrangement identified in subsection a. of section 5 of P.L.2017, c.238 (C.30:6D-9.5), and who may come into direct contact with individuals with developmental disabilities during the course of such employment.

“Exploitation” means the same as that term is defined by section 2 of P.L.2010, c.5 (C.30:6D-74).

“Group home” means a living arrangement that is operated in a residence or residences leased or owned by a licensee; which provides the opportunity for individuals with developmental disabilities to live together in a home, sharing in chores and the overall management of the residence; and in which staff provides supervision, training, or assistance in a variety of forms and intensity as required to assist the individuals as they move toward independence.

“Licensee” means an individual, partnership, or corporation that is licensed by the department, and is responsible for providing services associated with the operation of a community-based residential program.

“Major physical injury” means an injury that requires treatment that can only be performed at a general hospital or special hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), and which may additionally include admission to the hospital for further treatment or observation.

“Minor physical injury” means an injury that does not constitute a major physical injury or a moderate physical injury, and which can be treated with basic first aid, and without the assistance of a health care professional.

“Moderate physical injury” means an injury that does not constitute a major injury, but which requires treatment, beyond basic first aid, that can only be performed by a health care professional.

“Neglect” means the same as that term is defined by section 2 of P.L.2010, c.5 (C.30:6D-74).

“Program” means any program that is licensed or funded by the department for the purpose of providing services to individuals with developmental disabilities. “Program” includes, but is not limited to, a day program or a community-based residential program.

"Supervised apartment" means an apartment that is occupied by individuals with developmental disabilities; is leased or owned by a licensee; and in which staff provides supervision, guidance, and training, as needed, to assist individual occupants in the activities of daily living, in accordance with each individual's needs and targeted future goals.

C.30:6D-9.2 Site visits and evaluations of every community-based residential program facility.

2. a. The commissioner, or the commissioner's designee, shall designate employees of the Department of Human Services, who may be case managers employed by the department or an agency under contract with the department, to annually conduct not less than two site visits of every community-based residential program, in order to evaluate whether the individuals with developmental disabilities who are receiving services from each such program are at risk of, or are being subjected to, abuse, neglect, or exploitation by a caregiver, and report the results of each site visit pursuant to section 3 of P.L.2010, c.5 (C.30:6D-75).

b. (1) In the case of a community-based residential program that is a group home, not less than two annual site visits that are conducted for each such group home shall be unannounced site visits conducted by a department employee who is assigned to a resident of the group home.

(2) In the case of a community-based residential program that is a supervised apartment, not less than two annual site visits that are conducted for each such supervised apartment shall be unannounced site visits of the apartment, which shall be conducted by a department employee who is unaffiliated and unfamiliar with the assigned case.

c. Nothing in this section shall be interpreted to authorize a staff member or agent of a community-based residential program to perform the site visits required by this section.

C.30:6D-9.3 Provision of notification of injuries of developmentally disabled individual; specification.

3. a. A provider or licensee of a community-based residential program or day program shall provide notification, in accordance with the provisions of subsection b. of this section, of any major physical injury, moderate physical injury, or minor physical injury, as prescribed by department regulation, that is suffered by an individual with a developmental disability who is receiving services from the provider or licensee.

b. Except as otherwise provided by subsection c. of this section, the notification required under this section shall be provided:

(1) as soon as possible, but no later than two hours after the occurrence of the injury, except that if there is an extraordinary circumstance that prevents such notification, the provider or licensee shall provide notification as soon as possible, but no later than eight hours after the occurrence of the injury and shall provide a written, detailed explanation of the extraordinary circumstance causing the delay to the commissioner and to the guardian of the injured individual with a developmental disability or, if there is no guardian of the individual, to a family member who requests such notification, within 14 days of the incident;

(2) to the guardian of the injured individual with a developmental disability, or, if there is no guardian of the individual, to a family member who requests such notification unless the individual has expressly prohibited the family member from receiving such notification; and

(3) through in-person means or by telephone. Electronic means may be used to engage in follow-up communications after the initial notification.

c. Notwithstanding the provisions of this section to the contrary, notification pursuant to this section shall not be required if the guardian or family member expresses, in a written document filed with the caretaker, that they do not want to receive notification of injury pursuant to this section.

C.30:6D-9.4 Verification of the level of severity of the injury, incident.

4. Within 48 hours after receipt of a report of an incident involving moderate physical injury, major physical injury, or abuse, neglect, or exploitation in a State developmental center or community-based residential program, the commissioner shall send an employee of the department, who is not an employee of a State developmental center, but who may be a case manager employed either by the department, or by an agency under contract with the department, to the location of the reported incident, in order to verify the level of severity of the incident. In investigating the incident, the department shall comply with the provisions of section 4 of P.L.2010, c.5 (C.30:6D-76).

C.30:6D-9.5 Drug testing for direct care staff applicants and employees.

5. a. (1) A person applying for employment as a direct care staff member at a program, facility, or living arrangement licensed or funded by the department, other than a developmental center that is already subject to the provisions of section 1 of P.L.2009, c.220 (C.30:4-3.27), shall consent to and undergo drug testing for controlled dangerous substances as a condition of such employment.

(2) If a person applying for employment pursuant to this subsection, on or after the effective date of P.L.2017, c.238 (C.30:6D-9.1 et al.), tests positive for the unlawful use of any controlled dangerous substance, or refuses to submit to drug testing as required by this subsection, the person shall be removed from consideration for employment.

b. (1) Direct care staff members employed at a program, facility, or living arrangement identified in subsection a. of this section, shall be subject, during the course of employment, to random drug testing for controlled dangerous substances, as provided by this subsection.

(2) At least once a year, the employing program, facility, or living arrangement shall require one or more of the direct care staff members employed thereby to undergo random drug testing for controlled dangerous substances. The person who is responsible for the overall operation of the program, facility, or living arrangement shall have the discretion to determine the total number of direct care staff members who will be required to undergo random drug testing, each year, pursuant to this subsection.

c. In addition to the annual performance of random drug testing, as provided by subsection b. of this section, a program, facility, or living arrangement identified in subsection a. of this section may additionally require a direct care staff member employed thereby to undergo drug testing for controlled dangerous substances, at any time, if the direct care staff member's immediate supervisor has reasonable suspicion to believe that the staff member is illegally using a controlled dangerous substance, based on the staff member's visible impairment or professional misconduct which relates adversely to patient care or safety. The supervisor shall report this information to his immediate supervisor in a form and manner specified by the commissioner, and, if the latter concurs that there is reasonable

suspicion to believe that a direct care staff member is illegally using a controlled dangerous substance, that supervisor shall notify the person who is responsible for the overall operation of the program, facility, or living arrangement, and request written approval therefrom to order the direct care staff member to undergo drug testing pursuant to this subsection. Drug testing under this subsection shall not be ordered without the written approval of the person who is responsible for the overall operation of the program, facility, or living arrangement.

d. If a direct care staff member is subjected to a drug test under subsection b. or c. of this section, and tests positive for the unlawful use of any controlled dangerous substance, the direct care staff member may be referred for treatment services or terminated from employment. A direct care staff member who refuses to submit to drug testing, as required by subsection b. or c. of this section, shall be terminated from employment.

e. Any drug testing performed pursuant to this section shall be done at the expense of the department.

f. Any program, facility, or living arrangement identified in subsection a. of this section, which employs a direct care staff member, shall notify the staff member of the provisions of this section.

C.30:6D-9.6 Meetings with parents and guardians of developmentally disabled residents; request for contact information.

6. a. Each State developmental center shall biannually schedule a meeting with parents and guardians of individuals with developmental disabilities residing in the developmental center, in order to provide an opportunity for parents and guardians to share experiences about the individuals.

b. The provider of a community-based residential program shall request contact information from each parent or guardian of an individual with a developmental disability who is residing in the residential program, and shall advise the parent or guardian that, if the parent or guardian agrees, the provider will exchange contact information with other parents and guardians of individuals with developmental disabilities residing in the residential program, in order to provide an opportunity for parents and guardians to share experiences about the individuals.

c. The provider of a day program shall request contact information from each parent or guardian of an individual with a developmental disability who is participating in the day program, and shall advise the parent or guardian that, if the parent or guardian agrees, the provider will exchange contact information with other parents and guardians of individuals with developmental disabilities who are participating in the same program, in order to provide an opportunity for parents and guardians to share experiences about the individuals.

7. Section 4 of P.L.2003, c.191 (C.30:6D-5.4) is amended to read as follows:

C.30:6D-5.4 Violations, penalties.

4. a. Any member of the staff at a facility for persons with developmental disabilities or for persons with traumatic brain injury, and any member of the staff at a public or private agency, who violates the provisions of section 3 of P.L.2003, c.191 (C.30:6D-5.3) shall be liable to a civil penalty of \$5,000 for the first offense, \$10,000 for the second offense, and \$25,000 for the third and each subsequent offense, to be sued for and collected in a summary proceeding by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

b. A penalty collected pursuant to this section shall be dedicated to providing funding for training caregivers, as defined in section 2 of P.L.2010, c.5 (C.30:6D-74), and for site visits conducted pursuant to P.L.2017, c.238 (C.30:6D-9.1 et al.).

8. 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 P.L.2010, c.5 (C.30:6D-73 et seq.):

"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 P.L.2010, c.5 (C.30:6D-73 et seq.).

"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 the same as that term is defined by 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 failing 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.

"Program" means any program that is licensed or funded by the department for the purpose of providing services to individuals with developmental disabilities. "Program" includes, but is not limited to, a day program or a community-based residential program, as those terms are defined by section 1 of P.L.2017, c.238 (C.30:6D-9.1).

"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.

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

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

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 a site visit pursuant to section 2 of P.L.2017, c.238 (C.30:6D-9.2), 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.

(2) A report made pursuant to paragraph (1) of this subsection, where possible, shall contain: (a) the name and address of the individual with a developmental disability, as well as the name and address of 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 (b) 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:

- (1) maintain a unit to receive and prioritize reports that are filed pursuant to this section;
- (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, as provided by section 4 of P.L.2017, c.238 (C.30:6D-9.4);
- (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 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 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, or a caregiver suspected of abuse, neglect, or exploitation of an individual with a developmental disability, 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, or of a caregiver suspected of abuse, neglect, or exploitation who is employed by the department, the case manager, supervisor, or caregiver shall retain any available right of review by the Civil Service Commission.

10. 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.). The guardian of the individual with a developmental disability shall also be authorized to request appropriate assistance from local and State law enforcement officials.

b. (1) 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, which shall include:

(a) maintaining an Office of Investigations to investigate serious unusual incidents, as defined by applicable rules and regulations, in facilities or programs licensed, contracted, or

regulated by the department and to investigate incidents that occur in State developmental centers;

(b) providing the guardian of the individual with prior notice of the commencement of an investigation under this section, and providing an opportunity for the guardian, as appropriate, to submit information to facilitate an investigation, except that if there is no guardian, a family member of the individual may submit information, unless the individual has expressly prohibited the family member from doing so; and

(c) providing that a guardian of an individual with a developmental disability, upon request, may be permitted to attend the investigative interview of the individual the guardian represents and to terminate the interview of the individual the guardian represents, unless the attendance or termination would impede the investigation.

(2) 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 Investigations 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 Investigations, 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 Investigations, 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 Investigations 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. (1) No later than 30 days after an investigation under this section is concluded, the Office of Investigations shall issue a written report of the investigation that includes the conclusions of the office, the rationale for the conclusions, 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.

(2) A written summary of the investigation, as provided for in paragraph (3) of this subsection, shall be provided to the guardian of the individual 18 years of age or older with a

developmental disability who is the subject of the alleged abuse, neglect, or exploitation; however, the actual records and reports of an investigation shall also be provided to a guardian or other person who is responsible for the welfare of the individual with a developmental disability if the information is needed in connection with the provision of care, treatment, assessment, evaluation, or supervision to the individual; and the provision of information is in the best interests of the individual with a developmental disability, as determined by the Division of Developmental Disabilities.

(3) The written summary of an investigation of an alleged incident of abuse, neglect, or exploitation shall include, but need not be limited to:

(a) the name of the individual with a developmental disability who is the subject of the alleged abuse, neglect, or exploitation;

(b) the date of the incident, or the date the incident was reported if the incident date is unknown;

(c) whether the incident is an allegation of abuse, neglect, or exploitation;

(d) the incident number;

(e) a summary of the allegation of abuse, neglect, or exploitation;

(f) a finding that the incident is substantiated or unsubstantiated;

(g) the rationale for the finding and, if the incident is substantiated, a description of the action or inaction that precipitated the finding;

(h) if known at the time of issuing the summary, whether or not criminal charges against the alleged offending caregiver are pending; and

(i) whether remedial action was taken.

(4) If there is no guardian of the individual with a developmental disability who is the subject of the alleged abuse, neglect, or exploitation, the written summary described in paragraph (3) of this subsection shall be provided to a family member of the individual who requests such summary, unless the individual has expressly prohibited the family member from receiving such summary.

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

g. The department, the Office of Investigations, 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 Investigations, 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).

11. 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 and to the guardian of the individual with a developmental disability who was 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 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. If the individual with a developmental disability has no guardian, notification pursuant to this subsection shall be given to a family member who requests such notification, unless the individual has expressly prohibited the family member from receiving such notification.

(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.

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

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

6. a. All records of a report made pursuant to 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 P.L.2010, c.5 (C.30:6D-73 et seq.) shall be kept confidential and may be disclosed only:

(1) insofar as information is shared with a guardian in connection with a guardian's attendance at an investigative interview pursuant to subsection b. of section 4 of P.L.2010, c.5 (C.30:6D-76); or

(2) under circumstances expressly authorized by paragraph (2) of subsection e. of section 4 of P.L.2010, c.5 (C.30:6D-76), or by rules and regulations promulgated by the commissioner.

b. 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 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.

C.30:6D-9.7 Department of Human Services website posting of the law.

13. The Department of Human Services shall post a copy of P.L.2017, c.238 (C.30:6D-9.1 et al.) on its website.

C.30:6D-9.8 Rules, regulations.

14. 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.

15. 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.

Approved October 6, 2017.