

**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY COMMITTEE SUBSTITUTE FOR**  
**ASSEMBLY, No. 2503**  
**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

DATED: NOVEMBER 1, 2016

**SUMMARY**

- Synopsis:** Provides protections for individuals with developmental disabilities through accountability and transparency; designated as "Stephen Komninos' Law."
- Type of Impact:** An expenditure increase from the General Fund or Casino Revenue Fund.
- Agencies Affected:** Department of Human Services.

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>
<b>State Cost</b>	Indeterminate increase – See comments below.
<b>State Revenue</b>	Minimal increase – See comments below.

- The Office of Legislative Services (OLS) finds that several provisions of the substitute would significantly increase personnel and administrative expenditures at the Department of Human Services (DHS), likely in the millions of dollars. The specific magnitude of these increased costs, and the extent to which they might be absorbed within existing funding, would depend upon the specific manner in which DHS implements the law, and cannot be independently determined by the OLS.
- The substitute may result in a small increase in revenue resulting from increased fines imposed on case workers who fail to report incidents of abuse, neglect, or exploitation, but may also result in increased costs to incarcerate these individuals for longer prison terms that are authorized under current law, depending upon the sentences imposed.

**BILL DESCRIPTION**

The Assembly Committee Substitute for Assembly Bill No. 2503 of 2016 requires the Commissioner of Human Services, or the commissioner's designee, to designate employees of the DHS, who are not employees of a State developmental center but may be case managers

employed by DHS, or an agency under contract with DHS, to conduct at least six 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 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), which is the law that established the Central Registry of Offenders Against Individuals with Developmental Disabilities (Central Registry). The Central Registry is designed to prevent caregivers who become offenders against individuals with developmental disabilities from working with these individuals.

The substitute would apply to caregiver abuse, neglect, or exploitation in day programs, sheltered workshops, group homes, apartments, supervised apartments, self-directed housing, campus housing, or developmental centers.

Under the substitute, the Commissioner of Human Services, or the commissioner's designee, is required to 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, as soon as possible, but no later than 60 minutes after the occurrence of the injury. Additionally, a provider or licensee is to notify the guardian or authorized family member of an individual with a developmental disability receiving services as soon as possible, but no later than 60 minutes after the occurrence of the injury. These notifications are to be in person, or by telephone, with other electronic means to be used to follow up the telephoned notification.

Further, within 48 hours of receipt of a report of an incident involving physical injury, or abuse or neglect in a program, facility, community care residence, or living arrangement licensed or funded by DHS for an individual with a developmental disability, the Commissioner of Human Services is required to send an employee, who is not an employee of a State developmental center but may be a case manager employed by DHS or an agency under contract with DHS, to the location to verify the level of severity.

The substitute requires drug testing as a condition of employment as a direct care staff member of a program, facility, or living arrangement licensed or funded by DHS. This testing would be paid for by the applicant for employment.

There also is a requirement for random drug testing of direct care staff members, which would occur at least once a year, and for drug testing if a 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 is to report this information to his immediate supervisor and if the supervisor concurs that there is reasonable suspicion to believe that a direct care staff member is illegally using a controlled dangerous substance, that supervisor would notify the person responsible for the overall operation of the agency under contract with DHS to provide services to individuals with developmental disabilities. The drug testing would not be ordered without the written approval of the person responsible for the overall operation of the agency. A direct care staff member who tests positive for the unlawful use of any controlled dangerous substance may be referred for treatment services or terminated from employment, and if a direct care staff member refuses to submit to the drug testing he would be terminated. This testing would be at the expense of the agency under contract with DHS. These drug testing provisions are similar to those required under current law for direct care staff at developmental centers.

The substitute also amends the Central Registry law to include a definition of "program" which specifies that the term includes day programs, and: 1) authorizes a guardian to request appropriate assistance from local and State law enforcement officials who have undergone

training in working with individuals with developmental disabilities; 2) provides an opportunity for a guardian or authorized family member to submit information to facilitate an investigation, represent an individual, and be informed of progress of the investigation via a written progress report of the status of an investigation, including any medical records or reports about the individual, within seven calendar days of the incident and weekly thereafter, 3) permits a guardian, upon request, to attend or observe the investigation unless attendance or observation would impede the investigation; 4) provides that written summaries of the investigation, which are provided to guardians or authorized family members, are to include any medical records or reports about the individual; and 5) adds a requirement for the guardian or authorized family to be notified of an offending caregiver's inclusion on the Central Registry and of action taken by DHS to remediate a condition.

Other amendments to this law include: changing from a disorderly persons offense (punishable by a term of imprisonment of up to six months, a fine of up to \$1,000, or both) to a fourth degree crime (punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both) the failure of a case manager or supervisor to report an incident; making it a third degree crime (punishable by a term of imprisonment of up to three to five years, a fine of up to \$15,000, or both) rather than a fourth degree crime if the unreported incident results in death; and providing for a caregiver to be temporarily reassigned to duties that do not involve contact with individuals with developmental disabilities or other vulnerable populations.

Lastly, the substitute revises the penalty provisions of "Danielle's Law," P.L.2003, c.191 (C.30:6D-5.1 et seq.) to require penalties collected under that law to be used for caregiver training and visits conducted under this bill.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS notes that several provisions of the substitute would appear to significantly increase personnel and administrative expenditures at the DHS, but cannot independently estimate the fiscal impact of the substitute without information from the DHS on the manner in which it would implement the law.

The substitute would increase State costs under several of its provisions, including: the requirement that case workers conduct six unannounced site visits per year to programs, facilities, and living arrangements and conduct additional visits following the occurrence of an injury; the requirement that the Commissioner of Human Services designate staff responsible for notifying the guardian or authorized family member of an individual with a developmental disability of any physical injury to the individual; the need to enforce the requirement of programs, facilities, and living arrangements to notify the guardian or authorized family member of an individual with a developmental disability shortly after the occurrence of the injury; and the requirement to accommodate guardians or authorized family members who wish to contribute to and attend or observe investigations. The specific magnitude of these increased costs, and the extent to which they might be absorbed within existing funding, would depend upon the specific manner in which DHS implements the law, and cannot be independently

determined by the OLS. These requirements are quite substantial, and would likely increase State costs by several million dollars annually. Many, but not all, of these costs would be eligible for a 50 percent federal matching share under the Medicaid program.

It is also noted that the scope of the substitute is not explicitly limited to programs, facilities, or living arrangements that are licensed or contracted *specifically to provide* services to individuals with developmental disabilities; rather, it applies to programs, facilities, or living arrangements, licensed or funded by the DHS, *that provide* any services to individuals with developmental disabilities. The DHS licenses and funds tens of thousands of health care and social services providers, which generally cannot turn away a prospective client based on a developmental disability. The context and the statement seem to indicate that the intention of the substitute is to only apply to providers contracted with the Division of Developmental Disabilities (approximately 300 provider agencies), but the department could interpret the substitute more broadly to encompass hospitals, nursing homes, mental health and substance abuse disorder treatment providers, county welfare agencies, and others, as well. The OLS cannot independently determine how narrowly or broadly the DHS may interpret the language of the substitute, and therefore cannot estimate the number of additional site visits and other oversight and reporting activities that would be required, or the costs that would result.

The substitute requires direct care staff to submit to drug testing, at their own expense, as a condition of employment. The cost of this testing could discourage some job applicants in a market that already struggles to find sufficient qualified staff, but would not directly affect State finances unless providers must substantially alter their businesses or some cease operations.

The substitute may result in a small increase in revenue resulting from increased fines imposed on case workers who fail to report incidents of abuse, neglect, or exploitation, but may also result in increased costs to incarcerate these individuals for longer prison terms that are authorized under current law, depending upon the sentences imposed.

*Section: Human Services*

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).