

ASSEMBLY HUMAN SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2503**

STATE OF NEW JERSEY

DATED: SEPTEMBER 19, 2016

The Assembly Human Services Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2503.

This committee substitute requires the Commissioner of Human Services, or the commissioner's designee, to designate employees of the Department of Human Services (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 with a developmental disability, 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, and other electronic means are 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 at 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 from employment. 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.

This substitute provides protections for individuals with developmental disabilities through accountability and transparency, and is designated as "Stephen Komninos' Law" to honor the memory of Stephen J. Komninos, an individual with developmental disabilities who died at the age of 22 while under the care of a private licensed facility for individuals with developmental disabilities. Stephen was a non-verbal young man who was very sociable and suffered through many substantiated incidents of abuse and neglect by caregivers. Tragically, the last incident resulted in his death. This substitute is intended to encourage caregivers, supervisors, and managers of facilities, as well as the appropriate funding, licensing, regulatory, and law enforcement agencies to protect individuals with developmental disabilities, by providing for more transparency in incident reporting and investigations, the reporting of incidents in a more timely manner, and an environment that does not tolerate abuse, neglect, or exploitation of individuals with developmental disabilities.