

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 2503

STATE OF NEW JERSEY

DATED: JUNE 1, 2017

The Senate Budget and Appropriations Committee reports Assembly Bill No. 2503 (ACS/1R).

This bill would improve protections for individuals with developmental disabilities and provide for increased transparency and accountability in investigations that are conducted in association with an allegation of abuse, neglect, or exploitation of an individual with a developmental disability. The bill would also enhance the criminal penalties that are associated with certain crimes committed against persons with developmental disabilities, and it would establish a new offense of endangering the welfare of an individual with a developmental disability. The bill 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 more transparency in incident reporting and investigation, requiring the timely reporting of incidents, and facilitating the establishment of an environment wherein the abuse, neglect, or exploitation of individuals with developmental disabilities is not tolerated.

The bill defines “developmental disability” in the same way the term is defined by section 3 of P.L.1977, c.82 (C.30:6D-3). Specifically, a developmental disability is “a severe, chronic disability of a person which:

(1) is attributable to a mental or physical impairment or combination of mental or physical impairments;

(2) is manifest before age 22;

(3) is likely to continue indefinitely;

(4) results in substantial functional limitations in three or more of the following areas of major life activity, that is, self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living or economic self-sufficiency; and

(5) reflects the need for a combination and sequence of special inter-disciplinary or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

“Developmental disability” includes, but is not limited to, severe disabilities attributable to an intellectual disability, autism, cerebral palsy, epilepsy, spina bifida and other neurological impairments where the above criteria are met.

Increased Criminal Penalties

The bill would establish two new grades of offenses that involve endangering the welfare of an individual with a developmental disability. Under the bill’s provisions, a caregiver or other person who has a legal duty for the care of a person with a developmental disability, or who has assumed responsibility for the care of a person with a developmental disability, and who subjects the person with a developmental disability to abuse, neglect, or exploitation, would be guilty of a crime of the second degree. Any other person who engages in such conduct would be guilty of a crime of the third degree. For the purposes of this offense, the terms “abuse,” “caregiver,” “exploitation,” and “neglect,” would have the same meaning ascribed to those terms in section 2 of P.L.2010, c.5 (C.30:6D-74).

The bill would further amend the law at section 3 of P.L.2010, c.5 (C.30:6D-75) to upgrade certain offenses associated with the failure to report an act of abuse, neglect, or exploitation of an individual with a developmental disability. Specifically, the bill would provide that a case manager or case manager’s supervisor who fails to report an act of abuse, neglect, or exploitation will be guilty of a crime of the fourth degree (as opposed to a disorderly person’s offense), unless the abuse, neglect, or exploitation results in the death of an individual with a developmental disability, in which case the case manager or supervisor will be guilty of a crime of the third degree (as opposed to a crime of the fourth degree). The bill would further specify that a caregiver suspected of abuse, neglect, or exploitation of an individual with a developmental disability, who is charged with a failure to report, is to be temporarily reassigned to duties that do not involve contact with such individuals. Such a caregiver, if employed by the Department of Human Services (DHS), would retain a right of review by the Civil Service Commission. (The law currently provides for the temporary reassignment of case managers and case manager supervisors who fail to report, but it does not address caregivers who are suspected of abuse, neglect, or exploitation.)

Under the State’s criminal code, a crime of the second degree is generally punishable by a term of imprisonment of five to 10 years or a fine up to \$150,000, or both; a crime of the third degree is punishable by a term of imprisonment of three to five years or a fine up to \$15,000, or both; a crime of the fourth degree is punishable by a term of imprisonment of up to 18 months or a fine up to \$10,000, or both; and a disorderly persons offense is punishable by a term of imprisonment of up to six months or a fine of up to \$1,000 or both.

Finally, the bill would revise the penalty provisions of "Danielle's Law," P.L.2003, c.191 (C.30:6D-5.1 et seq.) in order to specify that any penalties collected thereunder are to be used for caregiver training and site visits conducted under the bill's other provisions

Site Visits

This bill would establish a system for the regular site visitation of all community-based residential programs and day programs that provide services to individuals with developmental disabilities. "Community-based residential program" is defined by the bill to include any group home or supervised apartment that is licensed and regulated by the department; while a "day program" is defined to include those programs that are certified to provide day habilitation services or sheltered workshops for individuals with developmental disabilities.

Specifically, the bill would require the Commissioner of Human Services, or the commissioner's designee, to ensure that case managers: annually conduct not less than two site visits of each and every community-based residential program and day 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. The results of each site visit are to be reported to the department, in accordance with the State law that established the Central Registry of Offenders Against Individuals with Developmental Disabilities (Central Registry Law).

For a group home, not less than two site visits would need to be unannounced site visits that are conducted by a department employee who is assigned to a resident of the group home. "Department employee" is defined to include a direct employee of the DHS, or an employee of a department-funded case management agency. For a supervised apartment, not less than two site visits would need to be unannounced site visits conducted by a department employee who is unaffiliated and unfamiliar with the assigned case. For a day habilitation services provider or a sheltered workshop provider, not less than one site visit would need to be an unannounced site visit conducted by a department employee who is assigned to a participant in the day program; and not less than one site visit would need to be an unannounced site visit conducted by a department employee who is unaffiliated and unfamiliar with the assigned case.

Notice of Physical Injury, Abuse, Neglect, and Exploitation

The bill would also require certain notifications to be provided to guardians or family members whenever an injury is suffered by an individual with a developmental disability who is receiving services from a community-based residential program, day program, facility, community care residence, or living arrangement licensed or funded

by the department. Notification of injury to the guardian or family member would be required regardless of the injury's severity (i.e., regardless of whether the injury constitutes a major, moderate, or minor injury).

Notification of injury would be provided by the provider or licensee of the program, facility, community care residence, or living arrangement where the individual with developmental disabilities is located at the time of injury. Such notification would need to be provided to the guardian of the individual, or, if there is no guardian, to a family member who requests such notification, and is to be provided: 1) as soon as possible, but no later than 60 minutes after the occurrence of the injury; and 3) through in-person means, or by telephone, and also through email or other electronic means. Electronic means may be used to engage in follow-up communications after the initial notification.

Notwithstanding these requirements, notification of injury would 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 under the bill.

The bill would further amend section 3 of P.L.2010, c.5 (C.30:6D-75), the State's Central Registry Law, which pertains to the reporting of incidents involving the abuse, neglect, or exploitation of an individual with a developmental disability. These amendments would specify that the department is to provide notice of an incident involving abuse, neglect, or exploitation of such an individual, to the guardian or authorized family member, as soon as possible, but no later than 60 minutes after the occurrence of the abuse, neglect, or exploitation.

Verification/Investigation of Major or Moderate Physical Injury, and of Abuse, Neglect, or Exploitation

The bill would provide that, within 48 hours after the department receives a report of major physical injury, moderate physical injury, or abuse, neglect, or exploitation occurring in a developmental center, in a community-based residential program, or in a day program, the department is to send an employee (who is not an employee of a State developmental center, but who may be a case manager) to verify the level of severity of the incident. In investigating the incident, the department would be required to comply with the provisions of section 4 of P.L.2010, c.5 (C.30:6D-76) (the Central Registry Law), which provide requirements in association with the commencement and continuation of an investigation into the abuse, neglect, or exploitation of an individual with a developmental disability.

Drug Testing Requirements

The bill would require the drug testing of direct care staff members – i.e., persons 18 years of age or older, who are employed by a

community-based residential program, a day program, a facility, or a living arrangement licensed or funded by the department, and who may come into direct contact with individuals with developmental disabilities during the course of such employment. The expenses associated with drug testing, under the bill's provisions, are to be paid by the department.

The bill requires all direct care staff members to undergo an initial drug test, prior to employment. It further provides that a program, facility, or living arrangement must require one or more of the direct care staff members employed thereby to undergo a random drug test once a year, as part of the regular course of employment. The person who is responsible for the overall management of the program, facility, or living arrangement will have the discretion to determine the total number of direct care staff member employees who will be required to undergo random drug testing each year. Finally, the bill provides a procedure pursuant to which a direct care staff member may be required to take an additional drug test in cases where the immediate supervisor has reasonable suspicion to believe that the staff member is illegally using a controlled dangerous, based on the staff member's visible impairment or professional misconduct which relates adversely to patient care or safety. In such a case, the bill requires the supervisor to report this information to his immediate supervisor, and, if the latter concurs that there is reasonable suspicion to believe that the direct care staff member is illegally using a controlled dangerous substance, that supervisor will be required to notify the person responsible for the overall operation of the program, facility, or living arrangement. Such drug testing would not be ordered without the written approval of the person responsible for the overall operation of the program, facility, or living arrangement. A direct care staff member who is employed by a program, facility, or living arrangement, and who tests positive for the unlawful use of any controlled dangerous substance drug test, may be referred for treatment services or terminated from employment; however, if the staff member refuses to submit to the drug testing, termination from employment will be required.

The bill's drug testing requirements would not apply to direct care staff members who are employed in a State developmental center, since those actors are already subject to drug testing requirements under section 1 of P.L.2009, c.220 (C.30:4-3.27).

Support System for Parents and Guardians

The bill would attempt to improve the support structure that is available to parents and guardians of individuals with developmental disabilities who are receiving care from a community-based residential program, a day program, or a State developmental center.

In particular, the bill would require each developmental center to biannually schedule a meeting with the parents and guardians of those individuals with developmental disabilities who are residing in the

center, in order to provide an opportunity for the parents and guardians to share experiences about the individuals. Similarly, the bill would require the provider of a community-based residential program to request contact information from each parent or guardian of an individual with a developmental disability who is residing at the group home or supervised apartment, as the case may be, and advise those parents and guardians that, if they agree, the provider will exchange their contact information with the parents and guardians of other individuals residing in the residential program, in order to provide an opportunity for the parents and guardians to share their experiences about the individuals. The provider of a day program is also required to request the same contact information from the parents or guardians of individuals with developmental disabilities who are participating in day habilitation services or sheltered workshops, and to advise those parents and guardians that, if they agree, the provider will exchange their contact information with the parents or guardians of other individuals participating in the day program, in order to provide an opportunity for parents and guardians to share their experiences.

Expansion and Clarification of Central Registry Law

The Central Registry Law is designed to prevent caregivers who commit offenses against individuals with developmental disabilities from working with these individuals. To that end, the law provides procedures for the reporting and investigation of incidents of abuse, neglect, and exploitation, which are committed by caregivers against individuals with developmental disabilities.

This bill would amend the Central Registry Law to define the term “program,” consistently with the other provisions of the bill, to include day programs and community-based residential programs that are licensed or funded by the department. The bill would also amend the Central Registry Law to: 1) permit the guardian or authorized family member of an individual with a developmental disability to request investigatory assistance from local and State law enforcement officials who have undergone training in working with individuals with developmental disabilities; 2) require the Commissioner of Human Services to commence a review/investigation of an incident of alleged abuse, neglect, or exploitation within seven days after receiving notice of such incident; 3) require the commissioner to provide the guardian or authorized family member of an individual with a developmental disability with prior notice, either in person or by phone, that an investigation into abuse, neglect, or exploitation of the individual will be commenced; 4) require the commissioner to provide the guardian or authorized family member, as appropriate, with the opportunity to submit information to facilitate the investigation, to represent the individual during the course of the investigation, to be informed of the progress of the investigation through the receipt of regular progress reports (which include the represented individual’s relevant medical

records), and to attend or observe an investigative interview of the person they represent, unless the attendance or observation would impede the investigation; and 5) require the Office of Investigations to issue a written report no later than 14 days after the conclusion of an investigation into an incident of alleged abuse, neglect, or exploitation. If the guardian or authorized family member expressly requests, at any time, that the department terminate an investigative interview of the person they represent, the department, and its Office of Investigations, will be required to immediately comply with the request, unless it would impede the investigation.

The bill would also amend the confidentiality provisions of the Central Registry Law, in order to authorize disclosure of investigative records and reports to the guardian or authorized family member of an individual with a developmental disability if: such information is needed in connection with the provision of care, treatment, assessment, evaluation, or supervision to the individual; and the provision of such detailed information is in the best interests of the individual, as determined by DDD, or by the individual's guardian or authorized family member. The bill would further provide that any written summary of the investigation (which the law already requires be provided to the guardian or authorized family member) is to include the following information, at a minimum: 1) the name of the individual with a developmental disability who is the subject of the allegation; 2) the date of the incident, or the date reported if the incident date is unknown; 3) whether the incident is an allegation of abuse, neglect, or exploitation; 4) the incident number; 5) a summary of the allegation; 6) a finding that the incident is substantiated or unsubstantiated; 7) the rationale for the finding and, if a substantiated incident, a description of the action or inaction that precipitated the finding; 8) if known at the time of issuing the summary, whether or not criminal charges against the alleged offending caregiver are pending; and 9) whether remedial action was taken.

Bill Designation

This bill 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 bill is intended to facilitate the enhanced protection of individuals with developmental disabilities, like Stephen, by requiring more transparency in incident reporting and investigations; by requiring more timely reporting and the issuance of prompt notification to the parents and guardians of individuals with developmental disabilities who suffer injury, abuse, neglect, or exploitation; and by promoting

the establishment and maintenance of a Statewide policy and environment that does not tolerate the abuse, neglect, or exploitation of individuals with developmental disabilities.

As reported, this bill is identical to Senate Bill No. 516 (1R), as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) finds that several provisions of the bill would significantly increase annual personnel and administrative expenditures at the Department of Human Services (DHS). The specific magnitude of the increase is uncertain, and may vary substantially depending on the manner in which the DHS would implement the bill.

Additional staff would be needed to conduct site visits and restructure the investigations process as required under the bill. Based on information provided by the Executive on an earlier version of the bill, the OLS assumes for purposes of illustrating the potential impact of the current legislation that 200 additional employees may have to be hired at a gross annual cost of approximately \$24 million. Federal Medicaid funds may offset a portion of these costs, leading to an estimated annual State cost of \$18 million. These estimates are highly uncertain and only serve as an illustrative example.

In addition, the OLS estimates that drug testing for applicants for employment as direct care staff may cost the State approximately \$600,000 annually. Indeterminate additional expenditures for the drug testing of certain current employees would also be required under the bill.

Moreover, the bill may result in a small recurring increase in State revenue resulting from increased fines and criminal penalties imposed on individuals who endanger the welfare of an individual with a developmental disability, or who fail to report incidents of abuse, neglect, or exploitation. However, the bill may also result in increased annual State costs to incarcerate these individuals for longer terms than are authorized under current law, depending upon the sentences imposed.