

# ASSEMBLY HUMAN SERVICES COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 5123

with committee amendments

# STATE OF NEW JERSEY

DATED: JANUARY 25, 2021

The Assembly Human Services Committee reports favorably and with committee amendments Assembly Bill No. 5123.

As amended by the committee, this bill would require the operator of each community-based residential program in the State, as a condition of licensure, to adopt and implement written policies and have appropriate technology, staff, and other capabilities in place, to prevent the social isolation of residents at all times during operation. “Community-based residential program” is defined to include a developmental center, group home, supervised apartment, community care residence, or any other residential setting for individuals with developmental disabilities, which is licensed and regulated by the Department of Human Services (DHS).

The bill would require the social isolation prevention policies adopted by each community-based residential program to authorize, and include specific protocols and procedures to encourage and enable, residents to engage in in-person contact, communications, and religious and recreational activities with other program residents and with family members, friends, and other external support systems, except when such in-person contact, communication, or activities are prohibited, restricted, or limited, as permitted by federal and State statute, rule, or regulation. The social isolation prevention policies would additionally be required to:

- 1) authorize, and include specific protocols and procedures to encourage and enable, residents to engage in face-to-face or verbal/auditory-based contact, communication, and religious and recreational activities with other program residents and with family members, friends, and other external support systems, through the use of electronic or virtual means and methods, including, but not limited to, computer technology, the Internet, social media, videoconferencing, and other innovative technological means or methods, whenever such residents are subject to restrictions that limit their ability to engage in in-person contact, communications, or religious and recreational activities;

- 2) provide for residents to be given access to assistive and supportive technology as may be necessary to facilitate the residents’ engagement in social interactions and religious and

recreational activities with other program residents, and with family members, friends, and other external support systems, through electronic means;

3) include specific administrative policies, procedures, and protocols governing: a) the acquisition, maintenance, and replacement of computers, videoconferencing equipment, distance-based communications technology, assistive and supportive technology and devices, and other technological equipment, accessories, and electronic licenses, as may be necessary to enable residents to engage in electronic communications and activities, as specified in the bill; b) the use of environmental barriers and other controls when the equipment and devices acquired pursuant to the bill are in use, especially in cases where the equipment or devices are likely to become contaminated with bodily substances, are touched frequently with gloved or ungloved hands, or are difficult to clean; and c) the regular cleaning of the equipment and devices acquired pursuant to the bill and any environmental barriers or other physical controls used in association therewith;

4) require appropriate staff to assess and regularly reassess the individual needs and preferences of residents with respect to their participation in social interactions and religious and recreational activities, and include specific protocols and procedures to ensure that the quantity of devices and equipment maintained on-site at the residence remains sufficient, at all times, to meet the assessed social and activities needs and preferences of each program resident;

5) require appropriate staff, upon the request of a resident or the resident's family members or guardian, to develop an individualized visitation plan for the resident, which plan is to: a) identify the assessed needs and preferences of the resident and any preferences specified by the resident's family members; b) address the need for a visitation schedule, and establish a visitation schedule if deemed to be appropriate; c) describe the location and modalities to be used in visitation; and d) describe the respective responsibilities of staff, visitors, and the resident when engaging in visitation pursuant to the individualized visitation plan;

6) include specific policies, protocols, and procedures governing a resident's requisition, use, and return of devices and equipment maintained pursuant to the bill, and require appropriate staff to communicate those policies, protocols, and procedures to residents; and

7) designate at least one program staff member to train other appropriate on-site staff, including, but not limited to, activities professionals and volunteers, social workers, occupational therapists, and therapy assistants, to provide direct assistance to residents, upon request and on an as-needed basis, as necessary to ensure that each resident is able to successfully access and use the technology, devices, and equipment acquired pursuant to the bill.

The bill would require the DHS to distribute available federal and State funds, upon request, to assist community-based residential programs in acquiring the communicative technologies and accessories needed for the bill's purposes.

The bill would require the DHS, when conducting an inspection of a community-based residence, to determine whether the residence is in compliance with the bill's provisions and the policies, protocols, and procedures adopted pursuant thereto. In addition to any other applicable penalties provided by law, the licensed operator of a community-based residence that fails to comply with the bill's provisions or to properly implement the policies, protocols, and procedures adopted pursuant thereto will be liable to pay an administrative penalty and may be subject to adverse licensure action, as deemed by the DHS to be appropriate. The amount of the administrative penalty imposed is to be determined in accordance with a schedule established by DHS regulation, which schedule is to provide for an enhanced administrative penalty in the case of a repeat or ongoing violation.

The bill would further specify that, whenever a complaint received or an investigation conducted by the Office of the Ombudsman for Individuals with Intellectual or Developmental Disabilities and Their Families, or by Disability Rights New Jersey, discloses evidence indicating that a community-based residence has failed to comply with the bill's provisions or has failed to properly implement the policies, protocols, and procedures adopted pursuant thereto, the ombudsman or executive director, as the case may be, will be required to refer the matter to the DHS for disciplinary action and, notwithstanding such referral, may take any other appropriate investigatory or enforcement action, with respect to the matter, as may be authorized by law.

The bill would require the DHS to adopt rules and regulations to implement the bill, on an emergency basis and in consultation with the DOH, within 60 days after the bill's effective date. The rules and regulations are to include, but need not be limited to, minimum standards for social isolation prevention policies adopted under the bill and a penalty schedule to be used when penalizing violations of the bill. The emergency rules and regulations are to remain in effect for a period of not more than one year before being subject to re-adoption or amendment.

#### COMMITTEE AMENDMENTS:

The committee amended the bill to remove references to nursing homes, since nursing homes were included in an earlier social isolation bill (Assembly Bill No. 4007) that applies to all long-term care facilities.

The committee also amended the bill to require the nonprofit organization, Disability Rights New Jersey, in addition to the Ombudsman for Individuals with Intellectual or Developmental Disabilities and Their Families, to refer to the Department of Human Services, for disciplinary action, any relevant complaints or investigatory matters whenever there is evidence to show that a community-based residential program has failed to comply with, or implement the policies, protocols, and procedures required by, the bill's provisions.