

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 5123

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 17, 2021

The Assembly Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 5123 (1R).

As amended, 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 further requires the DHS and the Division of Developmental Disabilities therein, to the extent consistent with federal law, to authorize a resident who is enrolled in the division's Supports Program or Community Care Program, which is operated pursuant to the State's approved Comprehensive Medicaid Waiver, to utilize funds from the Supports Program or Community Care Program, which have been budgeted for the purchase of goods and services, to finance the purchase of computers, mobile phones, and other equipment and accessories that may facilitate the resident's ability to engage in electronic or virtual contact, communications, and religious and recreational activities with other residents, and with family members, friends, and other external support systems, as provided by the bill. The Commissioner of Human Services will be required to apply for such State plan amendments or waivers as may be necessary to implement the bill's provisions, in this regard, and secure federal financial participation for State Medicaid expenditures under the federal Medicaid program.

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 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 executive director 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 amendments remove provisions that would have required the Ombudsman for Individuals with Intellectual or Developmental Disabilities and Their Families to refer investigatory matters to the department, because the ombudsman is not actually authorized by law to conduct investigations.

The amendments also require the DHS and the Division of Developmental Disabilities therein, to the extent consistent with federal law, to authorize a resident who is enrolled in the division's Supports Program or Community Care Program, which is operated pursuant to the State's approved Comprehensive Medicaid Waiver, to utilize funds from the Supports Program or Community Care Program, which have been budgeted for the purchase of goods and services, to finance the purchase of computers, mobile phones, and other equipment and accessories that may facilitate the resident's ability to engage in electronic or virtual contact, communications, and religious and recreational activities with other residents, and with family members, friends, and other external support systems, as provided by the bill. The amendments further provide for the Commissioner of Human Services to apply for such State plan amendments and waivers as may be necessary to implement the bill's provisions, in this regard, and secure federal financial participation for State Medicaid expenditures under the federal Medicaid program.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that the bill may result in potential significant costs to the Department of Human Services (DHS) from distributing State funds, upon request, to assist community-based residential programs in acquiring the communicative technologies and accessories needed for the bill's purposes. The OLS notes that while it authorizes the distribution of such State funds, the bill does not include a State appropriation. As such, the OLS cannot predict if State funds will be available for all requests and to what extent community-based residential programs will request funds under the bill. However, it is likely that such

programs will not have surplus funds available to acquire and maintain all the technology required to comply with the provisions of the bill. To the extent that federal sources of funds are available, particularly via Medicaid matching funds through the Supports Program or the Community Care Program, the reliance of State funds will decrease with the increase of federal revenue under the bill.

The OLS also assumes that the department will realize certain minimal expenses to support, monitor, and enforce the provisions of the bill regarding the adoption and implementation of policies by community-based residential programs to prevent the social isolation of residents. Currently, the DHS's Office of Program Integrity and Accountability (OPIA) is responsible for incident investigations and licensing of department programs and facilities, such as those programs discussed in the bill. The Office of Licensing, within the OPIA, among other things, is charged with ensuring that all persons receiving services under the DHS are afforded certain rights, including the right to interaction with others. As such, the OLS assumes that the provisions of the bill will overlap with the existing duties and framework, at least in part, with this office, thereby minimizing costs.

Any expenses incurred by the department under the bill may, in part, be offset by an increase in State revenues due to the collection of penalties assessed against community-based residential programs for infractions regarding the bill's provisions. The nature and number of infractions that may be committed, however, is unpredictable. As such, the OLS cannot quantify the amount of revenue generated from penalties and fines under the bill, but assumes that such revenue will not be significant.

The OLS notes that the bill may also indirectly impact annual State Medicaid expenditures. Community-based residential programs will likely incur costs to comply with the provisions of the bill, even if State and federal resources are available. While any change in community-based residential programs operating expenditures does not automatically result in corresponding modifications to Medicaid rates, significant changes would likely apply upward pressure on such rates and may lead to adjustments. Any increase in such program rates would also increase annual State Medicaid expenditures and federal Medicaid matching funds.