

ASSEMBLY, No. 4021

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED APRIL 25, 2013

Sponsored by:

Assemblyman GARY S. SCHAER

District 36 (Bergen and Passaic)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman CLEOPATRA G. TUCKER

District 28 (Essex)

Assemblywoman MARLENE CARIDE

District 36 (Bergen and Passaic)

Co-Sponsored by:

Assemblyman Singleton

SYNOPSIS

"Protection for Individuals with Developmental Disabilities in Institutional and Community Settings Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/13/2013)

1 AN ACT concerning persons with developmental disabilities and
2 supplementing Titles 26 and 30 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "Protection
8 for Individuals with Developmental Disabilities in Institutional and
9 Community Settings Act."

10

11 2. As used in sections 2 to 6, 8 to 10, and 12 to 19 of
12 P.L. , c. (C.) (pending before the Legislature as this bill):

13 "Authorized family member" means a relative of the individual
14 with a developmental disability, authorized by the individual's
15 guardian, or by the individual if the individual is his own guardian,
16 to receive information pursuant to P.L. , c. (C.) (pending
17 before the Legislature as this bill).

18 "Commissioner" means the Commissioner of Human Services.

19 "Community residence for the developmentally disabled" means
20 a community residence for the developmentally disabled as defined
21 in section 2 of P.L.1977, c.448 (C.30:11B-2), and includes, but is
22 not limited to, group homes and supervised apartments.

23 "Day program" means a program that an individual with a
24 developmental disability attends on a regular basis to receive
25 training in life and vocational skills, as appropriate, during daytime
26 hours.

27 "Department" means the Department of Human Services.

28 "Developmental center" means a State developmental center.

29 "Licensee" means an individual, partnership, corporation, or
30 other entity responsible for providing services associated with the
31 operation of a community residence for the developmentally
32 disabled or private licensed facility, as applicable.

33 "Negative licensing action" means an action taken that imposes a
34 restriction on a licensee of a community residence for the
35 developmentally disabled or private licensed facility, and may
36 include suspension of admissions, issuance of a provisional license,
37 reduction in the licensed capacity, non-renewal of a license,
38 suspension of a license, or revocation of a license.

39 "Office of Licensing" or "office" means the licensing unit of the
40 Department of Human Services for programs in the Division of
41 Developmental Disabilities.

42 "Private licensed facility" means a facility licensed by the
43 Department of Human Services to provide services to individuals
44 with developmental disabilities, but is not operated by the State.

45 "Staff member" means a person whose employment involves
46 providing direct care to individuals with developmental disabilities
47 residing in a community residence for the developmentally
48 disabled, developmental center or private licensed facility, or

1 providing services to enhance the life or vocational skills of
2 individuals with developmental disabilities attending a day
3 program, but excludes health care professionals licensed pursuant to
4 Title 45 of the Revised Statutes.

5 “Substantiated” means the available information obtained during
6 the investigation of an allegation of abuse, neglect, or exploitation
7 indicates a finding by a preponderance of the evidence that an
8 individual with a developmental disability has been harmed or
9 placed at substantial risk of harm by a caretaker or staff member.

10 “Supervised apartment” means an apartment that is occupied by
11 an individual with a developmental disability and is leased or
12 owned by a licensee of a community residence for the
13 developmentally disabled.

14 “Unfounded” means the available information obtained during
15 the investigation of an allegation of abuse, neglect, or exploitation
16 indicates a finding that there is no risk to the safety or welfare of
17 the individual with a developmental disability.

18 “Unsubstantiated” means the available information obtained
19 during the investigation of an allegation of abuse, neglect, or
20 exploitation provides some indication of a finding that an individual
21 with a developmental disability has been harmed or placed at
22 substantial risk of harm by a caretaker or staff member.

23

24 3. A community residence for the developmentally disabled
25 shall be subject to the following provisions:

26 a. If a licensee of a community residence for the
27 developmentally disabled is required to provide a plan of correction
28 as a result of an inspection by the Office of Licensing that provides
29 for inquiry into the facilities, records, equipment, sanitary
30 conditions, accommodations, and management of an individual with
31 a developmental disability, and that plan has not been successfully
32 implemented, as determined by the supervisor of the case manager
33 of the individual or the office, within 30 days of the date that the
34 licensee submitted the plan to the office, the individual with a
35 developmental disability residing in that residence shall be removed
36 from the residence if the supervisor, in consultation with the office,
37 determines that the licensee’s failure to implement the plan of
38 correction threatens the health and well-being of that individual.

39 b. If the health, safety, or well-being of an individual with a
40 developmental disability residing in a community residence for the
41 developmentally disabled is threatened because of a licensee’s
42 noncompliance with the standards adopted by regulation of the
43 department, the individual with a developmental disability shall be
44 removed from the residence, and the licensee shall be subject to
45 negative licensing action by the Office of Licensing.

46 c. (1) The department shall have the authority to impose a
47 penalty in an amount of \$350 per day on the licensee of a
48 community residence for the developmentally disabled for a

1 repeated failure to implement a required plan of correction. The
2 penalty shall be payable to the Treasurer of the State of New Jersey
3 and shall be used to provide services to individuals with
4 developmental disabilities.

5 (2) If the department determines that a repeated failure to
6 implement a required plan of correction endangers the health and
7 well-being of an individual with a developmental disability, the
8 department may, upon notice and after hearing, revoke the license
9 issued to operate the community residence for the developmentally
10 disabled.

11

12 4. A private licensed facility shall be subject to the following
13 provisions:

14 a. If a licensee of a private licensed facility is required to
15 provide a plan to correct deficiencies as a result of an inspection by
16 the Office of Licensing that provides for inquiry into the physical
17 environment, records, equipment, sanitary conditions,
18 accommodations, and management of an individual with a
19 developmental disability, and those deficiencies have not been
20 corrected within 30 days of the date that the licensee submitted the
21 plan to the office, the individual with a developmental disability
22 residing in that facility shall be removed from the facility if the
23 office determines that the licensee's failure to implement the plan to
24 correct the deficiencies threatens the health and well-being of that
25 individual.

26 b. If the health, safety, or well-being of an individual with a
27 developmental disability residing in a private licensed facility is
28 threatened because of a licensee's noncompliance with the standards
29 adopted by regulation of the department, the individual with a
30 developmental disability shall be removed from the private licensed
31 facility, and the licensee shall be subject to negative licensing
32 action by the Office of Licensing.

33 c. (1) The department shall have the authority to impose a
34 penalty in an amount of \$350 per day on the licensee of a private
35 licensed facility for a repeated failure to implement a plan to correct
36 the deficiencies. The penalty shall be payable to the Treasurer of
37 the State of New Jersey and shall be used to provide services to
38 individuals with developmental disabilities.

39 (2) If the department determines that a repeated failure to
40 implement a plan to correct deficiencies endangers the health and
41 well-being of an individual with a developmental disability, the
42 department may, upon notice and after hearing, revoke the license
43 issued to operate the private licensed facility.

44

45 5. A developmental center shall be subject to the following
46 provisions:

47 a. If a developmental center is required to provide a plan to
48 correct deficiencies as a result of an inspection by the Division of

1 Health Facilities Evaluation and Licensing in the Department of
2 Health that allows for inquiry into the physical environment,
3 records, equipment, sanitary conditions, accommodations, and
4 management of an individual with a developmental disability, and
5 those deficiencies have not been corrected within 30 days of the
6 date that the developmental center submitted the plan to the
7 division, the individual with a developmental disability residing in
8 that developmental center shall be removed from the developmental
9 center if the division determines that the developmental center's
10 failure to implement the plan to correct the deficiencies threatens
11 the health and well-being of that individual.

12 b. If the health, safety, or well-being of an individual with a
13 developmental disability residing in a developmental center is
14 threatened because of the developmental center's noncompliance
15 with the federal standards adopted under Part 483 of Title 42 of the
16 Code of Federal Regulations, the individual with a developmental
17 disability shall be removed from the developmental center. The
18 developmental center shall be subject to such negative action
19 against its certification as determined by the division, in accordance
20 with federal law.

21 c. If the division determines that failure to implement a plan of
22 correction poses an immediate jeopardy to the health and safety of
23 the residents, the division shall terminate the certification of the
24 developmental center, as provided for in section 442.117 of Title
25 42, Code of Federal Regulations.

26

27 6. A provider of a day program shall submit to the Division of
28 Developmental Disabilities in the department a plan to correct
29 deficiencies as a result of an inspection by the Office of Licensing
30 or another unit of the department that provides for inquiry into the
31 physical environment, records, equipment, sanitary conditions, and
32 management of an individual with a developmental disability
33 attending the day program. A day program shall be subject to the
34 following provisions:

35 a. If a provider of a day program is required to provide a plan
36 to correct deficiencies as a result of an inspection conducted
37 pursuant to this section, and that plan has not been successfully
38 implemented, as determined by the Office of Licensing or another
39 unit of the department, within 30 days of the date that the provider
40 of the day program submitted the plan to the office or other unit of
41 the department, as applicable, an individual with a developmental
42 disability shall no longer attend that day program if the office or
43 other unit of the department determines that the failure of the day
44 program to implement the plan threatens the health and well-being
45 of that individual.

46 b. If the health, safety, or well-being of an individual with a
47 developmental disability attending a day program is threatened
48 because the day program is not capable of providing a healthy and

1 safe environment to an individual with a developmental disability,
2 as determined by an inspection conducted pursuant to this section,
3 the Division of Developmental Disabilities may remove the
4 individual with a developmental disability from the day program
5 and the department may, upon notice and after hearing, reduce the
6 number of individuals with developmental disabilities eligible for
7 services from the department who attend the day program or take
8 such other negative action against the provider of the day program
9 as the department determines necessary.

10 c. (1) The department shall have the authority to impose a
11 penalty in an amount of \$350 per day on the provider of a day
12 program for a repeated failure to implement a plan to correct
13 deficiencies. The penalty shall be payable to the Treasurer of the
14 State of New Jersey and shall be used to provide services to
15 individuals with developmental disabilities.

16 (2) If the department determines that a repeated failure to
17 implement a plan to correct deficiencies endangers the health and
18 well-being of an individual with a developmental disability
19 attending the day program, the department may, upon notice and
20 after hearing, rescind the contract of the provider of the day
21 program with the Division of Developmental Disabilities or the
22 department, as applicable, or take such other negative action against
23 the provider as the division or department determines necessary.

24

25 7. A nursing home licensed by the Department of Health shall
26 be subject to the following provisions:

27 a. If a licensee of a nursing home is required to provide a plan
28 to correct deficiencies as a result of an inspection by the Division of
29 Health Facilities Evaluation and Licensing in the Department of
30 Health that provides for inquiry into the facilities, records,
31 equipment, sanitary conditions, accommodations, and management
32 of an individual with a developmental disability, and those
33 deficiencies have not been corrected within 30 days of the date that
34 the licensee submitted the plan to the division, the individual with a
35 developmental disability residing in that nursing home shall be
36 removed from the nursing home if the division determines that the
37 licensee's failure to implement the plan to correct the deficiencies
38 threatens the health and well-being of that individual.

39 b. If the health, safety, or well-being of an individual with a
40 developmental disability residing in a nursing home is threatened
41 because of a licensee's noncompliance with the standards adopted
42 by regulation of the department, the individual with a
43 developmental disability shall be removed from the nursing home,
44 and the licensee shall be subject to negative licensing action.

45 c. (1) The department shall have the authority to impose a
46 penalty in an amount of \$350 per day on the licensee of the nursing
47 home for a repeated failure to implement a plan to correct the
48 deficiencies. The penalty shall be payable to the Treasurer of the

1 State of New Jersey and shall be used to provide services to
2 individuals with developmental disabilities.

3 (2) If the department determines that a repeated failure to
4 implement a plan to correct deficiencies endangers the health and
5 well-being of an individual with a developmental disability, the
6 department may, upon notice and after hearing, revoke the license
7 issued to operate the nursing home.

8 d. Before taking negative licensing action pursuant to this
9 section, the department shall give notice personally, or by mail, to
10 the last known address of the licensee of a nursing home with return
11 receipt requested. The notice shall afford the licensee the
12 opportunity to be heard and to contest the department's action. The
13 hearing shall be conducted in accordance with the "Administrative
14 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

15 e. As used in this section, "negative licensing action" means an
16 action taken that imposes a restriction on a licensee and may
17 include suspension of admissions, issuance of a provisional license,
18 reduction in the licensed capacity, non-renewal of a license,
19 suspension of a license, or revocation of a license.

20

21 8. a. The Department of Human Services shall require a
22 community residence for the developmentally disabled to comply
23 with the following provisions as a condition of maintaining its
24 license:

25 (1) A staff member of a community residence for the
26 developmentally disabled shall, annually, undergo an examination
27 by a physician to ascertain whether the staff member is physically
28 and mentally capable of fulfilling the job duties of a staff member,
29 as specified on the form listing a staff member's job duties prepared
30 by the department pursuant to section 12 of P.L. , c. (C.)
31 (pending before the Legislature as this bill) and completed by the
32 physician pursuant to this subsection. Upon conclusion of the
33 examination, the physician shall provide the staff member with a
34 statement as to whether the staff member is capable of fulfilling the
35 duties of a staff member, and shall complete and attach the form on
36 which the physician shall indicate, for each duty, whether the staff
37 member is capable of fulfilling the duty. The licensee of the
38 community residence for the developmentally disabled may, at its
39 discretion, require further physical or mental health examinations of
40 the staff member.

41 (2) Upon receipt of the physician statement and the form
42 completed pursuant to paragraph (1) of this subsection, a staff
43 member shall provide the statement and form to the licensee of the
44 community residence for the developmentally disabled. If a staff
45 member fails to provide the statement and form, the licensee shall
46 have the authority to: stop any payments to the staff member; seek
47 recovery of any payments to the staff member from the date that the

1 statement and form were due; and not resume payment until such
2 time as the staff member submits the statement and form.

3 (3) If, after undergoing the examination, a staff member is
4 unable to provide the physician statement and the form completed
5 pursuant to paragraph (1) of this subsection, the licensee of the
6 community residence for the developmentally disabled may
7 reassign the staff member to duties that do not involve contact with
8 individuals with developmental disabilities.

9 b. (1) In the event that an individual with a developmental
10 disability is not capable of managing the individual's own funds, a
11 staff member of a community residence for the developmentally
12 disabled who is responsible for making purchases and
13 disbursements on the individual's behalf shall not make such a
14 purchase or disbursement unless that purchase or disbursement
15 reflects the specific needs of the individual with a developmental
16 disability.

17 (2) Over a four-year period, the Office of Auditing in the
18 department shall review a random sample of one month's worth of
19 receipts or records for purchases and disbursements made on behalf
20 of each individual with a developmental disability residing in a
21 community residence for the developmentally disabled. The case
22 manager and the case manager's supervisor shall also review a
23 random sample of receipts or records of such purchases and
24 disbursements when conducting visits pursuant to section 8 of
25 P.L.1983, c.524 (C.30:6D-20) or section 14 of P.L. c. (C.) (
26 pending before the Legislature as this bill). If it is determined that a
27 purchase or disbursement does not reflect the specific needs of the
28 individual with a developmental disability, that fact shall be
29 documented and the commissioner or the commissioner's designee
30 shall be so advised. The commissioner or the commissioner's
31 designee may instruct the licensing agency to take negative
32 licensing action.

33 (3) (a) If there is evidence from a review of a random sampling
34 of receipts or records performed pursuant to paragraph (2) of this
35 subsection that an inappropriate purchase or disbursement entailed
36 an egregious amount of money, the commissioner or the
37 commissioner's designee shall report the purchase or disbursement
38 to the Attorney General.

39 (b) If there is evidence that a case manager was aware of an
40 egregious inappropriate purchase or disbursement and failed to
41 document that fact or notify the case manager's supervisor, the
42 commissioner or the commissioner's designee shall notify the
43 Attorney General.

44 c. A staff member shall annually attend a continuing education
45 program conducted or approved by the department, as provided for
46 in section 12 of P.L. , c. (C.) (pending before the
47 Legislature as this bill).

1 d. A staff member shall demonstrate to the case manager the
2 staff member's ability to provide any physical assistance that
3 individuals in the community residence for the developmentally
4 disabled may require.

5 e. A staff member shall immediately notify the responsible
6 placing agency in the event of a lapse in the individual's
7 participation or attendance in the individual's day program that
8 exceeds a duration of five consecutive days, with the exception of a
9 planned vacation or a documented medical reason.

10

11 9. a. The Department of Human Services shall require a
12 developmental center and private licensed facility to comply with
13 the following provisions:

14 (1) A staff member of a developmental center or private
15 licensed facility shall, annually, undergo an examination by a
16 physician to ascertain whether the staff member is physically and
17 mentally capable of fulfilling the job duties of a staff member, as
18 specified on the form listing a staff member's job duties prepared
19 by the department pursuant to section 12 of P.L. , c. (C.)
20 (pending before the Legislature as this bill) and completed by the
21 physician pursuant to this subsection. Upon conclusion of the
22 examination, the physician shall provide the staff member with a
23 statement as to whether the staff member is capable of fulfilling the
24 duties of a staff member, and shall complete and attach the form on
25 which the physician shall indicate, for each duty, whether the staff
26 member is capable of fulfilling the duty. The chief executive
27 officer of the developmental center or private licensed facility or
28 the officer's designee may, at the officer's or designee's discretion,
29 require further physical or mental health examinations of the staff
30 member.

31 (2) Upon receipt of the physician statement and the form
32 completed pursuant to paragraph (1) of this subsection, a staff
33 member shall provide the statement and form to the chief executive
34 officer of the developmental center or private licensed facility or
35 the officer's designee. If a staff member fails to provide the
36 statement and form completed pursuant to paragraph (1) of this
37 subsection, the chief executive officer or the officer's designee shall
38 have the authority to: stop any payments to the staff member; seek
39 recovery of any payments to the staff member from the date that the
40 statement and form were due; and not resume payment until such
41 time as the staff member submits the statement and form.

42 (3) The chief executive officer or the officer's designee may
43 reassign the staff member to duties that do not involve contact with
44 individuals with developmental disabilities. If the staff member is
45 employed by the department, the staff member shall retain any
46 available right of review by the Civil Service Commission.

47 b. (1) In the event that an individual with a developmental
48 disability is not capable of managing the individual's own funds, a

1 staff member who is responsible for making purchases and
2 disbursements on the individual's behalf shall not make such a
3 purchase or disbursement unless that purchase or disbursement
4 reflects the specific needs of the individual with a developmental
5 disability.

6 (2) Over a four-year period, the Office of Auditing in the
7 department shall review a random sample of one month's worth of
8 receipts or records for purchases and disbursements made on behalf
9 of each individual with a developmental disability residing in a
10 developmental center or private licensed facility. If it is determined
11 that a purchase or disbursement does not reflect the specific needs
12 of the individual with a developmental disability, that fact shall be
13 documented and the commissioner or the commissioner's designee
14 shall be so advised. The department may take negative licensing
15 action against a private licensed facility.

16 In the case of a developmental center, the department shall
17 advise the Division of Health Facilities Evaluation and Licensing in
18 the Department of Health for the purpose of taking negative action
19 against the certification of the developmental center.

20 (3) If there is evidence from a review of a random sampling of
21 receipts or records performed pursuant to paragraph (2) of this
22 subsection that an inappropriate purchase or disbursement entailed
23 an egregious amount of money, the commissioner or the
24 commissioner's designee shall report the purchase or disbursement
25 to the Attorney General.

26 c. A staff member of a developmental center or private
27 licensed facility shall annually attend a continuing education
28 program conducted or approved by the department, as provided for
29 in section 12 of P.L. , c. (C.) (pending before the Legislature
30 as this bill).

31 d. A staff member shall demonstrate to the chief executive
32 officer of the developmental center or private licensed facility, or
33 the officer's designee, the staff member's ability to provide any
34 physical assistance that individuals in the developmental center or
35 private licensed facility may require.

36

37 10. a. The Department of Human Services shall require a day
38 program to comply with the following provisions as a condition of
39 operating a day program for individuals with developmental
40 disabilities eligible for services from the Division of Developmental
41 Disabilities.

42 (1) A staff member of a day program shall, annually, undergo an
43 examination by a physician to ascertain whether the staff member is
44 physically and mentally capable of fulfilling the job duties of a staff
45 member, as specified on the form listing a staff member's job duties
46 prepared by the department pursuant to section 12 of
47 P.L. , c. (C.) (pending before the Legislature as this bill)
48 and completed by the physician pursuant to this subsection. Upon

1 conclusion of the examination, the physician shall provide the staff
2 member with a statement as to whether the staff member is capable
3 of fulfilling the duties of a staff member, and shall complete and
4 attach the form on which the physician shall indicate, for each duty,
5 whether the staff member is capable of fulfilling the duty. The
6 provider of a day program may, at its discretion, require further
7 physical or mental health examinations of the staff member.

8 (2) Upon receipt of the physician statement and the form
9 completed pursuant to paragraph (1) of this subsection, a staff
10 member shall provide the statement and form to the provider of the
11 day program. If a staff member fails to provide the statement and
12 form, the provider shall have the authority to: stop any payments to
13 the staff member; seek recovery of any payments to the staff
14 member from the date that the statement and form were due; and
15 not resume payment until such time as the staff member submits the
16 statement and form.

17 (3) If, after undergoing the examination, a staff member is
18 unable to provide the physician statement and the form completed
19 pursuant to paragraph (1) of this subsection, the provider of the day
20 program may reassign the staff member to duties that do not involve
21 contact with individuals with developmental disabilities.

22 b. A staff member shall annually attend a continuing education
23 program conducted or approved by the department, as provided for
24 in section 12 of P.L. , c. (C.) (pending before the
25 Legislature as this bill).

26 c. A staff member shall demonstrate to the provider of a day
27 program the staff member's ability to provide any physical
28 assistance that individuals attending the day program may require.

29

30 11. a. The Department of Health shall require a nursing home to
31 comply with the following provisions:

32 (1) A staff member of a nursing home shall, annually, undergo
33 an examination by a physician to ascertain whether the staff
34 member is physically and mentally capable of fulfilling the job
35 duties of a staff member, as specified on the form listing a staff
36 member's job duties prepared by the Department of Human
37 Services in consultation with the Department of Health pursuant to
38 section 12 of P.L. , c. (C.) (pending before the Legislature
39 as this bill), and completed by the physician pursuant to this
40 subsection. Upon conclusion of the examination, the physician
41 shall provide the staff member with a statement as to whether the
42 staff member is capable of fulfilling the duties of a staff member,
43 and shall complete and attach the form on which the physician shall
44 indicate, for each duty, whether the staff member is capable of
45 fulfilling the duty. The nursing home administrator or the
46 administrator's designee may, at the administrator's or designee's
47 discretion, require further physical or mental health examinations of
48 the staff member.

1 (2) Upon receipt of the physician statement and the form
2 completed pursuant to paragraph (1) of this subsection, a staff
3 member shall provide the statement and form to the nursing home
4 administrator or the administrator's designee. If a staff member
5 fails to provide the statement and the form completed pursuant to
6 paragraph (1) of this subsection, the nursing home administrator or
7 the administrator's designee shall have the authority to: stop any
8 payments to the staff member; seek recovery of any payments to the
9 staff member from the date that the statement and form were due;
10 and not resume payment until such time as the staff member
11 submits the statement and form.

12 (3) The nursing home administrator or the administrator's
13 designee may reassign the staff member to duties that do not
14 involve contact with individuals with developmental disabilities.

15 b. (1) In the event that an individual with a developmental
16 disability is not capable of managing the individual's own funds, a
17 staff member who is responsible for making purchases and
18 disbursements on the individual's behalf shall not make such a
19 purchase or disbursement unless that purchase or disbursement
20 reflects the specific needs of the individual with a developmental
21 disability.

22 (2) Over a four-year period, the Office of Auditing in the
23 Department of Human Services shall review a random sample of
24 one month's worth of receipts or records for purchases and
25 disbursements made on behalf of each individual with a
26 developmental disability residing in a nursing home. If it is
27 determined that a purchase or disbursement does not reflect the
28 specific needs of the individual with a developmental disability, that
29 fact shall be documented and the Commissioner of Health or the
30 commissioner's designee shall be so advised. The commissioner or
31 the commissioner's designee may instruct the Division of Health
32 Facilities Evaluation and Licensing in the Department of Health to
33 take negative licensing action.

34 (3) If there is evidence from a review of a random sampling of
35 receipts or records performed pursuant to paragraph (2) of this
36 subsection that an inappropriate purchase or disbursement entailed
37 an egregious amount of money, the commissioner or the
38 commissioner's designee shall report the purchase or disbursement
39 to the Attorney General.

40 c. A staff member shall annually attend a continuing education
41 program conducted or approved by the Department of Human
42 Services, in consultation with the Department of Health, as
43 provided for in section 12 of P.L. , c. (C.) (pending before
44 the Legislature as this bill).

45 d. A staff member shall demonstrate to the nursing home
46 administrator or the administrator's designee the staff member's
47 ability to provide any physical assistance that individuals with

1 developmental disabilities residing in the nursing home may
2 require.

3 e. As used in this section, "staff member" means a person
4 whose employment involves providing direct care to individuals
5 with developmental disabilities residing in a nursing home, but
6 excludes health care professionals licensed pursuant to Title 45 of
7 the Revised Statutes.

8

9 12. a. The department may issue a provisional license to operate
10 a community residence for the developmentally disabled or private
11 licensed facility, not to exceed a three-month period, during which
12 time the licensee of the community residence for the
13 developmentally disabled or the licensee of the private licensed
14 facility, as appropriate, shall demonstrate the ability to comply with
15 the provisions of P.L. , c. (C.) (pending before the
16 Legislature as this bill) and the applicable licensing standards
17 adopted by regulation of the department.

18 b. The department shall conduct, or approve another entity to
19 conduct, a continuing education program for a staff member of a
20 community residence for the developmentally disabled,
21 developmental center, private licensed facility, and day program.

22 c. The department shall prepare a form listing the job duties of
23 a staff member of a community residence for the developmentally
24 disabled, developmental center, private licensed facility and day
25 program, and shall annually distribute the form for completion by
26 the physician of the staff member, as appropriate, in accordance
27 with the provisions of sections 8, 9, and 10 of P.L. , c. (C.)
28 (pending before the Legislature as this bill), as applicable. The
29 form shall contain a check list on which the physician shall indicate
30 a person's ability to perform each duty.

31 d. The department, in consultation with the Department of
32 Health, shall:

33 (1) conduct, or approve another entity to conduct, a continuing
34 education program for a staff member of a nursing home, as defined
35 in subsection e. of section 11 of P.L. , c. (C.) (pending
36 before the Legislature as this bill); and

37 (2) prepare a form listing the job duties of a staff member of a
38 nursing home and shall annually distribute the form for completion
39 by the physician of the staff member in accordance with the
40 provisions of section 11 of P.L. , c. (C.) (pending before
41 the Legislature as this bill). The form shall contain a check list on
42 which the physician shall indicate a staff member's ability to
43 perform each duty.

44

45 13. a. A case manager conducting a visit to an individual with a
46 developmental disability, in accordance with the provisions of
47 section 8 of P.L.1983, c.524 (C.30:6D-20), shall, upon completion
48 of the visit, provide a written report to the case manager's

1 supervisor and, if requested, to the guardian or authorized family
2 member, as appropriate, of the individual with a developmental
3 disability. The report, which shall be sent electronically to the case
4 manager's supervisor and, if practicable, electronically to the
5 guardian or authorized family member, shall include information
6 pertaining to the care and safety of the individual with a
7 developmental disability, including, but not limited to, personal
8 hygiene and grooming, nutritional and clothing needs, overall
9 sanitary and living conditions of the community residence for the
10 developmentally disabled, and the general well-being of the
11 individual with a developmental disability.

12 The reports made pursuant to this subsection may be shared with
13 persons other than the guardian or authorized family member, if the
14 guardian or individual with the developmental disability so
15 authorizes in writing.

16 b. The case manager shall also review, on a monthly basis, any
17 records required to be maintained on behalf of an individual with a
18 developmental disability. The case manager's supervisor shall
19 review the records when the supervisor performs the visit required
20 by section 14 of P.L. , c. (C.) (pending before the
21 Legislature as this bill). The case manager or supervisor, or both,
22 as applicable, shall provide written documentation that the records
23 were reviewed and include that documentation with the other
24 records maintained on behalf of an individual with a developmental
25 disability.

26

27 14. The supervisor of a case manager shall, over a three-year
28 period, visit 100 percent of the individuals with developmental
29 disabilities who are assigned to the case manager, except that
30 individuals who are their own guardians may decline such visits by
31 providing a written statement to that effect to the department. One
32 third of the visits shall be conducted in each of the first three years.
33 If, after three years, the supervisor determines, based on certain
34 factors, including, but not limited to, the number and age of the
35 individuals with developmental disabilities residing in a community
36 residence for the developmentally disabled, the individuals' regular
37 attendance at day programs, and lack of complaints after three
38 years, the individuals in the community residence for the
39 developmentally disabled are not at risk for abuse, neglect, or
40 exploitation, the visits may be reduced to one visit every four years.

41 a. Each visit shall be conducted by the supervisor of the case
42 manager in coordination with a case manager who is unaffiliated
43 with, and unfamiliar to, the assigned case manager. The supervisor
44 and unaffiliated case manager shall prepare and provide to the
45 guardian or authorized family member of the individual with a
46 developmental disability a written report pertaining to the care and
47 safety of that individual.

1 b. If, as a result of a visit conducted pursuant to subsection a.
2 of this section, a supervisor determines that a community residence
3 for the developmentally disabled is not capable of providing care or
4 training, or both, to an individual with a developmental disability
5 the supervisor shall so advise the commissioner or the
6 commissioner's designee, who shall instruct the licensing agency to
7 take negative licensing action. In such a case, the supervisor shall
8 provide a copy of the written report prepared pursuant to section 13
9 of P.L. , c. (C.) (pending before the Legislature as this bill)
10 and the written report concerning a community residence for the
11 developmentally disabled prepared pursuant to a. of this section to
12 the commissioner or the commissioner's designee.

13 c. If, based on the supervisor's and unaffiliated case manager's
14 visit and input from family members or the guardian of the
15 individual with a developmental disability, the supervisor
16 determines that the individual would benefit from a change in the
17 individual's case manager, the supervisor shall assign a different
18 case manager to the individual.

19 d. The Office of Licensing shall annually conduct routine
20 unannounced visits of 25 percent of community residences for the
21 developmentally disabled Statewide. These visits shall include a
22 review of financial records, including receipts for purchases and
23 disbursement.

24

25 15. Before taking a negative licensing action or any other
26 negative action pursuant to P.L. , c. (C.) (pending before the
27 Legislature as this bill), the department shall give notice personally,
28 or by mail, to the last known address of the licensee of a community
29 residence for the developmentally disabled or private licensed
30 facility, or the provider of a day program, as appropriate, with
31 return receipt requested. The notice shall afford the licensee or
32 provider the opportunity to be heard and to contest the department's
33 action. The hearing shall be conducted in accordance with the
34 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
35 seq.).

36

37 16. The Special Response Unit shall compile data about any
38 investigation conducted as a result of a report made pursuant to
39 section 3 of P.L.2010, c.5 (C.30:6D-75) concerning abuse, neglect,
40 or exploitation of an individual with a developmental disability
41 residing in a community residence for the developmentally
42 disabled, developmental center, private licensed facility, or nursing
43 home, and shall issue an annual report as provided in this section.
44 The report, which shall be made available on the website of the
45 department and contain non-identifying information, shall, at a
46 minimum, include:

47 a. the number of individuals with developmental disabilities
48 who were the subject of an allegation of abuse, neglect, or

1 exploitation, and the number of substantiated, unsubstantiated, and
2 unfounded allegations;

3 b. the number of deaths, if any, of individuals with
4 developmental disabilities who were the subject of a report of
5 abuse, neglect, or exploitation, the cause of death, and the types of
6 residences in which the individuals resided;

7 c. the number of case managers or case managers' supervisors
8 who have been reassigned or terminated, or both, as a result of an
9 investigation of abuse, neglect, or exploitation of an individual with
10 a developmental disability; and

11 d. the number of case managers or case managers' supervisors
12 against whom a civil or criminal action has been brought as a result
13 of an allegation of abuse, neglect, or exploitation of an individual
14 with a developmental disability.

15

16 17. a. In addition to the requirements of section 12 of P.L.2012,
17 c.69 (C.30:6D-5.16), a provider of a day program shall submit to
18 the Division of Developmental Disabilities a copy of its monthly
19 report of individuals with developmental disabilities who attend the
20 day program. The report shall be submitted no later than 14 days
21 after the end of each month.

22 b. A provider of a day program shall not seek reimbursement
23 from the department for an individual with a developmental
24 disability who is scheduled to attend the day program, but has not
25 attended the program for 30 consecutive days. A provider who
26 seeks reimbursement in violation of this subsection shall refund a
27 payment received from the department on behalf of that individual,
28 and shall be subject to a penalty of \$1,000 per day, per individual
29 listed on the monthly attendance report as being in attendance, but
30 who was not in attendance. The penalty shall be sued for and
31 collected in a summary proceeding by the commissioner pursuant to
32 the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-
33 10 et seq.).

34 c. If an individual with a developmental disability who is
35 scheduled to attend a day program is absent from the program for
36 30 consecutive days, the provider of the day program shall, no later
37 than 14 days after the end of the 30 days, notify the appropriate
38 regional office administrator.

39 d. The division shall, no later than 28 days after the end of each
40 month, provide a copy of the monthly report submitted by a
41 provider pursuant to this section to:

42 (1) the appropriate regional office administrator; and

43 (2) the supervisor of a case manager assigned to an individual
44 with a developmental disability who is scheduled to attend the day
45 program.

46 e. The division shall provide:

47 (1) a guardian or authorized family member of an individual
48 with a disability who is scheduled to attend a day program with

1 information pertaining to the individual's monthly attendance at the
2 day program, if requested. The information shall be provided no
3 later than 28 days after the end of the month in which the
4 information was requested; and

5 (2) a random sampling of the monthly reports to the Special
6 Response Unit, which shall audit attendance of individuals with
7 developmental disabilities who are scheduled to attend a day
8 program.

9 f. A regional office administrator shall bi-annually conduct an
10 on-site audit of attendance of individuals with developmental
11 disabilities who are scheduled to attend a day program in the
12 office's region.

13

14 18. a. A physician examining or treating an individual with a
15 developmental disability who resides in a community residence for
16 the developmentally disabled, developmental center, private
17 licensed facility or nursing home, or the chief executive officer or
18 the officer's designee of a hospital or similar institution to which the
19 individual has been brought for care or treatment, or both, may take
20 the individual into protective custody when the individual has
21 suffered serious physical injury or injuries, or the individual's
22 condition constitutes a life-threatening emergency, as defined in
23 section 2 of P.L.2003, c.191 (C.30:6D-5.2), and the most probable
24 inference from the medical and factual information supplied is that
25 the injury or condition was inflicted upon the individual by another
26 person by other than accidental means, and the person suspected of
27 inflicting, or permitting to be inflicted, the injury upon the
28 individual is a staff member of a community residence for the
29 developmentally disabled, developmental center, private licensed
30 facility, or nursing home where the individual resides and to whom
31 the individual would normally be returned.

32 b. The physician or the chief executive officer or the officer's
33 designee of a hospital or similar institution taking an individual
34 with a disability into protective custody shall immediately report
35 the action and the condition of the individual with a developmental
36 disability to the department by calling its emergency telephone
37 service.

38 c. A physician or chief executive officer or the officer's
39 designee who fails to comply with the provisions of this section
40 shall be subject to a penalty of \$500. The penalty shall be sued for
41 and collected in a summary proceeding by the commissioner
42 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
43 c.274 (C.2A:58-10 et seq.).

44

45 19. a. An agency or organization that causes a written,
46 individualized habilitation plan to be developed pursuant to section
47 10 of P.L.1977, c.82 (C.30:6D-10), on or after the effective date of
48 P.L. , c. (C.) (pending before the Legislature as this bill), for

1 an individual with a developmental disability residing in a
2 community residence for the developmentally disabled,
3 developmental center, private licensed facility, or nursing home
4 shall not include the Social Security number of the individual on the
5 plan. In the case of an individualized habilitation plan developed
6 prior to the effective date of P.L. , c. (C.) (pending before
7 the Legislature as this bill), the Social Security number of the
8 individual shall be removed from the plan within 60 days of the
9 effective date of P.L. , c. (C.) (pending before the
10 Legislature as this bill).

11 b. A private agency or organization that violates the provisions
12 of subsection a. of this section shall be subject to a penalty of \$250
13 for the first offense and \$500 for each subsequent offense. The
14 penalty shall be sued for and collected in a summary proceeding by
15 the commissioner pursuant to the "Penalty Enforcement Law of
16 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

17 c. In addition to the requirements for the development,
18 revision, and review of an individual habilitation plan pursuant to
19 sections 10 and 12 of P.L.1977, c.82 (C.30:6D-10 and C.30:6D-12),
20 a plan developed, revised, or reviewed for an individual with a
21 developmental disability shall be provided to the community
22 residence for the developmentally disabled where the individual
23 resides, the case manager of the individual with a developmental
24 disability, and the case manager's supervisor, as applicable.

25 d. If a guardian or authorized family member of an individual
26 with developmental disabilities residing in a community residence
27 for the developmentally disabled, developmental center, private
28 licensed facility, or nursing home is unable to attend the
29 development, revision, or review of the plan, a copy of the plan
30 shall be provided to the guardian or authorized family member of
31 the individual, and the guardian or authorized family member, as
32 appropriate, shall sign and return a copy of the plan to the agency or
33 organization responsible for the development, revision, or review of
34 the plan.

35

36 20. The Commissioners of Human Services and Health shall
37 adopt rules and regulations, pursuant to the "Administrative
38 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to
39 carry out the provisions of this act.

40

41 21. This act shall take effect on the 180th day after the date of
42 enactment, but the Commissioners of Human Services and Health
43 may take such anticipatory administrative action in advance thereof
44 as shall be necessary for the implementation of this act.

STATEMENT

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This bill is designed to provide protections for individuals with developmental disabilities residing in community residences for the developmentally disabled, developmental centers, private licensed facilities, and nursing homes. "Community residences for the developmentally disabled" are defined in the bill as including, but not limited to, group homes and supervised apartments. The bill also includes protections for individuals with developmental disabilities who attend day programs in the community.

Under the provisions of the bill, if an inspection of one of these residences or programs by the Department of Human Services (DHS) or the Department of Health (DOH), as applicable, requires the submission of a plan of to correct deficiencies and that plan has not been successfully implemented within 30 days, an individual with a developmental disability is to be removed if it is determined that failure to implement the plan threatens the individual's health and well-being. For a repeated failure to implement the plan, a license may be revoked, or any other negative action may be taken against the provider of the services.

In the case of a developmental center, which is inspected by the Division of Health Facilities Evaluations and Licensing in DOH and is required to comply with federal standards, the bill also requires removal of an individual if failure to implement a plan of correction threatens the individual's health and well-being, and provides that the developmental center is subject to negative action against its certification, in accordance with federal regulations.

The bill also requires a staff member providing direct care to individuals with developmental disabilities to annually undergo an examination by a physician to ascertain physical and mental ability to fulfill job duties. The physician is to provide a statement and complete a form indicating ability to perform each duty. Failure to provide these documents may result in non-payment, recovery of prior payments, and no resumption of payment until a staff member submits the statement and form. A staff member employed by DHS retains any available right of review by the Civil Service Commission.

If an individual with a developmental disability is incapable of managing his own funds, a staff member is restricted from making purchases and disbursements that do not reflect specific needs of the individual. Over a four-year period, the Office of Auditing in DHS is to review a sample of one month's receipts for purchases and disbursements made on behalf of the individual. A case manager and the case manager's supervisor are also to review a random sample of receipts when they conduct visits to residences. If it is determined that purchases or disbursements do not reflect the individual's specific needs, that fact is documented and the Commissioner of Human Services or the commissioner's designee

1 is to be advised. In addition, if there is evidence of an inappropriate
2 purchase or disbursement entailing an egregious amount, the
3 Attorney General is to be notified.

4 The bill also requires staff members to annually attend a
5 continuing education program and demonstrate the ability to
6 provide physical assistance to individuals with developmental
7 disabilities under their care. For individuals with developmental
8 disabilities who reside in community residences for the
9 developmentally disabled and attend day programs, a staff member
10 of these residences is to notify the placing agency of a lapse in
11 attendance at a day program that exceeds five days, except for
12 vacations or medical reasons. The bill also limits provisional
13 licenses to a three-month, rather than the current six-month, period.

14 The bill provides for oversight of case management and requires
15 a case manager to provide a supervisor with a written report
16 pertaining to care and safety of an individual with a developmental
17 disability when monthly visits to individuals with developmental
18 disabilities are conducted pursuant to section 8 of P.L.1983, c.524
19 (C.30:6D-20). Reports are to be sent to the guardian or authorized
20 family member of the individual, and shared with others if the
21 guardian or individual so authorizes. In addition, individuals'
22 records are to be reviewed and the reviews are to be documented.

23 Over a three-year period, a case manager's supervisor is to visit
24 100 percent of the individuals with developmental disabilities who
25 are assigned to the case manager, except that individuals who are
26 their own guardians may decline. After three years, if the
27 supervisor determines that individuals are not at risk for abuse,
28 neglect, or exploitation, the supervisor visits may be reduced to one
29 every four years. Visits are to be conducted in coordination with a
30 case manager who is unaffiliated with, and unfamiliar to, the
31 assigned case manager, and written reports about the visits are to be
32 provided to the guardian or authorized family member. A different
33 case manager is to be assigned if it is determined that the individual
34 would benefit from such a change.

35 In addition, the Office of Licensing in DHS is to annually
36 conduct routine unannounced visits of 25 percent of community
37 residences for the developmentally disabled Statewide.

38 The bill requires the Special Response Unit in DHS to compile
39 data about investigations and issue an annual report, which is to be
40 available on the DHS website and contain non-identifying
41 information about individuals with developmental disabilities. The
42 bill also provides for oversight of providers of day programs for
43 individuals with developmental disabilities by requiring that
44 providers submit monthly attendance reports to the Division of
45 Developmental Disabilities (DDD). The providers are subject to a
46 penalty of \$1,000 per day, per individual, for seeking
47 reimbursement for an individual who is scheduled to attend, but has
48 not attended, the program for 30 days. Day program providers are

1 also to notify regional office administrators of non-attendance.
2 DDD is to provide a guardian or authorized family member with
3 information pertaining to attendance, and provide SRU with a
4 sampling of the monthly attendance reports for SRU to audit. A
5 regional office administrator is also to biannually conduct on-site
6 audits of attendance reports.

7 The bill provides physicians and chief executive officers of
8 hospitals with the authority to take an individual into protective
9 custody if there is suspicion that an injury was inflicted by a staff
10 member. Failure to comply would result in a penalty of \$500.

11 The bill also imposes a fine of \$250 for the first offense and
12 \$500 for the second offense of including an individual's Social
13 Security number on an individualized habilitation plan (IHP), and
14 requires that a copy of an IHP be provided to the community
15 residence for the developmentally disabled where the individual
16 resides, the individual's case manager, the supervisor, as well as the
17 guardian or authorized family members if they are unable to attend
18 the development, revision, or review of an IHP.

19 Lastly, the bill provides for rule making and has a delayed
20 effective date of the 180th day after the date of enactment, and
21 permits prior administrative action in advance of that date.