ASSEMBLY, No. 5247

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 12, 2021

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SYNOPSIS

Entitles legal guardians and certain other persons to receive detailed information and actual records in association with investigations involving abuse, neglect, or exploitation of individuals with developmental disabilities.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 3/1/2021)

AN ACT concerning information provided to legal guardians and certain other persons in association with investigations involving abuse, neglect, or exploitation of individuals with developmental disabilities and amending P.L.2010, c.5.

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

1. Section 4 of L.2010, c.5 (C.30:6D-76) is amended to read as follows:

4. a. Upon receipt of a report pursuant to section 3 of P.L.2010, c.5 (C.30:6D-75), the department shall designate an entity, as established by the commissioner, that shall immediately take such action as shall be necessary to ensure the safety of the individual 18 years of age or older with a developmental disability and to that end may request appropriate assistance from local and State law enforcement officials or contact Adult Protective Services to provide assistance in accordance with the provisions of P.L.1993, c.249 (C.52:27D-406 et seq.). The guardian of the individual with a developmental disability shall also be authorized to request appropriate assistance from local and State law enforcement officials.

b. (1) The commissioner shall adopt rules and regulations necessary to provide for an investigation of a reported incident and subsequent substantiation or non-substantiation of an allegation of abuse, neglect, or exploitation of an individual 18 years of age or older with a developmental disability by a caregiver, which shall include:

(a) maintaining an Office of Investigations to investigate serious unusual incidents, as defined by applicable rules and regulations, in facilities or programs licensed, contracted, or regulated by the department and to investigate incidents that occur in State developmental centers;

(b) providing the guardian of the individual with prior notice of the commencement of an investigation under this section, and providing an opportunity for the guardian, as appropriate, to submit information to facilitate an investigation, except that if there is no guardian, a family member of the individual may submit information, unless the individual has expressly prohibited the family member from doing so; and

(c) providing that a guardian of an individual with a developmental disability, upon request, may be permitted to attend the investigative interview of the individual the guardian represents and to terminate the interview of the individual the guardian represents, unless the attendance or termination would impede the investigation.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.

(2) During its investigation of an allegation of abuse, neglect, or exploitation of an individual 18 years of age or older with a developmental disability by a caregiver, the Office of Investigations shall make a good faith effort to notify the caregiver of the possibility of the caregiver's inclusion on the registry, and give the caregiver an opportunity to respond to the department concerning the allegation.

c. The Office of Investigations, the department, or other investigating entity shall forward to the commissioner, or the commissioner's designee, a substantiated incident of abuse, neglect, or exploitation of an individual 18 years of age or older with a developmental disability for inclusion of an offending caregiver on the central registry. The Office of Investigations, the department, or other investigating entity shall also forward to the commissioner, or the commissioner's designee, all unsubstantiated incidents of abuse, neglect, or exploitation of an individual 18 years of age or older with a developmental disability. As soon as possible, and no later than 14 days after receipt of the incident of abuse, neglect, or exploitation, the commissioner or the commissioner's designee shall review the incident. The offending caregiver of a substantiated incident shall be included on the central registry as expeditiously as possible. The Office of Investigations shall retain a record of all unsubstantiated incidents.

d. Upon the initiation of an investigation, the department shall: (1) ensure that any communication concerning the alleged abuse, neglect, or exploitation of an individual 18 years of age or older with a developmental disability between a caregiver, case manager of the caregiver, the case manager's supervisor, including a care manager or supervisor under contract with the Children's System of Care, or a person at the appropriate Community Services Office of the Division of Developmental Disabilities or the Children's System of Care is identified, safeguarded from loss or destruction, and maintained in a secure location; and (2) contact the Office of the Attorney General, which shall determine whether to participate in the investigation.

e. (1) No later than 30 days after an investigation under this section is concluded, the Office of Investigations shall issue a written report of the investigation that includes the conclusions of the office, the rationale for the conclusions, and a detailed summary of any communication secured pursuant to subsection d. of this section. The report shall also include an assessment of the role of any case manager of a caregiver or the case manager's supervisor, if applicable, in the allegation of abuse, neglect, or exploitation, and a recommendation about whether any civil or criminal action should be brought against the case manager or supervisor. The report shall be made part of the record for review in any civil or criminal proceeding that may ensue.

(2) [A] The Office of Investigations shall provide a written summary of the investigation, as [provided for] described in paragraph (3) of this subsection, [shall be provided] to the legal guardian of the individual 18 years of age or older with a developmental disability who is the subject of the alleged abuse, neglect, or exploitation[; however, the actual records and reports of an investigation shall also be provided to a guardian] or, if there is no legal guardian, to the family member or other person who is responsible for the individual's welfare [of the individual with a developmental disability if the information is needed in connection with the provision of care, treatment, assessment, evaluation, or supervision to the individual; and the provision of information is in the best interests of the individual with a developmental disability, as determined by the Division of Developmental Disabilities].

(3) The written summary of an investigation of an alleged incident of abuse, neglect, or exploitation shall include, but need not be limited to:

(a) the name of the individual with a developmental disability who is the subject of the alleged abuse, neglect, or exploitation;

(b) the date of the incident, or the date the incident was reported if the incident date is unknown;

(c) whether the incident is an allegation of abuse, neglect, or exploitation;

(d) the incident number;

(e) a summary of the allegation of abuse, neglect, or exploitation;

(f) a finding that the incident is substantiated or unsubstantiated;

(g) the rationale for the finding made pursuant to subparagraph (f) of this paragraph and, if the incident is substantiated, a description of the action or inaction that precipitated the finding;

(h) if known at the time of issuing the summary, whether or not criminal charges against the alleged offending caregiver are pending; and

(i) whether and what remedial action was taken.

(4) [If] In any case where there is no legal guardian of the individual with a developmental disability who is the subject of the alleged abuse, neglect, or exploitation, the Office of Investigations shall provide the written summary described in paragraph (3) of this subsection [shall be provided] to [a] each family member of the individual who requests such summary and who is not otherwise entitled to receive the summary pursuant to paragraph (2) of this subsection, unless the individual with a developmental disability has expressly prohibited the family member from receiving such summary.

(5) The legal guardian, family member, or other person who is entitled to receive the written summary of an investigation, as

provided by paragraph (2) of this subsection, shall also be entitled to receive a copy of all of the actual records and reports that were maintained or produced by the Office of Investigations in association with the investigation. The Office of Investigations shall ensure that all such records and reports are made available to the person entitled to review them within 10 days after the written summary is provided to the person pursuant to paragraph (2) of this subsection.

f. A licensed provider in another state shall be permitted access to the central registry.

g. The department, the Office of Investigations, or other investigative entity shall forward to the Commissioner of Children and Families, or to the commissioner's designee, copies of the investigative reports involving any individual over the age of 18 with a developmental disability who is the subject of an investigation and is receiving services from the Children's System of Care. The reports may be used by the Department of Children and Families, as appropriate, to initiate or support contracting, licensing, or other corrective actions.

h. The department, the Office of Investigations, the Institutional Abuse Investigation Unit, and any other investigative entity may share, with and among each other, investigative records involving an individual with a developmental disability who is the subject of an investigation of an incident of abuse, neglect, or exploitation pursuant to section 3 of P.L.2010, c.5 (C.30:6D-75) or an investigation of child abuse or neglect pursuant to section 4 of P.L.1971, c.437 (C.9:6-8.11).

(cf: P.L.2017, c.238, s.10)

2. This act shall take effect immediately.

STATEMENT

This bill would amend the law pertaining to investigations of incidents involving the abuse, neglect, and exploitation of an individual with a developmental disability in order to make it easier for a guardian, family member, or other person who is responsible for the welfare of such an individual to obtain detailed information related to investigations of allegations of abuse, neglect, or exploitation affecting that individual.

First, the bill would clarify that the Office of Investigations will be required to provide a written summary of any investigation involving allegations of abuse, neglect, or exploitation of an individual 18 years of age or older with a developmental disability to: 1) the individual’s legal guardian; or 2) if there is no legal guardian, to the family member or other person who is responsible for the individual’s welfare. The bill would further clarify that, in

any case where there is no legal guardian of the individual with a developmental disability, the written summary of the investigation is to be provided, not only to the family member or other person who is responsible for the individual's welfare, but also to any other family member of the individual who requests such summary, unless the individual with a developmental disability has expressly prohibited such family member from receiving the summary.

Finally, the bill provides that, in addition to the receipt of a written investigation summary, the legal guardian, family member, or other person responsible for the welfare of an individual with a developmental disability who is the subject of an investigation into allegations of abuse, neglect, or exploitation will further be entitled to receive a copy of all of the actual records and reports that were maintained or produced by the Office of Investigations in association with the investigation. The bill requires the Office of Investigations to ensure that all such records and reports are made available to the person entitled to review them within 10 days after the written summary of the investigation is provided to the person.