

N.J.A.C. 10:44D

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 51 No. 11, June 3, 2019

New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 44D. CENTRAL REGISTRY OF OFFENDERS AGAINST INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

Title 10, Chapter 44D -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

N.J.S.A. 30:11B-1 et seq., specifically 30:11B-4.

History

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2019 d.002, effective November 30, 2018.

See: 50 N.J.R. 1694(a), 51 N.J.R. 85(a).

CHAPTER HISTORICAL NOTE:

Chapter 44D, Central Registry of Offenders Against Individuals with Developmental Disabilities, was adopted as new rules by R.2011 d.164, effective June 6, 2011. See: 42 N.J.R. 2884(a), 43 N.J.R. 1334(a).

Chapter 44D, Central Registry of Offenders Against Individuals with Developmental Disabilities, was readopted as R.2019 d.002, effective November 30, 2018. See: Source and Effective Date. See, also, section annotations.

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N.J.A.C. 10:44D-1.1

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New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 44D. CENTRAL REGISTRY OF OFFENDERS AGAINST INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES > SUBCHAPTER 1. GENERAL PROVISIONS

§ 10:44D-1.1 Purpose and scope

(a)No person who is placed on the Central Registry of Offenders Against Individuals with Developmental Disabilities shall receive State funding, directly or indirectly, in whole or in part, to provide services or supports, or both, to an individual with a developmental disability.

(b)No facility, program or employer of record providing services to individuals with developmental disabilities that is State-operated, licensed, contracted or regulated by the Department of Human Services, or providing State-funded community-based services shall employ or maintain the employment of a person who is placed on the Central Registry of Offenders Against Individuals with Developmental Disabilities.

(c)No person shall receive or maintain a license to operate any community care residence for individuals with developmental disabilities, nor shall any person occupy or provide care to a community care resident as a volunteer, alternate or respite provider who has been placed on the Central Registry, until removed by an affirmative demonstration of rehabilitation as described at N.J.A.C. 10:44D-6.3. The employment, licensure or State funding shall be terminated immediately, until removed by an affirmative demonstration of rehabilitation as described at N.J.A.C. 10:44D-6.3.

N.J.A.C. 10:44D-1.2

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§ 10:44D-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Abuse" means wrongfully inflicting or allowing to be inflicted physical abuse, sexual abuse or verbal or psychological abuse or mistreatment by a caregiver upon an individual with a developmental disability.

"Act" means N.J.S.A. 30:6D-73 et seq.

"Authorized family member" means a relative of the individual with a developmental disability authorized by the individual's guardian or by the individual, if the individual does not have an appointed guardian, to receive information pursuant to this section.

"Caregiver" means a person who receives State funding, directly or indirectly, in whole or in part, or who volunteers to provide services or supports, or both, to an individual with a developmental disability.

1. "Caregiver" shall not include an immediate family member of a person with a developmental disability.

"Central Registry" means the Central Registry of Offenders Against Individuals with Developmental Disabilities established pursuant to the Act.

"Commissioner" means the Commissioner of the Department of Human Services.

"Community-based residential program" or "residential program" means a group home or supervised apartment, which is licensed and regulated by the Department.

"Day program" means a program that is certified to provide day habilitation services or sheltered workshops for individuals with developmental disabilities.

"Department" means the Department of Human Services.

"Developmental disability" means developmental disability as defined in P.L. 1977, c. 82, § 3 (N.J.S.A. 30:6D-3).

"Division" means the Division of Developmental Disabilities.

"Exploitation" means the act or process of a caregiver using an individual with a developmental disability or his resources for another person's profit or advantage.

"Immediate family member" means a parent; sibling; child by blood, adoption or marriage; spouse; civil union partner; grandparent; or grandchild.

"Intimate parts" means the following body parts of a person: sexual organs, genital area, anal area, inner thigh, groin, buttock or breast.

"Lewdness" means the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of a caregiver or an individual with a developmental disability, or any flagrantly lewd and offensive act that the caregiver knows or reasonably expects is likely to be observed by an individual with a developmental disability.

"Neglect" shall consist of any of the following acts by a caregiver on an individual with a developmental disability: willfully failing to provide proper and sufficient food, clothing, maintenance, medical care or a clean and proper home; or failure to do, or permit to be done, any act necessary for the well-being of an individual with a developmental disability.

"Physical abuse" means a physical act directed at an individual with a developmental disability by a caregiver of a type that causes one or more of the following: pain, injury, anguish or suffering. Such acts include, but are not limited to, the individual with a developmental disability being kicked, pinched, bitten, punched, slapped, hit, pushed, dragged or struck with a thrown or held object.

"Program" means any program that is licensed or funded by the Department for the purpose of providing services to individuals with developmental disabilities. "Program" includes, but is not limited to, a day program or a community-based, residential program.

"Sexual abuse" means an act or attempted act of lewdness, sexual contact or sexual penetration between a caregiver and an individual with a developmental disability. Any form of sexual contact or activity between a caregiver and an individual with a developmental disability, absent marriage, domestic partnership or civil union, is sexual abuse, regardless of whether the individual with a developmental disability gives consent or the caregiver is on or off duty.

"Sexual contact" means an intentional touching by a caregiver or individual with a developmental disability, either directly or through clothing, of the intimate parts of the individual with a developmental disability or the caregiver for the purpose of sexually arousing or sexually gratifying the caregiver. Sexual contact of the caregiver with himself or herself must be in view of the individual with a developmental disability whom the caregiver knows to be present.

"Sexual penetration" means vaginal intercourse, cunnilingus, fellatio or anal intercourse between a caregiver and an individual with a developmental disability or insertion of the hand, finger or object into the anus or vagina, either by the caregiver or upon the caregiver's instruction.

"Substantiated" means the available information obtained during the investigation of an allegation of abuse, neglect, or exploitation indicates a finding by a preponderance of the evidence that a caretaker or licensee abused, neglected, or exploited an individual with a developmental disability.

"Unfounded" means the available information obtained during the investigation of an allegation of abuse, neglect, or exploitation indicates a finding that a caretaker or licensee has not abused, neglected, or exploited an individual with a developmental disability.

"Unsubstantiated" means the available information obtained during the investigation of an allegation of abuse, neglect, or exploitation does not indicate a finding, by a preponderance of the evidence, that a caretaker or licensee abused, neglected, or exploited an individual with a developmental disability, but there may be some indication that an individual may have been harmed or placed at risk of harm.

"Verbal or psychological abuse or mistreatment" means any verbal or non-verbal act or omission by a caregiver that inflicts one or more of the following: emotional harm; mental distress; or invocation of fear, humiliation, intimidation or degradation to an individual with a developmental disability. Examples include, but are not limited to: bullying; ignoring need; verbal assault; use of racial or ethnic slurs; or intimidating gestures, such as shaking a fist at an individual with a developmental disability.

History

HISTORY:

Amended by R.2019 d.002, effective January 7, 2019.

See: 50 N.J.R. 1694(a), 51 N.J.R. 85(a).

Added definitions "Authorized family member", "'Community-based residential program' or 'residential program' ", "Day program", "Program", "Substantiated", "Unfounded", and "Unsubstantiated".

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N.J.A.C. 10:44D-1.3

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§ 10:44D-1.3 General policy

The primary concern of all providers of services to individuals with developmental disabilities, who are vulnerable to abuse, neglect and exploitation, shall be to assure the safety, health, welfare and freedom from exploitation of the individual with a developmental disability.

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N.J.A.C. 10:44D-2.1

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§ 10:44D-2.1 Allegations of abuse, neglect, or exploitation

(a)A case manager or case manager's supervisor in the Department, a person employed or volunteering in a program, facility, community care residence, or living arrangement licensed or funded by the Department, or a person providing community-based services with indirect State funding to a person with a developmental disability, as applicable, having reasonable cause to believe that an individual with a developmental disability has been subjected to abuse, neglect, or exploitation by a caregiver shall report the same immediately to the Department by telephone or otherwise. Such report, where possible, shall contain the name and address of the individual with a developmental disability and the caregiver responsible for the care, custody, or control of the individual with a developmental disability, and the guardian, or other person having custody and control of the individual, and, if known, the condition of the individual with a developmental disability, the nature and possible extent of the individual's injuries, maltreatment, abuse, neglect, or exploitation, including any evidence of previous injuries, maltreatment, abuse, neglect, or exploitation, and any other information that the person believes may be helpful with respect to the injuries, maltreatment, abuse, neglect, or exploitation of the individual with a developmental disability, and the identity of the alleged offender.

(b)The Division of Developmental Disabilities shall promote the awareness of, and maintain a reporting system available 24 hours a day to receive allegations of abuse, neglect and exploitation of individuals with developmental disabilities. The procedures for reporting shall be posted in all licensed or State-funded facilities or programs.

(c)The allegations of the types of injuries or risk or harm to a service recipient that may constitute abuse, neglect or exploitation and that shall be reported include, but are not limited to:

1. Death;
2. Head injuries;
3. Internal injuries;
4. Burns;

5. Exposure to or ingestion of poison or noxious substances;
6. Bodily wounds;
7. Bone fractures;
8. Injuries resulting in unexpected hospitalizations or trips to the emergency room;
9. Human bites;
10. Sprains or dislocations;
11. Mental or emotional impairment not related to the underlying physical and/or emotional disabilities of the service recipient;
12. Risk of harm due to substance abuse by the caregiver or the service recipient; and
13. Physical acts of aggression including, but not limited to, kicking, punching, slapping, hair pulling or hitting.

(d) The allegations of the types of injuries or risk or harm that may constitute abuse and that shall be reported include, but are not limited to:

1. Acts that demean, intimidate or humiliate;
2. Use of unapproved restraints;
3. Contraction of sexually transmitted diseases;
4. Sexual penetration;
5. Sexual exploitation;
6. Sexual molestation; and
7. Substantial risk of sexual injury.

(e) The allegations of the types of injuries, risks or harm that may constitute neglect of a service recipient and that shall be reported include, but are not limited to:

1. Inadequate supervision;
2. Abandonment or desertion;
3. Inadequate food;
4. Malnutrition;
5. Inadequate clothing;
6. Inadequate shelter; and
7. Medical neglect.

(f) The allegations of the types of conduct that may constitute acts of exploitation of a service recipient and that shall be reported include, but are not limited to:

1. Theft or use of a service recipient's property or private funds;
2. Misappropriation of a service recipient's identity;

3. Having a service recipient perform labor for which a service recipient is not compensated.

(g) A person employed, contracted or volunteering in a program, facility, community care residence or living arrangement licensed or funded by the Department, or a person providing community-based services with indirect State funding to a person with a developmental disability, as applicable, who fails to report an act of abuse, neglect or exploitation against an individual with a developmental disability while having reasonable cause to believe that such an act has been committed, will be deemed to have committed a disorderly person's offense and will be subject to legal penalties appropriate thereto, pursuant to N.J.S.A. 30:6D-75.

(h) If, after an investigation by the Office of Investigations or the Division of Developmental Disabilities, there are concerns that a case manager, a case manager's supervisor, or a caregiver failed to report an incident of abuse, neglect, or exploitation, the Department will determine if such a failure has occurred. Following a determination by the preponderance of evidence that a failure to report has occurred, the Department shall refer the matter to law enforcement officials, who shall evaluate for applicability, the following statutory penalties, as set forth in P.L. 2012, c. 69 (designated as Tara's Law):

1. A case manager or case manager's supervisor in the Department, who fails to report an act of abuse, neglect, or exploitation of an individual with a developmental disability while having reasonable cause to believe that such an act has been committed, shall be guilty of a crime of the fourth degree, unless the abuse, neglect, or exploitation results in the death of an individual with a developmental disability, in which case the case manager or case manager's supervisor shall be guilty of a crime of the third degree.

2. A person employed or volunteering in a program, facility, community care residence, or living arrangement licensed or funded by the Department, or a person providing community-based services with indirect State funding to a person with a developmental disability, as applicable, who fails to report an act of abuse, neglect, or exploitation against an individual with a developmental disability while having reasonable cause to believe that such an act has been committed, is a disorderly person.

3. In addition to any penalty imposed pursuant to this section, a person convicted under this section shall be subject to a penalty in the amount of \$ 350.00 for each day that the abuse, neglect, or exploitation was not reported, payable to the Treasurer, State of New Jersey, which shall be used by the Department to fund the provision of food and care to individuals with developmental disabilities residing in community care residences.

(i) A case manager or case manager's supervisor, who is charged with failure to report an act of abuse, neglect, or exploitation of an individual with a developmental disability while having reasonable cause to believe that such an act has been committed, shall be temporarily reassigned to duties that do not involve contact with individuals with developmental disabilities or other vulnerable populations and shall be terminated from employment if convicted. The Department's actions in the determination of whether or not a failure to report

occurred shall afford the case manager or supervisor any available right of review by the Civil Service Commission.

(j)A physician examining or treating an individual with a developmental disability residing in a community care residence or the chief executive officer, or designee, of a hospital or similar institution to which the individual has been brought for care or treatment, or both, is empowered to take the individual into protective custody when the individual has suffered serious physical injury or injuries, or the individual's condition constitutes a life-threatening emergency, as defined in section 2 of P.L. 2003, c. 191 (N.J.S.A. 30:6D-5.2), and the most probable inference from the medical and factual information supplied is that the injury or condition was inflicted upon the individual by another person by other than accidental means, and the person suspected of inflicting, or permitting to be inflicted, the injury upon the individual is a licensee or alternate of a community care residence where the individual resides and to whom the individual would normally be returned.

(k)The physician or the chief executive officer, or designee, of a hospital or similar institution taking an individual with a disability into protective custody shall immediately report the action and the condition of the individual with a developmental disability to the Department by calling its emergency telephone service (1-800-832-9173).

(l)A physician or chief executive officer, or his or her designee, who fails to comply with the provisions of this section, shall be subject to a penalty of \$ 500.00. The penalty shall be sued for and collected in a summary proceeding by the Commissioner pursuant to the Penalty Enforcement Law of 1999, P.L. 1999, c. 274 (N.J.S.A. 2A:58-10 et seq.).

History

HISTORY:

Amended by R.2019 d.002, effective January 7, 2019.

See: 50 N.J.R. 1694(a), 51 N.J.R. 85(a).

Section was "Allegations of abuse, neglect or exploitation". Rewrote (a); and added (h) through (l).

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§ 10:44D-2.2 Reporting allegations

(a)The Division of Developmental Disabilities, after determining that a report made to the Division, either orally or in writing, contains at least one allegation of abuse, neglect or exploitation, as set forth in N.J.A.C. 10:44D-2.1, shall prepare an Unusual Incident Report.

(b)A person making a report, in good faith, pursuant to the Act and this chapter shall be immune from any civil or criminal liability that might otherwise be incurred or imposed. Such a person shall have the same immunity with respect to testimony given in any judicial proceeding resulting from the report.

(c)A person who, in good faith, reports or causes a report to be made of an allegation of abuse, neglect or exploitation pursuant to the Act and this chapter, and, as a result thereof, is discharged from employment or is in any manner discriminated against with respect to compensation, hire, tenure or terms, conditions or privileges of employment, contract or licensure, may file a cause of action for appropriate relief in the Superior Court in the county in which the discharge or alleged discrimination occurred or in the county of the person's primary residence. If the court finds that the person was discharged or discriminated against as a result of the person's reporting an allegation of abuse, neglect or exploitation pursuant to the Act, the court may grant reinstatement of employment with back pay or other legal or equitable relief.

(d)Upon receiving an allegation of abuse, neglect or exploitation, the Division of Developmental Disabilities will enter all of the known information pertaining to the particulars thereof into the Unusual Incident Reporting Management System, maintained by the Critical Incident Management Unit within the Office of Program Integrity and Accountability.

(e)The Office of Program Integrity and Accountability shall prioritize incidents by severity, assign investigatory duties, notify appropriate Department personnel and set timelines for completion of findings.

(f)Upon receipt of a report pursuant to the Central Registry, the Office of Program Integrity and Accountability in coordination with the Division of Developmental Disabilities (Division), shall take immediate actions as shall be necessary to ensure the safety of the individual with a developmental disability. The units within the Office of Program Integrity and Accountability

and the Division shall develop protocols for, and are authorized to 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 (N.J.S.A. 52:27D-406 et seq.).

History

HISTORY:

Amended by R.2019 d.002, effective January 7, 2019.

See: 50 N.J.R. 1694(a), 51 N.J.R. 85(a).

Added (f).

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§ 10:44D-3.1 Responsibilities of the Office of Investigations

(a)The Office of Investigations shall investigate incidents occurring in community programs or facilities licensed, contracted, or funded by the Department of Human Services, or State-operated developmental centers that serve individuals with developmental disabilities.

(b)The Office of Investigation shall notify the guardian when an investigation of an incident involving an individual has been initiated, as set forth in P.L. 2017, c. 238 (designated as Stephen Komninos' Law). If there is no guardian, an authorized family member of the individual may be notified, unless the individual has expressly excluded the family member.

- 1.The guardian or family member, as appropriate, may submit information pertinent to the investigation for consideration by the investigators.
- 2.The guardian may attend the investigative interview of the individual and may terminate the interview, unless attendance or termination would impede the investigation.
- 3.Scheduling the participation of the guardian shall not impede the timely arranging of an interview. The guardian shall sign a confidentiality agreement limiting disclosure of information concerning other individuals obtained during the interview and agree to protect the confidentiality of any information obtained concerning other individuals. The interview shall not be recorded.
- 4.At the request of the investigator during the interview, the guardian may aid in the interpretation or recognition of the individual's speech or speech patterns. The guardian may present documentation prior to the interview of previous relevant incidents. The guardian may identify the familiar names of persons mentioned by the individual during the interview. At the request of the investigator during the interview, the guardian may describe the meanings of gestures or symbols used by non-verbal individuals.
- 5.The guardian shall allow the interview to be conducted by the investigator. The investigator shall determine the scope of the investigation and the questions to be asked of the individual. To ensure the integrity of the investigation, the guardian shall

not prompt the individual or suggest answers to the individual. The guardian may explain terms and identifiers to the investigator after the individual has used the terms or identifiers.

6.The guardian and the investigator shall cooperate, so as to avoid intimidating the individual by attempting to correct responses to questions, embellish responses, or interrupt the dialogue between the investigator and the individual. The guardian and the investigator will avoid distracting the individual from concentrating on the interview. The investigator will provide the guardian with an opportunity to write down any concerns or questions generated during the interview. At the conclusion of the interview, the investigator will afford the guardian the opportunity to review and discuss those concerns or questions.

7.The guardian and the investigator shall cooperate to provide necessary support to the individual, facilitate communications among all participants, and to maintain the integrity of the interview as an ordered question and answer process to determine the individual's perception of the incident.

(c)The investigating unit shall make a good faith effort to notify the caregiver accused of abuse, neglect or exploitation of the allegation, the possibility of being placed on the Central Registry if the allegations are substantiated and the consequences of a failure to cooperate with the investigation of the allegations.

(d)The investigating unit shall provide notification of the investigation to the appropriate parties as applicable, including, but not limited to, the alleged victim, as appropriate, the alleged victim's guardian, the alleged perpetrator's employer and the alleged perpetrator(s).

(e)The investigating unit shall work collaboratively with law enforcement personnel in the investigation of the allegations. The guardian of the individual with a developmental disability shall also be authorized to request appropriate assistance from local and State law enforcement officials.

(f)No information received in potential Central Registry investigations shall be considered as a public or government record within the meaning of P.L. 1963, c. 73 (N.J.S.A. 47:1A-1 et seq.) or P.L. 2001, c. 404 (N.J.S.A. 47:1A-5 et seq.). Information shared with a guardian in connection with attendance at an investigative interview pursuant to (b) above, or under circumstances described in (e) above is for the private use of the guardian or law enforcement unit, remaining covered by Federal and State privacy and medical information laws.

(g)All records of a report made pursuant to this chapter, all information obtained by the Department in investigating such reports and all reports of findings forwarded to the Central Registry pursuant to the Act shall be kept confidential and may be disclosed only under circumstances expressly authorized by rules and regulations promulgated by the Commissioner or by court order. The Department shall only disclose information that is relevant to the purpose for which the information is required; except that the Department shall not disclose information that would likely endanger the life, safety or physical or emotional well-being of an individual with a developmental disability or the life or safety of any other person or which may compromise the integrity of a departmental investigation, civil or criminal investigation or judicial proceeding. If the Department denies access to specific

information on any of these bases, the requesting entity may seek disclosure by making application to the Law Division of Superior Court. Nothing in the Act or this chapter shall be construed to permit the disclosure of any information deemed confidential by Federal or State law.

(h) Upon the initiation of an investigation, the Department shall:

1. Ensure that any communication concerning the alleged abuse, neglect, or exploitation of an individual with a developmental disability between a caregiver, case manager of the caregiver, the case manager's supervisor, or other staff at the Division of Developmental Disabilities 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.

(i) The Office of Investigations shall issue a written report within 30 days of the completion of the investigation that includes the conclusions of the unit, the rationale for the conclusion, and a detailed summary of any communication secured pursuant to the investigation. 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, pursuant to the requirements of N.J.A.C. 10:41-3.2.

(j) The Office of Investigations shall retain a record of all unsubstantiated incidents, as set forth in P.L. 2012, c. 69 (designated as Tara's Law).

(k) 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 with a developmental disability, as set forth in P.L. 2012, c. 69 (designated as Tara's Law).

History

HISTORY:

Amended by R.2019 d.002, effective January 7, 2019.

See: 50 N.J.R. 1694(a), 51 N.J.R. 85(a).

Section was "Responsibilities of the Special Response Unit". Rewrote the section.

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§ 10:44D-3.2 Investigation findings

(a)The investigating unit shall evaluate the available information and, for each allegation, determine whether abuse, neglect or exploitation has occurred, attempt to identify the perpetrator or perpetrators thereof and then make a finding either substantiating or not substantiating each allegation.

(b)The findings of substantiation shall be based upon the preponderance of the evidence found during the investigation. The preponderance of the evidence standard is the superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a reasonable person to conclude that an allegation is more likely true than not.

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§ 10:44D-3.3 Notification of findings

(a)The investigating unit shall, by way of a written summary, notify the alleged perpetrator, and as applicable, the alleged perpetrator's employer of the findings of its investigation. The investigating unit shall also notify, as appropriate, the alleged victim, and, as applicable, the alleged victim's guardian, or authorized family member, of the findings of its investigation.

1.The written summary of the investigation shall be provided to the guardian of the individual with a developmental disability who is the subject of the alleged abuse, neglect, or exploitation; however, the actual records and reports of an investigation, subject to confidentiality rules, shall also be provided to a guardian or other person who is responsible for the 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, as set forth in P.L. 2017, c. 238 (designated as Stephen Komninos' Law).

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

- (1)**The name of the individual with a developmental disability who is the subject of the alleged abuse, neglect, or exploitation;
- (2)**The date of the incident, or the date the incident was 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 of abuse, neglect, or exploitation;
- (6)**A finding that the incident is substantiated or unsubstantiated;
- (7)**The rationale for the finding and, if the incident is substantiated, 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.

ii. If there is no guardian of the individual with a developmental disability who is the subject of the alleged abuse, neglect, or exploitation, the written summary shall be provided to an authorized family member who requests such summary, unless the individual has expressly prohibited the family member from receiving such summary.

History

HISTORY:

Amended by R.2019 d.002, effective January 7, 2019.

See: 50 N.J.R. 1694(a), 51 N.J.R. 85(a).

Rewrote the section.

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§ 10:44D-3.4 Compilation of data by the Office of Investigations

(a)The Office of Investigations shall compile data about any investigation conducted as a result of a report made pursuant to section 3 of P.L. 2010, c. 5 (N.J.S.A. 30:6D-75), concerning abuse, neglect, or exploitation of an individual with a developmental disability residing in a community care residence, and shall issue an annual report as provided in this section. The report, which shall be made available on the website of the Department and contain non-identifying information, shall, at a minimum, include:

- 1.**The number of individuals with developmental disabilities residing in community care residences who were the subject of an allegation of abuse, neglect, or exploitation and the number of substantiated, unsubstantiated, and unfounded allegations;
- 2.**The number of deaths, if any, of individuals with developmental disabilities who were residing in community care residences and were the subject of a report of abuse, neglect, or exploitation and the cause of death;
- 3.**The number of case managers or case managers' supervisors who have been reassigned or terminated, or both, as a result of an investigation of abuse, neglect, or exploitation of an individual with a developmental disability residing in a community care residence; and
- 4.**The number of case managers or case managers' supervisors against whom a civil or criminal action has been brought as a result of an allegation of abuse, neglect, or exploitation of an individual with a developmental disability residing in a community care residence.

History

HISTORY:

New Rule, R.2019 d.002, effective January 7, 2019.

See: 50 N.J.R. 1694(a), 51 N.J.R. 85(a).

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N.J.A.C. 10:44D-4.1

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New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 44D. CENTRAL REGISTRY OF OFFENDERS AGAINST INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES > SUBCHAPTER 4. PLACEMENT ON THE CENTRAL REGISTRY

§ 10:44D-4.1 Placement on the Central Registry of Offenders Against Individuals with Developmental Disabilities

(a) Upon completion of every investigation of abuse, neglect or exploitation that results in substantiation of the allegation or allegations, the investigating unit shall determine whether the incident involves any or all of the elements specified in (b), (c) or (d) below.

(b) In the case of a substantiated incident of abuse, the caregiver acted intentionally, recklessly or with careless disregard to the well-being of the service recipient resulting in injury to an individual with a developmental disability or by exposing the latter to a potentially injurious situation.

1. Acting intentionally is the mental resolution or determination to commit an act.
2. Acting recklessly is the creation of a substantial and unjustifiable risk of harm to others by a conscious disregard for that risk.
3. Acting with careless disregard is the lack of reasonableness and prudence in doing what a person ought not to do or not doing what ought to be done.

(c) In the case of a substantiated incident of neglect, it shall be determined if the caregiver acted with gross negligence, recklessness or evidenced a pattern of behavior that caused harm to an individual with a developmental disability or placed that individual in harm's way.

1. Acting with gross negligence is a conscious, voluntary act or omission in reckless disregard of a duty and of the consequences to another party.
2. Acting with recklessness is the creation of a substantial and unjustifiable risk of harm to others by a conscious disregard for that risk.
3. A pattern of behavior is a repeated set of similar wrongful acts.

(d) In the case of a substantiated incident of exploitation, any single act or set of acts that dispossesses a service recipient or group of service recipients of a monetary value of \$ 100.00 or more.

(e) If the investigating unit determines that the elements in (b), (c) and (d) above are present or absent, the persons enumerated in N.J.A.C. 10:44D-3.1(d) will be notified in writing that

the caregiver, who had been substantiated for abuse, neglect and/or exploitation will be or will not be considered for placement on the Central Registry of Offenders Against Individuals with Developmental Disabilities.

(f)Substantiated offense(s) may have consequences in other Department decisions, such as, but not limited to, licensing and/or contracting. Such decisions may be appealed pursuant to the procedures set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(g)If the investigating unit has determined that any or all of the elements in (b), (c) or (d) above are present, the investigating unit shall refer the matter to the Commissioner or the Commissioner's designee, who shall determine whether the perpetrator will be considered for inclusion on the Central Registry of Offenders Against Individuals with Developmental Disabilities.

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N.J.A.C. 10:44D-5.1

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New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 44D. CENTRAL REGISTRY OF OFFENDERS AGAINST INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES > SUBCHAPTER 5. DEPARTMENT REVIEW

§ 10:44D-5.1 Central Registry of Offenders Against Individuals with Developmental Disabilities Review

(a)The Commissioner, or the Commissioner's designee, shall decide whether to place the names of a caregiver who has been found to be a substantiated perpetrator of abuse, neglect, or exploitation on the Central Registry of Offenders Against Individuals with Developmental Disabilities.

- 1.As soon as possible, and no later than 14 business days after receipt of the completed investigation report of the incident of abuse, neglect, or exploitation, the Commissioner, or the Commissioner's designee, shall review the incident.
- 2.The offending caregiver of a substantiated incident shall be included on the Central Registry as expeditiously as possible.
- 3.The decision of the Commissioner, or the Commissioner's designee, shall be deemed to be the departmental finding.

(b)The Commissioner, or the Commissioner's designee, shall notify the individual, who has been substantiated as a perpetrator of abuse, neglect, and/or exploitation, of the intention to place or not place him or her on the Central Registry of Offenders Against Individuals with Developmental Disabilities. The notification will include the perpetrator's name, address, the Unusual Incident Report number issued by the Critical Incident Management Unit, date upon which the decision was made, brief description of the incident and findings, and, in the case of placement on the Central Registry, a summary of the right to appeal procedures. Copies of the notification will be sent to the perpetrator's employer and the contracting or licensing unit providing funding to the perpetrator.

- 1.The Commissioner, or the Commissioner's designee, shall also notify the guardian of the individual with a developmental disability who was the subject of the abuse, neglect, or exploitation of the caregiver's inclusion on the Central Registry, as set forth in P.L. 2017, c. 238 (designated as Stephen Komninos' Law). The Commissioner, or the Commissioner's designee, shall designate staff to notify the individual of any action taken by the Department to remediate a condition that may have contributed to the occurrence of the abuse, neglect, or exploitation of the individual. If the individual

with a developmental disability has no guardian, notification pursuant to this subsection shall be given to an authorized family member who requests such notification, unless the individual has expressly prohibited the family member from receiving such notification.

(c)Forty-five calendar days after having mailed notification of the Commissioner's intent to place a person on the Central Registry to the substantiated perpetrator's best, last known address, that person shall be placed on the Central Registry, unless that person properly requests an informal hearing or a hearing before the Office of Administrative Law, as described in N.J.A.C. 10:44D-6.1 and 6.2.

(d)Any person placed on the Central Registry shall cease all contact with persons with developmental disabilities, except immediate family members, for whom they directly or indirectly received State funding, upon notification.

(e)Upon placement on the Central Registry, a person shall remain on the Central Registry until an affirmative proof of rehabilitation is offered to the Commissioner who will determine if removal of the individual from the Central Registry is warranted (as described in at N.J.A.C. 10:44D-6.3).

History

HISTORY:

Amended by R.2019 d.002, effective January 7, 2019.

See: 50 N.J.R. 1694(a), 51 N.J.R. 85(a).

Rewrote (a) through (c).

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N.J.A.C. 10:44D-6.1

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§ 10:44D-6.1 Central Registry of Offenders Against Individuals with Developmental Disabilities informal hearing

(a)Whenever the Department shall find cause to place a person on the Central Registry, it shall notify the person of the intent and the reasons therefor, in writing, and provide an opportunity for an informal hearing, in addition to an opportunity for an Office of Administrative Law hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b)The request for an informal hearing shall be filed within 10 business days from the date of receipt of the notice.

1.All requests for an informal hearing shall be in writing and shall be directed to the following address:

NJ Department of Human Services
Office of Legal, Regulatory and Guardianship Services
PO Box 700
6thFloor
222 South Warren Street
Trenton, NJ 08625-0700

2.All requests for an informal hearing shall include:

- i.**The date the request is written;
- ii.**The Unusual Incident Report number issued by the Critical Incident Management Unit upon which the decision to place the individual on the Central Registry was made;
- iii.**The full name of the person identified as the substantiated perpetrator (and the person's current name, if it has changed);

iv.A description of the evidence to be produced at the informal hearing that would indicate the person was placed on the Central Registry by error and, if proven, would dispel contested matters of fact and law;

v.The person's current street address, city, state, zip code and telephone number; and

vi.The person's signature.

(c)The Department hearing officer shall schedule an informal hearing to take place within 30 calendar days of receipt of such a request. If, after good faith efforts by the requesting party and the Office of Legal, Regulatory and Guardianship Services, an informal hearing cannot be arranged to take place within a reasonable period of time, the case may be transferred on appeal to the Office of Administrative Law as described in the appeals rules at N.J.A.C. 10:44D-6.2.

(d)The informal hearing shall take place in Trenton, New Jersey, at facilities provided by the Office of Legal, Regulatory and Guardianship Services. The informal hearing will be controlled by the Department hearing officer, who shall consider evidence, testimony or documents presented by the requester, as well as the Department's investigating unit.

(e)The purpose of the informal hearing is to allow the requester to show that placement on the Central Registry is not legally or factually warranted.

(f)After the informal hearing, the hearing officer shall decide whether or not the requester has sufficiently shown that placement on the Central Registry is inappropriate under the totality of the legal and factual case circumstances.

(g)If the hearing officer decides an error has been made and there remain no matters of fact or law in controversy, the hearing officer shall so advise the Commissioner, or designee, and ask that the decision to place the person on the Central Registry be reconsidered, by proffering the evidence presented at the informal hearing upon which the hearing officer based his or her decision. The Commissioner, or designee, shall consider the evidence and render a Department decision thereon. Within 30 days, the requester will be notified of the decision in writing. The requester shall have 10 business days from the date of notification in which to request, in writing, as a contested case, an Office of Administrative Law hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as set forth in the appeals rule at N.J.A.C. 10:44D-6.2.

(h)If the hearing officer decides that there has not been a compelling evidentiary showing that a person will be placed inappropriately on the Central Registry or that there remain matters of fact or law in controversy, the hearing officer shall notify the requester within 30 days and allow the requester 10 business days from the date of notification within which to request, in writing, an Office of Administrative Law hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as set forth in the appeals rule at N.J.A.C. 10:44D-6.2. The Department shall place the name of the individual substantiated for abuse, neglect and/or exploitation on the Central Registry of Offenders Against Individuals with Developmental Disabilities. If the individual substantiated for abuse, neglect and/or exploitation requests an Office of Administrative Law hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as set forth in the appeals rules at N.J.A.C.

10:44D-6.2, the Department shall include on the Central Registry the fact that the individual has filed an appeal and that a final judicial determination is pending.

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§ 10:44D-6.2 Central Registry of Offenders Against Individuals with Developmental Disabilities appeals

(a)In addition to the option of an informal hearing, as set forth in N.J.A.C. 10:44D-6.1, a person who is to be placed on the Central Registry may also request a hearing before the Office of Administrative Law pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., in order to appeal the Commissioner's decision. This request for an Office of Administrative Law hearing shall be made in writing within 30 calendar days of the mailing of the Department's notification of intent to place the individual on the Central Registry.

(b)A person requesting an appeal shall use information found on the notification to prepare a written request. The written request shall be delivered to the Administrative Practice Officer of the Office of Legal, Regulatory and Guardianship Services within 30 calendar days of the receipt of the notice and shall include the following items:

1. Date the request for appeal is written;
2. The Unusual Incident Report number issued by the Critical Incident Management Unit upon which the decision to place on the Central Registry was made;
3. The full name of the person identified as the substantiated perpetrator;
4. The reason the person is requesting the appeal and an explanation of why the person believes the substantiated determination is inappropriate;
5. The person's current name (if it has changed from the name noted in (b)3 above);
6. The person's current street address, city, state, zip code and telephone number; and
7. The person's signature.

(c)The Administrative Practice Officer shall transmit to the Office of Administrative Law, as contested cases, all appeals that present matters of fact or law upon which a decision may be rendered, for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The Department shall include on the Central Registry the fact that the individual has filed an appeal and that a final judicial determination is pending.

(d) Upon exhaustion of all administrative remedies afforded by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Commissioner's Final Decision may be appealed to the Appellate Division of the Superior Court. Upon supplying the Department with verification that such an appeal has been filed, the Department shall include on the Central Registry the fact that the individual has filed an appeal and that a final judicial determination is pending.

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N.J.A.C. 10:44D-6.3

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§ 10:44D-6.3 Removal by rehabilitation from the Central Registry of Offenders Against Individuals with Developmental Disabilities

(a)A person may apply to the Commissioner for removal of his or her name from the Central Registry after a period of five years of being placed of being placed thereon.

(b)The person shall affirmatively demonstrate to the Commissioner clear and convincing evidence of rehabilitation. In determining whether an individual has affirmatively demonstrated rehabilitation, as highly probable or reasonably certain, the following factors shall be considered:

- 1.The nature and responsibility of the position that the individual would hold or has held, as the case may be;
- 2.The nature and seriousness of the offense that caused the person's name to be placed on the Central Registry;
- 3.The circumstances under which the offense occurred;
- 4.The date of the offense;
- 5.The age of the individual when the offense was committed;
- 6.Whether the offense was an isolated or repeated incident;
- 7.Any social conditions that may have contributed to the offense; and
- 8.Any evidence of rehabilitation, including good conduct in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, remorse, successful participation in correctional programs or the recommendation of those who have had the individual under their supervision.

N.J.A.C. 10:44D-7.1

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New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 44D. CENTRAL REGISTRY OF OFFENDERS AGAINST INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES > SUBCHAPTER 7. REGISTRY CHECKS

§ 10:44D-7.1 Central Registry of Offenders Against Individuals with Developmental Disabilities Registry checks

(a)The Office of Program Integrity and Accountability, shall maintain the Central Registry of Offenders Against Individuals with Developmental Disabilities. All persons placed on the Central Registry shall be identified, to the extent ascertainable at the time of their placement, by:

- 1.Full name, any previous maiden name or aliases;
- 2.Most recent address;
- 3.Social Security number;
- 4.Date of birth; and
- 5.The Unusual Incident Report number, issued by the Critical Incident Management Unit, upon which placement on the Central Registry was made.

(b)The Office of Program Integrity and Accountability shall provide specific forms or electronic methods for entities that employ, license or contract with caregivers to obtain information sufficient to identify a person on the Central Registry by providing the information contained in (a)1 through 4 above.

(c)Every entity that employs caregivers, including volunteers, alternates and respite providers, in a State-operated facility or program licensed, contracted or regulated by the Department of Human Services, or providing State-funded community-based services to individuals with developmental disabilities shall develop policies and procedures that ensure:

- 1.Every caregiver, as described in this chapter, consents to having their identity checked against the Central Registry of Offenders Against Individuals with Developmental Disabilities;
- 2.Every caregiver, as described in this chapter, is aware of the duty to report allegations of abuse, neglect and exploitation, the method of reporting, the duty to cooperate with an investigation of the allegation, the immunity for reporting and the penalty for failure to report such allegations;

3. Every potential caregiver, as described in this chapter, has their identity checked against the Central Registry of Offenders Against Individuals with Developmental Disabilities, before employment;
4. Every employer shall check that none of their caregivers or volunteers appear on the Central Registry of Offenders Against Individuals with Developmental Disabilities; and
5. Documentary evidence of due diligence to prevent persons on the Central Registry of Offenders Against Individuals with Developmental Disabilities from being employed, contracted, licensed or financed in any way by State funding to provide care to individuals with developmental disabilities. This includes persons with a license to operate a community care residence, as well as every occupant, alternate and respite provider in a community care residence setting.

(d) The Department shall monitor entities that employ caregivers in State-operated facilities or programs licensed, contracted or regulated by the Department of Human Services, or providing State-funded community-based services. Failure by an entity to comply with (c) above may result in regulatory action including, but not limited to, license suspension or revocation, a decrease or cessation of funding and/or a suspension or revocation of contracting.

(e) Upon being notified of being on the Central Registry, a person so identified may contest the identification (but not the circumstances of being placed on the Registry; that procedure is specified in N.J.A.C. 10:44D-6.2). Within 10 calendar days of receiving notification, the person shall submit a written request with identification information to the Office of Program Integrity and Accountability. The person and the employer, licensing unit or contracting unit will be notified in the event of a mistaken identification, within 10 calendar days.

N.J.A.C. 10:44D-7.2

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§ 10:44D-7.2 Out-of-State facilities Central Registry of Offenders Against Individuals with Developmental Disabilities background checks

(a)Each out-of-State facility that contracts with the Division of Developmental Disabilities to provide services for New Jersey residents shall meet the requirements of N.J.A.C. 10:44D-3.1; and also shall perform a background check of any similar registry in effect within the facility's jurisdiction.

(b)A licensed provider in another state shall be permitted access to the Central Registry. A facility that is duly licensed under another state's authority to provide services to individuals with developmental disabilities may make a written request of the Office of Program Integrity and Accountability concerning whether or not a particular individual, who they believe may have provided services to individuals with developmental disabilities within the State of New Jersey, has been placed on the Central Registry of Offenders Against Individuals with Developmental Disabilities.

1.The non-New Jersey facility shall provide the name, last four digits of the Social Security number, date of birth, and the time frame in which the individual to be checked may have worked with individuals with developmental disabilities in New Jersey.

2.In the request, the facility shall also provide information about the licensing its state has granted the facility to provide services to individuals with developmental disabilities.

History

HISTORY:

Amended by R.2019 d.002, effective January 7, 2019.

See: 50 N.J.R. 1694(a), 51 N.J.R. 85(a).

Rewrote the section.

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