

**HUMAN SERVICES**

**OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY**

**Central Registry of Offenders Against Individuals with Developmental Disabilities**

**Tara's Law**

**Proposed Amendments: N.J.A.C. 10:44D-1.2, 2.1, 2.2, 3.1, 3.3, 5.1, and 7.2**

**Proposed New Rule: N.J.A.C. 10:44D-3.4**

Authorized By: Elizabeth Connolly, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:11B-1 et seq., specifically 30:11B-4 and P.L. 2012, c. 69.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2016-044.

Submit comments in writing by June 3, 2016, to:

Douglas Swan

Office of Program Integrity and Accountability

Department of Human Services

PO Box 700

Trenton, New Jersey 08625-0700

[Doug.swan@dhs.state.nj.us](mailto:Doug.swan@dhs.state.nj.us)

The agency proposal follows:

**Summary**

The Department of Human Services is proposing amendments and a new rule to N.J.A.C. 10:44D, Central Registry of Offenders Against Individuals with Developmental

Disabilities, in order to comply with P.L. 2012, c. 69. The Central Registry of Offenders against Individuals with Developmental Disabilities (Central Registry) creates a list of caretakers who have committed acts of abuse, neglect, or exploitation and, after being afforded due process rights, have been prohibited from employment working with individuals with developmental disabilities. P.L. 2012, c. 69 makes changes to the scope and enforcement of the Central Registry necessitating the following proposed amendments and new rule.

N.J.A.C. 10:44D-1.2 sets forth definitions of the words and terms used within the chapter. Amendments are proposed to this section to add definitions for: “authorized family member,” “substantiated,” “unfounded,” and “unsubstantiated.”

N.J.A.C. 10:44D-2.1 establishes the protocols by which allegations of abuse, neglect, or exploitation of individuals with disabilities should be reported. The amendments identify and add case managers and their supervisors as mandatory reporters at proposed new subsection (a) and set penalties for their failure to report at proposed new subsection (h). Proposed new subsection (i) empowers physicians to take into protective custody individuals, within the scope of this chapter, whom they suspect of being victims of abuse or neglect. Proposed new subsection (j) imposes a duty for the physicians in subsection (i) to report these incidents of affording protective custody. Proposed new subsection (k) imposes a penalty for failure to report these incidents of affording protective custody.

N.J.A.C. 10:44D-2.2 provides immunity from liability to those persons who, in good faith, report allegations of abuse, neglect, or exploitation. Proposed new subsection (f) requires the Department to take immediate action to ensure an individual’s safety and includes in those actions contacting law enforcement officials or Adult Protective Services.

N.J.A.C. 10:44D-3.1 assigns investigative units in the community and in State-run facilities. The designation of the “Special Response Unit” is changed to the “Office of Investigation” to reflect the Department’s reorganization of investigation units within the Office of Program Integrity and Accountability into a single unit, the Office of Investigation. The heading of the section is proposed for amendment to change from “responsibilities of the Special Response Unit” to “responsibilities of the investigating units” because this section encompasses more than just one unit. Proposed new subsection (h) requires the safeguarding of evidential communications and the contacting of the Office of the Attorney General to allow for the opportunity to participate in the investigation of an incident. Proposed new subsection (i) requires the Office of Investigation to add an assessment of a case manager’s or a supervisor’s involvement in allegations and to recommend for further action, if warranted. Proposed new subsection (j) mandates the retention of unsubstantiated incidents. Proposed new subsection (k) requires that unsubstantiated incidents be forwarded to the Commissioner or the Commissioner’s designee.

N.J.A.C. 10:44D-3.3 requires the investigation units to notify the alleged perpetrator, and as applicable, the alleged perpetrator’s employer of the findings of its investigation. This section is proposed for amendment to include authorized family member in the notification, as applicable.

Proposed new N.J.A.C. 10:44D-3.4 is added, which requires the compilation of data and statistics by the Office of Investigation. This section details the annual reports that are to be posted on the Department’s website.

N.J.A.C. 10:44D-5.1 sets forth who will decide who will be placed on the Central Registry, the notification of intent to place on the Central Registry, the due process and appeal rights that must be included in the notification, and the consequences to the person who is placed on the Central Registry. Amendments to this section are proposed that set a time requirement to review recommended cases and stress the expedition of placement on the Central Registry are added to new paragraphs (a)1 and 2. An amendment is proposed at subsection (d) to give a determinable timeframe in which to enact the statutory mandate to expeditiously place offenders on the Central Registry (from “30 calendar days of receipt of notification” to “45 days after having mailed notification”). Although there is an extension of time, the ability to positively measure its beginning and end is reasonably deemed to be more expeditious. The extension is based upon a reasoned allowance for the vagaries of the mail delivery, the return of misaddressed mail to the Department, and recognition of the need to make a good faith attempt to obtain the best and most recent address possible.

N.J.A.C. 10:44D-7.2 requires that out-of-State agencies with which the Department contracts perform the registry checks enumerated in this chapter. Proposed new subsection (b) is added to permit out-of-State providers access to the Central Registry.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The proposed amendments and new rule provide the standards for complying with N.J.S.A. 30:6D-73 et seq., creating the Central Registry of Offenders against Individuals with Developmental Disabilities and additional protections created by P.L. 2012, c. 69. It is in the

public interest for the State to provide these added protections to individuals with developmental disabilities. The Central Registry was established to safeguard individuals with developmental disabilities by preventing those caregivers who abuse, neglect, or exploit them from continued employment in the field. N.J.S.A. 30:6D-73 et seq. and the subsequent additions under Tara's Law establish standards necessary for the public's safety; the rules do not exceed, nor do they create a lesser standard than that described by the Legislature.

### **Economic Impact**

The proposed amendments and a new rule are expected to result in a minimal increase in costs. The Department's activities concerning the investigation of incidents and the maintenance of the Central Registry for use by employers will experience only a minimal economic effect, but should increase service recipient safety significantly. There are no additional requirements being placed upon service providers by the proposed amendments and new rule.

### **Federal Standards Statement**

The proposed amendments and a new rule are not subject to any Federal requirements or standards; therefore, a Federal standards analysis is not required.

### **Jobs Impact**

The Department anticipates no impact, either positive or negative, on job creation due to the proposed amendments and a new rule. While the time required to handle a single new hire or case of abuse, neglect, or exploitation may, on average, rise minimally, the total number of

instances is expected to remain the same, resulting in no major net impact on the screening of new hires or the investigation of reported incidents.

### **Agriculture Industry Impact**

The proposed amendments and a new rule should have no impact on the agriculture industry.

### **Regulatory Flexibility Analysis**

Some of the programs, facilities, and employers of record that receive State funding to provide services to individuals with developmental disabilities may be considered small businesses pursuant to N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The proposed amendments and a new rule do not impose additional recordkeeping requirements to service providers. N.J.A.C. 10:44D-2.2(c), however, does impose a reporting requirement upon physicians who treat individuals with developmental disabilities. To whatever extent these reporting or compliance requirements would be placed upon small businesses, they are a minimum of the current requirements that are deemed necessary by the Legislature. The costs of compliance are minimal and are expected to be absorbed by the Department without additional need for funding. As the amendments and a new rule are proposed to maintain public safety and are in accordance with Tara's Law, no lesser or differing standards can be applied to small businesses.

### **Housing Affordability Impact Analysis**

The proposed amendments and a new rule will have no impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules pertain to the implementation of Tara's Law.

## Smart Growth Development Impact Analysis

The proposed amendments and a new rule will have no impact on the number of housing units or the availability of affordable housing in this State, and will have no effect on smart growth development in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules pertain to the implementation of Tara's Law.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 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:

...

**"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 is his or her own guardian, to receive information pursuant to P.L. 2012, c. 69 (Tara's Law).

...

**"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.**

...

## **SUBCHAPTER 2. REPORTING REQUIREMENTS**

### **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.**

Recodify existing (a)-(g) as **(b)-(h)** (No change in text.)

**(i) A case manager or case manager's supervisor has a duty to report incidents of abuse, neglect, or exploitation. If, after an investigation by the Office of Investigation or the Division of Developmental Disabilities, there are concerns that a case manager or a case manager's supervisor failed to report incidents of abuse, neglect, or exploitation, the Division's personnel or human resources unit will determine if such a failure has occurred. The Division'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. Following the Division's determination that a failure to report has occurred by a preponderance of the evidence, the Division shall enforce the statutory penalties, as set forth in P.L. 2012, c. 69 (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 disorderly person's offense, 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 fourth degree.

2. 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 "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.

3. 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.

(j) A physician examining or treating an individual with a developmental disability residing in a community care residence or the chief executive officer, or his or her 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 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 his or her 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.).**

10:44D-2.2 Reporting allegations

(a)-(e) (No change.)

**(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, 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 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.).**

SUBCHAPTER 3. INVESTIGATIONS

10:44D-3.1 Responsibilities of the [Special Response] **Investigating** Units

(a) The [Special Response Unit] **Office of Investigation** shall investigate incidents occurring in community programs or facilities licensed, contracted, or funded by the Department of Human Services, that serve individuals with development disabilities.

(b)-(f) (No change.)

(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, **or an order by an Administrative Law Judge in connection with an Office of Administrative Law contested case.** 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 will:**

**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 a person at the appropriate regional office of 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 Investigation shall issue a written report of the investigation that includes the conclusions of the Office, 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 Investigation shall retain a record of all unsubstantiated incidents, as set forth in P.L. 2012, c. 69 (Tara's Law).**

**(k) The Office of Investigation, 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 (Tara's Law).**

#### 10:44D-3.3 Notification of findings

The investigating unit shall, in writing, 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.

#### **10:44D-3.4 Compilation of data by the Office of Investigation**

**(a) The Office of Investigation shall compile data about any investigation conducted as a result of a report made pursuant to 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.**

## SUBCHAPTER 5. DEPARTMENT REVIEW

### 10:44D-5.1 Central Registries 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, as set forth in this section.**

**3. The decision of the Commissioner, or the Commissioner's designee, shall be deemed to be the departmental finding.**

(b) (No change.)

(c) [After 30 calendar days of receipt of] **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)-(e) (No change.)

## SUBCHAPTER 7. REGISTRY CHECKS

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. The facility shall also provide information about the licensing their state has granted the facility to provide services to individuals with developmental disabilities in the request.**