

# 30:6D-5.7 to 30:6D-5.19

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2012                      **CHAPTER:** 69

**NJSA:** 30:6D-5.7 to 30:6D-5.19 ("Tara's Law"; provides protections for individuals with developmental disabilities residing in community care residences and for investigations of abuse of individuals with developmental disabilities)

**BILL NO:** S599 (Substituted for A2573)

**SPONSOR(S)** Beck and others

**DATE INTRODUCED:** January 10, 2012

**COMMITTEE:**                      **ASSEMBLY:** Appropriations

**SENATE:** Health, Human Services and Senior Citizens

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**                      **ASSEMBLY:** October 18, 2012

**SENATE:** June 28, 2012

**DATE OF APPROVAL:** December 3, 2012

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL** (First Reprint Senate Committee Substitute enacted)

**S599**

**SPONSOR'S STATEMENT:** (Begins on page 15 of introduced bill) Yes

**COMMITTEE STATEMENT:**                                      **ASSEMBLY:** Yes

**SENATE:** Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** Yes

**LEGISLATIVE FISCAL NOTE:** Yes

**A2573**

**SPONSOR'S STATEMENT:** (Begins on page 15 of original bill) Yes

**COMMITTEE STATEMENT:**                                      **ASSEMBLY:** Yes Human Services Appropriations

**SENATE:** No

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL NOTE:** Yes

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** No

LAW/KR

1 §§1-8, 11-15 -  
2 C.30:6D-5.7 to  
3 30:6D-5.19  
4 §16 – Note  
5

6 P.L.2012, CHAPTER 69, *approved December 3, 2012*  
7 Senate Committee Substitute (*First Reprint*) for  
8 Senate, No. 599  
9

10 **AN ACT** concerning individuals with developmental disabilities,  
11 designated as “Tara’s Law,” supplementing chapter 6D of Title  
12 30 of the Revised Statutes, and amending various parts of the  
13 statutory law.  
14

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

17  
18 1. (New section) The Legislature finds and declares that:

19 a. There are <sup>1</sup>**[more than 600]** hundreds of<sup>1</sup> community care  
20 residences in the State in which an adult or family secures a license  
21 from the Department of Human Services to provide care or training,  
22 or both, to up to four individuals with developmental disabilities;

23 b. For protection of the <sup>1</sup>**[approximately 1,200]**<sup>1</sup> individuals  
24 with developmental disabilities residing in these community care  
25 residences, there needs to be an increase in the oversight of the  
26 persons licensed to operate community care residences, the case  
27 managers who are required to conduct monthly visits of these  
28 residences, and the day programs that individuals with  
29 developmental disabilities are scheduled to, but may not actually,  
30 attend;

31 c. It is also important to improve communications with  
32 <sup>1</sup>**[parents and]**<sup>1</sup> guardians and authorized family members<sup>1</sup> of  
33 individuals with developmental disabilities residing in community  
34 care residences so that <sup>1</sup>**[parents and]**<sup>1</sup> guardians and authorized  
35 family members<sup>1</sup> know whether <sup>1</sup>**[their child or ward]** the  
36 individual<sup>1</sup> is receiving good care, attending scheduled day  
37 programs, and following the individualized habilitation plan  
38 developed for <sup>1</sup>**[their child or ward]** the individual<sup>1</sup> ;

39 d. Currently an individual with a developmental disability  
40 residing in a community care residence is required to have annual  
41 medical examinations; for the protection of an individual who may  
42 be suffering injury inflicted by the licensee of the community care  
43 residence, the examining physician should be required to take  
44 protective custody of the individual and report such action to the  
45 Department of Human Services;

46 e. Ensuring that investigators have access to communications  
47 concerning allegations of abuse, neglect, or exploitation of an

**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 thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate floor amendments adopted June 28, 2012.

1 individual with a disability, and that investigative reports examine  
2 the role of those overseeing the persons providing care to  
3 individuals with developmental disabilities, would provide needed  
4 information for any civil or criminal proceeding that may follow an  
5 allegation of abuse, neglect, or exploitation; and

6 f. It is the policy of this State to: ensure that there is sufficient  
7 oversight of community care residences and day programs attended  
8 by individuals with developmental disabilities residing in  
9 community care residences; protect these individuals from injury  
10 that may be inflicted by the very persons charged with providing  
11 them with care; and safeguard and report information that may be  
12 important for a civil or criminal proceeding that may follow an  
13 allegation of abuse, neglect, or exploitation of an individual with a  
14 developmental disability residing in a community setting.

15

16 2. (New section) As used in this act:

17 “Alternate” means a person 18 years of age or older who  
18 assumes the responsibility of a licensee when the licensee is absent  
19 from a community care residence.

20 <sup>1</sup>“Authorized family member” means a relative of the individual  
21 with a developmental disability authorized by the individual’s  
22 guardian, or by the individual if the individual is his own guardian,  
23 to receive information pursuant to this act.<sup>1</sup>

24 “Community care residence” or “residence” means a private  
25 home or apartment in which an adult or family is licensed by and  
26 contracts with the department to provide an individual with a  
27 developmental disability with care or training, or both.

28 “Commissioner” means the Commissioner of Human Services.

29 “Department” means the Department of Human Services.

30 “Division” means the Division of Developmental Disabilities in  
31 the Department of Human Services.

32 “Licensee” means one or more persons 18 years of age or older  
33 who are named on the license issued by the Department of Human  
34 Services to operate a community care residence and have overall  
35 responsibility for an individual with a developmental disability.

36 “Negative licensing action” means an action taken that imposes a  
37 restriction on a licensee and may include suspension of admissions,  
38 issuance of a provisional license of a residence, reduction in the  
39 licensed capacity, non-renewal of license, suspension of a license,  
40 or revocation of a license.

41 <sup>1</sup> **“Non-substantiated” means the available information obtained**  
42 **during the investigation of an allegation of abuse, neglect, or**  
43 **exploitation provides some indication of a finding that an individual**  
44 **with a developmental disability has been harmed or placed at**  
45 **substantial risk of harm by a caretaker or licensee. <sup>1</sup>**

46 “Office of Licensing” or “office” means the licensing unit of the  
47 Department of Human Services for programs in the Division of  
48 Developmental Disabilities.

1       “Special Response Unit” means the unit in the department that is  
2 charged with investigation of serious unusual incidents, as defined  
3 by applicable rules and regulations of the department, and is  
4 responsible for the investigation of a report of abuse, neglect, or  
5 exploitation in a community care residence.

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

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

15       <sup>1</sup>“Unsubstantiated” means the available information obtained  
16 during the investigation of an allegation of abuse, neglect, or  
17 exploitation provides some indication of a finding that an individual  
18 with a developmental disability has been harmed or placed at  
19 substantial risk of harm by a caretaker or licensee.<sup>1</sup>

20

21       3. (New section) A community care residence licensed by the  
22 Department of Human Services pursuant to N.J.A.C. 10:44B-1.1 et  
23 seq. shall be subject to the following provisions:

24       a. If, as a result of an annual inspection of a community care  
25 residence by the Office of Licensing that allows for inquiry into the  
26 facilities, records, equipment, sanitary conditions, accommodations,  
27 and management of an individual with a developmental disability as  
28 required by N.J.A.C.10:44B-1.1 et seq, a licensee is required to  
29 provide a plan of correction and that plan has not been successfully  
30 implemented, as determined by the supervisor <sup>1</sup>of the case manager  
31 of the individual<sup>1</sup> or the office, within 30 days of the date that the  
32 licensee submitted the plan to the office, an individual with a  
33 developmental disability residing in that residence shall be removed  
34 from the residence if the supervisor, in consultation with the office,  
35 determines that the licensee’s failure to implement the plan of  
36 correction threatens the health and well-being of the individual with  
37 the developmental disability.

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

45       c. (1) The department shall have the authority to impose a  
46 penalty in an amount of \$350 per day on the licensee for a repeated  
47 failure to implement a required plan of correction. The penalty  
48 shall be payable to the Treasurer of the State of New Jersey and

1 shall be used to provide food and care to individuals with  
2 developmental disabilities residing in community care residences.

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

8

9 4. (New section) a. The Department of Human Services shall  
10 require a licensee, as a condition of maintaining a license to operate  
11 a community care residence, to comply with the following  
12 provisions:

13 (1) A licensee shall, ~~'[biennially]~~ annually<sup>1</sup>, undergo an  
14 examination by a physician to ascertain whether the licensee is  
15 physically and mentally capable of fulfilling the job duties of a  
16 licensee, as specified on the form listing a licensee's job duties  
17 prepared by the department pursuant to section 5 of this act and  
18 completed by the physician pursuant to this subsection. Upon  
19 conclusion of the examination, the physician shall provide the  
20 licensee with a statement as to whether the licensee is capable of  
21 fulfilling the duties of a licensee, and complete and attach the form  
22 on which the physician shall indicate, for each duty, whether the  
23 licensee is capable of fulfilling the duty. 'The department may, at  
24 its discretion, require further physical or mental health  
25 examinations of the licensee.'<sup>1</sup>

26 (2) Upon receipt of the physician statement and completed form,  
27 a licensee shall provide the statement and form to the department.  
28 If a licensee fails to provide the statement and form, the  
29 commissioner shall have the authority to: stop any payments to the  
30 licensee; seek recovery of any payments to the licensee from the  
31 date that the statement and form were due; and not resume payment  
32 until such time as the licensee submits the statement and form.

33 (3) If, after undergoing the examination, a licensee is unable to  
34 provide the physician's statement and the completed form, the  
35 licensing agency shall take negative licensing action against the  
36 licensee.

37 b. (1) In the event that an individual with a developmental  
38 disability is not capable of managing the individual's own funds, a  
39 licensee who is responsible for making purchases and  
40 disbursements on the individual's behalf shall not make such a  
41 purchase or disbursement unless that purchase or disbursement  
42 reflects the specific needs of the individual with a developmental  
43 disability. '[A receipt or record, as applicable, of a purchase or  
44 disbursement pursuant to this subsection shall be submitted monthly  
45 to the Office of Auditing in the department]'<sup>1</sup>.

46 (2) 'Over a four-year period, the Office of Auditing in the  
47 department shall review a random sample of one month's worth of  
48 receipts or records for purchases and disbursements made on behalf

1 of each individual with a developmental disability.<sup>1</sup> The case  
2 manager<sup>1</sup>[,] and<sup>1</sup> the case manager's supervisor<sup>1</sup>[, and the Office  
3 of Auditing]<sup>1</sup> shall 'also' review 'a random sample of' receipts and  
4 records of 'such' purchases '[or] and' disbursements. If it is  
5 determined that a purchase or disbursement does not reflect the  
6 specific needs of the individual with a developmental disability, that  
7 fact shall be documented and the commissioner or the  
8 commissioner's designee shall be so advised. The commissioner or  
9 the commissioner's designee may instruct the licensing agency to  
10 take negative licensing action.

11 (3) (a) If there is evidence that an inappropriate purchase or  
12 disbursement entailed an egregious amount of money, the  
13 commissioner or the commissioner's designee shall report the  
14 purchase or disbursement to the Attorney General.

15 (b) If there is evidence that a case manager was aware of an  
16 egregious inappropriate purchase or disbursement and failed to  
17 document that fact or notify the case manager's supervisor, the  
18 commissioner or the commissioner's designee shall notify the  
19 Attorney General.

20 c. A licensee shall annually attend a continuing education  
21 program conducted or approved by the department, as provided for  
22 in section 5 of this act.

23 d. A licensee shall annually take a two-week leave from  
24 providing services to an individual with a developmental disability  
25 residing in a community care residence, during which time an  
26 alternate shall provide care or training, or both, to the individual  
27 with a developmental disability.

28 'e. A licensee shall demonstrate to the case manager the  
29 licensee's ability to provide any physical assistance that individuals  
30 in the licensed home may require.

31 f. A licensee shall immediately notify the responsible placing  
32 agency in the event of a lapse in the individual's participation or  
33 attendance in the individual's day program that exceeds a duration  
34 of five consecutive days, with the exception of a planned vacation  
35 or a documented medical reason.<sup>1</sup>

36  
37 5. (New section) a. The department may issue a provisional  
38 license to operate a community care residence, not to exceed a  
39 three-month period, during which time the licensee shall  
40 demonstrate the ability to comply with the provisions of this act and  
41 the licensing standards adopted by regulation of the department for  
42 the operation of a community care residence.

43 b. The department shall conduct, or approve another entity to  
44 conduct, a continuing education program for a licensee.

45 c. The department shall prepare a form listing the job duties of  
46 a licensee and biennially distribute the form to a licensee for  
47 completion by the licensee's physician in accordance with the  
48 provisions of section 4 of this act. The form shall contain a check

1 list on which the physician shall indicate a licensee's ability to  
2 perform each duty.

3  
4 6. (New section) a. A case manager conducting a visit to an  
5 individual with a developmental disability residing in a community  
6 care residence, in accordance with section 8 of P.L.1983, c.524  
7 (C.30:6D-20), shall, upon completion of the visit, provide a written  
8 report to the case manager's supervisor and 'if requested,' to the  
9 '[parent or]' guardian 'or authorized family member.' as  
10 appropriate, of the individual with a developmental disability. The  
11 report, which shall be sent electronically to the case manager's  
12 supervisor and, if practicable, electronically to the '[parent or]'  
13 guardian 'or authorized family member', shall include information  
14 pertaining to the care and safety of the individual with a  
15 developmental disability, including, but not limited to, personal  
16 hygiene and grooming, nutritional and clothing needs, overall  
17 sanitary and living conditions of the community care residence, and  
18 the general well-being of the individual with a developmental  
19 disability.

20 The reports made pursuant to this subsection may be shared with  
21 persons other than the '[parent or]' guardian 'or authorized family  
22 member.' if the individual with the developmental disability so  
23 authorizes in writing.

24 b. The case manager shall also review the records required to  
25 be maintained in a community care residence pursuant to N.J.A.C.  
26 10:44B-1.1 et seq., on a monthly basis. The case manager's  
27 supervisor shall review the records when the supervisor performs  
28 the visit required by section 7 of this act. The case manager or  
29 supervisor, or both, as applicable, shall provide written  
30 documentation that the records were reviewed and include that  
31 documentation with the records maintained pursuant to N.J.A.C.  
32 10:44B-1.1 et seq.

33  
34 7. (New section) The supervisor of a case manager shall  
35 '[biennially] , over a three-year period,' visit 100 percent of the  
36 individuals with developmental disabilities who are assigned to the  
37 case manager and residing in a community care residence, '[with  
38 50 percent] except that individuals who are their own guardians  
39 may decline such visits by providing a written statement to that  
40 effect to the department. One third' of the visits 'shall be'  
41 conducted in each of the first '[and second] three' years. If, after  
42 '[two] three' years, the supervisor determines that, based on  
43 certain factors, including, but not limited to, the number and age of  
44 the individuals residing in the community care residence, whether  
45 each individual attends a day program on a regular basis, and lack  
46 of complaints after '[two] three' years, the individuals in the  
47 community care residence are not at risk for abuse, neglect, or



1 exploitation, the visits may be reduced to one visit every ~~'[three]~~  
2 four<sup>1</sup> years.

3 a. The visit shall be conducted by the supervisor ~~'[together]~~ in  
4 coordination<sup>1</sup> with a case manager who is unaffiliated with and  
5 unfamiliar to the assigned case manager. The supervisor and  
6 unaffiliated case manager shall prepare and provide to the ~~'[parent~~  
7 or]<sup>1</sup> guardian 'or authorized family member<sup>1</sup> of the individual with  
8 a 'developmental<sup>1</sup> disability ~~'[the]~~ a<sup>1</sup> written report pertaining to  
9 the care and safety of ~~'[the]~~ that<sup>1</sup> individual ~~'[with a~~  
10 developmental disability pursuant to section 6 of this act]<sup>1</sup>.

11 b. The supervisor shall conduct a review of:

12 (1) a member of the household of a community care residence  
13 who is 18 years of age or older to determine whether the presence  
14 of the person 18 years of age or older in the household changes the  
15 character of the community care residence so that it is no longer a  
16 positive environment for care or training, or both, of an individual  
17 with a developmental disability;

18 (2) a licensee who is 65 years of age or older to determine  
19 whether the licensee is capable of continuing to provide care or  
20 training, or both, to an individual with a developmental disability;  
21 and

22 (3) a licensee who experiences a life-changing event that causes  
23 a changed physical or mental condition of the licensee, to determine  
24 whether the licensee is able to provide care or training, or both, to  
25 an individual with a developmental disability.

26 c. The supervisor shall prepare a written report of a review  
27 conducted pursuant to subsection b. of this section and the report  
28 shall be made part of the records maintained in a community care  
29 residence pursuant to N.J.A.C. 10:44B-1.1 et seq.

30 d. If, based on the supervisor's and unaffiliated case manager's  
31 review and input from family members or the guardian of the  
32 individual with a developmental disability residing in the  
33 community care residence, the supervisor determines that the  
34 individual would benefit from a change in the individual's case  
35 manager, the supervisor shall assign a different case manager to the  
36 individual.

37 e. If, as a result of a visit or review conducted pursuant to this  
38 section, a supervisor determines that a licensee is not capable of  
39 providing care or training, or both, to an individual with a  
40 developmental disability, the supervisor shall so advise the  
41 commissioner or the commissioner's designee who shall instruct the  
42 licensing agency to take negative licensing action. In such a case,  
43 the supervisor shall provide a copy of the written report prepared  
44 pursuant to section 6 of this act and any written report prepared  
45 pursuant to subsection c. of this section to the commissioner or the  
46 commissioner's designee.

47 'f. The Office of Licensing shall annually conduct routine  
48 unannounced visits of 10 percent of community care residences

1 Statewide. These visits shall include a review of financial records,  
2 including receipts for purchases and disbursement.<sup>1</sup>

3  
4 8. (New section) Before taking negative licensing action  
5 pursuant to this act, the department shall give notice to a licensee  
6 personally or by mail to the last known address of the licensee with  
7 return receipt requested. The notice shall afford the licensee the  
8 opportunity to be heard and to contest the department's action. The  
9 hearing shall be conducted in accordance with the "Administrative  
10 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

11  
12 9. Section 3 of P.L.2010, c.5 (C.30:6D-75) is amended to read  
13 as follows:

14 3. a. A case manager or case manager's supervisor in the  
15 department, a person employed or volunteering in a program,  
16 facility, community care residence, or living arrangement licensed  
17 or funded by the department, or a person providing community-  
18 based services with indirect State funding to a person with a  
19 developmental disability, as applicable, having reasonable cause to  
20 believe that an individual with a developmental disability has been  
21 subjected to abuse, neglect, or exploitation by a caregiver shall  
22 report the same immediately to the department by telephone or  
23 otherwise. Such report, where possible, shall contain the name and  
24 address of the individual with a developmental disability and the  
25 caregiver responsible for the care, custody, or control of the  
26 individual with a developmental disability, and the guardian, or  
27 other person having custody and control of the individual and, if  
28 known, the condition of the individual with a developmental  
29 disability, the nature and possible extent of the individual's injuries,  
30 maltreatment, abuse, neglect or exploitation, including any evidence  
31 of previous injuries, maltreatment, abuse, neglect, or exploitation,  
32 and any other information that the person believes may be helpful  
33 with respect to the injuries, maltreatment, abuse, neglect, or  
34 exploitation of the individual with a developmental disability and  
35 the identity of the alleged offender.

36 b. Within the department, the commissioner shall maintain a  
37 unit to receive and prioritize such reports, initiate appropriate  
38 responses through timely and appropriate investigative activities,  
39 alert appropriate staff, and ensure that findings are reported in a  
40 uniform and timely manner.

41 c. (1) A <sup>1</sup>case manager or case manager's supervisor in the  
42 department, a<sup>1</sup> person employed or volunteering in a program,  
43 facility, community care residence, or living arrangement licensed  
44 or funded by the department, or a person providing community-  
45 based services with indirect State funding to a person with a  
46 developmental disability, as applicable, who fails to report an act of  
47 abuse, neglect, or exploitation against an individual with a  
48 developmental disability while having reasonable cause to believe  
49 that such an act has been committed, is a disorderly person.

1       (2) A case manager or case manager's supervisor in the  
2 department who fails to report an act of abuse, neglect, or  
3 exploitation of an individual with a developmental disability while  
4 having reasonable cause to believe that such an act has been  
5 committed, shall be guilty of a disorderly person's offense, unless  
6 the abuse, neglect, or exploitation results in the death of an  
7 individual with a developmental disability, in which case the case  
8 manager or case manager's supervisor shall be guilty of a crime of  
9 the fourth degree.

10       d. In addition to any penalty imposed pursuant to this section, a  
11 person convicted under this section shall be subject to a penalty in  
12 the amount of \$350 for each day that the abuse, neglect, or  
13 exploitation was not reported, payable to the Treasurer of the State  
14 of New Jersey, which shall be used by the department to fund the  
15 provision of food and care to individuals with developmental  
16 disabilities residing in community care residences.

17       e. A case manager or case manager's supervisor who is  
18 charged with failure to report an act of abuse, neglect, or  
19 exploitation of an individual with a developmental disability while  
20 having reasonable cause to believe that such an act has been  
21 committed, shall be temporarily reassigned to duties that do not  
22 involve contact with individuals with developmental disabilities or  
23 other vulnerable populations and shall be terminated from  
24 employment if convicted.

25       In the case of a case manager or case manager's supervisor who  
26 is employed by the department, the case manager or supervisor shall  
27 retain any available right of review by the Civil Service  
28 Commission.

29 (cf: P.L.2010, c.5, s.3)

30

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

33       4. a. Upon receipt of a report pursuant to section 3 of this act,  
34 the department shall designate an entity, as established by the  
35 commissioner, that shall immediately take such action as shall be  
36 necessary to ensure the safety of the individual with a  
37 developmental disability and to that end may request appropriate  
38 assistance from local and State law enforcement officials or contact  
39 Adult Protective Services to provide assistance in accordance with  
40 the provisions of P.L.1993, c.249 (C.52:27D-406 et seq.).

41       b. The commissioner shall adopt rules and regulations  
42 necessary to provide for an investigation of a reported incident and  
43 subsequent substantiation or non-substantiation of an allegation of  
44 abuse, neglect, or exploitation of an individual with a  
45 developmental disability by a caregiver, by maintaining a Special  
46 Response Unit to investigate serious unusual incidents, as defined  
47 by applicable rules and regulations, in facilities or community  
48 programs licensed, contracted, or regulated by the department.  
49 During its investigation of an allegation of abuse, neglect, or

1 exploitation of an individual with a developmental disability by a  
2 caregiver, the Special Response Unit shall make a good faith effort  
3 to notify the caregiver of the possibility of the caregiver's inclusion  
4 on the registry, and give the caregiver an opportunity to respond to  
5 the department concerning the allegation.

6 c. The Special Response Unit, the department, or other  
7 investigating entity shall forward to the commissioner, or ~~his~~ the  
8 commissioner's designee, a substantiated incident of abuse, neglect,  
9 or exploitation of an individual with a developmental disability for  
10 inclusion of an offending caregiver on the central registry. The  
11 Special Response Unit, the department, or other investigating entity  
12 shall also forward to the commissioner, or the commissioner's  
13 designee, all '[non-substantiated] unsubstantiated' incidents of  
14 abuse, neglect, or exploitation of an individual with a  
15 developmental disability. As soon as possible, and no later than 14  
16 days after receipt of the incident of abuse, neglect, or exploitation,  
17 the commissioner or the commissioner's designee shall review the  
18 incident. The offending caregiver of a substantiated incident shall  
19 be included on the central registry as expeditiously as possible. The  
20 Special Response Unit shall retain a record of all '[non-  
21 substantiated] unsubstantiated' incidents.

22 d. Upon the initiation of an investigation, the department shall:  
23 (1) ensure that any communication concerning the alleged abuse,  
24 neglect, or exploitation of an individual with a developmental  
25 disability between a caregiver, case manager of the caregiver, the  
26 case manager's supervisor, or a person at the appropriate Regional  
27 Office of the Division of Developmental Disabilities is identified,  
28 safeguarded from loss or destruction, and maintained in a secure  
29 location; and (2) contact the Office of the Attorney General, which  
30 shall determine whether to participate in the investigation.

31 e. The Special Response Unit shall issue a written report of the  
32 investigation that includes the conclusions of the unit, the rationale  
33 for the conclusion, and a detailed summary of any communication  
34 secured pursuant to subsection d. of this section. The report shall  
35 also include an assessment of the role of any case manager of a  
36 caregiver or the case manager's supervisor, if applicable, in the  
37 allegation of abuse, neglect, or exploitation, and a recommendation  
38 about whether any civil or criminal action should be brought against  
39 the case manager or supervisor. The report shall be made part of  
40 the record for review in any civil or criminal proceeding that may  
41 ensue.

42 A written summary of the conclusions of the investigation shall  
43 be provided to the '[parent or]' guardian 'or authorized family  
44 member' of the individual with a developmental disability who is  
45 the subject of the alleged abuse, neglect, or exploitation.

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

48 (cf: P.L.2010, c.5, s.4)

1 11. (New section) The Special Response Unit shall compile  
2 data about any investigation conducted as a result of a report made  
3 pursuant to section 3 of P.L.2010, c.5 (C.30:6D-75), concerning  
4 abuse, neglect, or exploitation of an individual with a  
5 developmental disability residing in a community care residence,  
6 and shall issue an annual report as provided in this section. The  
7 report, which shall be made available on the website of the  
8 department and contain non-identifying information, shall, at a  
9 minimum, include:

10 a. the number of individuals with developmental disabilities  
11 residing in community care residences who were the subject of an  
12 allegation of abuse, neglect, or exploitation, and the number of  
13 substantiated, ~~'[non-substantiated]~~ unsubstantiated<sup>1</sup>, and  
14 unfounded allegations;

15 b. the number of deaths, if any, of individuals with  
16 developmental disabilities who were residing in community care  
17 residences and were the subject of a report of abuse, neglect, or  
18 exploitation, and the cause of death;

19 c. the number of case managers or case managers' supervisors  
20 who have been reassigned or terminated, or both, as a result of an  
21 investigation of abuse, neglect, or exploitation of an individual with  
22 a developmental disability residing in a community care residence;  
23 and

24 d. the number of case managers or case managers' supervisors  
25 against whom a civil or criminal action has been brought as a result  
26 of an allegation of abuse, neglect, or exploitation of an individual  
27 with a developmental disability residing in a community care  
28 residence.

29

30 12. (New section) a. A provider of a day program for  
31 individuals with developmental disabilities shall submit to the  
32 division a copy of its monthly report of individuals with  
33 developmental disabilities who reside in community care residences  
34 and attend a day program sponsored by the provider. The report  
35 shall be submitted no later than 14 days after the end of each month.

36 b. A provider of a day program for individuals with  
37 developmental disabilities shall not seek reimbursement from the  
38 department for an individual with a developmental disability who  
39 resides in a community care residence and is scheduled to attend  
40 a day program sponsored by the provider, but has not attended  
41 the program for 30 consecutive days. A provider who seeks  
42 reimbursement in violation of this subsection shall refund a  
43 payment received from the department on behalf of that individual,  
44 and shall be subject to a penalty of \$1,000 per day, per individual  
45 listed on the monthly attendance report as being in attendance, but  
46 who was not in attendance. The penalty shall be sued for and  
47 collected in a summary proceeding by the commissioner pursuant to  
48 the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-  
49 10 et seq.).

1 c. If an individual with a developmental disability who resides  
2 in a community care residence and is scheduled to attend a day  
3 program is absent from the program for 30 consecutive days, the  
4 provider of the day program shall, no later than 14 days after the  
5 end of the 30 days, notify the appropriate regional office  
6 administrator.

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

10 (1) the appropriate regional office administrator; and

11 (2) the supervisor of a case manager assigned to an individual  
12 with a developmental disability who resides in a community care  
13 residence and is scheduled to attend the day program.

14 e. The division shall provide:

15 (1) a 'parent or' guardian 'or authorized family member' of  
16 an individual with a disability, who resides in a community care  
17 residence and is scheduled to attend a day program, with  
18 information pertaining to the individual's monthly attendance at the  
19 day program', if requested'. The information shall be provided no  
20 later than 28 days after the end of 'each the' month 'in which the  
21 information was requested'; and

22 (2) a random sampling of the monthly reports to the Special  
23 Response Unit, which shall audit attendance of individuals with  
24 developmental disabilities who reside in community care residences  
25 and are scheduled to attend a day program.

26 f. A regional office administrator shall bi-annually conduct an  
27 on-site audit of attendance of individuals with developmental  
28 disabilities who reside in community care residences and are  
29 scheduled to attend a day program in the office's region.

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

47 b. The physician or the chief executive officer, or his designee,  
48 of a hospital or similar institution taking an individual with a

1 disability into protective custody shall immediately report the action  
2 and the condition of the individual with a developmental disability  
3 to the department by calling its emergency telephone service.

4 c. A physician or chief executive officer, or his designee, who  
5 fails to comply with the provisions of this section shall be subject to  
6 a penalty of \$500. The penalty shall be sued for and collected in a  
7 summary proceeding by the commissioner pursuant to the "Penalty  
8 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).  
9

10 14. (New section) a. An agency or organization that causes a  
11 written, individualized habilitation plan to be developed pursuant to  
12 section 10 of P.L.1977, c.82 (C.30:6D-10), on or after the effective  
13 date of this act, for an individual with a developmental disability  
14 residing in a community care residence shall not include the Social  
15 Security number of the individual with a developmental disability  
16 on the plan. In the case of an individualized habilitation plan  
17 developed prior to the effective date of this act, the Social Security  
18 number of the individual with a developmental disability residing in  
19 a community care residence shall be removed from the plan within  
20 60 days of the effective date of this act.

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

27 c. In addition to the requirements for the development,  
28 revision, and review of an individual habilitation plan pursuant to  
29 sections 10 and 12 of P.L.1977, c.82 (C.30:6D-10 and C.30:6D-12),  
30 a plan developed, revised, or reviewed for an individual with a  
31 developmental disability residing in a community care residence  
32 shall be provided to the licensee of the community care residence,  
33 the case manager of the individual with a developmental disability  
34 residing in the community care residence, and the case manager's  
35 supervisor. If a '[parent or]' guardian 'or authorized family  
36 member' of the individual is unable to attend the development,  
37 revision, or review of the plan, a copy of the plan shall be provided  
38 to the '[parent or]' guardian 'or authorized family member' of the  
39 individual, and the '[parent or]' guardian 'or authorized family  
40 member', as appropriate, shall sign and return a copy of the plan to  
41 the agency or organization responsible for the development,  
42 revision, or review of the plan.  
43

44 15. The Commissioner of Human Services shall adopt rules and  
45 regulations, pursuant to the "Administrative Procedure Act,"  
46 P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the provisions of  
47 this act.

1       16. This act shall take effect on the 180th day after the date of  
2 enactment, but the Commissioner of Human Services may take such  
3 anticipatory administrative action in advance thereof as shall be  
4 necessary for the implementation of this act.

5

6

7

8

9       “Tara’s Law”; provides protections for individuals with  
10 developmental disabilities residing in community care residences  
11 and for investigations of abuse of individuals with developmental  
12 disabilities.



# SENATE, No. 599

## STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

**Sponsored by:**

**Senator JENNIFER BECK**

**District 11 (Monmouth)**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**Co-Sponsored by:**

**Senators Gordon, Madden, Buono and A.R.Bucco**

**SYNOPSIS**

"Tara's Law"; provides protections for individuals with developmental disabilities residing in community care residences and for investigations of abuse of individuals with developmental disabilities.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



**(Sponsorship Updated As Of: 2/7/2012)**

1 AN ACT concerning individuals with developmental disabilities,  
2 designated as "Tara's Law," supplementing chapter 6D of Title  
3 30 of the Revised Statutes, and amending various parts of the  
4 statutory law.

5

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

8

9 1. (New section) The Legislature finds and declares that:

10 a. There are more than 600 community care residences in the  
11 State in which an adult or family secures a license from the  
12 Department of Human Services to provide care or training, or both,  
13 to up to four individuals with developmental disabilities;

14 b. For protection of the approximately 1,200 individuals with  
15 developmental disabilities residing in these community care  
16 residences, there needs to be an increase in the oversight of the  
17 persons licensed to operate community care residences, the case  
18 managers who are required to conduct monthly visits of these  
19 residences, and the day programs that individuals with  
20 developmental disabilities are scheduled to, but may not actually,  
21 attend;

22 c. It is also important to improve communications with parents  
23 and guardians of individuals with developmental disabilities  
24 residing in community care residences so that parents and guardians  
25 know whether their child or ward is receiving good care, attending  
26 scheduled day programs, and following the individualized  
27 habilitation plan developed for their child or ward;

28 d. Currently an individual with a developmental disability  
29 residing in a community care residence is required to have annual  
30 medical examinations; for the protection of an individual who may  
31 be suffering injury inflicted by the licensee of the community care  
32 residence, the examining physician should be required to take  
33 protective custody of the individual and report such action to the  
34 Department of Human Services;

35 e. Ensuring that investigators have access to communications  
36 concerning allegations of abuse, neglect, or exploitation of an  
37 individual with a disability, and that investigative reports examine  
38 the role of those overseeing the persons providing care to  
39 individuals with developmental disabilities would provide needed  
40 information for any civil or criminal proceeding that may follow an  
41 allegation of abuse, neglect, or exploitation; and

42 f. It is the policy of this State to: ensure that there is sufficient  
43 oversight of community care residences and day programs attended  
44 by individuals with developmental disabilities residing in  
45 community care residences; protect these individuals from injury

**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 thus is new matter.**

1 that may be inflicted by the very persons charged with providing  
2 them with care; and safeguard and report information that may be  
3 important for a civil or criminal proceeding that may follow an  
4 allegation of abuse, neglect, or exploitation of an individual with a  
5 developmental disability residing in a community setting.

6

7 2. (New section) As used in this act:

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

12 "Alternate" means a person 18 years of age or older who assumes  
13 the responsibility of a licensee when the licensee is absent from a  
14 community care residence.

15 "Commissioner" means the Commissioner of Human Services.

16 "Community care residence" or "residence" means a private  
17 home or apartment in which an adult or family is licensed by and  
18 contracts with the department to provide an individual with a  
19 developmental disability with care or training, or both.

20 "Department" means the Department of Human Services.

21 "Developmental disability" means developmental disability as  
22 defined in section 3 of P.L.1977, c.82 (C.30:6D-3).

23 "Division" means the Division of Developmental Disabilities in  
24 the Department of Human Services.

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

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

31 "Lewdness" means the exposing of the genitals for the purpose  
32 of arousing or gratifying the sexual desire of a licensee or an  
33 individual with a developmental disability, or any flagrantly lewd  
34 and offensive act which the licensee knows or reasonably expects is  
35 likely to be observed by an individual with a developmental  
36 disability.

37 "Licensee" means one or more persons 18 years of age or older  
38 who are named on the license issued by the department to operate a  
39 community care residence and have overall responsibility for an  
40 individual with a developmental disability.

41 "Negative licensing action" means an action taken which  
42 imposes a restriction on a licensee and may include suspension of  
43 admissions, issuance of a provisional license, reduction in the  
44 licensed capacity, non-renewal of license, suspension of the license,  
45 or revocation of the license.

46 "Neglect" shall consist of any of the following acts by a licensee  
47 on an individual with a developmental disability: willfully failing

1 to provide proper and sufficient food, clothing, maintenance,  
2 medical care, or a clean and proper home; or failure to do or permit  
3 to be done any act necessary for the well-being of an individual  
4 with a developmental disability.

5 "Office of Licensing" or "office" means the licensing unit of the  
6 Department of Human Services for programs in the Division of  
7 Developmental Disabilities.

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

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

23 "Sexual contact" means an intentional touching by a licensee or  
24 individual with a developmental disability, either directly or  
25 through clothing, of the intimate parts of the individual with a  
26 developmental disability or the licensee for the purpose of sexually  
27 arousing or sexually gratifying the licensee. Sexual contact of the  
28 licensee with himself must be in view of the individual with a  
29 developmental disability whom the licensee knows to be present.

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

35 "Special Response Unit" means the unit in the department that is  
36 charged with investigation of serious unusual incidents, as defined  
37 by applicable rules and regulations of the department, and is  
38 responsible for the investigation of a report of abuse, neglect, or  
39 exploitation in a community care residence.

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

1       3. (New section) A community care residence licensed by the  
2 Department of Human Services pursuant to N.J.A.C. 10:44B-1.1 et  
3 seq. shall be subject to the following provisions:

4       a. If, as a result of an annual inspection of a community care  
5 residence by the Office of Licensing that allows for inquiry into the  
6 facilities, records, equipment, sanitary conditions, accommodations,  
7 and management of an individual with a developmental disability as  
8 required by N.J.A.C.10:44B-1.1 et seq, a licensee is required to  
9 provide a plan of correction and such plan has not been successfully  
10 implemented, as determined by the office, within 30 days of the  
11 date that the licensee submitted the plan to the office, an individual  
12 with a developmental disability residing in that residence shall be  
13 removed from the residence; and

14       b. If the health, safety, or well-being of an individual with a  
15 developmental disability residing in a community care residence is  
16 threatened because of a licensee's non-compliance with the  
17 standards adopted by regulation of the department, the individual  
18 with a developmental disability shall be removed from the  
19 residence, and the licensee shall be subject to negative licensing  
20 action by the Office of Licensing;

21  
22       4. (New section) The Department of Human Services shall  
23 require a licensee, as a condition of maintaining a license to operate  
24 a community care residence, to comply with the following  
25 provisions:

26       a. (1) A licensee shall, biennially, undergo an examination by a  
27 physician to ascertain whether the licensee is physically and  
28 mentally capable of fulfilling the job duties of a licensee, as  
29 specified on the form listing a licensee's job duties prepared by the  
30 department pursuant to section 5 of this act and completed by the  
31 physician pursuant to this subsection. Upon conclusion of the  
32 examination, the physician shall provide the licensee with a  
33 statement as to whether the licensee is capable of fulfilling the  
34 duties of a licensee, and complete and attach the form on which the  
35 physician shall indicate, for each duty, whether the licensee is  
36 capable of fulfilling the duty.

37       (2) Upon receipt of the physician statement and completed form,  
38 a licensee shall provide the statement and form to the department.  
39 If a licensee fails to provide the statement and form, the  
40 commissioner shall have the authority to: stop any payments to the  
41 licensee; seek recovery of any payments to the licensee from the  
42 date that the statement and form were due; and not resume payment  
43 until such time as the licensee submits the statement and form.

44       (3) If, after undergoing the examination, a licensee is unable to  
45 provide a physician's statement that the licensee is capable of  
46 fulfilling the job duties of a licensee and the attached form

1 completed by the physician, the licensing agency shall take negative  
2 licensing action against the licensee.

3 b. In the event that an individual with a developmental  
4 disability is not capable of managing his own funds, a licensee who  
5 is responsible for making purchases and disbursements on the  
6 individual's behalf shall not make a purchase or disbursement  
7 unless that purchase or disbursement reflects the specific needs of  
8 the individual with a developmental disability. A receipt or record,  
9 as applicable, of a purchase or disbursement pursuant to this  
10 subsection shall be submitted monthly to the Office of Auditing in  
11 the department.

12 c. A licensee shall annually attend a continuing education  
13 program conducted or approved by the department, as provided for  
14 in section 5 of this act;

15 d. A licensee shall annually take a two-week vacation from  
16 providing services to an individual with a developmental disability  
17 residing in a community care residence, during which time an  
18 alternate shall provide care or training, or both, to the individual  
19 with a developmental disability.

20

21 5. (New section) a. The department may issue a provisional  
22 license to operate a community care residence, not to exceed a  
23 three-month period, during which time such licensee shall  
24 demonstrate the ability to comply with the provisions of this act and  
25 the licensing standards adopted by regulation of the department for  
26 operation of a community care residence.

27 b. The department shall conduct, or approve another entity to  
28 conduct, a continuing education program for a licensee.

29 c. The department shall prepare a form listing the job duties of  
30 a licensee and, biennially, distribute the form to a licensee for  
31 completion by the licensee's physician in accordance the provisions  
32 of section 4 of this act. The form shall contain a check list on  
33 which the physician shall indicate a licensee's ability to perform  
34 each duty.

35

36 6. (New section) a. A case manager conducting a visit of an  
37 individual with a developmental disability residing in a community  
38 care residence, in accordance with section 8 of P.L.1983, c.524  
39 (C.30:6D-20), shall, upon completion of the visit, provide a written  
40 report to the case manager's supervisor and to the parent or  
41 guardian, as appropriate, of the individual with a developmental  
42 disability. The report, which shall be sent electronically to the case  
43 manager's supervisor and, if practicable, electronically to the parent  
44 or guardian, shall include information pertaining to the care and  
45 safety of the individual with a developmental disability, including,  
46 but not limited to, personal hygiene and grooming, nutritional and  
47 clothing needs, overall sanitary and living conditions of the

1 community care residence, and the general well-being of the  
2 individual with a developmental disability.

3 b. The case manager shall also review the records required to  
4 be maintained in a community care residence pursuant to N.J.A.C.  
5 10:44B-1.1 et seq., on a monthly basis. The case manager's  
6 supervisor shall review the records when the supervisor performs  
7 the visit required by section 7 of this act. The case manager or  
8 supervisor, or both, as applicable, shall provide written  
9 documentation that the records were reviewed and include that  
10 documentation with the records maintained pursuant to N.J.A.C.  
11 10:44B-1.1 et seq.

12

13 7. (New section) The supervisor of a case manager shall  
14 biennially visit 100% of the individuals with developmental  
15 disabilities who are assigned to the case manager and residing in a  
16 community care residence, with 50% of the visits conducted in each  
17 of the first and second years.

18 a. The visit shall be conducted by the supervisor together with  
19 a case manager who is unaffiliated with and unfamiliar to the  
20 assigned case manager. The supervisor and unaffiliated case  
21 manager shall prepare and provide to the parent or guardian of the  
22 individual with a disability the written report pertaining to the care  
23 and safety of the individual with a developmental disability  
24 pursuant to section 6 of this act.

25 b. The supervisor shall conduct a review of:

26 (1) a member of the household of a community care residence  
27 who is 18 years of age or older to determine whether the presence  
28 of the person 18 years of age or older in the household changes the  
29 character of the community care residence such that it is no longer a  
30 positive environment for care or training, or both, of an individual  
31 with a developmental disability;

32 (2) a licensee who is 65 years of age or older to determine  
33 whether the licensee is capable of continuing to provide care or  
34 training, or both, to an individual with a developmental disability;  
35 and

36 (3) a licensee who experiences a life-changing event which  
37 causes a changed physical or mental condition of the licensee to  
38 determine whether the licensee is able to provide care or training, or  
39 both, to an individual with a developmental disability.

40 c. The supervisor shall prepare a written report of a review  
41 conducted pursuant to subsection b. of this section and the report  
42 shall be made part of the records maintained in a community care  
43 residence pursuant to N.J.A.C. 10:44B-1.1 et seq.

44 d. If, based on the supervisor's and unaffiliated case manager's  
45 review and input from family members or the guardian of the  
46 individual with a developmental disability residing in the  
47 community care residence, the supervisor determines that the

1 individual would benefit from a change in the individual's case  
2 manager, the supervisor shall assign a different case manager to the  
3 individual.

4 e. If, as a result of a visit or review conducted pursuant to this  
5 section, a supervisor determines that a licensee is not capable of  
6 providing care or training, or both, to an individual with a  
7 developmental disability, the supervisor shall so advise the  
8 commissioner or the commissioner's designee who shall instruct the  
9 licensing agency to take negative licensing action. In such a case,  
10 the supervisor shall provide a copy of the written report prepared  
11 pursuant to subsection a. of this section and any written report  
12 prepared pursuant to subsection c. of this section to the  
13 commissioner or the commissioner's designee.

14

15 8. (New section) Before taking negative licensing action  
16 pursuant to this act, the department shall give notice to a licensee  
17 personally or by mail to the last known address of the licensee with  
18 return receipt requested. The notice shall afford the licensee the  
19 opportunity to be heard and to contest the department's action. The  
20 hearing shall be conducted in accordance with the "Administrative  
21 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

22

23 9. (New section) a. A case manager or case manager's  
24 supervisor having reasonable cause to believe that an individual  
25 with a developmental disability residing in a community care  
26 residence has been subjected to abuse, neglect, or exploitation by a  
27 licensee shall report the same immediately to the department by  
28 telephone or otherwise. Such report, where possible, shall contain  
29 the name and address of the individual with a developmental  
30 disability and the licensee responsible for the care or training, or  
31 both, of the individual with a developmental disability, and the  
32 guardian, or other person having custody and control of the  
33 individual and, if known, the condition of the individual with a  
34 developmental disability, the nature and possible extent of the  
35 individual's injuries, maltreatment, abuse, neglect, or exploitation,  
36 including any evidence of previous injuries, maltreatment, abuse,  
37 neglect, or exploitation, and any other information that the case  
38 manager or case manager's supervisor believes may be helpful with  
39 respect to the injuries, maltreatment, abuse, neglect, or exploitation  
40 of the individual with a developmental disability and the identity of  
41 the alleged offender.

42 b. The commissioner shall maintain a unit within the  
43 department to receive and prioritize such reports, initiate  
44 appropriate responses through timely and appropriate investigative  
45 activities, alert appropriate staff, and ensure that findings are  
46 reported in a uniform and timely manner.



1 c. A case manager or case manager's supervisor who fails to  
2 report an act of abuse, neglect, or exploitation of an individual with  
3 a developmental disability while having reasonable cause to believe  
4 that such an act has been committed, shall be guilty of a crime of  
5 the third degree.

6 d. In addition to any penalty imposed pursuant to this section, a  
7 person convicted under this section shall be subject to a surcharge  
8 in the amount of \$350 payable to the Treasurer of the State of New  
9 Jersey for use by the department to fund the provision of food and  
10 care to individuals with developmental disabilities residing in  
11 community care residences.

12 e. A case manager or case manager's supervisor who is charged  
13 with failure to report an act of abuse, neglect, or exploitation of an  
14 individual with a developmental disability while having reasonable  
15 cause to believe that such an act has been committed, shall be  
16 temporarily reassigned to duties that do not involve contact with  
17 individuals with developmental disabilities or other vulnerable  
18 populations and shall be terminated from employment if convicted.  
19 In the case of a case manager or case manager's supervisor who is  
20 employed by the department, such a case manager or supervisor  
21 shall retain any available right of review by the Civil Service  
22 Commission.

23

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

26 4. a. Upon receipt of a report pursuant to section 3 of [this  
27 act] P.L.2010, c.5 (C.30:6D-75) or section 9 of P.L. , c. (C. )  
28 (pending before the Legislature as this bill), the department shall:

29 (1) designate an entity, as established by the commissioner, that  
30 shall immediately take such action as shall be necessary to ensure  
31 the safety of the individual with a developmental disability and to  
32 that end may request appropriate assistance from local and State  
33 law enforcement officials or contact Adult Protective Services to  
34 provide assistance in accordance with the provisions of P.L.1993,  
35 c.249 (C.52:27D-406 et seq.); and

36 (2) require the Critical Incident Management Unit, the Special  
37 Response Unit, or another unit in the department other than one in  
38 the division, to review the report and determine whether the report  
39 warrants an investigation.

40 b. The commissioner shall adopt rules and regulations  
41 necessary to provide for an investigation of a reported incident and  
42 subsequent substantiation or non-substantiation of an allegation of  
43 abuse, neglect, or exploitation of an individual with a  
44 developmental disability by a caregiver, by maintaining a Special  
45 Response Unit to investigate serious unusual incidents, as defined  
46 by applicable rules and regulations, in facilities or community  
47 programs licensed, contracted, or regulated by the department.

1 Upon the initiation of an investigation, the department shall:  
2 (1) ensure that any communication concerning the alleged abuse,  
3 neglect, or exploitation of an individual with a developmental  
4 disability between a caregiver, case manager of the caregiver, the  
5 case manager's supervisor, or a person at the appropriate Regional  
6 Office of the Division of Developmental Disabilities is identified,  
7 safeguarded from loss or destruction, and maintained in a secure  
8 location; and (2) contact the Office of the Attorney General which  
9 shall determine whether to participate in the investigation.

10 During its investigation of an allegation of abuse, neglect, or  
11 exploitation of an individual with a developmental disability by a  
12 caregiver, the Special Response Unit shall make a good faith effort  
13 to notify the caregiver of the possibility of the caregiver's inclusion  
14 on the registry, and give the caregiver an opportunity to respond to  
15 the department concerning the allegation.

16 c. The Special Response Unit shall issue a written report of the  
17 investigation that includes the conclusions of the unit, the rationale  
18 for the conclusion, and a detailed summary of any communication  
19 secured pursuant to subsection b. of this section. The report also  
20 shall include an assessment of the role of any case manager of a  
21 caregiver or the case manager's supervisor, if applicable, in the  
22 allegation of abuse, neglect, or exploitation, and a recommendation  
23 about whether any civil or criminal action should be brought against  
24 the case manager or supervisor. The report shall be made part of  
25 the record for review in any civil or criminal proceeding that may  
26 ensue.

27 A written summary of the conclusions of the investigation shall  
28 be provided to the parent or guardian of the individual with a  
29 developmental disability who is the subject of the alleged abuse,  
30 neglect, or exploitation.

31 [c.] d. The Special Response Unit, the department, or other  
32 investigating entity shall forward to the commissioner, or his  
33 designee, a substantiated or unsubstantiated incident of abuse,  
34 neglect, or exploitation of an individual with a developmental  
35 disability **【for inclusion of an offending caregiver on the central**  
36 **registry】**. Within 14 days of receipt of the substantiated or  
37 unsubstantiated incident of abuse, neglect, or exploitation, the  
38 commissioner or the commissioner's designee shall review the  
39 incident and, if appropriate, proceed with inclusion of an offending  
40 caregiver on the central registry.

41 (cf: P.L.2010, c.5 , s.4)

42  
43 11. Section 6 of P.L.2010, c.5 (C.30:6D-78) is amended to read  
44 as follows:

45 6. All records of a report made pursuant to **【this act】** section 3  
46 of P.L.2010, c.5 (C.30:6D-75) or section 9 of P.L. , c. (C. )  
47 (pending before the Legislature as this bill), all information

1 obtained by the department in investigating such reports, and all  
2 reports of findings forwarded to the central registry pursuant to  
3 **【this act】** P.L.2010, c.5 or P.L. \_\_\_\_\_, c. \_\_\_\_\_ (pending before the  
4 Legislature as this bill) shall be kept confidential and may be  
5 disclosed only under circumstances expressly authorized by rules  
6 and regulations promulgated by the commissioner. The department  
7 shall only disclose information that is relevant to the purpose for  
8 which the information is required; except that the department shall  
9 not disclose information which would likely endanger the life,  
10 safety, or physical or emotional well-being of an individual with a  
11 developmental disability or the life or safety of any other person, or  
12 which may compromise the integrity of a department investigation,  
13 civil or criminal investigation, or judicial proceeding. If the  
14 department denies access to specific information on this basis, the  
15 requesting entity may seek disclosure through the Superior Court.  
16 Nothing in **【this act】** P.L.2010, c.5 or P.L. \_\_\_\_\_, c. \_\_\_\_\_ (pending before  
17 the Legislature as this bill) shall be construed to permit the  
18 disclosure of any information deemed confidential by federal or  
19 State law.

20 (cf: P.L.2010, c.5, s.6)

21

22 12. Section 8 of P.L.2010, c.5 (C.30:6D-80) is amended to read  
23 as follows:

24 8. A person acting pursuant to **【this act】** P.L.2010, c.5  
25 (C.30:6D-73 et seq.) or P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the  
26 Legislature as this bill) in the making of a report under **【this act】**  
27 P.L.2010, c.5 or P.L. \_\_\_\_\_, c. \_\_\_\_\_ (pending before the Legislature as this  
28 bill) shall have immunity from any civil or criminal liability that  
29 might otherwise be incurred or imposed. Such a person shall have  
30 the same immunity with respect to testimony given in any judicial  
31 proceeding resulting from the report. A person who reports or  
32 causes to report in good faith an allegation of abuse, neglect, or  
33 exploitation pursuant to **【this act】** P.L.2010, c.5 or P.L. \_\_\_\_\_,  
34 c. \_\_\_\_\_ (pending before the Legislature as this bill) and as a result  
35 thereof is discharged from employment or in any manner  
36 discriminated against with respect to compensation, hire, tenure, or  
37 terms, conditions or privileges of employment, may file a cause of  
38 action for appropriate relief in the Superior Court in the county in  
39 which the discharge or alleged discrimination occurred or in the  
40 county of the person's primary residence. If the court finds that the  
41 person was discharged or discriminated against as a result of the  
42 person's reporting an allegation of abuse, neglect, or exploitation  
43 pursuant to **【this act】** P.L.2010, c.5 or P.L. \_\_\_\_\_, c. \_\_\_\_\_ (pending before  
44 the Legislature as this bill), the court may grant reinstatement of  
45 employment with back pay or other legal or equitable relief.

46 (cf: P.L.2010, c.5 , s.8)

1       13. (New section) The Special Response Unit shall compile  
2 data about any investigations conducted as a result of a report made  
3 pursuant to section 3 of P.L.2010, c.5 (C.30:6D-75) or section 9 of  
4 P.L. , c. (C. ) (pending before the Legislature as this bill)  
5 concerning abuse, neglect, or exploitation of an individual with a  
6 developmental disability residing in a community care residence,  
7 and shall issue an annual report as provided in this section. The  
8 report, which shall be available on the official website of the  
9 department and contain non-identifying information, shall, at a  
10 minimum, include:

11       a. The number of individuals with developmental disabilities  
12 residing in community care residences who were the subject of an  
13 allegation of abuse, neglect, or exploitation, and the number of  
14 substantiated allegations;

15       b. The number of deaths, if any, of individuals with  
16 developmental disabilities who were residing in community care  
17 residences and were the subject of a report of abuse, neglect, or  
18 exploitation, and the cause of death;

19       c. The number of case managers or case managers' supervisors  
20 who have been reassigned or terminated, or both, as a result of an  
21 investigation of abuse, neglect, or exploitation of an individual with  
22 a developmental disability residing in a community care residence;  
23 and

24       d. The number of case managers or case managers' supervisors  
25 against whom a civil or criminal action has been brought as a result  
26 of an allegation of abuse, neglect, or exploitation of an individual  
27 with a developmental disability residing in a community care  
28 residence.

29  
30       14. (New section) a. A provider of a day program for  
31 individuals with developmental disabilities shall submit to the  
32 division a copy of its monthly report of individuals with  
33 developmental disabilities who reside in community care residences  
34 and attend a day program sponsored by the provider. The report  
35 shall be submitted no later than 14 days after the end of the month.

36       b. A provider of a day program for individuals with  
37 developmental disabilities shall not seek reimbursement from the  
38 department for an individual with a developmental disability who  
39 resides in a community care residence and is scheduled to attend  
40 a day program sponsored by the provider, but has not attended  
41 the program for 30 consecutive days. A provider who seeks  
42 reimbursement in violation of this subsection shall refund a  
43 payment received from the department on behalf of that individual,  
44 and shall be subject to a penalty of \$1,000 per day, per individual  
45 listed on the monthly attendance report as being in attendance, but  
46 who was not in attendance. The penalty shall be sued for and  
47 collected in a summary proceeding by the commissioner pursuant to

1 the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-  
2 10 et seq.).

3 c. If an individual with a developmental disability who resides  
4 in a community care residence and is scheduled to attend a day  
5 program is absent from the program for 30 consecutive days, the  
6 provider of the day program shall, no later than 14 days after the  
7 end of the 30 days, notify the appropriate Regional Office  
8 Administrator.

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

12 (1) the appropriate Regional Office Administrator; and

13 (2) the supervisor of a case manager assigned to an individual  
14 with a developmental disability who resides in a community care  
15 residence and is scheduled to attend the day program.

16 e. The division shall provide:

17 (1) a parent or guardian of an individual with a disability who  
18 resides in a community care residence and is scheduled to attend a  
19 day program, with information pertaining to the individual's  
20 monthly attendance at the day program. Such a report shall be  
21 provided no later than 28 days after the end of the month; and

22 (2) a random sampling of the monthly reports to the Special  
23 Response Unit, which shall audit attendance of individuals with  
24 developmental disabilities who reside in community care residences  
25 and are scheduled to attend a day program.

26 f. A Regional Office Administrator shall bi-annually conduct  
27 an on-site audit of attendance of individuals with developmental  
28 disabilities who reside in community care residences and are  
29 scheduled to attend a day program in the office's region.

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

1       b. The physician or the chief executive officer, or his designee,  
2 of a hospital or similar institution taking an individual with a  
3 disability into protective custody shall immediately report the action  
4 and the condition of the individual with a developmental disability  
5 to the department by calling its emergency telephone service.

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

11  
12       16. (New section) a. An agency or organization that causes a  
13 written, individualized habilitation plan to be developed pursuant to  
14 section 10 of P.L.1977, c.82 (C.30:6D-10) on or after the effective  
15 date of this act for an individual with a developmental disability  
16 residing in a community care residence shall not include the social  
17 security number of the individual with a developmental disability  
18 on the plan. In the case of an individualized habilitation plan  
19 developed prior to the effective date of this act, the social security  
20 number of the individual with a developmental disability residing in  
21 a community care residence shall be removed from the plan within  
22 60 days of the effective date of this act.

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

29       c. In addition to the requirements for the development,  
30 revision, and review of an individual habilitation plan pursuant to  
31 sections 10 and 12 of P.L.1977, c.82 (C.30:6D-10 and C.30:6D-12),  
32 a plan developed, revised, or reviewed for an individual with a  
33 developmental disability residing in a community care residence  
34 shall be provided to the licensee of the community care residence,  
35 the case manager of the individual with a developmental disability  
36 residing in the community care residence, and the case manager's  
37 supervisor. If a parent or guardian of the individual is unable to  
38 attend the development, revision, or review of the plan, a copy of  
39 such plan shall be provided to the parent or guardian of the  
40 individual, and the parent or guardian, as appropriate, shall sign and  
41 return a copy of the plan to the agency or organization responsible  
42 for the development, revision, or review of the plan.

43  
44       17. Section 2 of P.L.2003, c.191 (C.30:6D-5.2) is amended to  
45 read as follows:

46       2. As used in this act:

47       "Commissioner" means the Commissioner of Human Services.

1 "Department" means the Department of Human Services.

2 "Facility for persons with developmental disabilities" means a  
3 facility for persons with developmental disabilities as defined in  
4 section 3 of P.L.1977, c.82 (C.30:6D-3).

5 "Facility for persons with traumatic brain injury" means a facility  
6 for persons with traumatic brain injury that is operated by, or under  
7 contract with, the department.

8 "Life-threatening emergency" means a situation in which a  
9 prudent person could reasonably believe that immediate  
10 intervention is necessary to protect the life of a person receiving  
11 services at a facility for persons with developmental disabilities or a  
12 facility for persons with traumatic brain injury or from a public or  
13 private agency, or to protect the lives of other persons at the facility  
14 or agency, from an immediate threat or actual occurrence of a  
15 potentially fatal injury, impairment to bodily functions or  
16 dysfunction of a bodily organ or part. "Life-threatening  
17 emergency" includes any change in a person's physical or mental  
18 condition that significantly weakens the person so that the person's  
19 health condition is precarious and shall include, but not be limited  
20 to, dramatic weight loss, poor hygiene, physical bruises, and sores  
21 dominating parts of the body.

22 "Public or private agency" means an entity under contract with,  
23 licensed by or working in collaboration with the department to  
24 provide services for persons with developmental disabilities or  
25 traumatic brain injury.

26 (cf: P.L.2003, c.191, s.2)

27

28 18. The Commissioner of Human Services shall adopt rules and  
29 regulations pursuant to the "Administrative Procedure Act,"  
30 P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the provisions of  
31 this act.

32

33 19. This act shall take effect on the 180th day after the date of  
34 enactment, but the Commissioner of Human Services may take such  
35 anticipatory administrative action in advance thereof as shall be  
36 necessary for the implementation of this act.

37

38

39

#### STATEMENT

40

41 This bill, which is designated as "Tara's Law," provides for  
42 oversight of community care residences, which are private homes or  
43 apartments in which an adult or family is licensed by and contracts  
44 with the Department of Human Services (DHS) to provide up to  
45 four individuals with developmental disabilities with care or  
46 training, or both.

1 The bill includes provisions to oversee persons who are licensed  
2 to operate community care residences (licensees), the case  
3 managers of the individuals with developmental disabilities who  
4 reside in community care residences, and the day programs which  
5 these individuals with developmental disabilities may attend. In  
6 addition, the bill authorizes physicians and hospitals to take into  
7 protective custody an individual with a developmental disability  
8 who otherwise would be returned to a licensee suspected of causing  
9 injury to the individual, and report such action to DHS. The bill  
10 also provides for safeguarding and reporting information which may  
11 be necessary for any civil or criminal proceedings which may  
12 follow an allegation of abuse, neglect, or exploitation by a caregiver  
13 of an individual with a developmental disability.

14 Specifically, the bill provides as follows:

15 **Oversight of community care residences**

- 16 • A community care residence licensed by DHS shall be subject to  
17 the following provisions:
  - 18 -- If, as a result of an annual inspection of a community care  
19 residence by DHS, a licensee was required to provide a plan of  
20 correction and such plan has not been successfully implemented,  
21 within 30 days of the date that the licensee submitted the plan to  
22 the office, an individual with a developmental disability residing  
23 in that residence shall be removed from the residence; and
  - 24 -- If the health, safety, or well-being of an individual with a  
25 developmental disability is threatened because of a licensee's  
26 non-compliance with DHS standards for community care  
27 residences, the individual must be removed from the residence,  
28 and the licensee would be subject to negative licensing action  
29 (an action that imposes a restriction on a licensee and may  
30 include suspension of admissions, issuance of a provisional  
31 license, reduction in the licensed capacity or non-renewal,  
32 suspension, or revocation of the license).
- 33 • As a condition of maintaining a license to operate a community  
34 care residence, a licensee shall:
  - 35 -- Undergo an examination every two years by a physician to  
36 ascertain whether the licensee is physically and mentally  
37 capable of fulfilling the job duties of a licensee. Upon  
38 conclusion of the examination, the physician would complete a  
39 form established by DHS and provide the licensee with a  
40 statement as to whether the licensee is capable of fulfilling the  
41 duties of a licensee. The licensee shall provide the statement  
42 and form to DHS, and if a licensee fails to do so, the  
43 Commissioner of Human Services may stop any payments, seek  
44 recovery of any payments to the licensee, and not resume  
45 payment until such time as the licensee submits the statement  
46 and form. If, after undergoing the examination, the licensee is  
47 unable to provide the form and statement that the licensee is



- 1 capable of fulfilling the job duties of a licensee, DHS shall take  
2 negative licensing action against the licensee;
- 3 -- In the event an individual with a developmental disability is  
4 not capable of managing his own funds and the licensee is  
5 responsible for making purchases and disbursements on the  
6 individual's behalf, the licensee shall only make such purchases  
7 or disbursements that reflect the specific needs of the individual,  
8 and submit a receipt or record of a purchase or disbursement to  
9 DHS; and
- 10 -- Annually attend a continuing education program conducted or  
11 approved by DHS, and take an annual two-week vacation,  
12 during which time an alternate would provide the care or  
13 training, or both, to the individual with a developmental  
14 disability.
- 15 • DHS may issue a provisional license to operate a community  
16 care residence, but that provisional license may not exceed three  
17 months (current regulations allow for a six-month provisional  
18 license).
  - 19 • DHS would conduct, or approve another entity to conduct, a  
20 continuing education program for licensees.

21

22 **Case Managers and Supervisors**

- 23 • Upon completion of a visit to an individual with a developmental  
24 disability residing in a community care residence, the case  
25 manager must provide a written report to the case manager's  
26 supervisor and the individual's parent or guardian, as  
27 appropriate. The report shall include information pertaining to  
28 the care and safety of the individual. The case manager must  
29 also review, on a monthly basis, the records required to be  
30 maintained in a community care residence. The case manager's  
31 supervisor also must review the records when the supervisor  
32 conducts a biennial visit, and the case manager or supervisor, or  
33 both, as applicable, must provide written documentation that the  
34 records were reviewed.
- 35 • Every two years, the supervisor of a case manager must visit all  
36 of the individuals residing in a community care residence who  
37 are assigned to the case manager. The visit would be conducted  
38 with a case manager who is unaffiliated with and unfamiliar to  
39 the assigned case manager. The supervisor and case manager  
40 shall prepare and provide to the individual's parent or guardian  
41 a written report pertaining to the care and safety of the  
42 individual. The supervisor shall determine whether the licensee  
43 is able to continue to provide care or training, or both, to an  
44 individual with a developmental disability if any of the  
45 following has occurred: there is a member of the household 18  
46 years of age or older whose presence changes the character of  
47 the residence such that it is no longer a positive environment for

- 1 an individual with a developmental disability; a licensee is 65  
2 years of age or older; or a licensee has experienced a life-  
3 changing event which causes a changed physical or mental  
4 condition of the licensee.
- 5 • If, based on the supervisor's and unaffiliated case manager's  
6 review and input from family members or the guardian of the  
7 individual with a developmental disability residing in the  
8 community care residence, the supervisor determines that the  
9 individual would benefit from a change in the individual's case  
10 manager, the supervisor shall assign a different case manager to  
11 the individual.
  - 12 • If a supervisor determines that a licensee is no longer capable of  
13 providing care or training, or both, the supervisor must advise  
14 the commissioner, who may initiate negative licensing action.  
15 Before taking negative licensing action, DHS must give notice  
16 to a licensee and afford the licensee the opportunity to be heard  
17 and to contest the action in an administrative hearing.
  - 18 • A case manager or case manager's supervisor who has reasonable  
19 cause to believe that an individual with a developmental  
20 disability residing in a community care residence has been  
21 subjected to abuse, neglect, or exploitation by a licensee shall  
22 report the same immediately to DHS. A case manager or  
23 supervisor who fails to so report shall be guilty of a crime of the  
24 third degree (punishable by a term of imprisonment between  
25 three to five years, a fine not to exceed \$15,000, or both), and a  
26 surcharge of \$350, which amount will be used by DHS for food  
27 and care of individuals in community care residences. A case  
28 manager or supervisor who is charged with failure to report  
29 would be temporarily reassigned to duties that do not involve  
30 contact with individuals with developmental disabilities, and  
31 terminated from employment if convicted.

32  
33 **Investigations of Abuse, Neglect, or Exploitation by a Caregiver**  
34 **in Community Settings**

35 The bill amends existing law to provide that upon receipt of a  
36 report of abuse, neglect, or exploitation by a caregiver, DHS shall  
37 require the Critical Incident Management Unit, the Special  
38 Response Unit (SRU), or another unit in DHS other than one in the  
39 Division of Developmental Disabilities, to review the report and  
40 determine whether the report warrants an investigation. In addition,  
41 DHS shall: (1) ensure that any communication concerning the  
42 alleged abuse, neglect, or exploitation is identified, safeguarded,  
43 and maintained in a secure location; and (2) contact the Attorney  
44 General, who shall determine whether to participate in the  
45 investigation. The bill specifies the information that shall be  
46 included in the report of the SRU. Within 14 days of receipt of a  
47 substantiated or unsubstantiated incident of abuse, neglect, or

1 exploitation, the commissioner shall review the incident and, if  
2 appropriate, proceed with inclusion of an offending caregiver on the  
3 Central Registry of Offenders Against Individuals with  
4 Developmental Disabilities established under section 5 of P.L.2010,  
5 c.5 (C.30:6D-77).

6 The SRU is also required to compile data and issue an annual  
7 report, which shall be made available on the DHS website.

8

#### 9 **Oversight of Day Program Providers**

10 A provider of a day program for individuals with developmental  
11 disabilities shall submit to the division a copy of its monthly report  
12 of individuals with developmental disabilities who reside in  
13 community care residences and attend a day program sponsored by  
14 the provider. The provider shall not seek reimbursement from DHS  
15 for an individual who has not attended the program for 30  
16 consecutive days, and shall notify the appropriate Regional Office  
17 Administrator if an individual was absent for 30 consecutive days.  
18 The division shall provide a parent or guardian with information  
19 pertaining to the individual's monthly attendance at the day  
20 program.

21

#### 22 **Physicians and Protective Orders**

23 A physician, who is examining or treating an individual with a  
24 developmental disability who resides in a community care  
25 residence, or the chief executive officer, or his designee, of a  
26 hospital or similar institution, may take the individual into  
27 protective custody when the individual has suffered serious physical  
28 injury, or the individual's condition constitutes a "life-threatening  
29 emergency," as defined in section 2 of P.L.2003, c.191 (C.30:6D-  
30 5.2), and the most probable inference from the medical and factual  
31 information supplied is that the injury or condition was inflicted  
32 upon the individual by another person by other than accidental  
33 means, and the person suspected of inflicting, or permitting to be  
34 inflicted, the injury upon the individual is a licensee or alternate of  
35 a community care residence where the individual resides and to  
36 whom the individual would normally be returned. The physician or  
37 the chief executive officer shall immediately report the action and  
38 the condition of the individual to DHS by calling the department's  
39 emergency telephone service.

40

#### 41 **Individualized Habilitation Plans (IHPs)**

42 The bill prohibits the use of social security numbers on IHPs for  
43 individuals residing in community care residences, and establishes a  
44 penalty of \$250 for the first offense and \$500 for each subsequent  
45 offense for violating this prohibition. A copy of the IHP must be  
46 provided to the licensee of a community care residence, the case  
47 manager of the individual, and the case manager's supervisor. If a

1 parent or guardian is unable to attend the development, revision, or  
2 review of an IHP, a copy of the IHP must be provided to the parent  
3 or guardian who would sign and return a copy to the agency or  
4 organization responsible for its development, revision, or review.

5

6 The bill takes effect 180 days after enactment.

7 The provisions of this bill are intended to help prevent a  
8 recurrence of a tragedy similar to that involving Tara O'Leary. The  
9 bill is designated "Tara's Law" in her memory. Tara O'Leary, a 28-  
10 year old woman with developmental disabilities who had been  
11 residing in a licensed community care residence, lost a dangerous  
12 amount of weight, was relocated to a developmental center, and was  
13 subsequently admitted to a hospital weighing 48 pounds and  
14 suffering from dehydration, malnutrition, and bedsores. When her  
15 overall condition did not improve despite the use of a feeding tube  
16 to increase her weight by more than 20 pounds, she was  
17 disconnected from life support and died. Criminal charges have  
18 been brought against the licensee of the community care residence  
19 and Tara's case manager.

SENATE HEALTH, HUMAN SERVICES AND SENIOR  
CITIZENS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR  
**No. 599**

**STATE OF NEW JERSEY**

DATED: JUNE 7, 2012

The Senate Health, Human Services and Senior Citizens Committee reports favorably a Senate Committee Substitute for Senate Bill No. 599.

As reported, this substitute, which is designated as "Tara's Law," provides for oversight of community care residences, which are private homes or apartments in which an adult or family is licensed by, and contracts with, the Department of Human Services (DHS) to provide up to four individuals with developmental disabilities with care or training, or both. The substitute includes provisions to oversee persons who are licensed to operate community care residences (licensees), case managers of individuals with developmental disabilities who reside in community care residences, and the day programs which these individuals with developmental disabilities may attend. In addition, the substitute authorizes physicians and hospitals to take into protective custody an individual with a developmental disability who otherwise would be returned to a licensee suspected of causing injury to the individual, and report such action to DHS. The substitute also provides for safeguarding and reporting information which may be necessary for any civil or criminal proceedings that may follow an allegation of abuse, neglect, or exploitation by a caregiver of an individual with a developmental disability.

**Oversight of community care residences**

The substitute provides that if, as a result of an annual inspection of a community care residence by DHS, a licensee was required to provide a plan of correction and the supervisor determines that the plan has not been successfully implemented, within 30 days of the date that the licensee submitted the plan to the office, an individual with a developmental disability residing in that residence is to be removed from the residence if the supervisor, in consultation with the office, determines that the licensee's failure to implement the plan of correction threatens the health and well being of the individual with the developmental disability.

If the health, safety, or well-being of an individual with a developmental disability is threatened because of a licensee's noncompliance with DHS standards for community care residences, the individual is to be removed from the residence, and the licensee is subject to negative licensing action (an action that imposes a restriction on a licensee and may include suspension of admissions, issuance of a provisional license, reduction in licensed capacity, or non-renewal, suspension, or revocation of the license).

In addition, DHS is authorized to impose a penalty in an amount of \$350 per day on a licensee for a repeated failure to implement a required plan of correction. The penalty is to be payable to the Treasurer of the State of New Jersey, to be used to provide food and care to individuals with developmental disabilities residing in community care residences. If DHS determines that a repeated failure to implement a required plan of correction endangers the health and well-being of an individual with a developmental disability, it may, upon notice and after hearing, revoke the license issued to operate a community care residence.

As a condition of maintaining a license to operate a community care residence, a licensee is to undergo an examination every two years by a physician to ascertain whether the licensee is physically and mentally capable of fulfilling the duties of a licensee. The physician is to complete a form established by DHS and provide the licensee with a statement as to whether the licensee is capable of fulfilling the duties of a licensee. The licensee is to provide the statement and form to DHS. Failure to do so may result in the Commissioner of Human Services stopping or seeking recovery of any payments to the licensee, and not resuming payments until the licensee submits the statement and form. If, after undergoing the examination, the licensee is unable to provide a statement indicating that the licensee is capable of fulfilling the job duties of a licensee, DHS is to take negative licensing action against the licensee.

The substitute provides that if an individual with a developmental disability is not capable of managing his own funds and the licensee is responsible for making purchases and disbursements on the individual's behalf, the licensee is to make only those purchases or disbursements that reflect the specific needs of the individual. Receipts or records of the purchases or disbursements are to be submitted on a monthly basis to the Office of Auditing in DHS. The case manager, the case manager's supervisor, and the Office of Auditing are to review these receipts and records. If it is determined that a purchase or disbursement does not reflect the specific needs of the individual with a developmental disability, that fact is to be documented and the commissioner or the commissioner's designee is to be so advised and may instruct the licensing agency to take negative licensing action.

If there is evidence that an inappropriate purchase or disbursement entailed an egregious amount of money, the commissioner or the

commissioner's designee is to report the purchase or disbursement to the Attorney General. If there is evidence that a case manager was aware of an egregious inappropriate purchase or disbursement and failed to document that fact or notify the case manager's supervisor, the commissioner or the commissioner's designee is to notify the Attorney General.

Licenseses are to annually attend a continuing education program conducted or approved by DHS, and take a two-week leave each year, during which time an alternate would provide the care or training, or both, to the individual with a developmental disability.

DHS may issue a provisional license to operate a community care residence, but that provisional license may not exceed three months (current regulations allow for a six-month provisional license).

### **Case Managers and Supervisors**

Upon completion of a visit by a case manager to an individual with a developmental disability residing in a community care residence, the case manager is to provide a written report that includes information pertaining to the care and safety of the individual to the case manager's supervisor, and the individual's parent or guardian, as appropriate, as well as other persons whom the individual with the developmental disability may authorize in writing to receive the report. The case manager is also to review, on a monthly basis, the records required to be maintained in a community care residence, and the case manager's supervisor is to review these records when conducting the biennial visit. The case manager and supervisor, as applicable, are to document in writing that they reviewed these records.

Every two years, the supervisor of a case manager is to visit all individuals residing in a community care residence who are assigned to a case manager. Half of the required visits are to be conducted in each of the first and second years. If, after two years, the supervisor determines that the individuals in the community care residence are not at risk for abuse, neglect, or exploitation, the visits may be reduced to one visit every three years. This determination is to be based on certain factors, including, but not limited to: the number and age of the individuals residing in the community care residence; whether each individual attends a day program on a regular basis; and a lack of complaints after two years concerning the community care residence or the individuals with developmental disabilities residing therein. These visits are to be conducted with a case manager who is unaffiliated with and unfamiliar to the assigned case manager. The supervisor and case manager are to prepare and provide to the individual's parent or guardian a written report pertaining to the care and safety of the individual. The supervisor is to determine whether the licensee is able to continue to provide care or training, or both, to an individual with a developmental disability if any of the following occurs: there is a member of the household 18 years of age or older

whose presence changes the character of the residence so that it is no longer a positive environment for an individual with a developmental disability; a licensee is 65 years of age or older; or a licensee has experienced a life-changing event that causes a changed physical or mental condition of the licensee.

If, based on the supervisor's and unaffiliated case manager's review and input from family members or the guardian of the individual with a developmental disability residing in the community care residence, the supervisor determines that the individual would benefit from a change in the individual's case manager, the supervisor is to assign a different case manager to the individual.

If a supervisor determines that a licensee is no longer capable of providing care or training, or both, the supervisor is to advise the commissioner, who may initiate negative licensing action. Before taking that action, DHS is to give notice to a licensee and afford the licensee the opportunity to be heard and contest the action in an administrative hearing.

A case manager or case manager's supervisor in DHS who has reasonable cause to believe that an individual with a developmental disability residing in a community care residence has been subjected to abuse, neglect, or exploitation by a licensee, is to report the same immediately to DHS. A case manager or supervisor who fails to so report is guilty of a crime of the degree (punishable by a term of imprisonment of up to 18 months, or a fine not to exceed \$10,000, or both), and an additional penalty of \$350 for each day, which amount will be used by DHS for food and care of individuals in community care residences. A case manager or supervisor who is charged with failure to report would be temporarily reassigned to duties that do not involve contact with individuals with developmental disabilities, and terminated from employment if convicted.

### **Investigations of Abuse, Neglect, or Exploitation by a Caregiver in Community Settings**

The substitute amends existing law to provide that upon receipt of a report of abuse, neglect, or exploitation by a caregiver, DHS is to require the Critical Incident Management Unit, the Special Response Unit (SRU), or another unit in DHS other than one in the Division of Developmental Disabilities, to review the report and determine whether the report warrants an investigation. In addition, DHS is to: (1) ensure that any communication concerning the alleged abuse, neglect, or exploitation is identified, safeguarded, and maintained in a secure location; and (2) contact the Attorney General, who is to determine whether to participate in the investigation. The substitute specifies the information that is to be included in the report of the SRU.

The substitute requires the SRU, DHS, or other investigating entity also to forward to the commissioner, or the commissioner's designee,



all substantiated and non-substantiated incidents of abuse, neglect, or exploitation of an individual with a developmental disability. The offending caregiver of a substantiated incident shall be included on the central registry as expeditiously as possible. The SRU shall retain a record of all non-substantiated incidents.

The SRU is also required to compile data and issue an annual report, which is to be made available on the DHS website.

### **Oversight of Day Program Providers**

A provider of a day program for individuals with developmental disabilities is to submit to the division a copy of its monthly report of individuals with developmental disabilities who reside in community care residences and attend a day program sponsored by the provider. The provider is not to seek reimbursement from DHS for an individual who has not attended the program for 30 consecutive days, and is to notify the appropriate Regional Office Administrator if an individual was absent for 30 consecutive days. The division is to provide a parent or guardian with information pertaining to the individual's monthly attendance at the day program.

### **Physicians and Protective Orders**

A physician, who is examining or treating an individual with a developmental disability who resides in a community care residence, or the chief executive officer, or his designee, of a hospital or similar institution, may take the individual into protective custody when the individual has suffered serious physical injury, or the individual's condition constitutes a "life-threatening emergency," as defined in section 2 of P.L.2003, c.191 (C.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. The physician or the chief executive officer is to immediately report the action and the condition of the individual to DHS by calling its emergency telephone service.

### **Individualized Habilitation Plans (IHPs)**

The substitute prohibits the use of Social Security numbers on IHPs for individuals residing in community care residences, and establishes a penalty of \$250 for the first offense and \$500 for each subsequent offense for violating this prohibition. A copy of the IHP is to be provided to the licensee of a community care residence, the case manager of the individual, and the case manager's supervisor. If a parent or guardian is unable to attend the development, revision, or review of an IHP, a copy of the IHP is to be provided to the parent or

guardian who is to sign and return a copy to the agency or organization responsible for its development, revision, or review.

The substitute takes effect 180 days after enactment.

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

**SENATE, No. 599**

with Senate Floor Amendments  
(Proposed by Senator Beck)

ADOPTED: JUNE 28, 2012

These amendments: clarify the legislative findings and declarations with respect to the number of individuals with developmental disabilities residing in community care residences in the State; add a definition of “authorized family member” for purposes of who may receive certain information regarding an individual with a developmental disability; replace the term “non-substantiated” with “unsubstantiated”; provide that a licensee is to immediately notify the responsible placing agency in the event of an individual’s unaccounted-for lapse in participation in or attendance at the individual’s day program of more than five consecutive days; and require that a licensee demonstrate ability to provide any required physical assistance to an individual with a developmental disability residing in a community care residence.

In addition, the amendments require an annual, rather than biennial, physical examination of a licensee, provide that over a four-year period the Office of Auditing is to review a random sample of one month’s worth of receipts for purchases made on behalf of each individual with a developmental disability residing in a community care residence, require that case managers’ supervisors conduct 100 percent of visits over a three-year period, provide an exemption from those visits for individuals who are their own guardians and who decline such visits in writing, require that the Office of Licensing conduct routine unannounced visits of 10 percent of community care residences Statewide each year that are to include a review of financial records, and clarify that attendance records respecting attendance at day programs are to be provided no later than 28 days after the end of the month in which a guardian or authorized family member requests them.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 599**

# **STATE OF NEW JERSEY**

DATED: SEPTEMBER 24, 2012

The Assembly Appropriations Committee reports favorably Senate Bill No. 599 (SCS) (1R).

The bill provides for oversight of community care residences, which are private homes or apartments in which an adult or family is licensed by, and contracts with, the Department of Human Services (DHS) to provide up to four individuals with developmental disabilities with care or training, or both. The bill also provides for oversight of case managers of individuals residing in community care residences and of reimbursement of day program providers, and provides for safeguarding and reporting information which may be necessary for civil or criminal proceedings following an allegation of abuse, neglect, or exploitation. Additionally, physicians and hospitals are authorized to take an individual with a developmental disability into protective custody and report such action to DHS.

Specifically, the bill provides that if a required plan of correction, following an annual inspection of a community care residence by DHS, is not implemented within 30 days, an individual with a developmental disability is to be removed from the residence if failure to implement the plan threatens the individual's health and well being. If health, safety, or well-being are threatened because of noncompliance with DHS standards, the individual is to be removed and the licensee subject to negative licensing action (suspension of admissions, issuance of a provisional license, reduction in licensed capacity, or non-renewal, suspension, or revocation of a license). DHS is authorized to impose a \$350 penalty per day for a repeated failure to implement a plan of correction, and the penalty is to be used to provide food and care to individuals with developmental disabilities residing in community care residences. If a repeated failure to implement a plan endangers an individual, DHS may, upon notice and after hearing, revoke a license.

The bill provides that a licensee of a community care residence is required to annually undergo a physical and mental examination to

determine ability to fulfill the duties of a licensee. A physician is to complete a form and provide a statement concerning ability. Failure to provide the documents to DHS may result in the Commissioner of Human Services stopping payment, seeking recovery of payments, and not resuming payments until documents are submitted. If the licensee is unable to provide the documents, DHS is to take negative licensing action. DHS may also require further physical or mental health examinations.

The bill provides that licensees are to annually attend a continuing education program, take an annual two-week leave, and demonstrate ability to provide physical assistance that individuals in the residence may require. Licensees are also to notify placing agencies of a lapse in day program attendance that exceeds five days, except for vacations or medical reasons. The bill limits provisional licenses to operate a community care residence to a three-month, rather than the current six-month period.

The bill provides that if an individual with a developmental disability is incapable of managing his own funds, a licensee is restricted to making purchases and disbursements that reflect an individual's specific needs. Over a four-year period, the Office of Auditing in DHS is to review a random sample of one month's worth of receipts, and the case manager and the case manager's supervisor are also to review a random sample of receipts when they conduct visits. If specific needs are not reflected in the purchases or disbursements, the Commissioner of Human Services is so advised, and if there is evidence of an inappropriate purchase or disbursement of an egregious amount, the Attorney General is to be advised. A case manager who was aware of the amount and failed to document that fact or notify a supervisor, is to be reported to the Attorney General.

The bill provides that a case manager is also to provide a supervisor with a written report pertaining to care and safety of the individual following completion of the case manager's required monthly visit. Reports are also to be sent to a guardian or authorized family member, if requested, and shared with others if the individual so authorizes.

The bill provides that over a three-year period, a case manager's supervisor is to visit 100 percent of individuals residing in a community care residence who are assigned to the case manager, except that individuals who are their own guardians may decline. After three years, if the supervisor determines individuals are not at risk for abuse, neglect, or exploitation, visits may be reduced to one every four years. Visits are to be conducted in coordination with a case manager who is unaffiliated with, and unfamiliar to, the assigned case manager, and written reports are to be provided to the guardian or authorized family member. If the supervisor determines a licensee is not capable of providing care or training, the commissioner is advised

so that negative licensing action may occur. A different case manager may be assigned if the individual would benefit from a change.

In addition to the above visits, the bill provides that the Office of Licensing in DHS is to annually conduct routine unannounced visits of 10 percent of community care residences Statewide.

The bill amends current law concerning reporting and investigations of allegations of abuse, neglect, and exploitation of individuals with developmental disabilities. If a case manager or supervisor fails to report, the person is guilty of a disorderly person's offense (punishable by a term of imprisonment of not more than six months, a fine of not more than \$1,000, or both), unless the incident resulted in death, which would be a fourth degree crime (punishable by a term of imprisonment of not more than 18 months, a fine of not more than \$10,000, or both). A \$350 penalty is to be imposed for each day of non-reporting, and a person who is charged with failure to report is to be temporarily assigned to other duties and terminated from employment if convicted.

With regard to investigations, the bill requires all unsubstantiated incidents to be reported. DHS is to ensure records are safeguarded from loss and to contact the Office of the Attorney General, which is to determine whether to participate in an investigation. Reports of investigations by the Special Response Unit (SRU) in DHS are to include the role of a case manager or supervisor and whether civil or criminal action should be pursued. Summaries of report conclusions are to be provided to a guardian or authorized family member, and SRU is to issue an annual report about investigations, to be available on the DHS website.

The bill provides that a provider of a day program is to submit to the Division of Developmental Disabilities (DDD) a copy of its monthly attendance report. If a provider seeks reimbursement for an individual who has not attended the program for 30 days, the provider is subject to a \$1,000 per day penalty, per individual. Providers are also to notify regional office administrators of non-attendance. DDD is to provide a guardian or authorized family member with information pertaining to attendance, and provide SRU with a sampling of monthly attendance reports for SRU to audit. Additionally, a regional office administrator is also to biannually conduct on-site audits of the reports.

The bill provides a \$500 penalty for physicians or chief executive officers of hospitals who fail to take an individual into protective custody if there is suspicion that an injury was inflicted by a licensee of a community care residence. The bill also imposes a fine of \$250 for the first and \$500 for the second offense of including an individual's Social Security number on an individualized habilitation plan (IHP). Copies of IHPs are to be provided to the licensee of a community care residence, the case manager, the supervisor, and a guardian or authorized family member if the guardian or family member was unable to attend a plan development, revision, or review.

The bill authorizes the Commissioner of Human Services to adopt rules and regulations, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the provisions of the bill.

The bill takes effect on the 180th day after the date of enactment, but permits the Commissioner of Human Services to take anticipatory administrative action in advance of that date.

The bill is designated as “Tara’s Law,” in honor of Tara O’Leary who suffered from serious neglect while receiving care in a State-licensed home for persons with developmental disabilities, and died shortly thereafter.

As reported, this bill is identical to Assembly Bill No. 2573 (ACS), as also amended and reported by the committee.

FISCAL IMPACT:

The Office of Management and Budget in the Department of the Treasury (OMB) and the Department of Human Services (DHS) have identified certain personnel and non-personnel costs (i.e. supplies and equipment) that may be incurred by the State as a result of the bill. According to DHS, the bill will necessitate the hiring of four additional case manager supervisors and one additional investigator in the Office of Program Integrity and Accountability at a cost to the State of \$300,000 per year. According to OMB, the non-personnel costs may total \$60,000 over a three-year period.

The Office of Legislative Services (OLS) is unable to verify the personnel and non-personnel costs identified by the Executive or independently calculate the bill’s fiscal impact. It lacks sufficient information regarding how the Executive will administer certain requirements imposed by the bill, and is uncertain how the Executive will implement certain other requirements not evaluated for purposes of analysis.

In particular, the OLS notes that it is unclear if the following provisions of the bill will be absorbed by existing personnel:

- the requirement that case managers submit written reports regarding clients’ care and safety following monthly visits;
- the requirement that, in addition to supervisors, other case managers who are unaffiliated with assigned case managers also visit CCR clients every three years and contribute to written reports of visit findings; and
- other DHS responsibilities, including conducting random audits of monthly day program attendance reports and biannual, on-site day program attendance audits.

In addition, the OLS notes that it is unclear if the various penalties authorized by the bill will generate a net revenue increase or a potential cost to the State. The penalties may reduce instances of waste, fraud, abuse, neglect, or exploitation that might otherwise generate administrative, medical, or legal costs for the State, and

thereby reduce State expenditures, but may also generate additional State costs associated with legal challenges by licensees, case managers, or program providers.

Moreover, the OLS notes that it is unclear whether DHS would incur additional costs under the new requirements for licensees, such as the bill's requirements that licensees undergo annual physician examinations and annually attend continuing education programs. To the extent that DHS directly assists licensees with meeting these requirements or increases the value of licensee contracts to offset the requirements' cost, additional State costs may be generated.



**FISCAL NOTE**  
 [First Reprint]  
 SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 599**  
**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

DATED: OCTOBER 22, 2012

**SUMMARY**

**Synopsis:** “Tara’s Law”; provides protections for individuals with developmental disabilities residing in community care residences and for investigations of abuse of individuals with developmental disabilities.

**Type of Impact:** Potential State expenditure increase

**Agencies Affected:** Department of Human Services; Office of the Attorney General in the Department of Law and Public Safety

**Executive Estimate (Office of Management and Budget)**

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
<b>State Cost</b>	\$180,000	\$315,000	\$315,000

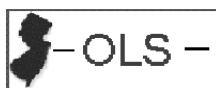
**Executive Estimate (Department of Human Services)**

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
<b>State Cost</b>	\$150,000	\$300,000	\$300,000

**Office of Legislative Services Estimate**

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
<b>State Cost</b>	Indeterminate Potential Increase – See comments below		

- The Office of Legislative Services (OLS) **concurs** with the Office of Management and Budget (OMB) that the substitute will generate increased personnel expenditures related to increased case manager supervision and expanded responsibilities for the Office of Program Integrity and Accountability.



- Estimates from the Department of Human Services (DHS) and OMB assume the same increase in personnel expenditures. In addition, OMB estimates include certain non-personnel costs, while the DHS estimates assume that these costs would be absorbed without the need for additional funding.
- The OLS is unable to determine the precise fiscal impact of the substitute due to insufficiency of information and uncertainty about how certain provisions would be implemented by the Executive.

## **BILL DESCRIPTION**

The First Reprint of the Senate Committee Substitute for Senate Bill No. 599 of 2012 provides for increased oversight of community care residences (CCRs) licensed by, and contracting with, the DHS. The CCRs, formerly known as skill development homes, are private homes or apartments in which an adult or family (licensee) provides up to four individuals with developmental disabilities (clients) with care or training.

Under the substitute, DHS would be required to remove clients from CCRs and subject licensees to negative licensing actions and penalties when a client's health, safety, or well-being is threatened by non-compliance with DHS standards. The substitute requires that substantiated and unsubstantiated reports of abuse, neglect, or exploitation investigated by the Special Response Unit, or by another DHS entity, be forwarded to the Commissioner of Human Services for review. The substitute also requires DHS to: safeguard communications regarding alleged abuse, neglect, or exploitation; contact the Office of the Attorney General (OAG) in the Department of Law and Public Safety regarding whether it wishes to participate in the investigation; maintain a record of all unsubstantiated incidents; issue a written report for each investigation; and produce annual data on investigations to be made publicly available on the DHS website.

The substitute would require case managers to submit written reports to their supervisors regarding clients' care and safety following monthly visits required under section 8 of P.L.1983, c.524 (C.30:6D-20). Case managers would also be required to review each CCR's records on a monthly basis. Supervisors of case managers and other, unaffiliated case managers would be required to visit all CCR clients every three years and issue written reports about each client's care and safety, with the exception that clients who are their own guardians may decline visits.

The substitute also requires licensees to undergo annual physician examinations and annually attend continuing education programs, and provides for the oversight of licensees' purchases and disbursements on behalf of clients. The DHS Office of Auditing would review, over a four-year period, random samples of monthly receipts for purchases and disbursements made on behalf of each client and report inappropriate activities to the OAG. Case managers and supervisors would also be required to review random samples of receipts. The DHS Office of Licensing would be required to conduct annual, unannounced reviews of financial records at ten percent of the State's CCRs.

The substitute requires licensees to report lapses exceeding five consecutive days in their clients' attendance in day programs serving individuals with developmental disabilities. Providers of day programs would be required to report to DHS the monthly attendance of CCR clients who attend day programs. Providers of day programs would also be: expressly prohibited from seeking reimbursement for clients who are scheduled to attend but who have not attended a program for 30 consecutive days; penalized for seeking reimbursement for such individuals; and

required to report absences to the appropriate Division of Developmental Disabilities Regional Office. The DHS would also be required to: report monthly information about clients' attendance at day programs to parents and guardians upon request; conduct random audits of monthly attendance reports; and conduct on-site attendance audits biannually.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

The OMB estimates State costs of \$180,000, \$315,000, and \$315,000, respectively, for the first, second, and third years of implementation of the substitute. The DHS estimates State costs of \$150,000, \$300,000, and \$300,000, respectively, for the first, second, and third years of implementation. The OMB estimates assume the same increase in personnel expenditures as DHS estimates, but OMB estimates include additional State costs of \$30,000 in the first year and \$15,000 in the second and third years for certain non-personnel expenditures (computer equipment, supplies, etc.). According to OMB, DHS anticipates absorbing these non-personnel costs without the need for additional funding. Both OMB and DHS also anticipate \$84,000, \$169,000, and \$169,000, respectively, in federal expenditures for the first, second, and third years of implementation.

The anticipated personnel expenditures are associated with hiring four additional case manager supervisors and one additional investigator within the Office of Program Integrity and Accountability (OPIA). The additional case manager supervisors would be needed to increase the monitoring frequency of clients in CCRs. The additional investigator would have responsibilities across all OPIA activities affected by the substitute, including the Special Response Unit, Office of Licensing, and Office of Auditing. Estimates for first-year personnel costs are 50 percent of second-year and third-year costs, reflecting the six-month period between enactment and required implementation in the first year. The estimates are based on an anticipated 1,000 clients residing in CCRs in each of the three years. According to DHS, there are 700 licensed CCRs across the State.

The OMB notes that the substitute's requirement that clients be removed from unsafe CCRs may or may not generate additional costs, depending on whether alternative placements (temporary placements in group homes, etc.) are more costly than the original CCR placements. The OMB also notes that the substitute allows for punitive actions against licensees who are non-compliant with DHS standards, and that punitive actions have the potential for additional legal challenges and legal fees, which may increase DHS costs.

Under the substitute, existing case managers will be required to submit written reports to supervisors regarding clients' care and safety following monthly visits. Although OMB's cost estimates assume that current staff would absorb these increased responsibilities, OMB notes the possibility that additional support staff may be required for this purpose.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS concurs with OMB and DHS that the substitute requires increased personnel expenditures related to case manager supervisors, as supervisors would be newly required to visit CCR clients every three years and issue written reports regarding each client's care and safety, unless clients who are their own guardians decline the visits. The OLS also concurs with OMB and DHS that the substitute requires increased OPIA personnel expenditures related to the

Special Response Unit, Office of Licensing, and Office of Auditing, as these offices would receive additional investigative, documentation, and reporting responsibilities.

However, the OLS has no independent information to either verify or refute the Executive estimates and is unable to estimate the precise fiscal impact of the substitute due to uncertainty about how its provisions would be implemented by the Executive. Available information from the Executive does not indicate whether other provisions of the substitute could be fully absorbed by the anticipated staffing, including:

- the requirement that case managers submit written reports regarding clients' care and safety following monthly visits;
- the requirement that, in addition to supervisors, other case managers who are unaffiliated with assigned case managers also visit CCR clients every three years and contribute to written reports of visit findings; and
- other DHS responsibilities, including conducting random audits of monthly day program attendance reports and biannual, on-site day program attendance audits.

To the extent that these activities cannot be absorbed under anticipated personnel and other expenditures, they may generate additional State costs. The OLS also agrees with OMB's observation that additional support staff may be required to meet case managers' increased reporting responsibilities. The OLS cannot verify OMB's assertion that additional non-personnel costs of \$30,000 in the first year and \$15,000 in the second and third years could not be absorbed under existing DHS funding.

No data are available to estimate the net impact of the substitute's penalties for: licensees' failure to comply with DHS standards; case managers' or their supervisors' failure to report suspected abuse, neglect, or exploitation; or day program providers' reimbursement requests for non-attending individuals. These penalties may reduce instances of waste, fraud, abuse, neglect, or exploitation that might otherwise generate significant administrative, medical, or legal costs for DHS, thereby reducing State expenditures. However, as OMB notes, applying these penalties may also generate additional State legal costs associated with legal challenges initiated by licensees, case managers, or day program providers.

It is also unclear whether DHS would incur additional costs under the new requirements for licensees, such as the substitute's requirements that licensees undergo annual physician examinations and annually attend continuing education programs. To the extent that DHS directly assists licensees with meeting these requirements or increases the value of licensee contracts to offset the requirements' cost, additional State costs may be generated. However, it is possible that the new requirements for licensees may be implemented at minimal additional State cost within other anticipated activities. For instance, OMB indicates that, independent of the substitute, DHS is developing rules that would enforce a similar physical examination requirement for CCR licensees. If these rules are implemented, the substitute may have no separate impact on DHS costs.

The OLS notes that a fiscal impact on the OAG is possible, but cannot be determined. As the substitute does not limit OAG discretion over participating in investigations of alleged abuse, neglect, or exploitation or in investigations of inappropriate purchases or disbursements on behalf of CCR clients, it is not known whether the substitute would increase OAG participation in these investigations and result in a corresponding increase in expenditures.

*Section: Human Services*

*Analyst: Nathan E. Myers  
Associate Fiscal Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# ASSEMBLY, No. 2573

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 21, 2012

**Sponsored by:**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Assemblyman PATRICK J. DIEGNAN, JR.**

**District 18 (Middlesex)**

**SYNOPSIS**

"Tara's Law"; provides protections for individuals with developmental disabilities residing in community care residences and for investigations of abuse of individuals with developmental disabilities.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 5/25/2012)

1 AN ACT concerning individuals with developmental disabilities,  
2 designated as "Tara's Law," supplementing chapter 6D of Title  
3 30 of the Revised Statutes, and amending various parts of the  
4 statutory law.

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

- 8  
9 1. (New section) The Legislature finds and declares that:  
10 a. There are more than 600 community care residences in the  
11 State in which an adult or family secures a license from the  
12 Department of Human Services to provide care or training, or both,  
13 to up to four individuals with developmental disabilities;  
14 b. For protection of the approximately 1,200 individuals with  
15 developmental disabilities residing in these community care  
16 residences, there needs to be an increase in the oversight of the  
17 persons licensed to operate community care residences, the case  
18 managers who are required to conduct monthly visits of these  
19 residences, and the day programs that individuals with  
20 developmental disabilities are scheduled to, but may not actually,  
21 attend;  
22 c. It is also important to improve communications with parents  
23 and guardians of individuals with developmental disabilities  
24 residing in community care residences so that parents and guardians  
25 know whether their child or ward is receiving good care, attending  
26 scheduled day programs, and following the individualized  
27 habilitation plan developed for their child or ward;  
28 d. Currently an individual with a developmental disability  
29 residing in a community care residence is required to have annual  
30 medical examinations; for the protection of an individual who may  
31 be suffering injury inflicted by the licensee of the community care  
32 residence, the examining physician should be required to take  
33 protective custody of the individual and report such action to the  
34 Department of Human Services;  
35 e. Ensuring that investigators have access to communications  
36 concerning allegations of abuse, neglect, or exploitation of an  
37 individual with a disability, and that investigative reports examine  
38 the role of those overseeing the persons providing care to  
39 individuals with developmental disabilities would provide needed  
40 information for any civil or criminal proceeding that may follow an  
41 allegation of abuse, neglect, or exploitation; and  
42 f. It is the policy of this State to: ensure that there is sufficient  
43 oversight of community care residences and day programs attended  
44 by individuals with developmental disabilities residing in  
45 community care residences; protect these individuals from injury

**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 thus is new matter.

1 that may be inflicted by the very persons charged with providing  
2 them with care; and safeguard and report information that may be  
3 important for a civil or criminal proceeding that may follow an  
4 allegation of abuse, neglect, or exploitation of an individual with a  
5 developmental disability residing in a community setting.

6

7 2. (New section) As used in this act:

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

12 "Alternate" means a person 18 years of age or older who assumes  
13 the responsibility of a licensee when the licensee is absent from a  
14 community care residence.

15 "Commissioner" means the Commissioner of Human Services.

16 "Community care residence" or "residence" means a private  
17 home or apartment in which an adult or family is licensed by and  
18 contracts with the department to provide an individual with a  
19 developmental disability with care or training, or both.

20 "Department" means the Department of Human Services.

21 "Developmental disability" means developmental disability as  
22 defined in section 3 of P.L.1977, c.82 (C.30:6D-3).

23 "Division" means the Division of Developmental Disabilities in  
24 the Department of Human Services.

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

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

31 "Lewdness" means the exposing of the genitals for the purpose  
32 of arousing or gratifying the sexual desire of a licensee or an  
33 individual with a developmental disability, or any flagrantly lewd  
34 and offensive act which the licensee knows or reasonably expects is  
35 likely to be observed by an individual with a developmental  
36 disability.

37 "Licensee" means one or more persons 18 years of age or older  
38 who are named on the license issued by the department to operate a  
39 community care residence and have overall responsibility for an  
40 individual with a developmental disability.

41 "Negative licensing action" means an action taken which  
42 imposes a restriction on a licensee and may include suspension of  
43 admissions, issuance of a provisional license, reduction in the  
44 licensed capacity, non-renewal of license, suspension of the license,  
45 or revocation of the license.

46 "Neglect" shall consist of any of the following acts by a licensee  
47 on an individual with a developmental disability: willfully failing  
48 to provide proper and sufficient food, clothing, maintenance,



1 medical care, or a clean and proper home; or failure to do or permit  
2 to be done any act necessary for the well-being of an individual  
3 with a developmental disability.

4 "Office of Licensing" or "office" means the licensing unit of the  
5 Department of Human Services for programs in the Division of  
6 Developmental Disabilities.

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

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

22 "Sexual contact" means an intentional touching by a licensee or  
23 individual with a developmental disability, either directly or  
24 through clothing, of the intimate parts of the individual with a  
25 developmental disability or the licensee for the purpose of sexually  
26 arousing or sexually gratifying the licensee. Sexual contact of the  
27 licensee with himself must be in view of the individual with a  
28 developmental disability whom the licensee knows to be present.

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

34 "Special Response Unit" means the unit in the department that is  
35 charged with investigation of serious unusual incidents, as defined  
36 by applicable rules and regulations of the department, and is  
37 responsible for the investigation of a report of abuse, neglect, or  
38 exploitation in a community care residence.

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

1       3. (New section) A community care residence licensed by the  
2 Department of Human Services pursuant to N.J.A.C.10:44B-1.1 et  
3 seq. shall be subject to the following provisions:

4       a. If, as a result of an annual inspection of a community care  
5 residence by the Office of Licensing that allows for inquiry into the  
6 facilities, records, equipment, sanitary conditions, accommodations,  
7 and management of an individual with a developmental disability as  
8 required by N.J.A.C.10:44B-1.1 et seq, a licensee is required to  
9 provide a plan of correction and such plan has not been successfully  
10 implemented, as determined by the office, within 30 days of the  
11 date that the licensee submitted the plan to the office, an individual  
12 with a developmental disability residing in that residence shall be  
13 removed from the residence; and

14       b. If the health, safety, or well-being of an individual with a  
15 developmental disability residing in a community care residence is  
16 threatened because of a licensee's non-compliance with the  
17 standards adopted by regulation of the department, the individual  
18 with a developmental disability shall be removed from the  
19 residence, and the licensee shall be subject to negative licensing  
20 action by the Office of Licensing.

21  
22       4. (New section) The Department of Human Services shall  
23 require a licensee, as a condition of maintaining a license to operate  
24 a community care residence, to comply with the following  
25 provisions:

26       a. (1) A licensee shall, biennially, undergo an examination by  
27 a physician to ascertain whether the licensee is physically and  
28 mentally capable of fulfilling the job duties of a licensee, as  
29 specified on the form listing a licensee's job duties prepared by the  
30 department pursuant to section 5 of this act and completed by the  
31 physician pursuant to this subsection. Upon conclusion of the  
32 examination, the physician shall provide the licensee with a  
33 statement as to whether the licensee is capable of fulfilling the  
34 duties of a licensee, and complete and attach the form on which the  
35 physician shall indicate, for each duty, whether the licensee is  
36 capable of fulfilling the duty.

37       (2) Upon receipt of the physician statement and completed form,  
38 a licensee shall provide the statement and form to the department.  
39 If a licensee fails to provide the statement and form, the  
40 commissioner shall have the authority to: stop any payments to the  
41 licensee; seek recovery of any payments to the licensee from the  
42 date that the statement and form were due; and not resume payment  
43 until such time as the licensee submits the statement and form.

44       (3) If, after undergoing the examination, a licensee is unable to  
45 provide a physician's statement that the licensee is capable of  
46 fulfilling the job duties of a licensee and the attached form  
47 completed by the physician, the licensing agency shall take negative  
48 licensing action against the licensee.

1       b. In the event that an individual with a developmental  
2 disability is not capable of managing his own funds, a licensee who  
3 is responsible for making purchases and disbursements on the  
4 individual's behalf shall not make a purchase or disbursement  
5 unless that purchase or disbursement reflects the specific needs of  
6 the individual with a developmental disability. A receipt or record,  
7 as applicable, of a purchase or disbursement pursuant to this  
8 subsection shall be submitted monthly to the Office of Auditing in  
9 the department.

10       c. A licensee shall annually attend a continuing education  
11 program conducted or approved by the department, as provided for  
12 in section 5 of this act;

13       d. A licensee shall annually take a two-week vacation from  
14 providing services to an individual with a developmental disability  
15 residing in a community care residence, during which time an  
16 alternate shall provide care or training, or both, to the individual  
17 with a developmental disability.

18

19       5. (New section) a. The department may issue a provisional  
20 license to operate a community care residence, not to exceed a  
21 three-month period, during which time such licensee shall  
22 demonstrate the ability to comply with the provisions of this act and  
23 the licensing standards adopted by regulation of the department for  
24 operation of a community care residence.

25       b. The department shall conduct, or approve another entity to  
26 conduct, a continuing education program for a licensee.

27       c. The department shall prepare a form listing the job duties of  
28 a licensee and, biennially, distribute the form to a licensee for  
29 completion by the licensee's physician in accordance the provisions  
30 of section 4 of this act. The form shall contain a check list on  
31 which the physician shall indicate a licensee's ability to perform  
32 each duty.

33

34       6. (New section) a. A case manager conducting a visit of an  
35 individual with a developmental disability residing in a community  
36 care residence, in accordance with section 8 of P.L.1983, c.524  
37 (C.30:6D-20), shall, upon completion of the visit, provide a written  
38 report to the case manager's supervisor and to the parent or  
39 guardian, as appropriate, of the individual with a developmental  
40 disability. The report, which shall be sent electronically to the case  
41 manager's supervisor and, if practicable, electronically to the parent  
42 or guardian, shall include information pertaining to the care and  
43 safety of the individual with a developmental disability, including,  
44 but not limited to, personal hygiene and grooming, nutritional and  
45 clothing needs, overall sanitary and living conditions of the  
46 community care residence, and the general well-being of the  
47 individual with a developmental disability.

1       b. The case manager shall also review the records required to  
2 be maintained in a community care residence pursuant to  
3 N.J.A.C.10:44B-1.1 et seq., on a monthly basis. The case  
4 manager's supervisor shall review the records when the supervisor  
5 performs the visit required by section 7 of this act. The case  
6 manager or supervisor, or both, as applicable, shall provide written  
7 documentation that the records were reviewed and include that  
8 documentation with the records maintained pursuant to  
9 N.J.A.C.10:44B-1.1 et seq.

10       c. A case manager shall not be assigned to manage the same  
11 individual with a developmental disability residing in a community  
12 care residence for more than six months.

13  
14       7. (New section) The supervisor of a case manager shall  
15 biennially visit 100% of the individuals with developmental  
16 disabilities who are assigned to the case manager and residing in a  
17 community care residence, with 50% of the visits conducted in each  
18 of the first and second years.

19       a. The visit shall be conducted by the supervisor together with  
20 a case manager who is unaffiliated with and unfamiliar to the  
21 assigned case manager. The supervisor and unaffiliated case  
22 manager shall prepare and provide to the parent or guardian of the  
23 individual with a disability the written report pertaining to the care  
24 and safety of the individual with a developmental disability  
25 pursuant to section 6 of this act.

26       b. The supervisor shall conduct a review of:

27       (1) a member of the household of a community care residence  
28 who is 18 years of age or older to determine whether the presence  
29 of the person 18 years of age or older in the household changes the  
30 character of the community care residence such that it is no longer a  
31 positive environment for care or training, or both, of an individual  
32 with a developmental disability;

33       (2) a licensee who is 65 years of age or older to determine  
34 whether the licensee is capable of continuing to provide care or  
35 training, or both, to an individual with a developmental disability;  
36 and

37       (3) a licensee who experiences a life-changing event which  
38 causes a changed physical or mental condition of the licensee to  
39 determine whether the licensee is able to provide care or training, or  
40 both, to an individual with a developmental disability.

41       c. The supervisor shall prepare a written report of a review  
42 conducted pursuant to subsection b. of this section and the report  
43 shall be made part of the records maintained in a community care  
44 residence pursuant to N.J.A.C.10:44B-1.1 et seq.

45       d. If, as a result of a visit or review conducted pursuant to this  
46 section, a supervisor determines that a licensee is not capable of  
47 providing care or training, or both, to an individual with a  
48 developmental disability, the supervisor shall so advise the

1 commissioner or the commissioner's designee who shall instruct the  
2 licensing agency to take negative licensing action. In such a case,  
3 the supervisor shall provide a copy of the written report prepared  
4 pursuant to subsection a. of this section and any written report  
5 prepared pursuant to subsection c. of this section to the  
6 commissioner or the commissioner's designee.

7  
8 8. (New section) Before taking negative licensing action  
9 pursuant to this act, the department shall give notice to a licensee  
10 personally or by mail to the last known address of the licensee with  
11 return receipt requested. The notice shall afford the licensee the  
12 opportunity to be heard and to contest the department's action. The  
13 hearing shall be conducted in accordance with the "Administrative  
14 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

15  
16 9. (New section) a. A case manager or case manager's  
17 supervisor having reasonable cause to believe that an individual  
18 with a developmental disability residing in a community care  
19 residence has been subjected to abuse, neglect, or exploitation by a  
20 licensee shall report the same immediately to the department by  
21 telephone or otherwise. Such report, where possible, shall contain  
22 the name and address of the individual with a developmental  
23 disability and the licensee responsible for the care or training, or  
24 both, of the individual with a developmental disability, and the  
25 guardian, or other person having custody and control of the  
26 individual and, if known, the condition of the individual with a  
27 developmental disability, the nature and possible extent of the  
28 individual's injuries, maltreatment, abuse, neglect, or exploitation,  
29 including any evidence of previous injuries, maltreatment, abuse,  
30 neglect, or exploitation, and any other information that the case  
31 manager or case manager's supervisor believes may be helpful with  
32 respect to the injuries, maltreatment, abuse, neglect, or exploitation  
33 of the individual with a developmental disability and the identity of  
34 the alleged offender.

35 b. The commissioner shall maintain a unit within the  
36 department to receive and prioritize such reports, initiate  
37 appropriate responses through timely and appropriate investigative  
38 activities, alert appropriate staff, and ensure that findings are  
39 reported in a uniform and timely manner.

40 c. A case manager or case manager's supervisor who fails to  
41 report an act of abuse, neglect, or exploitation of an individual with  
42 a developmental disability while having reasonable cause to believe  
43 that such an act has been committed, shall be guilty of a crime of  
44 the third degree.

45 d. In addition to any penalty imposed pursuant to this section, a  
46 person convicted under this section shall be subject to a surcharge  
47 in the amount of \$350 payable to the Treasurer of the State of New  
48 Jersey for use by the department to fund the provision of food and

1 care to individuals with developmental disabilities residing in  
2 community care residences.

3 e. A case manager or case manager's supervisor who is charged  
4 with failure to report an act of abuse, neglect, or exploitation of an  
5 individual with a developmental disability while having reasonable  
6 cause to believe that such an act has been committed, shall be  
7 temporarily reassigned to duties that do not involve contact with  
8 individuals with developmental disabilities or other vulnerable  
9 populations and shall be terminated from employment if convicted.  
10 In the case of a case manager or case manager's supervisor who is  
11 employed by the department, such a case manager or supervisor  
12 shall retain any available right of review by the Civil Service  
13 Commission.

14

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

17 4. a. Upon receipt of a report pursuant to section 3 of **[this**  
18 **act]** P.L.2010, c.5 (C.30:6D-75) or section 9 of P.L. , c. (C. )  
19 (pending before the Legislature as this bill), the department shall:

20 (1) designate an entity, as established by the commissioner, that  
21 shall immediately take such action as shall be necessary to ensure  
22 the safety of the individual with a developmental disability and to  
23 that end may request appropriate assistance from local and State  
24 law enforcement officials or contact Adult Protective Services to  
25 provide assistance in accordance with the provisions of P.L.1993,  
26 c.249 (C.52:27D-406 et seq.); and

27 (2) require the Critical Incident Management Unit, the Special  
28 Response Unit, or another unit in the department other than one in  
29 the division, to review the report and determine whether the report  
30 warrants an investigation.

31 b. The commissioner shall adopt rules and regulations  
32 necessary to provide for an investigation of a reported incident and  
33 subsequent substantiation or non-substantiation of an allegation of  
34 abuse, neglect, or exploitation of an individual with a  
35 developmental disability by a caregiver, by maintaining a Special  
36 Response Unit to investigate serious unusual incidents, as defined  
37 by applicable rules and regulations, in facilities or community  
38 programs licensed, contracted, or regulated by the department.

39 Upon the initiation of an investigation, the department shall: (1)  
40 ensure that any communication concerning the alleged abuse,  
41 neglect, or exploitation of an individual with a developmental  
42 disability between a caregiver, case manager of the caregiver, the  
43 case manager's supervisor, or a person at the appropriate Regional  
44 Office of the Division of Developmental Disabilities is identified,  
45 safeguarded from loss or destruction, and maintained in a secure  
46 location; and (2) contact the Office of the Attorney General which  
47 shall determine whether to participate in the investigation.

1 During its investigation of an allegation of abuse, neglect, or  
2 exploitation of an individual with a developmental disability by a  
3 caregiver, the Special Response Unit shall make a good faith effort  
4 to notify the caregiver of the possibility of the caregiver's inclusion  
5 on the registry, and give the caregiver an opportunity to respond to  
6 the department concerning the allegation.

7 c. The Special Response Unit shall issue a written report of the  
8 investigation that includes the conclusions of the unit, the rationale  
9 for the conclusion, and a detailed summary of any communication  
10 secured pursuant to subsection b. of this section. The report also  
11 shall include an assessment of the role of any case manager of a  
12 caregiver or the case manager's supervisor, if applicable, in the  
13 allegation of abuse, neglect, or exploitation, and a recommendation  
14 about whether any civil or criminal action should be brought against  
15 the case manager or supervisor. The report shall be made part of  
16 the record for review in any civil or criminal proceeding that may  
17 ensue.

18 A written summary of the conclusions of the investigation shall  
19 be provided to the parent or guardian of the individual with a  
20 developmental disability who is the subject of the alleged abuse,  
21 neglect, or exploitation.

22 [c.] d. The Special Response Unit, the department, or other  
23 investigating entity shall forward to the commissioner, or his  
24 designee, a substantiated or unsubstantiated incident of abuse,  
25 neglect, or exploitation of an individual with a developmental  
26 disability [for inclusion of an offending caregiver on the central  
27 registry]. Within 14 days of receipt of the substantiated or  
28 unsubstantiated incident of abuse, neglect, or exploitation, the  
29 commissioner or the commissioner's designee shall review the  
30 incident and, if appropriate, proceed with inclusion of an offending  
31 caregiver on the central registry.

32 (cf: P.L.2010, c.5 , s.4)

33  
34 11. Section 6 of P.L.2010, c.5 (C.30:6D-78) is amended to read  
35 as follows:

36 6. All records of a report made pursuant to **[this act]** section 3  
37 of P.L.2010, c.5 (C.30:6D-75) or section 9 of P.L. , c. (C. )  
38 (pending before the Legislature as this bill), all information  
39 obtained by the department in investigating such reports, and all  
40 reports of findings forwarded to the central registry pursuant to  
41 **[this act]** P.L.2010, c.5 or P.L. , c. (pending before the  
42 Legislature as this bill) shall be kept confidential and may be  
43 disclosed only under circumstances expressly authorized by rules  
44 and regulations promulgated by the commissioner. The department  
45 shall only disclose information that is relevant to the purpose for  
46 which the information is required; except that the department shall  
47 not disclose information which would likely endanger the life,  
48 safety, or physical or emotional well-being of an individual with a

1 developmental disability or the life or safety of any other person, or  
2 which may compromise the integrity of a department investigation,  
3 civil or criminal investigation, or judicial proceeding. If the  
4 department denies access to specific information on this basis, the  
5 requesting entity may seek disclosure through the Superior Court.  
6 Nothing in **[this act]** P.L.2010, c.5 or P.L. , c. (pending before  
7 the Legislature as this bill) shall be construed to permit the  
8 disclosure of any information deemed confidential by federal or  
9 State law.  
10 (cf: P.L.2010, c.5, s.6)

11  
12 12. Section 8 of P.L.2010, c.5 (C.30:6D-80) is amended to read  
13 as follows:

14 8. A person acting pursuant to **[this act]** P.L.2010, c.5  
15 (C.30:6D-73 et seq.) or P.L. , c. (C. )(pending before the  
16 Legislature as this bill) in the making of a report under **[this act]**  
17 P.L.2010, c.5 or P.L. , c. (pending before the Legislature as this  
18 bill) shall have immunity from any civil or criminal liability that  
19 might otherwise be incurred or imposed. Such a person shall have  
20 the same immunity with respect to testimony given in any judicial  
21 proceeding resulting from the report. A person who reports or  
22 causes to report in good faith an allegation of abuse, neglect, or  
23 exploitation pursuant to **[this act]** P.L.2010, c.5 or P.L. c.  
24 (pending before the Legislature as this bill) and as a result thereof is  
25 discharged from employment or in any manner discriminated  
26 against with respect to compensation, hire, tenure, or terms,  
27 conditions or privileges of employment, may file a cause of action  
28 for appropriate relief in the Superior Court in the county in which  
29 the discharge or alleged discrimination occurred or in the county of  
30 the person's primary residence. If the court finds that the person  
31 was discharged or discriminated against as a result of the person's  
32 reporting an allegation of abuse, neglect, or exploitation pursuant to  
33 **[this act]** P.L.2010, c.5 or P.L. , c. (pending before the  
34 Legislature as this bill), the court may grant reinstatement of  
35 employment with back pay or other legal or equitable relief.  
36 (cf: P.L.2010, c.5, s.8)

37  
38 13. (New section) The Special Response Unit shall compile  
39 data about any investigations conducted as a result of a report made  
40 pursuant to section 3 of P.L.2010, c.5 (C.30:6D-75) or section 9 of  
41 P.L. , c. (C. ) (pending before the Legislature as this bill)  
42 concerning abuse, neglect, or exploitation of an individual with a  
43 developmental disability residing in a community care residence,  
44 and shall issue an annual report as provided in this section. The  
45 report, which shall be available on the official website of the  
46 department and contain non-identifying information, shall, at a  
47 minimum, include:



1 a. The number of individuals with developmental disabilities  
2 residing in community care residences who were the subject of an  
3 allegation of abuse, neglect, or exploitation, and the number of  
4 substantiated allegations;

5 b. The number of deaths, if any, of individuals with  
6 developmental disabilities who were residing in community care  
7 residences and were the subject of a report of abuse, neglect, or  
8 exploitation, and the cause of death;

9 c. The number of case managers or case managers' supervisors  
10 who have been reassigned or terminated, or both, as a result of an  
11 investigation of abuse, neglect, or exploitation of an individual with  
12 a developmental disability residing in a community care residence;  
13 and

14 d. The number of case managers or case managers' supervisors  
15 against whom a civil or criminal action has been brought as a result  
16 of an allegation of abuse, neglect, or exploitation of an individual  
17 with a developmental disability residing in a community care  
18 residence.

19

20 14. (New section) a. A provider of a day program for individuals  
21 with developmental disabilities shall submit to the division a copy  
22 of its monthly report of individuals with developmental disabilities  
23 who reside in community care residences and attend a day program  
24 sponsored by the provider. The report shall be submitted no later  
25 than 14 days after the end of the month.

26 b. A provider of a day program for individuals with  
27 developmental disabilities shall not seek reimbursement from the  
28 department for an individual with a developmental disability who  
29 resides in a community care residence and is scheduled to attend a  
30 day program sponsored by the provider, but has not attended the  
31 program for 30 consecutive days. A provider who seeks  
32 reimbursement in violation of this subsection shall refund a  
33 payment received from the department on behalf of that individual,  
34 and shall be subject to a penalty of \$1,000 per day, per individual  
35 listed on the monthly attendance report as being in attendance, but  
36 who was not in attendance. The penalty shall be sued for and  
37 collected in a summary proceeding by the commissioner pursuant to  
38 the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-  
39 10 et seq.).

40 c. If an individual with a developmental disability who resides  
41 in a community care residence and is scheduled to attend a day  
42 program is absent from the program for 30 consecutive days, the  
43 provider of the day program shall, no later than 14 days after the  
44 end of the 30 days, notify the appropriate Regional Office  
45 Administrator.

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

- 1 (1) the appropriate Regional Office Administrator; and  
2 (2) the supervisor of a case manager assigned to an individual  
3 with a developmental disability who resides in a community care  
4 residence and is scheduled to attend the day program.

5 e. The division shall provide:

6 (1) a parent or guardian of an individual with a disability who  
7 resides in a community care residence and is scheduled to attend a  
8 day program, with information pertaining to the individual's  
9 monthly attendance at the day program. Such a report shall be  
10 provided no later than 28 days after the end of the month; and

11 (2) a random sampling of the monthly reports to the Special  
12 Response Unit, which shall audit attendance of individuals with  
13 developmental disabilities who reside in community care residences  
14 and are scheduled to attend a day program.

15 f. A Regional Office Administrator shall bi-annually conduct  
16 an on-site audit of attendance of individuals with developmental  
17 disabilities who reside in community care residences and are  
18 scheduled to attend a day program in the office's region.

19

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

36 b. The physician or the chief executive officer, or his designee,  
37 of a hospital or similar institution taking an individual with a  
38 disability into protective custody shall immediately report the action  
39 and the condition of the individual with a developmental disability  
40 to the department by calling its emergency telephone service.

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

46

47 16. (New section) a. An agency or organization that causes a  
48 written, individualized habilitation plan to be developed pursuant to

1 section 10 of P.L.1977, c.82 (C.30:6D-10) on or after the effective  
2 date of this act for an individual with a developmental disability  
3 residing in a community care residence shall not include the social  
4 security number of the individual with a developmental disability  
5 on the plan. In the case of an individualized habilitation plan  
6 developed prior to the effective date of this act, the social security  
7 number of the individual with a developmental disability residing in  
8 a community care residence shall be removed from the plan within  
9 60 days of the effective date of this act.

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

16 c. In addition to the requirements for the development,  
17 revision, and review of an individual habilitation plan pursuant to  
18 sections 10 and 12 of P.L.1977, c.82 (C.30:6D-10 and C.30:6D-12),  
19 a plan developed, revised, or reviewed for an individual with a  
20 developmental disability residing in a community care residence  
21 shall be provided to the licensee of the community care residence,  
22 the case manager of the individual with a developmental disability  
23 residing in the community care residence, and the case manager's  
24 supervisor. If a parent or guardian of the individual is unable to  
25 attend the development, revision, or review of the plan, a copy of  
26 such plan shall be provided to the parent or guardian of the  
27 individual, and the parent or guardian, as appropriate, shall sign and  
28 return a copy of the plan to the agency or organization responsible  
29 for the development, revision, or review of the plan.

30  
31 17. Section 2 of P.L.2003, c.191 (C.30:6D-5.2) is amended to  
32 read as follows:

33 2. As used in this act:

34 "Commissioner" means the Commissioner of Human Services.

35 "Department" means the Department of Human Services.

36 "Facility for persons with developmental disabilities" means a  
37 facility for persons with developmental disabilities as defined in  
38 section 3 of P.L.1977, c.82 (C.30:6D-3).

39 "Facility for persons with traumatic brain injury" means a facility  
40 for persons with traumatic brain injury that is operated by, or under  
41 contract with, the department.

42 "Life-threatening emergency" means a situation in which a  
43 prudent person could reasonably believe that immediate  
44 intervention is necessary to protect the life of a person receiving  
45 services at a facility for persons with developmental disabilities or a  
46 facility for persons with traumatic brain injury or from a public or  
47 private agency, or to protect the lives of other persons at the facility  
48 or agency, from an immediate threat or actual occurrence of a

1 potentially fatal injury, impairment to bodily functions or  
2 dysfunction of a bodily organ or part. "Life-threatening  
3 emergency" includes any change in a person's physical or mental  
4 condition that significantly weakens the person so that the person's  
5 health condition is precarious and shall include, but not be limited  
6 to, dramatic weight loss, poor hygiene, physical bruises, and sores  
7 dominating parts of the body.

8 "Public or private agency" means an entity under contract with,  
9 licensed by or working in collaboration with the department to  
10 provide services for persons with developmental disabilities or  
11 traumatic brain injury.

12 (cf: P.L.2003, c.191, s.2)

13

14 18. The Commissioner of Human Services shall adopt rules and  
15 regulations pursuant to the "Administrative Procedure Act,"  
16 P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the provisions of  
17 this act.

18

19 19. This act shall take effect on the 180th day after the date of  
20 enactment, but the Commissioner of Human Services may take such  
21 anticipatory administrative action in advance thereof as shall be  
22 necessary for the implementation of this act.

23

24

#### 25 STATEMENT

26

27 This bill, which is designated as "Tara's Law," provides for  
28 oversight of community care residences, which are defined in the  
29 bill as private homes or apartments in which an adult or family is  
30 licensed by, and contracts with, the Department of Human Services  
31 (DHS) to provide an individual with a developmental disability with  
32 care or training, or both. The bill includes provisions to oversee  
33 persons who are licensed to operate community care residences  
34 (licensees), the case managers of the individuals with  
35 developmental disabilities who reside in community care  
36 residences, and the day programs which these individuals with  
37 developmental disabilities may attend. In addition, the bill requires  
38 physicians and hospitals to take into protective custody an  
39 individual with a developmental disability who otherwise would be  
40 returned to the licensee suspected of causing injury to the  
41 individual, and report such action to DHS. The bill also amends  
42 existing law to provide for safeguarding and reporting information  
43 which may be necessary for any civil or criminal proceedings which  
44 may follow an allegation of abuse, neglect, or exploitation by a  
45 caregiver (which includes a licensee) of an individual with a  
46 developmental disability.

1 Specifically, the bill provides as follows:

2 **Oversight of community care residences**

3 A community care residence licensed by DHS shall be subject to  
4 certain licensing provisions. If, as a result of an annual inspection  
5 of a community care residence by the Office of Licensing that  
6 allows for inquiry into the facilities, records, equipment, sanitary  
7 conditions, accommodations, and management of an individual with  
8 a developmental disability as required by N.J.A.C.10:44B-1.1 et  
9 seq., a licensee is required to provide a plan of correction and such  
10 plan has not been successfully implemented, as determined by the  
11 office, within 30 days of the date that the licensee submitted the  
12 plan to the office, an individual with a developmental disability  
13 residing in that residence shall be removed from the residence.

14 Additionally, if the health, safety, or well-being of an individual  
15 with a developmental disability is threatened because of a licensee's  
16 non-compliance with DHS standards for community care  
17 residences, the individual must be removed from the residence, and  
18 the licensee would be subject to negative licensing action, which is  
19 defined in the bill as an action that imposes a restriction on a  
20 licensee and may include suspension of admissions, issuance of a  
21 provisional license, reduction in the licensed capacity, non-renewal  
22 of license, suspension of the license, or revocation of the license.

23 DHS would require a licensee, as a condition of maintaining a  
24 license to operate a community care residence, to comply with  
25 certain provisions. Biennially a licensee would be required to  
26 undergo an examination by a physician to ascertain whether the  
27 licensee is physically and mentally capable of fulfilling the job  
28 duties of a licensee, as specified on the form containing a check list  
29 of a licensee's job duties prepared by DHS and completed by the  
30 physician. Upon conclusion of the examination, the physician  
31 would provide the licensee with a statement as to whether the  
32 licensee is capable of fulfilling the duties of a licensee, and attach  
33 the form indicating, for each duty, whether the licensee is capable  
34 of fulfilling the duty. Upon receipt of the physician statement and  
35 completed form, a licensee would provide the statement and form to  
36 DHS.

37 If a licensee fails to provide the statement and form, the  
38 Commissioner of Human Services has authority to: stop any  
39 payments; seek recovery of any payments to the licensee; and not  
40 resume payment until such time as the licensee submits the  
41 statement and form. Additionally, if, after undergoing the  
42 examination, the licensee is unable to provide the statement that the  
43 licensee is capable of fulfilling the job duties of a licensee and  
44 attached form completed by the physician, the licensing agency  
45 shall take negative licensing action against the licensee.

46 Further, in the event an individual with a developmental  
47 disability is not capable of managing his own funds, a licensee who  
48 is responsible for making purchases and disbursements on the

1 individual's behalf shall not make such purchases or disbursements  
2 unless that purchase or disbursement reflects the specific needs of  
3 the individual. A receipt or record of a purchase or disbursement  
4 must be submitted to the Office of Auditing in DHS.

5 A licensee also must annually attend a continuing education  
6 program conducted or approved by DHS, and take an annual two-  
7 week vacation, during which time an alternate would provide the  
8 care or training, or both, to the individual with a developmental  
9 disability.

10 The bill also provides that DHS may issue a provisional license  
11 to operate a community care residence, but that provisional license  
12 may not exceed three months. Current regulations allow for a six-  
13 month provisional license.

14 Additionally, DHS would conduct, or approve another entity to  
15 conduct, a continuing education program for licensees.

#### 16 **Case Managers and Supervisors**

17 The bill requires a case manager conducting a visit of an  
18 individual with a developmental disability residing in a community  
19 care residence to, upon completion of the visit, provide a written  
20 report to the case manager's supervisor and to the parent or  
21 guardian, as appropriate, of the individual with a developmental  
22 disability. The report would include information pertaining to the  
23 care and safety of the individual with a developmental disability,  
24 including, but not limited to, personal hygiene and grooming,  
25 nutritional and clothing needs, overall sanitary and living conditions  
26 of the community care residence, and the general well-being of the  
27 individual with a developmental disability.

28 The case manager must also review the records required to be  
29 maintained in a community care residence pursuant to State  
30 regulations, N.J.A.C.10:44B-1.1 et seq., on a monthly basis. The  
31 case manager's supervisor also must review the records when the  
32 supervisor conducts a visit. The case manager or supervisor, or  
33 both, as applicable, must provide written documentation that the  
34 records were reviewed and include that documentation with other  
35 records maintained pursuant to N.J.A.C.10:44B-1.1 et seq.  
36 Additionally, a case manager shall not be assigned to manage the  
37 same individual with a developmental disability residing in a  
38 community care residence for more than six months.

39 The supervisor of a case manager must visit, biennially, 100% of  
40 the individuals with developmental disabilities who are assigned to  
41 the case manager and residing in a community care residence, with  
42 50% of the visits conducted in each of the first and second years.  
43 The visit would be conducted together with a case manager who is  
44 unaffiliated with and unfamiliar to the assigned case manager.

45 The supervisor and unaffiliated case manager must prepare and  
46 provide to the parent or guardian of the individual with a disability  
47 the written report pertaining to the care and safety of the individual

1 with a developmental disability, and the supervisor must conduct a  
2 review of:

- 3 • An 18 year-old member of the household to determine  
4 whether the presence of the 18 year-old changes the  
5 character of the residence such that it is no longer a positive  
6 environment for care or training, or both, of an individual  
7 with a developmental disability;
- 8 • A licensee who is 65 years of age or older to determine  
9 whether the licensee is capable of continuing to provide care  
10 or training, or both, to an individual with a developmental  
11 disability; and
- 12 • A licensee who experiences a life-changing event which  
13 causes a changed physical or mental condition of the  
14 licensee to determine whether the licensee is able to provide  
15 care or training, or both, to an individual with a  
16 developmental disability.

17 The bill requires the supervisor to prepare a written report of  
18 these reviews. If, as a result of a visit or review, a supervisor  
19 determines that a licensee is not capable of providing care or  
20 training, or both, to an individual with a developmental disability,  
21 the supervisor must advise the commissioner or the commissioner's  
22 designee who would instruct the licensing agency to take negative  
23 licensing action. In such a case, the supervisor must also provide a  
24 copy of a written report of the review and the report prepared by the  
25 case manager to the commissioner or the commissioner's designee.

26 Before taking negative licensing action, DHS must give notice to  
27 a licensee personally or by mail to the last known address of the  
28 licensee with return receipt requested. The notice would afford the  
29 licensee the opportunity to be heard and to contest the action in a  
30 hearing conducted in accordance with the "Administrative  
31 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

32 The bill also requires a case manager or case manager's  
33 supervisor having reasonable cause to believe that an individual  
34 with a developmental disability residing in a community care  
35 residence has been subjected to abuse, neglect, or exploitation by a  
36 licensee to report the same immediately to DHS by telephone or  
37 otherwise. A case manager or supervisor who fails to so report  
38 shall be guilty of a crime of the third degree (punishable by a term  
39 of imprisonment between three to five years, a fine not to exceed  
40 \$15,000, or both).

41 A convicted case manager or supervisor also would be subject to  
42 a surcharge of \$350, payable to the Treasurer of the State of New  
43 Jersey, for use by DHS to fund the provision of food and care to  
44 individuals with developmental disabilities residing in community  
45 care residences. Additionally, a case manager or supervisor who is  
46 charged under this provision would be temporarily reassigned to  
47 duties that do not involve contact with individuals with  
48 developmental disabilities, and terminated from employment if

1 convicted. A case manager or case manager's supervisor employed  
2 by DHS would retain any available right of review by the Civil  
3 Service Commission.

4 **Investigations of abuse, neglect, or exploitation by a caregiver in**  
5 **community settings. "Caregiver" includes a licensee of a**  
6 **community care residence.**

7 The bill amends existing law to provide that upon receipt of a  
8 report of abuse, neglect or exploitation by a caregiver, DHS shall  
9 require the Critical Incident Management Unit, the Special  
10 Response Unit, or another unit in DHS other than one in the  
11 division, to review the report and determine whether the report  
12 warrants an investigation. In addition, upon initiation of an  
13 investigation of abuse, neglect, or exploitation by a caregiver, DHS  
14 shall: (1) ensure that any communication concerning the alleged  
15 abuse, neglect, or exploitation of an individual with a  
16 developmental disability between a caregiver, case manager of the  
17 caregiver, the case manager's supervisor, or a person at the  
18 appropriate Regional Office of the Division of Developmental  
19 Disabilities is identified, safeguarded from loss or destruction, and  
20 maintained in a secure location; and (2) contact the Office of the  
21 Attorney General which shall determine whether to participate in  
22 the investigation.

23 The Special Response Unit in DHS must issue a written report of  
24 the investigation that includes the conclusions of the unit, the  
25 rationale for the conclusion, and a detailed summary of any secured  
26 communication described above. The report also must include an  
27 assessment of the role of any case manager of a caregiver or the  
28 case manager's supervisor, if applicable, in the allegation of abuse,  
29 neglect, or exploitation, and a recommendation about whether any  
30 civil or criminal action should be brought against the case manager  
31 or supervisor. The report must be made part of the record for  
32 review in any civil or criminal proceeding that may ensue. A  
33 written summary of the conclusions of the investigation must be  
34 provided to the parent or guardian. Within 14 days of receipt of a  
35 substantiated or unsubstantiated incident of abuse, neglect, or  
36 exploitation, the commissioner or the commissioner's designee must  
37 review the incident and, if appropriate, proceed with inclusion of an  
38 offending caregiver on the Central Registry of Offenders Against  
39 Individuals with Developmental Disabilities established under  
40 section 5 P.L.2010, c.5 (C.30:6D-77).

41 The SRU is also required to compile data and issue an annual  
42 report, which shall be available on the official website of DHS and  
43 contain non-identifying information about the number of: (1)  
44 individuals with developmental disabilities residing in community  
45 care residences who were the subject of an allegation of abuse,  
46 neglect, or exploitation, and the number of substantiated  
47 allegations; (2) deaths, if any, of individuals with developmental  
48 disabilities who were residing in community care residences and



1 were the subject of a report of abuse, neglect, or exploitation, and  
2 the cause of death; (3) case managers or case managers' supervisors  
3 who have been reassigned or terminated, or both, as a result of an  
4 investigation of abuse, neglect, or exploitation; and (4) case  
5 managers or case managers' supervisors against whom a civil or  
6 criminal action has been brought as a result of an allegation of  
7 abuse, neglect, or exploitation of an individual with a  
8 developmental disability residing in a community care residence.

9 **Oversight of Day Program Providers**

10 A provider of a day program for individuals with developmental  
11 disabilities shall submit to the division a copy of its monthly report  
12 of individuals with developmental disabilities who reside in  
13 community care residences and attend a day program sponsored by  
14 the provider. The report shall be submitted no later than 14 days  
15 after the end of the month. Additionally, the provider shall not seek  
16 reimbursement from DHS for such an individual with a  
17 developmental disability who has not attended the program for 30  
18 consecutive days. A provider who violates this provision shall  
19 refund a payment received from DHS on behalf of that individual,  
20 and shall be subject to a penalty of \$1,000 per day, per individual  
21 listed on the monthly attendance report as being in attendance, but  
22 who was not in attendance.

23 The provider of the day program shall, no later than 14 days after  
24 the end of the 30 days, notify the appropriate Regional Office  
25 Administrator of an individual with a developmental disability who  
26 resides in a community care residence and was scheduled to attend  
27 a day program but was absent for 30 consecutive days. The  
28 division shall, no later than 28 after the end of a month, provide a  
29 copy of the monthly report to: the appropriate Regional Office  
30 Administrator; and the supervisor of a case manager assigned to an  
31 individual with a developmental disability who resides in a  
32 community care residence and is scheduled to attend the day  
33 program.

34 The division shall also shall provide: (1) a parent or guardian of  
35 an individual with a disability who resides in a community care  
36 residence and is scheduled to attend a day program, with  
37 information pertaining to the individual's monthly attendance at the  
38 day program. This information shall be provided no later than 28  
39 days after the end of the month; and (2) a random sampling of the  
40 monthly reports to the Special Response Unit, which shall audit  
41 attendance of individuals with developmental disabilities at a day  
42 program.

43 A Regional Office Administrator shall, bi-annually, conduct an  
44 on-site audit of attendance of individuals with developmental  
45 disabilities who reside in community care residences and are  
46 scheduled to attend a day program in the office's region.

**1 Physicians and Protective Orders**

2 A physician, who is examining or treating an individual with a  
3 developmental disability residing in a community care residence or  
4 the chief executive officer, or his designee, of a hospital or similar  
5 institution, is empowered to take the individual into protective  
6 custody when the individual has suffered serious physical injury, or  
7 the individual's condition constitutes a "life-threatening  
8 emergency," as defined in section 2 of P.L.2003, c.191 (C.30:6D-  
9 5.2), and the most probable inference from the medical and factual  
10 information supplied, is that the injury or condition was inflicted  
11 upon the individual by another person by other than accidental  
12 means, and the person suspected of inflicting, or permitting to be  
13 inflicted, the injury upon the individual, is a licensee or alternate of  
14 a community care residence where the individual resides and to  
15 whom the individual would normally be returned.

16 The physician or the chief executive officer must immediately  
17 report the action and the condition of the individual with a  
18 developmental disability to DHS by calling its emergency telephone  
19 service. (These provisions are similar to those applicable to  
20 physicians who examine a child and suspect child abuse.)

21 Further, the definition of "life threatening emergency" in section  
22 2 of P.L.2003, c.91 (C.30:6D-5.2) is amended to include any change  
23 in a person's physical or mental condition that significantly weakens  
24 the person so that their health condition is precarious and shall  
25 include, but not be limited to, dramatic weight loss, poor hygiene,  
26 physical bruises, and sores dominating parts of the body.

**27 Individualized Habilitation Plans (IHPs)**

28 The bill prohibits the use of social security numbers on IHPs  
29 developed for individuals with developmental disabilities residing  
30 in community care residences, and establishes a penalty of \$250 for  
31 the first offense and \$500 for each subsequent offense for violating  
32 this prohibition. A copy of an IHP must be provided to the licensee  
33 of a community care residence, the case manager of the individual  
34 with a developmental disability residing in the residence, and the  
35 case manager's supervisor. If a parent or guardian is unable to  
36 attend the development, revision, or review of an IHP, a copy of it  
37 must be provided to the parent or guardian who would sign and  
38 return a copy to the agency or organization responsible for its  
39 development, revision, or review.

40 The bill provides that the Commissioner of Human Services shall  
41 adopt rules and regulations to carry out the provisions of the bill,  
42 has a delayed effective date of 180 days following enactment, and  
43 allows the Commissioner of Human Services to take anticipatory  
44 administrative action, in advance, as necessary for the  
45 implementation of the bill.

46 This bill was introduced after the death of Tara O'Leary, a 28-  
47 year old woman with developmental disabilities who had been  
48 residing in a licensed community care residence, lost a dangerous

1 amount of weight, was relocated to a developmental center, and was  
2 subsequently admitted to a hospital weighing 48 pounds and  
3 suffering from dehydration, malnutrition, and bedsores. When her  
4 overall condition did not improve despite the use of a feeding tube  
5 to increase her weight by more than 20 pounds, she was  
6 disconnected from life support and died.

7 It is also noteworthy that when Tara resided in the community  
8 care residence she had been scheduled to attend day programs, but  
9 she attended less than 20 programs in a two and one-half year  
10 period. In addition, although she underwent a medical examination,  
11 as required by DHS regulations, the physician did not take  
12 protective custody of her or report her condition to DHS.

13 The provisions of this bill are intended to help prevent a  
14 reoccurrence of a tragedy similar to the one that happened to Tara  
15 O'Leary. The bill is designated "Tara's Law" in her memory.

# ASSEMBLY HUMAN SERVICES COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2573**

# **STATE OF NEW JERSEY**

DATED: JUNE 18, 2012

The Assembly Human Services Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2573.

This substitute, which is designated as "Tara's Law," provides for oversight of community care residences, which are private homes or apartments in which an adult or family is licensed by, and contracts with, the Department of Human Services (DHS) to provide up to four individuals with developmental disabilities with care or training, or both. The substitute includes provisions to oversee persons who are licensed to operate community care residences (licensees), case managers of individuals with developmental disabilities who reside in community care residences, and the day programs which these individuals with developmental disabilities may attend. In addition, the substitute authorizes physicians and hospitals to take into protective custody an individual with a developmental disability who otherwise would be returned to a licensee suspected of causing injury to the individual, and report such action to DHS. The substitute also provides for safeguarding and reporting information which may be necessary for any civil or criminal proceedings that may follow an allegation of abuse, neglect, or exploitation by a caregiver of an individual with a developmental disability.

#### **Oversight of community care residences**

The substitute provides that if, as a result of an annual inspection of a community care residence by DHS, a licensee was required to provide a plan of correction and the supervisor of a case manager determines that the plan has not been successfully implemented, within 30 days of the date that the licensee submitted the plan to the office, an individual with a developmental disability residing in that residence is to be removed from the residence if the supervisor, in consultation with the office, determines that the licensee's failure to implement the plan of correction threatens the health and well being of the individual with the developmental disability.

If the health, safety, or well-being of an individual with a developmental disability is threatened because of a licensee's noncompliance with DHS standards for community care residences,

the individual is to be removed from the residence, and the licensee is subject to negative licensing action (an action that imposes a restriction on a licensee and may include suspension of admissions, issuance of a provisional license, reduction in licensed capacity, or non-renewal, suspension, or revocation of the license).

In addition, DHS is authorized to impose a penalty in an amount of \$350 per day on a licensee for a repeated failure to implement a required plan of correction. The penalty is to be payable to the Treasurer of the State of New Jersey, to be used to provide food and care to individuals with developmental disabilities residing in community care residences. If DHS determines that a repeated failure to implement a required plan of correction endangers the health and well-being of an individual with a developmental disability, it may, upon notice and after hearing, revoke the license issued to operate a community care residence.

As a condition of maintaining a license to operate a community care residence, a licensee is to undergo an examination every two years by a physician to ascertain whether the licensee is physically and mentally capable of fulfilling the duties of a licensee. The physician is to complete a form established by DHS and provide the licensee with a statement as to whether the licensee is capable of fulfilling the duties of a licensee. The licensee is to provide the statement and form to DHS. Failure to do so may result in the Commissioner of Human Services stopping payment or seeking recovery of any payments to the licensee, and not resuming payments until the licensee submits the statement and form. If, after undergoing the examination, the licensee is unable to provide a statement indicating that the licensee is capable of fulfilling the job duties of a licensee, DHS is to take negative licensing action against the licensee.

The substitute provides that if an individual with a developmental disability is not capable of managing his own funds and the licensee is responsible for making purchases and disbursements on the individual's behalf, the licensee is to make only those purchases or disbursements that reflect the specific needs of the individual. Receipts or records of the purchases or disbursements are to be submitted on a monthly basis to the Office of Auditing in DHS. The case manager, the case manager's supervisor, and the Office of Auditing are to review these receipts and records. If it is determined that a purchase or disbursement does not reflect the specific needs of the individual with a developmental disability, that fact is to be documented and the commissioner or the commissioner's designee is to be so advised and may instruct the licensing agency to take negative licensing action.

If there is evidence that an inappropriate purchase or disbursement entailed an egregious amount of money, the commissioner or the commissioner's designee is to report the purchase or disbursement to the Attorney General. If there is evidence that a case manager was aware of an egregious inappropriate purchase or disbursement and

failed to document that fact or notify the case manager's supervisor, the commissioner or the commissioner's designee is to notify the Attorney General.

Licenseses are to annually attend a continuing education program conducted or approved by DHS, and take a two-week leave each year, during which time an alternate would provide the care or training, or both, to the individual with a developmental disability.

DHS may issue a provisional license to operate a community care residence, but that provisional license may not exceed three months (current regulations allow for a six-month provisional license).

### **Case Managers and Supervisors**

Upon completion of a visit by a case manager to an individual with a developmental disability residing in a community care residence, the case manager is to provide a written report that includes information pertaining to the care and safety of the individual to the case manager's supervisor, and the individual's parent or guardian, as appropriate, as well as other persons whom the individual with the developmental disability may authorize in writing to receive the report. The case manager is also to review, on a monthly basis, the records required to be maintained in a community care residence, and the case manager's supervisor is to review these records when conducting the biennial visit. The case manager and supervisor, as applicable, are to document in writing that they reviewed these records.

Every two years, the supervisor of a case manager is to visit all individuals residing in a community care residence who are assigned to a case manager. Half of the required visits are to be conducted in each of the first and second years. If, after two years, the supervisor determines that the individuals in the community care residence are not at risk for abuse, neglect, or exploitation, the visits may be reduced to one visit every three years. This determination is to be based on certain factors, including, but not limited to: the number and age of the individuals residing in the community care residence; whether each individual attends a day program on a regular basis; and a lack of complaints after two years concerning the community care residence or the individuals with developmental disabilities residing therein. These visits are to be conducted with a case manager who is unaffiliated with and unfamiliar to the assigned case manager. The supervisor and case manager are to prepare and provide to the individual's parent or guardian a written report pertaining to the care and safety of the individual. The supervisor is to determine whether the licensee is able to continue to provide care or training, or both, to an individual with a developmental disability if any of the following occurs: there is a member of the household 18 years of age or older whose presence changes the character of the residence so that it is no longer a positive environment for an individual with a developmental disability; a licensee is 65 years of age or older; or a licensee has

experienced a life-changing event that causes a changed physical or mental condition of the licensee.

If, based on the supervisor's and unaffiliated case manager's review and input from family members or the guardian of the individual with a developmental disability residing in the community care residence, the supervisor determines that the individual would benefit from a change in the individual's case manager, the supervisor is to assign a different case manager to the individual.

If a supervisor determines that a licensee is no longer capable of providing care or training, or both, the supervisor is to advise the commissioner, who may initiate negative licensing action. Before taking that action, DHS is to give notice to a licensee and afford the licensee the opportunity to be heard and contest the action in an administrative hearing.

A case manager or case manager's supervisor in DHS who has reasonable cause to believe that an individual with a developmental disability residing in a community care residence has been subjected to abuse, neglect, or exploitation by a licensee, is to report the same immediately to DHS. A case manager or supervisor who fails to so report is guilty of a disorderly persons offense unless the abuse, neglect, or exploitation resulted in death, in which case, the person would be guilty of a crime of the fourth degree (punishable by a term of imprisonment of up to 18 months, or a fine not to exceed \$10,000, or both). There is an additional penalty of \$350 for each day that there was no report and this amount will be used by DHS for food and care of individuals in community care residences. A case manager or supervisor who is charged with failure to report would be temporarily reassigned to duties that do not involve contact with individuals with developmental disabilities, and terminated from employment if convicted.

### **Investigations of Abuse, Neglect, or Exploitation by a Caregiver in Community Settings**

The substitute amends existing law to require DHS to: (1) ensure that any communication concerning the alleged abuse, neglect, or exploitation is identified, safeguarded, and maintained in a secure location; and (2) contact the Attorney General, who is to determine whether to participate in the investigation. The substitute specifies the information that is to be included in the report of the SRU.

The substitute requires the SRU, DHS, or other investigating entity also to forward to the commissioner, or the commissioner's designee, all substantiated and non-substantiated incidents of abuse, neglect, or exploitation of an individual with a developmental disability. The offending caregiver of a substantiated incident shall be included on the central registry as expeditiously as possible. The SRU shall retain a record of all non-substantiated incidents.

The SRU is also required to compile data and issue an annual report, which is to be made available on the DHS website.

### **Oversight of Day Program Providers**

A provider of a day program for individuals with developmental disabilities is to submit to the division a copy of its monthly report of individuals with developmental disabilities who reside in community care residences and attend a day program sponsored by the provider. The provider is not to seek reimbursement from DHS for an individual who has not attended the program for 30 consecutive days, and is to notify the appropriate regional office administrator if an individual was absent for 30 consecutive days. The division is to provide a parent or guardian with information pertaining to the individual's monthly attendance at the day program.

### **Physicians and Protective Orders**

A physician, who is examining or treating an individual with a developmental disability who resides in a community care residence, or the chief executive officer, or his designee, of a hospital or similar institution, may take the individual into protective custody when the individual has suffered serious physical injury, or the individual's condition constitutes a "life-threatening emergency," as defined in section 2 of P.L.2003, c.191 (C.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. The physician or the chief executive officer is to immediately report the action and the condition of the individual to DHS by calling its emergency telephone service.

### **Individualized Habilitation Plans (IHPs)**

The substitute prohibits the use of Social Security numbers on IHPs for individuals residing in community care residences, and establishes a penalty of \$250 for the first offense and \$500 for each subsequent offense for violating this prohibition. A copy of the IHP is to be provided to the licensee of a community care residence, the case manager of the individual, and the case manager's supervisor. If a parent or guardian is unable to attend the development, revision, or review of an IHP, a copy of the IHP is to be provided to the parent or guardian who is to sign and return a copy to the agency or organization responsible for its development, revision, or review.

The substitute takes effect 180 days after enactment.



# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2573**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: SEPTEMBER 24, 2012

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2573 (ACS), with committee amendments.

As amended, the bill provides for oversight of community care residences, which are private homes or apartments in which an adult or family is licensed by, and contracts with, the Department of Human Services (DHS) to provide up to four individuals with developmental disabilities with care or training, or both. The bill also provides for oversight of case managers of individuals residing in community care residences and of reimbursement of day program providers, and provides for safeguarding and reporting information which may be necessary for civil or criminal proceedings following an allegation of abuse, neglect, or exploitation. Additionally, physicians and hospitals are authorized to take an individual with a developmental disability into protective custody and report such action to DHS.

Specifically, the bill provides that if a required plan of correction, following an annual inspection of a community care residence by DHS, is not implemented within 30 days, an individual with a developmental disability is to be removed from the residence if failure to implement the plan threatens the individual's health and well being. If health, safety, or well-being are threatened because of noncompliance with DHS standards, the individual is to be removed and the licensee subject to negative licensing action (suspension of admissions, issuance of a provisional license, reduction in licensed capacity, or non-renewal, suspension, or revocation of a license). DHS is authorized to impose a \$350 penalty per day for a repeated failure to implement a plan of correction, and the penalty is to be used to provide food and care to individuals with developmental disabilities residing in community care residences. If a repeated failure to implement a plan endangers an individual, DHS may, upon notice and after hearing, revoke a license.

The bill provides that a licensee of a community care residence is required to annually undergo a physical and mental examination to determine ability to fulfill the duties of a licensee. A physician is to

complete a form and provide a statement concerning ability. Failure to provide the documents to DHS may result in the Commissioner of Human Services stopping payment, seeking recovery of payments, and not resuming payments until documents are submitted. If the licensee is unable to provide the documents, DHS is to take negative licensing action. DHS may also require further physical or mental health examinations.

The bill provides that licensees are to annually attend a continuing education program, take an annual two-week leave, and demonstrate ability to provide physical assistance that individuals in the residence may require. Licensees are also to notify placing agencies of a lapse in day program attendance that exceeds five days, except for vacations or medical reasons. The bill limits provisional licenses to operate a community care residence to a three-month, rather than the current six-month period.

The bill provides that if an individual with a developmental disability is incapable of managing his own funds, a licensee is restricted to making purchases and disbursements that reflect an individual's specific needs. Over a four-year period, the Office of Auditing in DHS is to review a random sample of one month's worth of receipts, and the case manager and the case manager's supervisor are also to review a random sample of receipts when they conduct visits. If specific needs are not reflected in the purchases or disbursements, the Commissioner of Human Services is so advised, and if there is evidence of an inappropriate purchase or disbursement of an egregious amount, the Attorney General is to be advised. A case manager who was aware of the amount and failed to document that fact or notify a supervisor, is to be reported to the Attorney General.

The bill provides that a case manager is also to provide a supervisor with a written report pertaining to care and safety of the individual following completion of the case manager's required monthly visit. Reports are also to be sent to a guardian or authorized family member, if requested, and shared with others if the individual so authorizes.

The bill provides that over a three-year period, a case manager's supervisor is to visit 100 percent of individuals residing in a community care residence who are assigned to the case manager, except that individuals who are their own guardians may decline. After three years, if the supervisor determines individuals are not at risk for abuse, neglect, or exploitation, visits may be reduced to one every four years. Visits are to be conducted in coordination with a case manager who is unaffiliated with, and unfamiliar to, the assigned case manager, and written reports are to be provided to the guardian or authorized family member. If the supervisor determines a licensee is not capable of providing care or training, the commissioner is advised so that negative licensing action may occur. A different case manager may be assigned if the individual would benefit from a change.

In addition to the above visits, the bill provides that the Office of Licensing in DHS is to annually conduct routine unannounced visits of 10 percent of community care residences Statewide.

The bill amends current law concerning reporting and investigations of allegations of abuse, neglect, and exploitation of individuals with developmental disabilities. If a case manager or supervisor fails to report, the person is guilty of a disorderly person's offense (punishable by a term of imprisonment of not more than six months, a fine of not more than \$1,000, or both), unless the incident resulted in death, which would be a fourth degree crime (punishable by a term of imprisonment of not more than 18 months, a fine of not more than \$10,000, or both). A \$350 penalty is to be imposed for each day of non-reporting, and a person who is charged with failure to report is to be temporarily assigned to other duties and terminated from employment if convicted.

With regard to investigations, the bill requires all unsubstantiated incidents to be reported. DHS is to ensure records are safeguarded from loss and to contact the Office of the Attorney General, which is to determine whether to participate in an investigation. Reports of investigations by the Special Response Unit (SRU) in DHS are to include the role of a case manager or supervisor and whether civil or criminal action should be pursued. Summaries of report conclusions are to be provided to a guardian or authorized family member, and SRU is to issue an annual report about investigations, to be available on the DHS website.

The bill provides that a provider of a day program is to submit to the Division of Developmental Disabilities (DDD) a copy of its monthly attendance report. If a provider seeks reimbursement for an individual who has not attended the program for 30 days, the provider is subject to a \$1,000 per day penalty, per individual. Providers are also to notify regional office administrators of non-attendance. DDD is to provide a guardian or authorized family member with information pertaining to attendance, and provide SRU with a sampling of monthly attendance reports for SRU to audit. Additionally, a regional office administrator is also to biannually conduct on-site audits of the reports.

The bill provides a \$500 penalty for physicians or chief executive officers of hospitals who fail to take an individual into protective custody if there is suspicion that an injury was inflicted by a licensee of a community care residence. The bill also imposes a fine of \$250 for the first and \$500 for the second offense of including an individual's Social Security number on an individualized habilitation plan (IHP). Copies of IHPs are to be provided to the licensee of a community care residence, the case manager, the supervisor, and a guardian or authorized family member if the guardian or family member was unable to attend a plan development, revision, or review.

The bill authorizes the Commissioner of Human Services to adopt rules and regulations, pursuant to the "Administrative Procedure Act,"

P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the provisions of the bill.

The bill takes effect on the 180th day after the date of enactment, but permits the Commissioner of Human Services to take anticipatory administrative action in advance of that date.

The bill is designated as “Tara’s Law,” in honor of Tara O’Leary who suffered from serious neglect while receiving care in a State-licensed home for persons with developmental disabilities, and died shortly thereafter.

As amended and reported, this bill is identical to Senate Bill No. 599 (SCS) (1R), as also reported by the committee.

**FISCAL IMPACT:**

The Office of Management and Budget in the Department of the Treasury (OMB) and the Department of Human Services (DHS) have identified certain personnel and non-personnel costs (i.e. supplies and equipment) that may be incurred by the State as a result of the bill. According to DHS, the bill will necessitate the hiring of four additional case manager supervisors and one additional investigator in the Office of Program Integrity and Accountability at a cost to the State of \$300,000 per year. According to OMB, the non-personnel costs may total \$60,000 over a three-year period.

The Office of Legislative Services (OLS) is unable to verify the personnel and non-personnel costs identified by the Executive or independently calculate the bill’s fiscal impact. It lacks sufficient information regarding how the Executive will administer certain requirements imposed by the bill, and is uncertain how the Executive will implement certain other requirements not evaluated for purposes of analysis.

In particular, the OLS notes that it is unclear if the following provisions of the bill will be absorbed by existing personnel:

- the requirement that case managers submit written reports regarding clients’ care and safety following monthly visits;
- the requirement that, in addition to supervisors, other case managers who are unaffiliated with assigned case managers also visit CCR clients every three years and contribute to written reports of visit findings; and
- other DHS responsibilities, including conducting random audits of monthly day program attendance reports and biannual, on-site day program attendance audits.

In addition, the OLS notes that it is unclear if the various penalties authorized by the bill will generate a net revenue increase or a potential cost to the State. The penalties may reduce instances of waste, fraud, abuse, neglect, or exploitation that might otherwise generate administrative, medical, or legal costs for the State, and thereby reduce State expenditures, but may also generate additional

State costs associated with legal challenges by licensees, case managers, or program providers.

Moreover, the OLS notes that it is unclear whether DHS would incur additional costs under the new requirements for licensees, such as the bill's requirements that licensees undergo annual physician examinations and annually attend continuing education programs. To the extent that DHS directly assists licensees with meeting these requirements or increases the value of licensee contracts to offset the requirements' cost, additional State costs may be generated.

#### COMMITTEE AMENDMENTS

The amendments to the bill:

- clarify the legislative findings and declarations with respect to the number of individuals with developmental disabilities residing in State community care residences;

- add a definition of "authorized family member" for purposes of who may receive certain information regarding an individual with a developmental disability;

- replace the term "non-substantiated" with "unsubstantiated";

- provide that a licensee is to immediately notify the responsible placing agency in the event of an unaccounted-for lapse in participation in or attendance at the individual's day program of more than five consecutive days;

- require that a licensee demonstrate ability to provide any required physical assistance to an individual with a developmental disability residing in a community care residence;

- require an annual, rather than biennial, physical examination of a licensee;

- provide that over a four-year period the Office of Auditing in DHS is to review a random sample of one month's worth of receipts for purchases made on behalf of each individual with a developmental disability residing in a community care residence;

- require that case managers' supervisors conduct 100 percent of visits over a three-year period;

- provide an exemption from those visits for individuals who are their own guardians and decline such visits in writing;

- require that the Office of Licensing in DHS conduct routine unannounced visits of 10 percent of community care residences Statewide each year that are to include a review of financial records; and

- clarify that attendance records respecting attendance at day programs are to be provided no later than 28 days after the end of the month in which a guardian or authorized family member requests them.

# FISCAL NOTE

[First Reprint]

## ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 2573 STATE OF NEW JERSEY 215th LEGISLATURE

DATED: OCTOBER 22, 2012

### SUMMARY

- Synopsis:** “Tara’s Law”; provides protections for individuals with developmental disabilities residing in community care residences and for investigations of abuse of individuals with developmental disabilities.
- Type of Impact:** Potential State expenditure increase
- Agencies Affected:** Department of Human Services; Office of the Attorney General in the Department of Law and Public Safety

#### Executive Estimate (Office of Management and Budget)

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	\$180,000	\$315,000	\$315,000

#### Executive Estimate (Department of Human Services)

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	\$150,000	\$300,000	\$300,000

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	Indeterminate Potential Increase – See comments below		

- The Office of Legislative Services (OLS) **concurs** with the Office of Management and Budget (OMB) that the substitute will generate increased personnel expenditures related to increased case manager supervision and expanded responsibilities for the Office of Program Integrity and Accountability.

- Estimates from the Department of Human Services (DHS) and OMB assume the same increase in personnel expenditures. In addition, OMB estimates include certain non-personnel costs, while the DHS estimates assume that these costs would be absorbed without the need for additional funding.
- The OLS is unable to determine the precise fiscal impact of the substitute due to insufficiency of information and uncertainty about how certain provisions would be implemented by the Executive.

## **BILL DESCRIPTION**

The First Reprint of the Assembly Committee Substitute for Assembly Bill No. 2573 of 2012 provides for increased oversight of community care residences (CCRs) licensed by, and contracting with, the DHS. The CCRs, formerly known as skill development homes, are private homes or apartments in which an adult or family (licensee) provides up to four individuals with developmental disabilities (clients) with care or training.

Under the substitute, DHS would be required to remove clients from CCRs and subject licensees to negative licensing actions and penalties when a client's health, safety, or well-being is threatened by non-compliance with DHS standards. The substitute requires that substantiated and unsubstantiated reports of abuse, neglect, or exploitation investigated by the Special Response Unit, or by another DHS entity, be forwarded to the Commissioner of Human Services for review. The substitute also requires DHS to: safeguard communications regarding alleged abuse, neglect, or exploitation; contact the Office of the Attorney General (OAG) in the Department of Law and Public Safety regarding whether it wishes to participate in the investigation; maintain a record of all unsubstantiated incidents; issue a written report for each investigation; and produce annual data on investigations to be made publicly available on the DHS website.

The substitute would require case managers to submit written reports to their supervisors regarding clients' care and safety following monthly visits required under section 8 of P.L.1983, c.524 (C.30:6D-20). Case managers would also be required to review each CCR's records on a monthly basis. Supervisors of case managers and other, unaffiliated case managers would be required to visit all CCR clients every three years and issue written reports about each client's care and safety, with the exception that clients who are their own guardians may decline visits.

The substitute also requires licensees to undergo annual physician examinations and annually attend continuing education programs, and provides for the oversight of licensees' purchases and disbursements on behalf of clients. The DHS Office of Auditing would review, over a four-year period, random samples of monthly receipts for purchases and disbursements made on behalf of each client and report inappropriate activities to the OAG. Case managers and supervisors would also be required to review random samples of receipts. The DHS Office of Licensing would be required to conduct annual, unannounced reviews of financial records at ten percent of the State's CCRs.

The substitute requires licensees to report lapses exceeding five consecutive days in their clients' attendance in day programs serving individuals with developmental disabilities. Providers of day programs would be required to report to DHS the monthly attendance of CCR clients who attend day programs. Providers of day programs would also be: expressly prohibited from seeking reimbursement for clients who are scheduled to attend but who have not attended a program for 30 consecutive days; penalized for seeking reimbursement for such individuals; and

required to report absences to the appropriate Division of Developmental Disabilities Regional Office. The DHS would also be required to: report monthly information about clients' attendance at day programs to parents and guardians upon request; conduct random audits of monthly attendance reports; and conduct on-site attendance audits biannually.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

In a Fiscal Note to an identical bill, the First Reprint of the Senate Committee Substitute for Senate Bill No. 599 of 2012, the OMB estimates State costs of \$180,000, \$315,000, and \$315,000, respectively, for the first, second, and third years of implementation. The DHS estimates State costs of \$150,000, \$300,000, and \$300,000, respectively, for the first, second, and third years of implementation. The OMB estimates assume the same increase in personnel expenditures as DHS estimates, but OMB estimates include additional State costs of \$30,000 in the first year and \$15,000 in the second and third years for certain non-personnel expenditures (computer equipment, supplies, etc.). According to OMB, DHS anticipates absorbing these non-personnel costs without the need for additional funding. Both OMB and DHS also anticipate \$84,000, \$169,000, and \$169,000, respectively, in federal expenditures for the first, second, and third years of implementation.

The anticipated personnel expenditures are associated with hiring four additional case manager supervisors and one additional investigator within the Office of Program Integrity and Accountability (OPIA). The additional case manager supervisors would be needed to increase the monitoring frequency of clients in CCRs. The additional investigator would have responsibilities across all OPIA activities affected by the substitute, including the Special Response Unit, Office of Licensing, and Office of Auditing. Estimates for first-year personnel costs are 50 percent of second-year and third-year costs, reflecting the six-month period between enactment and required implementation in the first year. The estimates are based on an anticipated 1,000 clients residing in CCRs in each of the three years. According to DHS, there are 700 licensed CCRs across the State.

The OMB notes that the substitute's requirement that clients be removed from unsafe CCRs may or may not generate additional costs, depending on whether alternative placements (temporary placements in group homes, etc.) are more costly than the original CCR placements. The OMB also notes that the substitute allows for punitive actions against licensees who are non-compliant with DHS standards, and that punitive actions have the potential for additional legal challenges and legal fees, which may increase DHS costs.

Under the substitute, existing case managers will be required to submit written reports to supervisors regarding clients' care and safety following monthly visits. Although OMB's cost estimates assume that current staff would absorb these increased responsibilities, OMB notes the possibility that additional support staff may be required for this purpose.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS concurs with OMB and DHS that the substitute requires increased personnel expenditures related to case manager supervisors, as supervisors would be newly required to visit CCR clients every three years and issue written reports regarding each client's care and safety,



unless clients who are their own guardians decline the visits. The OLS also concurs with OMB and DHS that the substitute requires increased OPIA personnel expenditures related to the Special Response Unit, Office of Licensing, and Office of Auditing, as these offices would receive additional investigative, documentation, and reporting responsibilities.

However, the OLS has no independent information to either verify or refute the Executive estimates and is unable to estimate the precise fiscal impact of the substitute due to uncertainty about how its provisions would be implemented by the Executive. Available information from the Executive does not indicate whether other provisions of the substitute could be fully absorbed by the anticipated staffing, including:

- the requirement that case managers submit written reports regarding clients' care and safety following monthly visits;
- the requirement that, in addition to supervisors, other case managers who are unaffiliated with assigned case managers also visit CCR clients every three years and contribute to written reports of visit findings; and
- other DHS responsibilities, including conducting random audits of monthly day program attendance reports and biannual, on-site day program attendance audits.

To the extent that these activities cannot be absorbed under anticipated personnel and other expenditures, they may generate additional State costs. The OLS also agrees with OMB's observation that additional support staff may be required to meet case managers' increased reporting responsibilities. The OLS cannot verify OMB's assertion that additional non-personnel costs of \$30,000 in the first year and \$15,000 in the second and third years could not be absorbed under existing DHS funding.

No data are available to estimate the net impact of the substitute's penalties for: licensees' failure to comply with DHS standards; case managers' or their supervisors' failure to report suspected abuse, neglect, or exploitation; or day program providers' reimbursement requests for non-attending individuals. These penalties may reduce instances of waste, fraud, abuse, neglect, or exploitation that might otherwise generate significant administrative, medical, or legal costs for DHS, thereby reducing State expenditures. However, as OMB notes, applying these penalties may also generate additional State legal costs associated with legal challenges initiated by licensees, case managers, or day program providers.

It is also unclear whether DHS would incur additional costs under the new requirements for licensees, such as the substitute's requirements that licensees undergo annual physician examinations and annually attend continuing education programs. To the extent that DHS directly assists licensees with meeting these requirements or increases the value of licensee contracts to offset the requirements' cost, additional State costs may be generated. However, it is possible that the new requirements for licensees may be implemented at minimal additional State cost within other anticipated activities. For instance, OMB indicates that, independent of the substitute, DHS is developing rules that would enforce a similar physical examination requirement for CCR licensees. If these rules are implemented, the substitute may have no separate impact on DHS costs.

The OLS notes that a fiscal impact on the OAG is possible, but cannot be determined. As the substitute does not limit OAG discretion over participating in investigations of alleged abuse, neglect, or exploitation or in investigations of inappropriate purchases or disbursements on behalf of CCR clients, it is not known whether the substitute would increase OAG participation in these investigations and result in a corresponding increase in expenditures.

*Section: Human Services*

*Analyst: Nathan E. Myers  
Associate Fiscal Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).