

Agriculture Industry Impact

The proposed amendments will have a positive impact on New Jersey agriculture by helping to maintain a viable dairy industry in the Garden State, as described in the Social and Economic Impact statements above.

Regulatory Flexibility Analysis

The proposed amendments apply to approximately 309 milk dealers and processors of whom approximately 90 percent are small businesses as defined under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and approximately 10,100 retail stores of which approximately 85 percent are small businesses. However, no recordkeeping or reporting requirements are imposed by the proposed amendments on either large or small businesses, as described in the Summary and Economic Impact statement above. The fee structure reflects differing standards for small business, in that the fees are assessed based on volume of product sold.

The proposed amendments are essential to enable the continuation of a program that protects the interest of the dairy farmers (small businesses), as well as milk dealers, retail stores, and consumers.

Housing Affordability Impact Analysis

The proposed amendments will have an insignificant impact on the affordability of housing in New Jersey, and there is an extreme unlikelihood that the proposed amendments would evoke a change in the average costs associated with housing, because the proposed amendments increase dairy licensing fees.

Smart Growth Development Impact Analysis

The proposed amendments will have an insignificant impact on smart growth, and there is an extreme unlikelihood that the proposed amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendments are to dairy licensing fees.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

SUBCHAPTER 1. DAIRY LICENSING FEES

2:56-1.1 Licensing fees of dealers who buy for shipment, sale, resale, or manufacture

Persons licensed pursuant to N.J.S.A. 4:12-2 shall, in compliance with all other provisions of N.J.S.A. 4:12-3, pay a license fee of **[\$50.00] \$100.00**. This fee will supersede the fee required by N.J.S.A. 4:12-3 [as of July 21, 2003].

2:56-1.2 Licensing fees to operate as a milk dealer or store

(a) Persons licensed pursuant to N.J.S.A. 4:12A-33 shall, in compliance with all other provisions of N.J.S.A. 4:12A-36 pay a yearly license fee, as follows:

- 1. Stores selling 500 quart equivalents or less per week: **[\$25.00] \$30.00**;
- 2. Stores selling 501 to 1,500 quart equivalents per week: **[\$50.00] \$60.00**;
- 3. Stores selling 1,501 to 3,000 quart equivalents per week: **[\$75.00] \$90.00**;
- 4. Stores selling 3,001 quart equivalents or more per week: **[\$100.00] \$120.00**.

(b) Any person applying for a license to engage in business as a store at a new location shall pay a fee of **[\$25.00] \$30.00** for the first year of operation, but any person acquiring an existing store shall pay a fee based upon the average volume of milk sold during the previous two months in accordance with the store fee schedule in (a) above.

(c) Every milk dealer shall pay a fee of **[\$0.02] \$0.025** per hundredweight of milk sold for consumption within the State excluding

dealer to dealer sales, but a milk dealer processing milk for sale to other dealers shall pay a minimum fee of **[\$1,300] \$1,625** per year and a milk dealer selling to stores and consumers shall pay a minimum fee of **[\$60.00] \$75.00** per year.

(d) A milk dealer engaged in handling milk in the State of New Jersey but selling milk only in another state or engaged only in manufacturing shall pay a license fee of **[\$300.00] \$375.00** per year.

(e) These fees shall supersede the fees required by N.J.S.A. 4:12A-36 [as of July 21, 2003].

HUMAN SERVICES

(a)

OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY

Central Registry of Offenders Against Individuals with Developmental Disabilities

Proposed Readoption with Amendments: N.J.A.C. 10:44D

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

Authorized By: Carole Johnson, Commissioner, Department of Human Services.

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

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

Proposal Number: PRN 2018-065.

Submit written comments by October 5, 2018, to:

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The agency proposal follows:

Summary

The Department of Human Services (Department) is proposing to readopt N.J.A.C. 10:44D, the Central Registry of Offenders Against Individuals with Developmental Disabilities, with amendments to comply with P.L. 2012, c. 69 (designated as Tara’s Law) and P.L. 2017, c. 238 (designated as Stephen Komminos’ Law). Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 10:44D was scheduled to expire on June 6, 2018. As the Department has filed this notice of readoption prior to the expiration date, that date is extended 180 days to December 3, 2018, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The Central Registry of Offenders Against Individuals with Developmental Disabilities (Central Registry) creates a list of caretakers who have committed acts of abuse, neglect, or exploitation and, after being afforded due process rights, have been prohibited from employment working with individuals with developmental disabilities. P.L. 2012, c. 69 and P.L. 2017, c. 238 make changes to the scope and enforcement of the Central Registry necessitating the amendments. A summary of the rules proposed for readoption with amendments follows:

N.J.A.C. 10:44D-1.1 sets forth the purpose and scope of the chapter.

N.J.A.C. 10:44D-1.2 sets forth definitions of the words and terms used within the rules proposed for readoption. The proposed amendments add definitions for: “authorized family member,” “community-based residential program or residential program,” “day program,” “program,” “substantiated,” “unfounded,” and “unsubstantiated.”

N.J.A.C. 10:44D-1.3 sets forth the general policy of the chapter.

N.J.A.C. 10:44D-2.1 establishes the protocols by which allegations of abuse, neglect, or exploitation of individuals with developmental disabilities should be reported. The proposed amendments identify and add case managers and their supervisors as mandatory reporters at

subsection (a) and set penalties for their failure to report at proposed new subsection (h). Proposed new subsection (i) states that a case manager or case manager's supervisor charged with failure to report an act of abuse, neglect, or exploitation shall be temporarily reassigned. Proposed new subsection (j) reflects the statutory authorization for physicians to take into protective custody certain individuals, within the scope of this chapter, whom they suspect of being victims of abuse or neglect. Proposed new subsection (k) reflects the statutory requirement that the physicians under subsection (j) report these actions to the Department, and proposed new subsection (l) sets forth the potential statutory penalty for failure to comply with these provisions.

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

N.J.A.C. 10:44D-3.1 assigns investigative units in the community and in State-run facilities. The designation of the Special Response Unit is changed to the Office of Investigations to reflect the Department's reorganization of investigation units within the Office of Program Integrity and Accountability into a single unit, the Office of Investigations. Proposed new subsection (b) removes the reference to the incident response team that formerly investigated incidents in developmental centers. Proposed new subsection (b) also includes the rules concerning the participation of a guardian or in an investigative interview with an individual. The proposed amendment at subsection (e) authorizes the guardian of an individual to request assistance from law enforcement officials. The proposed amendment at subsection (f) requires that information obtained by a guardian, or during the course of an interview or law enforcement inquiry, remain for the private use of the guardian or law enforcement official. Proposed new subsection (h) requires the safeguarding of evidential communications and the contacting of the Office of the Attorney General with the opportunity to participate in the investigation of an incident. Proposed new subsection (i) requires the Office of Investigations' report be completed within 30 days of the completion of the investigation and to add an assessment of a case manager's or a supervisor's involvement in allegations and to recommend for further civil or criminal action, if warranted. Proposed new subsection (j) mandates the retention of reports of unsubstantiated incidents. Proposed new subsection (k) requires that reports of unsubstantiated incidents be forwarded to the Commissioner or the Commissioner's designee.

N.J.A.C. 10:44D-3.2(a) and (b) requires the Office of Investigations to make findings of substantiated or unsubstantiated, based upon the preponderance of the evidence standard.

N.J.A.C. 10:44D-3.3 requires the Office of Investigations to notify the alleged perpetrator and, as applicable, the alleged perpetrator's employer of a summary of the findings of its investigation. This section is proposed for amendment to include an authorized family member in the notification, as applicable. Proposed amendments at newly codified subsection (a) detail the contents of the summary of findings to be included in the notifications.

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

N.J.A.C. 10:44D-4.1 delineates the elements of acts of abuse, neglect, or exploitation that would necessitate placement on the Central Registry, as well as the manner in which placement would be recommended.

N.J.A.C. 10:44D-5.1 sets forth how determinations are made for placement on the Central Registry, the notification of intent to place on the Central Registry, the due process and appeal rights that must be included in the notification, and the consequences to the person who is placed on the Central Registry. Proposed amendments that set a time requirement to review recommended cases are added as paragraphs (a)1 and 2 and the final sentence of existing subsection (a) is codified as paragraph (a)3. Proposed new paragraph (b)1 requires the guardian or authorized family member be notified of a caregiver's inclusion on the Central Registry and of action taken by the Department to remediate a condition that may have contributed to the occurrence of abuse, neglect,

or exploitation. An amendment to subsection (c) is proposed to change the timeframe to place offenders on the Central Registry from 30 days to 45. The amended timeframe is based upon a reasoned allowance for the vagaries of the mail delivery, the return of misaddressed mail to the Department, and recognition of the need to make a good faith attempt to obtain the best and most recent address possible.

N.J.A.C. 10:44D-6.1 relates to the pre-hearing Departmental conference offered to persons who are to be listed on the Central Registry.

N.J.A.C. 10:44D-6.2 sets forth the process of appealing placement on the Central Registry pursuant to the Administrative Procedure Act, N.J.A.C. 52:14B-1 et seq.

N.J.A.C. 10:44D-6.3 sets forth the procedure for removing one's name from the Central Registry after having been placed thereon.

N.J.A.C. 10:44D-7.1 lists the procedures employers, agencies, programs, contractors, and employers of record would use to check that applicants, current employees, and volunteers are not on the Central Registry.

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

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

Social Impact

The rules proposed for readoption with amendments provide the standards for complying with N.J.S.A. 30:6D-73 et seq., creating the Central Registry of Offenders Against Individuals with Developmental Disabilities (Act). It is in the public interest for the State to provide for the protection of individuals with developmental disabilities by identifying those caregivers who have wrongfully caused them injury. The Central Registry is to safeguard individuals with developmental disabilities by preventing those caregivers who abuse, neglect, or exploit them from continued employment in the field. The Act established the standards necessary for this enhancement of the public's safety and the rules do not exceed, nor do they create a lesser standard than that described by the Legislature.

Economic Impact

The rules proposed for readoption with amendments are expected to result in a minimal net increase in costs. The Department currently investigates incidents of abuse, neglect, and exploitation of its clients and employers perform background checks on their new hires. The statutorily mandated investigations, classifications, and Central Registry maintenance and checking procedures currently exist within an easy-to-use Internet interface between the Department and employers. Proposed amendments to the Central Registry will enhance these e-services, and while they will have a minimal economic effect, they will increase service recipient safety.

Federal Standards Statement

The rules proposed for readoption with amendments are not subject to any Federal requirements or standards; therefore, a Federal standards analysis is not required.

Jobs Impact

The Department anticipates no impact, either positive or negative, on job creation due to the proposed readoption of the rules with amendments. While the time required to handle a single new hire or case of abuse, neglect, or exploitation may, on average, rise minimally, the total number of instances is expected to remain the same, resulting in no major net impact on the screening of new hires or the investigation of reported incidents.

Agriculture Industry Impact

The rules proposed for readoption with amendments should have no impact on the agriculture industry.

Regulatory Flexibility Analysis

Some of the programs, facilities, and employers of record that receive State funding to provide services to individuals with developmental

disabilities may be considered small businesses pursuant to N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The rules proposed for readoption with amendments impose only minimal recordkeeping and reporting requirements and do not include any additional compliance requirements on small businesses. The current requirements that are already in place will remain in effect. The costs of compliance are as discussed in the Economic Impact above. The procedures for checking the Central Registry are accomplished through a single contact with a website that generates the documents that need to be retained for inspection. The document generated by this action will be required to be maintained in the employer’s employee personnel file. Additionally, employees and volunteers are required to report instances of neglect, abuse, and exploitation they reasonably believe have occurred involving individuals with developmental disabilities. All of the requirements placed on small businesses are the same as those required of larger organizations and have been mandated by authorized legislation. The rules proposed for readoption with amendments are designed to maintain public safety and are in accordance with the Regulatory Flexibility Act; no lesser or differing standards can be applied to small businesses.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have no impact on the affordability of housing in New Jersey, and it is unlikely that the rules would impact the average costs associated with housing. The rules proposed for readoption with amendments pertain to placement of individuals on the Central Registry of Offenders Against Individuals with Developmental Disabilities.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will have no impact on the number of housing units or the availability of affordable housing in this State and will have no effect on smart growth development in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules pertain to placement of individuals on the Central Registry of Offenders Against Individuals with Developmental Disabilities.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:44D.

Full text of the proposed amendments and new rule follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

10:44D-1.2 Definitions

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

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

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

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

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

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

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

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

SUBCHAPTER 2. REPORTING REQUIREMENTS

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

[(a) Allegations of abuse, neglect or exploitation may be reported by using the on-call reporting system maintained by the Division of Developmental Disabilities or through the Unusual Incident Reporting Management System maintained by the Office of Program Integrity and Accountability.]

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

(b)-(g) (No change.)

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

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

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

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

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

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

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

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

10:44D-2.2 Reporting allegations

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

(f) Upon receipt of a report pursuant to the Central Registry, the Office of Program Integrity and Accountability in coordination with the Division of Developmental Disabilities (Division), shall take immediate actions as shall be necessary to ensure the safety of the individual with a developmental disability. The units within the Office of Program Integrity and Accountability and the Division shall develop protocols for, and are authorized to request, appropriate assistance from local and State law enforcement officials or contact Adult Protective Services to provide assistance in accordance with the provisions of P.L. 1993, c. 249 (N.J.S.A. 52:27D-406 et seq.).

SUBCHAPTER 3. INVESTIGATIONS

10:44D-3.1 Responsibilities of the [Special Response Unit] Office of Investigations

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

[(b) The Incident Response Teams shall investigate incidents occurring in State-operated Developmental Centers.]

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

1. The guardian or family member, as appropriate, may submit information pertinent to the investigation for consideration by the investigators.

2. The guardian may attend the investigative interview of the individual and may terminate the interview, unless attendance or termination would impede the investigation.

3. Scheduling the participation of the guardian shall not impede the timely arranging of an interview. The guardian shall sign a confidentiality agreement limiting disclosure of information concerning other individuals obtained during the interview and agree to protect the confidentiality of any information obtained concerning other individuals. The interview shall not be recorded.

4. At the request of the investigator during the interview, the guardian may aid in the interpretation or recognition of the individual's speech or speech patterns. The guardian may present documentation prior to the interview of previous relevant incidents. The guardian may identify the familiar names of persons mentioned by the individual during the interview. At the request of the investigator during the interview, the guardian may describe the meanings of gestures or symbols used by non-verbal individuals.

5. The guardian shall allow the interview to be conducted by the investigator. The investigator shall determine the scope of the investigation and the questions to be asked of the individual. To ensure the integrity of the investigation, the guardian shall not prompt the individual or suggest answers to the individual. The guardian may explain terms and identifiers to the investigator after the individual has used the terms or identifiers.

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

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

(c)-(d) (No change.)

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

(f) No information received in potential Central Registry investigations shall be considered as a public or government record within the meaning of P.L. 1963, c. 73 (N.J.S.A. 47:1A-1 et seq.) or P.L. 2001, c. 404 (N.J.S.A. 47:1A-5 et seq.). Information shared with a guardian in connection with attendance at an investigative interview

pursuant to (b) above, or under circumstances described in (e) above is for the private use of the guardian or law enforcement unit, remaining covered by Federal and State privacy and medical information laws.

(g) (No change.)

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

1. Ensure that any communication concerning the alleged abuse, neglect, or exploitation of an individual with a developmental disability between a caregiver, case manager of the caregiver, the case manager's supervisor, or other staff at the Division of Developmental Disabilities is identified, safeguarded from loss or destruction, and maintained in a secure location; and

2. Contact the Office of the Attorney General, which shall determine whether to participate in the investigation.

(i) The Office of Investigations shall issue a written report within 30 days of the completion of the investigation that includes the conclusions of the unit, the rationale for the conclusion, and a detailed summary of any communication secured pursuant to the investigation. The report shall also include an assessment of the role of any case manager of a caregiver or the case manager's supervisor, if applicable, in the allegation of abuse, neglect, or exploitation and a recommendation about whether any civil or criminal action should be brought against the case manager or supervisor. The report shall be made part of the record for review in any civil or criminal proceeding that may ensue, pursuant to the requirements of N.J.A.C. 10:41-3.2.

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

(k) The Office of Investigations, the Department, or other investigating entity shall also forward to the Commissioner, or the Commissioner's designee, all unsubstantiated incidents of abuse, neglect, or exploitation of an individual with a developmental disability, as set forth in P.L. 2012, c. 69 (designated as Tara's Law).

10:44D-3.3 Notification of findings

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

1. The written summary of the investigation shall be provided to the guardian of the individual with a developmental disability who is the subject of the alleged abuse, neglect, or exploitation; however, the actual records and reports of an investigation, subject to confidentiality rules, shall also be provided to a guardian or other person who is responsible for the welfare of the individual with a developmental disability if the information is needed in connection with the provision of care, treatment, assessment, evaluation, or supervision to the individual; and the provision of information is in the best interests of the individual with a developmental disability, as determined by the Division of Developmental Disabilities, as set forth in P.L. 2017, c. 238 (designated as Stephen Komminos' Law).

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

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

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

(3) Whether the incident is an allegation of abuse, neglect, or exploitation;

(4) The incident number;

(5) A summary of the allegation of abuse, neglect, or exploitation;

(6) A finding that the incident is substantiated or unsubstantiated;

(7) The rationale for the finding and, if the incident is substantiated, a description of the action or inaction that precipitated the finding;

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

(9) Whether remedial action was taken.

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

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

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

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

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

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

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

SUBCHAPTER 5. DEPARTMENT REVIEW

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

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

1. As soon as possible, and no later than 14 business days after receipt of the completed investigation report of the incident of abuse, neglect, or exploitation, the Commissioner, or the Commissioner's designee, shall review the incident.

2. The offending caregiver of a substantiated incident shall be included on the Central Registry as expeditiously as possible.

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

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

1. The Commissioner, or the Commissioner's designee, shall also notify the guardian of the individual with a developmental disability who was the subject of the abuse, neglect, or exploitation of the

caregiver's inclusion on the Central Registry, as set forth in P.L. 2017, c. 238 (designated as Stephen Komninos' Law). The Commissioner, or the Commissioner's designee, shall designate staff to notify the individual of any action taken by the Department to remediate a condition that may have contributed to the occurrence of the abuse, neglect, or exploitation of the individual. If the individual with a developmental disability has no guardian, notification pursuant to this subsection shall be given to an authorized family member who requests such notification, unless the individual has expressly prohibited the family member from receiving such notification.

(c) [After 30] **Forty-five** calendar days [of receipt of] **after having mailed** notification of the Commissioner's intent to place a person on the Central Registry **to the substantiated perpetrator's best, last known address**, that person shall be placed on the Central Registry, unless that person properly requests an informal hearing or a hearing before the Office of Administrative Law, as described in N.J.A.C. 10:44D-6.1 and 6.2.

(d)-(e) (No change.)

SUBCHAPTER 7. REGISTRY CHECKS

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

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

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

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

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

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS

NEW JERSEY STATE BOARD OF RESPIRATORY CARE

Respiratory Care Practitioner Licensing Act Rules

Proposed Amendments: N.J.A.C. 13:44F-3.1, 3.3, 4.1, 8.4, 10.1, 10.2, 10.3, and 10.4

Proposed Repeals and New Rules: N.J.A.C. 13:44F-7

Authorized By: New Jersey State Board of Respiratory Care, Dorcas O'Neal, Executive Director.

Authority: N.J.S.A. 45:1-15 and 45:14E-4; and P.L. 2013, c. 182.

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

Proposal Number: PRN 2018-066.

Submit written comments by October 5, 2018, to:

Dorcas O'Neal, Executive Director
New Jersey State Board of Respiratory Care
124 Halsey Street
PO Box 45031
Newark, New Jersey 07101
or electronically at <http://www.njconsumeraffairs.gov/Proposals/Pages/default.aspx>.

The agency proposal follows:

Summary

The Board of Respiratory Care (Board) is proposing repeals and new rules to implement P.L. 2013, c. 182, which became effective on July 1, 2014. The law modifies the reinstatement and reactivation requirements for professional or occupational licensees. The Board is also proposing amendments to correct terminology, update rules, and codify current standards of practice and licensure requirements.

The Board proposes a technical amendment at N.J.A.C. 13:44F-3.1(a)9 to remove the hyphen in "cardiopulmonary." The Board proposes new N.J.A.C. 13:44F-3.1(a)12iii to include apnea testing and monitoring in the list of testing techniques that may be employed by a respiratory care practitioner. This proposed amendment codifies the Board's position that respiratory care practitioners may conduct apnea testing and monitoring.

N.J.A.C. 13:44F-3.3 concerns the delegation of respiratory care services by licensed practitioners to unlicensed persons. The Board proposes to amend N.J.A.C. 13:44F-3.3(f) to extend to 72 hours, the period of time for the follow-up visit to occur after delivery of nebulizer compressors, concentrators, and medical gas cylinders. The Board is further amending N.J.A.C. 13:44F-3.3(f) to provide that if the nebulizer compressor, concentrator, or medical gas cylinder is used in conjunction with an artificial airway, including transtracheal oxygen catheters, the follow-up visit will continue to be within 24 hours of delivery.

The Board proposes new N.J.A.C. 13:44F-4.1(c) to codify the existing requirement that an applicant for initial licensure must complete a Certification and Authorization Form for a Criminal History Background Check. N.J.S.A. 45:1-29 mandates that, prior to issuing an initial license, a health care board must first determine that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police, which may disqualify the applicant from being licensed or otherwise authorized to practice as a health care professional.

To implement P.L. 2013, c. 182, which modifies the reinstatement and reactivation requirements for professional or occupational licensees, the Board proposes to repeal existing N.J.A.C. 13:44F-7, which relates to license renewal, reactivation of an inactive license, and reinstatement of a license that has been administratively suspended, and replace this subchapter with new rules.

Proposed new N.J.A.C. 13:44F-7.1 relates to license renewal. Proposed subsection (a) details the Board's responsibility for providing licensees with renewal notices. Proposed subsection (b) requires licensees to renew their license prior to license expiration. Proposed subsection (c) permits licensees to place their license on inactive status. Proposed subsection (d) establishes a 30-day grace period after the license has expired, during which time a licensee may still renew the license and continue to practice. Proposed subsection (e) mandates that any license not renewed by the end of the grace period will be administratively suspended. Proposed subsection (f) sets forth the consequences for continued practice after an individual's license has been administratively suspended.

Proposed new N.J.A.C. 13:44F-7.2 relates to reactivation of an inactive license. Proposed subsection (a) lists the documentation that a licensee who has placed his or her license on inactive status must provide to the Board when applying for reactivation of his or her license. Proposed subsection (b) sets forth the criteria that the Board must consider when reviewing an application to determine practice deficiencies and grants the Board discretion to require any applicant found to have practice deficiencies to successfully complete an examination, additional education, training, supervision, or other requirements as a condition of reactivation.