

August 1, 2014

**SENATE BILL NO. 2249**

**ADVANCE COPY**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 2249, with my recommendations for reconsideration.

In 2009, the State began "Return Home New Jersey" to facilitate the careful, safe, and appropriate return of more than 120 individuals residing in out-of-State developmental facilities. These individuals were placed in out-of-State facilities at a time when New Jersey did not have the community-based infrastructure to accommodate their care. Today, after years of reform and restructuring, New Jersey has changed the culture of support for our most needy. My Administration has continued that commitment, investing historic amounts of funding into home and community-based living programs and services for individuals with intellectual and developmental disabilities. This fiscal year New Jersey is dedicating \$100 million in new State and federal funds to support the expansion of residential-based services. Additionally, in the past two fiscal years, my Administration has opened more than 1,000 new living opportunities in community residences, with more on the way.

Moreover, with the help of the Legislature, we have strengthened our oversight of community residences by enacting several critically important measures, including the "Central Registry of Offenders Against Individuals with Developmental Disabilities," and "Tara's Law." Through the Registry, we have established a centralized database to identify caregivers who have harmed, neglected, or exploited an individual with a developmental disability. Under "Tara's Law," which provides added protections and monitoring for individuals residing in

community care residences, we have further strengthened our oversight of care provided to our most vulnerable residents.

I am aware that moving a loved one from a familiar setting can often be a difficult process. At the same time, federal standards governing the treatment, funding, and placement of persons with developmental disabilities have changed. As a result, it is necessary to modernize New Jersey's guidelines to ensure both the best standards of care, and compliance with applicable federal guidelines and standards for reimbursement. I agree with the sponsors' intent to provide a pathway for individuals to remain in their current placement, fully funded by State and federal programs.

Specifically, my recommendations today will establish predictable guidelines for public funded care at an out-of-state facility. These new guidelines will clearly and fairly set forth when an individual and their guardian will maintain the option to continue fully-funded care at an out-of-state location, or when it is appropriate for the Department to help facilitate transition to publicly funded community care in-state. To make certain that these individuals continue to receive the highest quality care no matter their location, my recommendations also require out-of-State facilities to report regularly to the Department.

The care we provide to individuals with developmental disabilities is of utmost importance. We must ensure that individuals receive the services and supports to best accommodate their unique needs in the least restrictive and most appropriate setting, and we must do so in a manner that is both sustainable and fiscally responsible.

Accordingly, I herewith return Senate Bill No. 2249 and recommend that it be amended as follows:

Page 2, Section 1, Line 7:

Delete "impose a"

Page 2, Section 1, Lines 8-14:

Delete in their entirety and insert "prepare a"

Page 2, Section 1, Line 15:

After "plan" insert "concerning the transfer of individuals with developmental disabilities from out-of-State placements to new placements in this State"

Page 2, Section 1, Line 15:

Delete "posts" and insert "post"

Page 2, Section 1, Line 20:

Delete "care and services" and insert "all necessary services and supports"

Page 2, Section 1, Lines 21-22:

Delete "that are substantially similar to the care and services which the individual received in an out-of-State placement" and insert "as identified by the individual's service plan pursuant to sections 10-12 of P.L. 1977, c.82 (C.30:6D-10-12)"

Page 2, Section 2, Line 29:

Delete "Returning" and insert "Return"

Page 2, Section 2, Line 32:

After "if" insert "all the following conditions are met"

Page 2, Section 2, Line 34:

After "guardian" insert ", as applicable"

Page 2, Section 2, Line 35:

Delete "has resided" and insert "resides"

Page 2, Section 2, Lines 35-36:

Delete "for 10 or more years; or" and insert "funded by the Division of Developmental Disabilities as of the effective date of this act;"

Page 2, Section 2, Lines 37-39:

Delete in their entirety and insert

"c. The individual continues to be served by the same out-of-State provider in the same location as of the effective date of this act;

d. the individual or guardian, as applicable, remains in compliance with the provisions of N.J.A.C. 10:46D-1.1 et seq.;

e. the primary residence of the individual's legal guardian is located in New Jersey, if applicable;

f. the individual is enrolled in New Jersey Medicaid within 90 days of the effective date of this Act; and

g. the out-of-State provider transmits written reports of life safety oversight as well as copies of all relevant incident reports to the Division of Developmental Disabilities."

Page 2, Line 40:

Insert new sections 3-6 to read as follows:

"3. The Department of Human Services shall enroll any eligible individual with a developmental disability residing in an out-of-State placement who meets the criteria established in section 2 of P.L. 1997, c. 107 (C. 17:27) (pending before the Legislature as this bill) into either section 1115 or section 1915(c) Federal Medicaid waiver under the Social Security Act, as applicable and permissible. If an individual with a developmental disability residing in an out-of-State placement cannot be enrolled in either waiver, as appropriate, the Department of Human Services shall fund only the State share of otherwise federally reimbursable services if the individual elects to remain out-of-State following the Department locating an appropriate residential placement in this State.

4. The provisions of section 2 of P.L. 1997, c. 107 (C. 17:27) (pending before the Legislature as this bill) shall not apply if:

a. the United States Department of Justice, Centers for Medicare and Medicaid Services, or a Federally-designated state protection and advocacy organization has deemed the out-of-State placement facility unsafe or the individual to be at risk for health or safety violations; or

b. the Bureau of the Office of Guardianship Services is the

legal guardian of the individual.

5. Nothing in this act shall be construed as limiting the Department's ability to determine reasonable funding for services provided by out-of-State providers, as appropriate.

6. Nothing in this act shall prohibit an individual with a developmental disability residing in an out-of-State placement from remaining in an out-of-State placement if no State funds are allocated to the individual through the Department of Human Services for any purpose."

Page 2, Section 3, Line 41:

Delete "3." and insert "7."

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Paul B. Matey

Deputy Chief Counsel to the Governor