

## NJ Human Trafficking Prevention, Protection and Treatment Act

05/30/18

### **I. THE LAW: NJSA 2C:13-12 Training courses on handling, response procedures, investigation, prosecution of human trafficking cases**

As part of the NJ Human Trafficking Law, the Department of Health (the “Department”), in consultation with the Commission on Human Trafficking (the “Commission”), requires “facilities” licensed by the Department to provide training on the handling of and response procedures to suspected human trafficking activities for employees, including licensed professionals. The NJ Human Trafficking Law provides that the Department shall define by regulation which employees are required, as a condition of their employment, to attend the training course. Verifiable completion of the training course by required employees is now a condition of issuance, maintenance, or renewal of any license, permit, certificate, or approval required, permitted to be granted, or issued to licensed health care facilities. The training course must be reviewed at least every two years and modified by the Department from time to time as need may require.

The Department’s regulations, which are summarized below, contain a broad definition of employees who must receive training which includes all “workers” (regardless of the compensation arrangement, contractual status, or privilege status that may exist between the professional and the facility) who have direct contact and/or interaction with facility patients and/or visitors of facility patients, regardless of whether the contact or interaction is clinical or non-clinical in nature.

### **II. THE REGULATIONS: NJAC 8:43E-14.1 et seq.**

#### **A. 8:43E-14.2 Facility personnel to receive training (effective September 18, 2017)**

A facility shall require workers who have direct contact and/or interaction with facility patients and/or visitors of facility patients to receive training, regardless of whether the contact or interaction is clinical or non-clinical in nature.

#### **Workers Include:**

1. Health care professionals who hold professional credentials issued by the State of New Jersey, regardless of the compensation arrangement, contractual status, or privilege status that may exist between the professional and the facility, such as:
  - i. Health care professionals whose professional practice is regulated pursuant to Title 45 of NJ law;
  - ii. Licensed radiologic technologists;
  - iii. Emergency medical technicians and paramedics;
  - iv. Licensed nursing home administrators;
  - v. Certified nurse aides;
  - vi. Certified assisted living administrators; and

- vii. Certified personal care assistants and medication aides; and
- 2. Paid and volunteer facility workers.

#### **Alternative Training:**

As an alternative to a facility requiring workers to receive training from the facility, a facility can confirm that a worker already received that training from another entity, if the other entity is either:

- 1. A facility; or
- 2. A contractor or vendor that:
  - i. Is under a contractual duty of honesty, good faith, and fair dealing to the facility; and
  - ii. Maintains contemporaneous training records consistent with N.J.A.C. 8:43E-14.4

*As a result, the requirements will be satisfied if a physician or other worker receives training at a hospital or other facility provided the alternative training is documented as provided in the regulations.*

#### **B. 8:43E-14.3 Required Training**

##### **Timing of Training:**

A facility shall ensure that workers receive training:

- 1. By March 18, 2018, with respect to existing facility workers; and
- 2. Within six months of the first day of employment at the facility, with respect to persons who become workers at the facility after September 18, 2017.

##### **Type of Training:**

A facility shall require workers to receive training by means of one of the following:

- 1. The online webinar entitled “Recognizing and Responding to Human Trafficking in a Healthcare Context,” published February 2016 by the National Human Trafficking Resource Center (NHTRC), as amended and supplemented, which is accessible:
  - i. Directly from the NHTRC [website](#); and
  - ii. Through the website of the [New Jersey Hospital Association](#); or
- 2. The online or in-person training entitled, “Stop. Observe. Ask. Respond to Human Trafficking (SOAR): A Training for Health Care and Social Service Providers,” published August 2016, by the United States Department of Health and Human Services, as amended and supplemented; Registration for the SOAR training is available through the website of the Office on Trafficking in Persons of the Administration for Children and Families of the United States Department of Health and Human Services, at <http://www.acf.hhs.gov/endtrafficking/initiatives/soar>;
  - i. Participants who successfully complete SOAR training may apply for continuing education and continuing medical education credits from the SOAR training provider.

#### **C. 8:43E-14.5 Policies and Procedures**

A facility shall establish and implement written policies and procedures that address, at minimum, how the facility will:

- 1. Identify both clinical and nonclinical workers who, by virtue of their positions, have, or are likely to have, direct contact and/or interaction with facility patients and/or the visitors of facility patients, and are to receive training;

i. The Department encourages facilities to construe broadly the scope of workers who should receive training to facilitate the greatest possible opportunity for workers to develop awareness of, observe, and respond to, indicators of potential human trafficking;

1. Ensure that workers receive training; and
2. Maintain training records (see below).

#### **D. 8:43E-14.4 Recordkeeping**

A facility shall establish, maintain, and make available upon request of the Department, a record that identifies:

1. The name and position of each of the facility's workers required to receive training;
2. The date by which each worker is to receive training; and
3. The date on which the worker actually receives the training.

i. A facility shall note that the date on which a worker receives training in each worker's personnel record.

### **III. THE PENALTIES: NJAC 8:43E-3.4 (a) (21) Civil Monetary Penalties**

Under the NJ Human Trafficking Law, verifiable completion of the training course by the required workers is now a condition of issuance, maintenance, or renewal of any license, permit, certificate, or approval required, permitted to be granted, or issued to licensed health care facilities. In addition, new regulations provide that the Department may assess a penalty against a licensed facility for violation of the licensure rules as follows:

1. For violations of N.J.A.C. 8:43E-14, governing human trafficking handling and response training, \$1,000 per violation, which may be assessed for each day noncompliance is found.
2. Except for violations deemed to be immediate and serious threats, the Department may decrease the penalty assessed, based on the compliance history of the facility; the number, frequency and/or severity of violations by the facility; the measures taken by the facility to mitigate the effects of the current violation, or to prevent future violations; the deterrent effect of the penalty; and/or other specific circumstances of the facility or the violation.

#### **Attorney**

- Grace D. Mack