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HEALTH

HEALTH SYSTEMS BRANCH

DIVISION OF CERTIFICATE OF NEED AND LICENSING

OFFICE OF CERTIFICATE OF NEED AND HEALTHCARE FACILITY LICENSURE

General Licensure Procedures and Standards Applicable to All Licensed Facilities

Human Trafficking Handling and Response Training

Civil Monetary Penalties

Proposed Amendment: N.J.A.C. 8:43E-3.4

Proposed New Rules: N.J.A.C. 8:43E-14

Authorized By: Cathleen D. Bennett, Commissioner, Department of Health (with the approval of the Health Care Administration Board, and in consultation with the Commission on Human Trafficking).

Authority: N.J.S.A. 26:2H-1 et seq., particularly 26:2H-5; and the Human Trafficking Prevention, Protection, and Treatment Act, P.L. 2013, c. 51, particularly at § 19 (N.J.S.A. 2C:13-12).

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

Proposal Number: PRN 2016-185.

Submit written comments by January 6, 2017, electronically to http://www.nj.gov/health/legal/ecomments.shtml or by regular mail postmarked before January 6, 2017, to:

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The agency proposal follows:

Summary

On May 6, 2013, Governor Christie approved the Human Trafficking Prevention, Protection, and Treatment Act, P.L. 2013, c. 51 (Act), which created the New Jersey Commission on Human Trafficking (Commission) at § 1 (N.J.S.A. 52:17B-237), in the Division of Criminal Justice in the Department of Law and Public Safety. The Act at § 19 (N.J.S.A. 2C:13-12), directs the Department of Health (Department) to either develop, or approve for use, a "one-time training course on the handling and response procedures of suspected human trafficking activities for employees of every licensed health care facility." N.J.S.A. 2C:13-12.c(1). The Act requires the Department to establish standards identifying the health care facility (facility) employees who "are required, as a condition of their employment," to receive the training. *Id.* The Act makes facility compliance with employee training a condition of facility license issuance, maintenance, and renewal. *Id.*

The Act obliges the Department to ensure that the existing employees of licensed facilities receive the training within one year of the Act's enactment and that new facility employees receive the training within six months of commencement of employment. *Id.*

at c(2). The Act obliges the Department to make available all training materials. *Id.* at c(3).

To implement these mandates, the Department is proposing, within the General Licensure Procedures and Standards Applicable to All Licensed Facilities, new rules at N.J.A.C. 8:43E-14, establishing standards for facility employee training in human trafficking handling and response procedures, and an amendment at N.J.A.C. 8:43E-3.4, establishing civil monetary penalties for violations of the proposed new rules.

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

Proposed new N.J.A.C. 8:43E-14.1 would establish the purpose of the subchapter, which is to implement §19 of the Act.

Proposed new N.J.A.C. 8:43E-14.2 would identify the facility workers who are to receive training. Proposed new N.J.A.C. 8:43E-14.2(a) would require facilities to ensure that workers who have direct contact and/or interaction with facility patients and/or visitors of facility patients receive the training specified at proposed new N.J.A.C. 8:43E-14.3, regardless of whether or not the contact or interaction is clinical or non-clinical in nature. Proposed new N.J.A.C. 8:43E-14.2(b) would indicate that health care professionals who hold State professional credentials are included among those who are to receive training, regardless of their compensation, contractual, or privileging relationships with the facilities at which they provide services, if the professionals have the requisite contact and/or interaction described in proposed new N.J.A.C. 8:43E-14.2(a). Proposed new N.J.A.C. 8:43E-14.2(b)1i through vi would provide a

nonexclusive list of the types of health care professionals that hold State credentials who require training if they have the requisite contact and/or interaction.

Proposed new N.J.A.C. 8:43E-14.3 would establish the required training. Proposed new N.J.A.C. 8:43E-14.3(a) would establish the dates by which existing and future facility workers are to receive required training. Proposed new N.J.A.C. 8:43E-14.3(b) would identify the required training and the means of access.

The Department, in consultation with the Commission and with the approval of the Health Care Administration Board, has determined to approve for use, in accordance with N.J.S.A. 2C:13-12.c(1), an online, web-based training offered by the National Human Trafficking Resource Center (NHTRC) called "Modern Day Slavery in America: Recognizing and Responding to Human Trafficking in a Healthcare Context" (February 2016), which is incorporated into the section by reference, as amended and supplemented.

The NHTRC website describes the NHTRC as "a national anti-trafficking hotline and resource center serving victims and survivors of human trafficking and the anti-trafficking community in the United States" that has been operated since 2007 "by Polaris, a non-profit, non-governmental organization. The NHTRC is not a law enforcement or immigration agency. Funding is provided by the Department of Health and Human Services (HHS) and other private donors and supporters." https://traffickingresourcecenter.org. The stated mission of the NHTRC is to "provide trafficking victims and survivors with access to critical support and services to get help and stay safe, and to equip the anti-trafficking community with tools to effectively combat human trafficking. The NHTRC offers confidential round-the-clock access to a

safe space to report tips, seek services, and ask for help. The NHTRC also provides innovative trainings, technical assistance, and capacity building support. The NHTRC serves all victims and survivors of sex and labor trafficking." *Id.* The NHTRC provides services "in over 200 languages." *Id.*

The NHTRC describes "Modern Day Slavery in America: Recognizing and Responding to Human Trafficking in a Healthcare Context" as an "online training for healthcare professionals on how to identify human trafficking victims within a healthcare context." https://traffickingresourcecenter.org/audience/service-providers. This training is available without charge and requires no special equipment or software other than a computer with speakers and internet access. The running time of the presentation is approximately 30 minutes.

As a more in-depth alternative to the NHTRC training described above that has the advantage of offering healthcare professionals continuing education and continuing medical education credits, the Department, in consultation with the Commission and with the approval of the Health Care Administration Board, has determined to approve for use, in accordance with N.J.S.A. 2C:13-12.c(1), the training known as "Stop. Observe. Ask. Respond to Human Trafficking (SOAR): A Training for Health Care and Social Service Providers," which educates health care and social services professionals on how to identify, treat, and respond appropriately to potential victims of human trafficking who present in health care or social services settings. See http://www.acf.hhs.gov/endtrafficking/initiatives/soar. The Administration for Children and Families (ACF) and the Office on Women's Health, both of which are Divisions within the United States Department of Health and Human Services (US DHHS),

originally developed the SOAR training in 2014, in furtherance of the Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013-2017, President's Interagency Task Force to Monitor and Combat Trafficking In Persons (January 2014), available at http://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf. The SOAR training first became available nationwide in August 2016. The Postgraduate Institute for Medicine and the US DHSS jointly provide the training, as facilitated by subject matter experts from the 2016 SOAR Technical Working Group, http://www.acf.hhs.gov/endtrafficking/soar-technical-working-group. The SOAR training is offered by means of both a traditional in-person classroom setting and a live presentation in a scheduled online virtual classroom. The Office on Trafficking in Persons of the ACF administers registration for the SOAR training online through its website, without cost. The training is a three-hour course for which continuing education and continuing medical education credits are available through the provider to participants who complete the training.

Proposed new N.J.A.C. 8:43E-14.4 would establish recordkeeping standards. Proposed new N.J.A.C. 8:43E-14.4(a) would identify the training records that facilities are to maintain and make available upon request to the Department. Proposed new N.J.A.C. 8:43E-14.4(b) would require facilities to memorialize workers' receipt of training in their individual facility personnel records.

Proposed new N.J.A.C. 8:43E-14.5 would require facilities to establish policies and procedures addressing the means by which they will identify workers, pursuant to proposed new N.J.A.C. 8:43E-14.2, who are to receive training pursuant to proposed

new N.J.A.C. 8:43E-14.3, to ensure that personnel receive that training, and, pursuant to N.J.A.C. 8:43E-14.4, to establish and maintain training records.

The Department proposes new N.J.A.C. 8:43E-3.4(a)21, to add civil monetary penalties applicable to health care facilities subject to the chapter for violations thereof, specifically, to establish a civil monetary penalty of $1,000 for violations of proposed new Subchapter 14, to be assessable for each day noncompliance is found.

Social Impact

The International Labour Organization (ILO) estimated in 2012 that 18.7 million people worldwide are being exploited for forced labor in the private economy by individuals or enterprises, and that, "of these, 4.5 million ... are victims of forced sexual exploitation, and 14.2 million ... are victims of forced labour exploitation, in economic activities such as agriculture, construction, domestic work and manufacturing." ILO, *ILO Global Estimate of Forced Labour: Results and methodology,* 13-14 (Geneva, 2012), available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf. "Women and girls represent the greater share of total forced labour — [55 percent], as compared to [45 percent], men and boys. [Children] aged 17 years and below represent 26 [percent] of all forced labour victims (or 5.5 million children)." *Id.* The ILO estimates that in developed economies and the European Union, 1.3 million people are being exploited, and of these, 300,000 people are being subjected to forced sexual exploitation and 1 million people to forced labor exploitation. ILO, Profits and Poverty: The economics of forced labour*,* 7-17 (Geneva, 2014) available at http://www.ilo.org/global/topics/forced-labour/publications/profits-of-forced-labour-2014/lang--en/index.htm.

New Jersey has been called a "hub for human trafficking," because of its accessibility to Interstate 95, its central location between the northern portion of the East Coast and the metropolitan regions of Philadelphia, Baltimore, and Washington, D.C., its proximity to major tourist destinations like Atlantic City and New York City, and because it is a major national and international transportation and shipping corridor. Jeannie O'Sullivan, Human trafficking: New Jersey is a hub, BURLINGTON COUNTY TIMES (September 28, 2014), available at http://www.burlingtoncountytimes.com/tabs/hidden-victims/human-trafficking-new-jersey-is-a-hub/article_db104e23-3165-5739-a46b-ee729d466845.html. New Jersey has the "potential to be one of the country's major entry, transit, and destination states for trafficking." Brochure, New Jersey Human Trafficking Task Force (Task Force), Division of Criminal Justice, New Jersey Department of Law and Public Safety, available at http://www.nj.gov/oag/dcj/humantrafficking/downloads/NJ-Human-Trafficking-Brochure.pdf.

"Human trafficking is a violent crime that requires strong rule of law and extensive social safety nets to establish a foundation to protect victims and bring traffickers to justice. However, human trafficking is also a public health issue that impacts individuals, families, and entire communities across generations." Katherine Chon, Director of the Office on Trafficking in Persons within the Administration of Children and Families of the United States Department of Health and Human Services, The Power of Framing Human Trafficking as a Public Health Issue (January 11, 2016), available at http://www.acf.hhs.gov/programs/endtrafficking/resource/publichealthlens.

One study of the impact of sex trafficking on health, conducted by means of surveys and interviews of 107 female sex trafficking victims and survivors from 12 cities in the United States, found that they "suffered tremendously, virtually without exception" and that the "toll of constant commercial sexual exploitation and physical abuse on the victims led to a range of [symptoms, including physical health symptoms.] Survivors were overwhelmingly traumatized not only physically, but also mentally … Not surprisingly, survivors also reported significant numbers of reproductive health problems while they were being trafficked [including sexually transmitted diseases and infections, other gynecological symptoms, and reproductive health issues.] The prevalence of forced abortions is an especially disturbing trend in sex trafficking … Nearly all of the survivors reported being the victim of at least one form of physical violence…. Almost all reported verbal abuse … and being deprived of … food [and] sleep. [Some] victims were subjected to other forms of degradation, such as … being forcibly recorded for pornographic purposes … Many survivors were dependent on drugs or alcohol while they were trafficked either because the substances were forced on them as a control mechanism by their traffickers or because substance use was a means of coping with the immense abuse they suffered." Laura J. Lederer and Christopher A. Wetzel, The Health Consequences of Sex Trafficking and Their Implications for Identifying Victims in Healthcare Facilities, 23 ANNALS HEALTH L. 61, 68-73 (2014), available at http://www.annalsofhealthlaw.com. See also Marion Callahan, A Mount Holly teen's 36 hours in the world of sex trafficking, BURLINGTON COUNTY TIMES (September 28, 2014), available at http://www.burlingtoncountytimes.com/tabs/hidden-victims/a-mount-holly-teen-s-hours-in-the-world-of/article_3610f844-14b8-5a33-8bb7-c1c47628a78a.html

(survivor from Mount Holly, New Jersey, describes experience of having been trafficked for sex in Atlantic City, New Jersey, at age 14, and her subsequent suicide attempts, mental trauma, and hospitalizations).

Labor trafficking (that is, forced labor other than sex trafficking) likewise has public health implications. Also referred to as forced labor, involuntary servitude, debt bondage, and modern-day slavery, labor trafficking can be found in many types of domestic and non-domestic situations and industries. Colleen Owens et al., Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*,* Urban Institute and Northeastern University (October 21, 2014) (Owens), available at http://www.urban.org/research/publication/understanding-organization-operation-and-victimization-process-labor-trafficking-united-states. Domestic involuntary servitude can include housework, childcare, and caregiving for ill or elderly persons. *Id.* Labor trafficking in service industries occurs in restaurants, hotels, bars and nightclubs, janitorial companies, and the beauty industry, such as hair and nail salons. *Id.* Labor trafficking occurs in the construction, agriculture, mining, and landscaping industries, and in factory work and textile manufacturing (sweatshops), door-to-door sales, carnival and fair work, and panhandling. *Id.,* and see, for example, Jeannie O'Sullivan, Marion Callahan, and Crissa Shoemaker DeBree, Labor trafficking enslaves the poor, vulnerable, BURLINGTON COUNTY TIMES (September 28, 2014), available at http://www.burlingtoncountytimes.com/tabs/hidden-victims/labor-trafficking-enslaves-the-poor-vulnerable/article_2d569602-62d9-5a1c-b91b-12b0a5ef3bd6.html (describing

prosecuted cases of labor trafficking in New Jersey in hair braiding enterprises and janitorial services).

Victims of labor trafficking, like victims of sex trafficking, suffer negative health impacts. "They may suffer permanent and/or chronic medical conditions requiring intensive and lifelong treatment. For children, these medical conditions can severely affect their physical development. One example of this is children exposed to chemicals harming their respiratory system and hindering proper lung development. In addition, victims of labor trafficking may also have experienced sexual assault during their trafficking experience, putting them at risk for an increased number of associated health and mental health issues." Erin Williamson, M.P.A., M.S.W., Nicole M. Dutch, B.A., and Heather J. Clawson, Ph.D., National Symposium on the Health Needs of Human Trafficking Victims: Post Symposium Brief (2008), Office of the Assistant Secretary for Planning and Evaluation, United States Department of Health and Human Services, Washington, DC, available at https://aspe.hhs.gov/sites/default/files/pdf/75841/ib.pdf. Victims of labor trafficking routinely experience "sexual abuse and rape; … psychological manipulation and coercion; torture; attempted murder; and violence and threats against themselves and their family members." Owens, *supra* (also noting various conditions routinely found among persons who were trafficked for labor, including untreated broken bones, stab wounds, rape, sexual abuse, bed bugs, untreated rashes, severe malnourishment, dental issues, physical and psychological torture of the most severe forms, including brainwashing, and chronic health conditions (such as asthma, diabetes, and heart disease) before the trafficking that were worsened by their lack of access to medical care during the labor trafficking victimization). "As a

result of their victimization, labor trafficking survivors suffered from posttraumatic stress disorder, anxiety, depression, psychosis, suicidal ideation and attempts, and fear and difficulty forming trusting relationships." *Id.*

Not surprisingly, human trafficking can be fatal to its victims. "Migrant workers who leave home communities for economic opportunity are vulnerable to conditions of forced slavery … that impair their health, typically with minimal recourse to medical assistance … Those who are trafficked for labor suffer a terrifying range of physical and mental health problems. [One] group of labor trafficking victims … suffered from malaria, renal failure, gastritis, and malnutrition. Victims of forced labor are routinely beaten and assaulted. Their injuries are rarely treated, so infection is a common risk. They suffer depression and post-traumatic stress disorder, which elevate the risk of suicide. [Another group] who were trafficked on fishing boats … were forced to remain at sea for years, denied pay, and fed only fish and rice. They suffered vitamin deficiencies, and then, starvation. One by one, they began to die. So the traffickers tossed them off the boat, into the sea. Death is the ultimate adverse health impact of trafficking." Ambassador Mark P. Lagon, Director of the Office to Monitor and Combat Trafficking in Persons, Keynote Address at the National Symposium on the Health Needs of Human Trafficking Victims, Department of Health and Human Services, Washington, DC (September 22, 2008), available at http://2001-2009.state.gov/g/tip/rls/rm/2008/110369.htm.

New Jersey is "committed to combatting the crime of human trafficking." See http://www.nj.gov/oag/dcj/humantrafficking. The proposed new rules at N.J.A.C. 8:43E-14 and amendment at N.J.A.C. 8:43E-3.4 would further the Commission's duty,

pursuant to the Act at § 1 (N.J.S.A. 52:17B-237), to establish "mechanisms to promote public awareness of human trafficking … and … training courses and other educational material for use by" entities subject to the Act at § 19 (N.J.S.A. 2C:13-12), "to undergo training on the handling of and response procedures for suspected human trafficking activities."

Healthcare facility personnel are uniquely positioned to have opportunities for identification, and intervention on behalf, of trafficking victims. "Outside of law enforcement, healthcare settings are among the few places where the lives of human trafficking victims may intersect with the rest of society's, if only for brief periods." Susan Trossman, RN, The costly business of human trafficking*,* AMER. NURSE TODAY, (December 2008), available at http://www.americannursetoday.com/the-costly-business-of-human-trafficking. One study noted that "human trafficking victims in the US interact with health care personnel, including providers of primary care, sexual and reproductive health care, dental care, and traditional or alternative remedies. Trafficking victims may even be found working within health care facilities. [Certain] patient behaviors and accompanying trafficker behaviors can alert health care professionals to a potential human trafficking case." Susan B. Baldwin, *et al.,* Identification of Human Trafficking Victims in Health Care Settings*,* 13 HEALTH AND HUMAN RIGHTS 36-49, 45 (July 2011) available at http://publichealth.lacounty.gov/ha/present/Staff_researchpapers/Susie_Baldwin_Articles/BaldwinHHR2011.pdf. In a study of 107 sex trafficking survivors, 88 percent had at least one encounter with a health care provider while they were being trafficked, and 63.3 percent were seen in an emergency department. Lederer, *supra,* at 77.

However, “studies have demonstrated that medical care providers are woefully unprepared to identify trafficking victims.” *Id.* at 78-79. “In this country, nurses and other clinicians who encounter a person who’s being trafficked probably won’t realize it.” Donna Sabella, PhD, RN, The Role of the Nurse in Combating Human Trafficking, 111 AM. J. NURS. 28-37, 34 (February 2011). “Capturing these lifesaving opportunities requires proactive measures aimed at educational awareness and training.” Emergency Nurses Association, Position Statement: Human Trafficking Patient Awareness in the Emergency Setting (2015), available at https://www.ena.org/SiteCollectionDocuments/Position%20Statements/HumanTrafficking.pdf.

A number of organizations representing healthcare providers have issued statements recognizing human trafficking as a public health issue and acknowledging the importance of building awareness of human trafficking among health care providers. Among these are:

1. The Emergency Nurses Association, see Position Statement, *supra*;

2. The American Medical Association (AMA), see AMA, Physicians Response to Victims of Human Trafficking [Policy Number] H-65.966 (2015) available at https://www.ama-assn.org/ssl3/ecomm/PolicyFinderForm.pl?site=www.ama-assn.org&uri=%2Fresources%2Fhtml%2FPolicyFinder%2Fpolicyfiles%2FHnE%2FH-65.966.HTM (“Physicians should be aware of the definition of human trafficking and of resources available to help them identify and address the needs of victims. [The] AMA will help encourage the education of physicians about human trafficking and how to

report cases of suspected human trafficking to appropriate authorities to provide a conduit to resources to address the victim's medical, legal and social needs");

3. The American Association of Nurse Practitioners (AANP), see Statement of Kenneth P. Miller, PhD, RN, CFNP, FAAN, FAANP [as President of the AANP] to the United States House of Representatives Committee on Energy and Commerce Subcommittee on Health On "Examining H.R. __, the Trafficking Awareness Training for Health Care Act of 2014" (September 11, 2014) ("We know today that practicing [nurse practitioners] are confronted with patients whom they suspect are victims of human trafficking, and we understand that … we must lead and work with other provider groups to develop best practices and procedures that will allow all providers to attain the skills needed to ensure that these victims are identified, treated and assisted.") available at http://docs.house.gov/meetings/IF/IF14/20140911/102647/HHRG-113-IF14-Wstate-MillerK-20140911.pdf;

4. The American College of Emergency Physicians (ACEP), see ACEP, Memorandum, Action on Resolutions, Action on Resolution 25: Human Trafficking (January 14, 2016) ("RESOLVED, That [the American College of Emergency Physicians] and its chapters work together to coordinate with other agencies and participate with existing initiatives … and to coordinate with EMS agencies, hospitals, and other members of the emergency medicine team to provide education on awareness and resources available to help reduce and eliminate human trafficking") available at http://www.acep.org/About-Us/Action-on-2014-Resolutions;

5. The American College of Obstetricians and Gynecologists (ACOG), see ACOG, Committee Opinion, Number 507, Human Trafficking (September 2011) ("As

health care providers to women and girls, the members of the American College of Obstetricians and Gynecologists should be aware of this problem and strive to recognize and assist their patients who are victims or who have been victims of human trafficking.") available at http://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Human-Trafficking;

6. The American Medical Women's Association (AMWA), see AMWA, Position Paper on the Sex Trafficking of Women and Girls in the United States (May 2014) ("[Victims] of sex trafficking require access to coordinated medical care and other support services in a safe and confidential environment in order to meet their physical and social needs, start appropriate treatment, and begin the process of reintegration into society. Physicians and other healthcare providers urgently need additional training to effectively identify and treat survivors of sex trafficking. The doctor-patient visit may be the only contact or opportunity to provide compassionate care and offer appropriate services. Further, as advocates, physicians and other healthcare providers can become a very powerful voice aligned with others in the community calling for the end to this most pressing and egregious of human rights violations.") available at https://www.amwa-doc.org/wp-content/uploads/2013/12/AMWA-Position-Paper-on-Human-Sex-Trafficking_May-20141.pdf;

7. The American Nurses Association (ANA), see ANA, Revised Position Statement: The Nurse's Role in Ethics and Human Rights: Protecting and Promoting Individual Worth, Dignity, and Human Rights in Practice Settings (June 14, 2010) ("Nurses can and should engage in open discussion and public debate to seek resolution in situations where violations of human rights are evident. Human trafficking

is an often hidden example of violating human rights. It occurs when vulnerable persons are exploited in sex industries or labor markets. Nurses are in a perfect position to intervene and advocate for these victims when they encounter them in clinics, emergency rooms or community health centers.") available at http://www.nursingworld.org/MainMenuCategories/EthicsStandards/Ethics-Position-Statements/-Nursess-Role-in-Ethics-and-Human-Rights.pdf;

8. The American Psychoanalytic Association (APsaA), see APsaA, Position Statement on Human Trafficking (January 15, 2015) ("APsaA urges local, national and international program and policy officials to draw on the expertise of trained mental health professionals in developing comprehensive treatment that includes long term, relationship-based psychotherapy for victims of human trafficking … APsaA joins the efforts of the UN Initiative to Fight Human Trafficking, the American Psychological Association's task force on Trafficking of Women and Girls as well as the International Psychoanalytic Association's efforts on this issue.") available at http://www.apsa.org/sites/default/files/Position%20Statement%20on%20Human%20Trafficking.pdf;

9. The American Psychological Association (APA), *APA* Resolution on Emancipating and Assisting Victims of Human Trafficking (2009) available at http://www.apa.org/about/policy/chapter-12b.aspx#human%20trafficking%20 (the APA "commits itself to promoting public awareness of the presence of human trafficking consistent with its mission");

10. The American Public Health Association (APHA), see APHA, Policy Statement Number 201516: Expanding and Coordinating Human Trafficking-Related

Public Health Research, Education, and Prevention (November 3, 2015) ("All health professional schools, societies, and certifying bodies should incorporate the topic of human trafficking (including labor and sex trafficking) in their curricula, integrating it into existing training on intimate partner, domestic, and sexual violence; child and elder abuse; mandated reporting; and trauma-informed approaches to care … All health societies and certifying bodies should have policies in place indicating the necessary involvement of health care professionals in the identification and referral of trafficked persons encountered in clinical settings.");

11. The Association of Women's Health, Obstetric and Neonatal Nurses (AWHONN), see AWHONN, Position Statement, Human Trafficking (March 2016) ("[The AWHONN] supports improved education and awareness for nurses regarding human trafficking [and] research and policy initiatives to improve care and support for victims of human trafficking. Nurses should take leadership roles in these initiatives. Improvements in screening, identification and treatment will ultimately lead to safer, healthier women.") available at https://www.awhonn.org/?page=PositionStatements and at J. OBSTET. GYNECOL. NEONATAL NURS., Vol. 45(3) 458–460 (May–June 2016), http://www.jognn.org/article/S0884-2175(16)30149-6/abstract; and

12. The National Association of Social Workers (NASW), see Elizabeth Pathy Salett, LICSW, NASW Practice Update on Human Rights and International Affairs: Human Trafficking and Modern-Day Slavery (November 2006) ("Human trafficking is a devastating human rights violation and a human tragedy, but social workers can help [to] identify victims of slavery and trafficking and assist them to get help") available at http://www.socialworkers.org/diversity/affirmative_action/humanTraffic1206.pdf.

The proposed new rule at N.J.A.C. 8:43E-14.5 “encourages facilities to construe broadly the scope of persons 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.” Some facilities may determine to include in training activities non-clinical facility personnel who may rarely interact with patients, but who routinely interact with patients’ visitors, such as security personnel or receptionists and other front desk staff who greet visitors and issue visitor passes. Building awareness of the behaviors of trafficking victims and their traffickers through training may enable non-clinical facility personnel to work cooperatively with clinical personnel to assist in the identification of persons being trafficked.

For example, one study of human trafficking survivors found that in “most encounters that survivors described, the traffickers or their agents accompanied patients to health care facilities. In all of these cases, survivors reported that their traffickers completed paperwork for them and communicated with clinic staff and health care providers on their behalf. The physical proximity of the traffickers perpetuated their coercion and control of the victims, preventing them from communicating with health care personnel directly.” Baldwin, *supra,* at 40-42. For these reasons, best practices for healthcare personnel to identify trafficking victims usually recommend interviewing suspected victims separately from those who accompany them. See, for example, Baldwin, *supra,* at 45 (“[The] presence of an overbearing or controlling companion should trigger concern. To allow patients the opportunity to speak for themselves, clinic or hospital staff should attempt to interview and assess all patients privately. [Many survivors] had limited English proficiency while they were enslaved, and … reported that

medical personnel communicated only with their trafficker, who served as their interpreter."). Moreover, some traffickers may routinely use the same facilities to obtain services for all of the people they are trafficking and pay for those services. Baldwin, *supra,* at 40-44.

Trained non-clinical workers could be instrumental in helping to maintain separation during potential victim identification interviews in a manner that does not alert potential traffickers to victim identification efforts. Non-clinical staff, such as receptionists, security guards, and accounting personnel, who are made sensitive to these matters through training, may observe patterns and know when and how to respond if a potential trafficker repeatedly presents for multiple patients as a companion, translator, or medical bill payer, regardless of whether these personnel interact with the patients themselves. Multilingual non-clinical staff who may share a common language with trafficked persons of limited English proficiency may be able to converse and develop a rapport with trafficked persons that facilitates trust and frank communication based on their language or cultural commonalities. Thus, broad construction of the types of employees who are to receive training would enhance opportunities for identification of and response to potential trafficking situations.

Economic Impact

The proposed new rules at N.J.A.C. 8:43E-14 would require facilities that elect to satisfy the training requirements by offering staff the online training, "Recognizing and Responding to Human Trafficking in a Healthcare Context," to incur costs associated with compensating workers for the time they spend to view the online course (approximately 30 minutes), administration, and recordkeeping. Facilities subject to the

proposed new rules generally maintain internet access and have the information technology required to view the training, and would not incur additional costs to provide the web-based training. The proposed new rules would not require facilities to retain the services of professionals to comply.

The proposed new rules at N.J.A.C. 8:43E-14 would require facilities that elect to satisfy the training requirements by offering staff the SOAR training to incur similar costs, although the time to participate in the course is longer (three hours). If staff attend the in-person training, transportation expenses may also be incurred. Health care professionals who are subject to credentialing obligations that require them to obtain continuing education and continuing medical education credits could realize a financial benefit by participating in the SOAR training, because they could obtain credits with no tuition expense.

The proposed new rules, to the extent they may result in the identification of, successful intervention for, and referral to available services of, victims of human trafficking, would have an immediate economic impact on these persons by helping to remove them from uncompensated labor situations, that is, slavery.

Worldwide, forced labor in the private economy is estimated to generate $150 billion in illegal profits per year, $46.9 billion of which is generated in developed nations, with an average annual profit to traffickers of $34,800 per victim. *Profits and poverty, supra,* at 13-14.

Human trafficking generally results in many negative economic impacts, from which New Jersey presumably is not exempt. “In addition to the victims, the main financial losers from forced labour are the countries where forced labour originates or

where forced labour occurs. The victims usually lose much of their earnings due to wage retention, debt repayments and underpayment of wages. They work under strenuous conditions but receive little or no pay. The countries where they work lose revenues from non-payment of taxes due to undeclared incomes or the illegal nature of the jobs concerned. For the countries of origin, remittances are severely affected by the very low wages of forced labourers. For developing countries, this cut in remittances tends to result in a heavy reduction in investments and a lack of improvement in income inequality." Profits and poverty*, supra,* at 12. Thus, to the extent the proposed new rules may help to eliminate human trafficking in New Jersey, the State and its people, and people who have been trafficked to New Jersey from other countries, will realize an economic benefit. This benefit is not readily susceptible to quantification due to the inherently covert nature of human trafficking activity.

The proposed amendment at N.J.A.C. 8:43E-3.4(a)21 would subject facilities subject to the chapter to civil monetary penalties for violations of the proposed new rules at N.J.A.C. 8:43E-14 of $1,000 per violation per day.

Federal Standards Statement

The Department proposes new rules at N.J.A.C. 8:43E-14 and an amendment at 8:43E-3.4(a)21 pursuant to the Human Trafficking Prevention, Protection, and Treatment Act. There are no Federal standards applicable to the proposed new rules and amendment. Therefore, no Federal standards analysis is required.

Jobs Impact

The Department does not anticipate that the proposed new rules and amendment would result in an increase or decrease in the number of jobs available in

the State. However, human trafficking by its nature generally undermines the availability of *bona fide* employment opportunities when required work in legitimate industries is performed by slaves. Therefore, to the extent the proposed new rules may help to eliminate human trafficking in New Jersey, the State and its people may realize an increase in *bona fide* employment opportunities in legitimate industries.

Agriculture Industry Impact

The proposed new rules and amendment may have an impact on the agriculture industry to the extent they may result in facility workers identifying and responding to cases of persons being trafficked in the agriculture and fishing industries of the State.

Regulatory Flexibility Analysis

The proposed new rules and amendment would impose reporting, recordkeeping, and compliance requirements on facilities. Some facilities are "small businesses" as the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., defines that term. The Summary, above, describes the reporting, recordkeeping, and compliance requirements that the proposed new rules and amendment would impose on facilities. The Economic Impact, above, describes the potential costs associated with compliance. As stated therein, the proposed new rules and amendment would not require facilities to retain the services of professionals to comply.

The proposed new rules and amendment would establish the minimum standards necessary for the Department to comply with its obligation to implement the Act through rulemaking. The proposed new rules would minimize the burden on facilities that are small businesses by enabling them to scale the burden of compliance therewith in the identification of workers whose patient and/or visitor interactions warrant

training, through facilities' establishment of policies and procedures pursuant to proposed new N.J.A.C. 8:43E-14.5.

Housing Affordability Impact Analysis

The proposed new rules and amendment would have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that they would evoke a change in the average costs associated with housing because the proposed new rules and amendment would impose a training requirement applicable to facility workers and would have no bearing on housing.

Smart Growth Development Impact Analysis

The proposed new rules and amendment would have an insignificant impact on smart growth and there is an extreme unlikelihood that they 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 new rules and amendment would impose a training requirement applicable to facility workers and would have no bearing on development activities.

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

SUBCHAPTER 3. ENFORCEMENT REMEDIES

8:43E-3.4 Civil monetary penalties

(a) Pursuant to N.J.S.A. 26:2H-13 and 14, the Commissioner may assess a penalty for violation of licensure rules in accordance with the following standards:

1. – 18. (No change.)

19. For violations of N.J.A.C. 8:43E-12 resulting in either actual harm or immediate and serious risk of harm, to individuals who are directly employed by a covered health care facility, $2,500 per violation, which may be assessed for each day noncompliance is found; [and]

20. For other violations of N.J.A.C. 8:43E-12 not resulting in harm as set forth in (a)19 above, $1,000 per violation, which may be assessed for each day noncompliance is found[.]**; and**

21. 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.

(b) – (c) (No change.)

SUBCHAPTER 14. HUMAN TRAFFICKING HANDLING AND RESPONSE TRAINING

8:43E-14.1 Purpose

This subchapter implements the Human Trafficking Prevention, Protection, and Treatment Act, P.L. 2013, c. 51 (approved May 6, 2013), particularly § 19, codified at N.J.S.A. 2C:13-12.

8:43E-14.2 Facility personnel to receive training

(a) A facility shall require workers who have direct contact and/or interaction with facility patients and/or visitors of facility patients to receive training in accordance with N.J.A.C. 8:43E-14.3, regardless of whether the contact or interaction is clinical or non-clinical in nature.

(b) As used in (a) above, provided they have the specified contact and/or interaction, "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 the Revised Statutes;

ii. Radiologic technologists who hold licensure pursuant to N.J.S.A. 26:2D-25 et seq.;

iii. Emergency medical technicians and paramedics who hold certification pursuant to N.J.S.A. 26:2K-1 et seq.;

iv. Nursing home administrators who hold licensure pursuant to N.J.S.A. 30:11-13;

v. Nurse aides who hold certification pursuant to N.J.A.C. 8:39;

vi. Assisted living administrators who hold certification pursuant to N.J.A.C. 8:36 or licensure pursuant to N.J.A.C. 8:34; and

vii. Personal care assistants and medication aides who hold certification pursuant to N.J.A.C. 8:36; and

2. Paid and volunteer facility workers.

(c) Facilities that employ workers whose employment requires them to visit other facilities and have contact and/or interaction with the patients of, and/or the visitors of the patients of, other facilities, such as hospital workers who transport,

or collect laboratory specimens from, nursing home patients, shall arrange training pursuant to N.J.A.C. 8:43E-14.3 for these workers, and the facilities that these workers visit need not arrange these workers' training pursuant to N.J.A.C. 8:43E-14.3.

8:43E-14.3 Required training

(a) A facility shall ensure that workers to whom N.J.A.C. 8:43E-14.2 requires the facility to provide training pursuant to (b) below receive that training:

1. By (six months from the effective date of this subchapter), 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 (the effective date of this subchapter).

(b) Pursuant to N.J.S.A. 2C:13-12.c, 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), which is incorporated herein by reference, as amended and supplemented, which is accessible:

i. Directly from the NHTRC website at https://traffickingresourcecenter.org/audience/service-providers; and

ii. Through the website of the New Jersey Hospital Association at http://www.njha.com/education; 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, which is incorporated herein by reference, as amended and supplemented;

i. 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.

ii. Participants who successfully complete SOAR training may apply for continuing education and continuing medical education credits from the SOAR training provider.

8:43E-14.4 Recordkeeping; training confirmation statement

(a) 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 whom N.J.A.C. 8:43E-14.2 requires to receive training;

2. The date by which each worker is to receive training pursuant to N.J.A.C. 8:43E-14.3(a); and

3. The date on which the worker actually receives the training.

(b) A facility shall note the date on which a worker receives training pursuant to N.J.A.C. 8:43E-14.3 in each worker's personnel record.

8:43E-14.5 Policies and procedures

(a) 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 pursuant to N.J.A.C. 8:43E-14.2;

i. The Department encourages facilities to construe broadly the scope of workers who should receive training pursuant to N.J.A.C. 8:43E-14.2 to facilitate the greatest possible opportunity for workers to develop awareness of, observe, and respond to, indicators of potential human trafficking;

2. Ensure that workers whom the facility identifies pursuant to N.J.A.C. 8:43E-14.2 receive training in accordance with N.J.A.C. 8:43E-14.3; and

3. Maintain training records pursuant to N.J.A.C. 8:43E-14.4.