



**LEGISLATIVE AND PUBLIC POLICY COMMITTEE
MEETING NOTICE/AGENDA**

Posted at www.scdd.ca.gov

DATE: Thursday, March 15, 2012
TIME: 10:30 a.m. – 3:30 p.m.
LOCATION: State Council on Developmental Disabilities
1507 21st Street, Suite 210
Sacramento, CA 95811
(916) 322-8481

Pursuant to Government Code Sections 11123.1 and 11125(f), individuals with disabilities who require accessible alternative formats of the agenda and related meeting materials and/or auxiliary aids/services to participate in the meeting, should contact Michael Brett at (916) 322-8481 or michael.brett@scdd.ca.gov by 5:00 pm, March 9, 2012.

**Denotes action item.*

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1. CALL TO ORDER	R. Ceragioli
2. ESTABLISHMENT OF QUORUM	R. Ceragioli
3. INTRODUCTIONS AND ANNOUNCEMENTS	R. Ceragioli
4. *APPROVAL OF 2/16/12 MINUTES	R. Ceragioli 3

5. PUBLIC COMMENTS

*This item is for members of the public only to provide comments and/or present information to the Committee on matters **not** on the agenda. Each person will be afforded up to three minutes to speak. Written requests, if any, will be considered first. The Committee will provide a public comment period, not to exceed a total of seven minutes, for public comment prior to action on each agenda item.*

6. LEGISLATIVE ISSUES

A. State Legislation

*i.	Assembly Bill 2338- Employment First	C. Arroyo	10
*ii.	Assembly Bill 1657 – Spinal Cord Injury	M. Corral	25
*iii.	Senate Bill 1123- Parking	K. Alipourfard	28
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B. Budget Update

i.	2012-13 Governor’s Budget	C. Risley	88
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C. SCDD Legislative Update

i.	Key Bills	C. Arroyo	
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7. AREA BOARD LEGISLATIVE UPDATES

R. Smith

8. ADJOURNMENT

R. Ceragioli

For a additional information regarding this agenda, please contact Michael Brett,
1507 21st Street, Suite 210, Sacramento, CA 95811, (916) 322-8481

DRAFT
Legislative & Public Policy (LPPC) Committee Minutes
Thursday, February 16, 2012

Members Present

Ray Ceragioli, Chairperson
Jennifer Allen
Evelyn Abouhassan
Rocio Smith
Leroy Shipp
Connie Lapin
Lisa Cooley
Margaret Shipp

Members Absent

Dan Boomer
David Mulvaney
Bill Moore
Marilyn Barraza

Others Present

Robert Phillips
Karim Alipourfard
Christofer Arroyo
Carol Risley
Melissa Corral

1. CALL TO ORDER

Ray Ceragioli, Chairperson, called the meeting to order at 10:40 AM.

2. ESTABLISHMENT OF A QUORUM

A quorum was established.

3. INTRODUCTIONS AND ANNOUNCEMENTS

Members introduced themselves.

4. APPROVAL OF 1/19/12 MINUTES

It was moved, seconded (Lapin/L. Shipp), and carried to approve the Committee minutes as written. (1 abstention)

5. PUBLIC COMMENTS

No comments were provided.

6. LEGISLATIVE ISSUES

Assembly Bill 1554: Regional Center Web Postings

It was moved, seconded (L. Shipp/Lapin) and carried to support AB 1554 if amended to remove requirement to post vendor rates because of potential lack of reliability and workload impact could take away from direct services to consumers and families. The Committee agrees that this information should be public, but with the current budget reductions and without a cost/benefit analysis of this provision, the value cannot be evaluated at this time. (1 opposed, 2 abstentions).

Assembly Bill 171- Pervasive Developmental Disorder and Autism

It was moved, seconded (M. Shipp/Lapin) and carried to support AB 171 with a technical amendment that uses the definition of autism as it appears in the most recent version of the DSM.

Assembly Bill 1553- Medi-Cal Managed Care

It was moved, seconded (L. Shipp/Cooley) to support AB 1553, however a preferred approach would be to allow individuals to opt-in to managed care rather than being passively enrolled and having to "opt-out". (1 abstention)

Assembly Bill 1525- Elder and Dependent Abuse

It was moved, seconded (Lapin/M. Shipp) and carried to support AB 1525 with an amendment that requires money transmitters be provided information/training on their reporting responsibilities under this bill. (1 abstention)

Assembly Bill 1244- Self Determination

It was moved, seconded (Lapin/M. Shipp) to continue to support AB 1244 with the proposed amendment to allow an individual or family to select either using historical expenditures or a modeled costs to establish the level of their budget.

Employment First Legislation

Chris Arroyo reported that while we do not have a bill number at this time, Assemblymember Wes Chesbro has agreed to reintroduce the Council's legislation to place an employment first policy in California statute. The bill will include the amendments that were to be made to AB 254 had the bill passed the Appropriations Committee. Consensus was to continue to sponsor the new bill.

HR 2295- Workforce Investment Act of 2011

It was moved, seconded (M. Shipp/Lapin) and carried to watch HR 2295. (1 absent)

7. 2012-13 GOVERNOR'S BUDGET POSITIONS

Staff reviewed the handouts related to the budget that became available since the packet mailing. The committee then reviewed the agenda item detail sheet and adopted the following positions for recommendation to the Council:

It was moved, seconded (Smith/L. Shipp) and carried to recommend the Council adopt the following general principles and specifically related to the Department of Developmental Services' budget:

General Principles

- ▶ The Council recognizes the magnitude of California's fiscal crisis and that all Californians will be impacted by balancing the budget, thus individuals with developmental disabilities will likely share in this correction, but should not be expected to assume an inequitable portion of the burden.
- ▶ While budget solutions may define and refine the level of entitlement to services and supports in the developmental services system, they must not eliminate the entitlement to access and receive services and supports from the system by eligible individuals and families.
- ▶ Budget solutions must not result in people with developmental disabilities having their health and safety negatively impacted,

jeopardize their inclusion in the community, force them to become less productive, and/or reduce their ability to direct their own lives and make choices.

- ▶ Budget solutions must not violate the basic tenet of the developmental services system as a civil/social rights model rather than medical model, nor reduce the quality of available services.
- ▶ Budget solutions must examine the entire state system to seek administrative efficiencies and economies of scale, not just impact direct services to Californians.
- ▶ Budget solutions must not violate the basic underpinnings of existing federal and state statutes and court decisions that serve to assure the provision of quality services and supports and protect basic human rights.
- ▶ Budget solutions must seek and maximize all available income.

Department of Developmental Services

- ▶ Budget solutions must be shared by the entire developmental services system, not solely applied to community services, and more specifically purchase of services and supports for individuals with developmental disabilities.
- ▶ Budget solutions must protect continuity and avoid developing gaps in the lives and needed services and supports of people with developmental disabilities.
- ▶ Budget solutions must not undermine or violate the individual program planning process and outcomes.
- ▶ Budget solutions must not increase co-payments or application of income criteria to access services and supports beyond what exist currently.
- ▶ Oppose the \$200 million trigger reduction.
- ▶ Revisit this item after DDS issues its proposed plan to absorb the \$200 million trigger reduction.

- ▶ Support budget, however place a moratorium on admissions to developmental centers and allow regional centers necessary flexibility to provide community services and supports for deflections from developmental center placement.

It was moved, seconded (Lapin/M. Shipp) and carried to recommend the Council adopt the following with respect to the Department of Social Services' budget:

- ▶ Oppose the elimination of "domestic and related services" (housework, shopping, and meal preparation) for approximately 254,000 IHSS recipients.
- ▶ Oppose an across-the-board 20 percent reduction in hours of service for the IHSS Program on April 1, 2012.
- ▶ Oppose individuals receiving both Medi-Cal and Medicare, including IHSS benefits, being required to enroll in managed care health plans for their Medi-Cal benefits until the details of how this transition will occur and guarantees related how it will operate beyond the first year is identified and reviewed.

It was moved, seconded (Lapin/L. Shipp) and carried to recommend the Council adopt the following with respect to the Department of Health Care Services' budget:

- ▶ All efforts must be made to access and maximize other sources of income including but not limited to:
 - Issuing directions to counties regarding the use of state and local funds for Medi-Cal share of costs for California Children's Services (CCS).
 - Require that the Consolidated Omnibus Budget Reconciliation Act (COBRA) notices be issued in California to provide information about the Health Insurance Premium Payment Program (HIPP) for coverage of premium costs of COBRA benefits; and information that receiving an extension of the 11-month disability extension does not require a person to qualify for Social Security benefits.

- Examine other states' successes in ensuring that costs of long-term care are not prematurely shifted from Medicare to Medi-Cal.
 - Seek payments by health plans to cover their obligations to children with disabilities covered under their parent's group plans.
 - Require private insurance plans to cover the full cost of wheelchairs and other durable medical equipment.
 - Pursue federal financial participation for the costs of veterans pharmacy benefits.
- ▶ Oppose and revisit the shift of more than 1 million seniors and people with disabilities who currently qualify for both Medi-Cal and Medicare (dual eligibles) from fee-for-service Medi-Cal into managed care, when additional details are available regarding how the proposal will be implemented. Specifically oppose the design now being considered to passively enroll all applicable populations, allowing them to "opt out" later; instead support an "opt-in" approach allowing individuals maximum choice.
 - ▶ Oppose reducing eligibility for the Medical Therapy Program (MTP) by applying an income test.
 - ▶ Oppose requiring Medi-Cal enrollees to select their health plan during an annual open enrollment period and remain in that plan for a full year.

It was moved, seconded (Lapin/L. Shipp) and carried to recommend the Council adopt the following with respect to the Department of Mental Health's budget:

- ▶ Oppose elimination of all funding (\$2.9 million) for the Caregivers Resource Centers.

It was moved, seconded (Lapin/Cooley) and carried to recommend the Council support the Department of Rehabilitations' budget.

It was moved, seconded (M. Shipp/Lapin) and carried to recommend the council support the Department Of Education's Special Education budget, however oppose the elimination of the behavioral intervention program, suspensions and expulsions appeals, and notification of truancy.

It was moved, seconded (L. Shipp/Allen) to recommend the Council oppose moving the Disabled Students Program into a block grant at the community colleges.

8. SCDD LEGISLATIVE UPDATE

Chris Arroyo reviewed Assembly Bills 1564, 1610, 1641 and Senate Bill 1050 noting these are newly introduced bills and undoubtedly more will be coming.

9. AREA BOARD LEGISLATIVE UPDATE

Rocio Smith provided the committee with a copy of the PowerPoint presented at the Bay Area Town Hall meeting representing the impact of the budget reductions over the years. She also noted that several area boards are conducting community meetings and legislative forums.

10. ADJOURNMENT

The meeting was adjourned at 2:45 PM.

LPPC AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: Assembly Bill (AB) 2338 (Chesbro/Beall), developmental services: employment first policy

BILL SUMMARY: AB 2338 requires the regional center, when developing an individual program plan (IPP) for transition age youth or working age adults, to consider the Employment First Policy while not infringing upon an individual's right to make informed choices about services and supports. The Employment First Policy is identified as: "It is the policy of the state that integrated competitive employment is the priority outcome for working age individuals with developmental disabilities. This policy shall be known as the Employment First Policy." This bill also, beginning when an individual with a developmental disability is 16 years of age, requires the planning team to discuss school-to-work opportunities during IPP meetings and to inform the consumer, parents, legal guardian, or conservator about the Employment First Policy. Lastly, AB 2338 includes a provision that nothing about it should be understood to expand the entitlement to services as part of the Lanterman Act.

BACKGROUND: Last session, Chapter 231, Statutes of 2009 (AB 287) was enacted requiring the Council to create an Employment First Committee (EFC). The EFC was required to submit a report to the Legislature and Governor that identified an employment first policy and included recommendations to enhance and increase integrated employment opportunities for people with developmental disabilities. This report was submitted to the Governor and Legislature in August 2011.

The Employment First Policy, as articulated in the report, is: "It is the policy of the state that integrated competitive employment is the priority outcome for working age individuals with developmental disabilities." In order to clarify that the Employment First Policy is in no way intended to diminish any part of the IPP planning process, the following appears immediately after the policy as the first key principle underpinning the policy:

"The individual program plan (IPP) and the provision of services and supports is centered on the individual and the family. The IPP and the provision of services take into account the needs and preferences of the individual and family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments."

AB 254 (Beall) from this session sought to accomplish similar but slightly different provisions as AB 2338.

ANALYSIS/DISCUSSION: While AB 2338 is largely similar to AB 254 (which did not pass) there are substantial differences. Given LPPC members' familiarity with AB 254, this analysis compares and contrasts AB 254 and AB 2338.

Regarding AB 254, some erroneously believed that it removed a portion of the Lanterman Act that provides for the IPP process and the ability of one's right to make choices about one's own life. It was also understood why one might have been left with this impression based upon the way in which changes were made to this bill. However, AB 254 made no such changes to the Lanterman Act and the Employment First Policy was designed in that bill to further the intent of the Act, be consistent with rights established under the Act, and maintain one's right to make choices in respect to the development and implementation of IPPs. **AB 2338** explicitly includes provisions that the Employment First Policy is designed to further the intent of the Lanterman Act, be consistent with rights established under the Act, and may not infringe upon an individual's right to make informed choices about services and supports.

On January 19th, 2012, the Assembly Appropriations Committee reviewed AB 254. At that time, the committee staff analysis indicated a belief that AB 254 broadens the entitlement in the Lanterman Act "...to include an entitlement that all working-age consumers receive a prevailing wage job." **AB 2338** explicitly indicates that there is no broadening of the entitlement in the Lanterman Act.

The Appropriations Committee staff analysis of AB 254 also indicated that additional costs would be incurred by the state if IPPs were required to have school-to-work plans for students 14 or over and if DDS collected data from regional centers in order to evaluate progress for the implementation of Employment First. **AB 2338** is likely to have a less costly projection because it only requires the planning team to discuss school-to-work opportunities during IPP meetings and to inform the consumer, parents, legal guardian, or conservator about the Employment First Policy. Additionally, **AB 2338** indicates DDS **may** request information from regional centers on current and planned activities related to the Employment First Policy. Because this provision is permissive and does not create a requirement, it is anticipated that this will be less costly than the provision that appeared in AB 254.

The California Disability Services Association, an organization that spoke in opposition to AB 254 at the Appropriations hearing on January 12th, indicated that if many individuals chose to pursue employment, additional and substantial state resources would be necessary to support this increased need. One could make a similar argument for **AB 2338**, but if there were a provision for services to be provided "within existing resources"; there would be no basis for this argument.

COUNCIL STRATEGIC PLAN OBJECTIVE: The Council will take a position on proposed state and federal legislation and proposed regulations that impact people with developmental disabilities, will communicate those positions to legislators and their staff, and will disseminate this information to all interested parties.

The State of California will adopt an Employment First policy which reflects inclusive and gainful employment as the preferred outcome for working age individuals with developmental disabilities.

PRIOR COUNCIL ACTIVITY: The Council supported AB 287 (2009) and submitted the first annual Employment First report to the Governor and Legislature in August 2011. In April 2011, the Council supported AB 254. In December 2011, the Council sponsored AB 254.

RECOMMENDATION(S): Sponsor AB 2338 and work with the bill author to refine as may be necessary.

ATTACHMENT(S): AB 2338 and Appropriations Committee analysis of AB 254

PREPARED: Christofer Arroyo, March 1, 2012

ASSEMBLY BILL

No. 2338

Introduced by Assembly Members Chesbro and Beall

February 24, 2012

An act to amend Sections 4646.5 and 4868 of, and to add Section 4869 to, the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

AB 2338, as introduced, Chesbro. Developmental services: Employment First Policy.

The Lanterman Developmental Disabilities Services Act authorizes the State Department of Developmental Services to contract with regional centers to provide support and services to individuals with developmental disabilities. The services and supports to be provided to a regional center consumer are contained in an individual program plan (IPP), developed in accordance with prescribed requirements.

Existing law requires the State Council on Developmental Disabilities to, among other responsibilities, form a standing Employment First Committee to identify strategies and recommend legislative, regulatory, and policy changes to increase integrated employment, as defined, self-employment, and microenterprises for persons with developmental disabilities, as specified.

This bill would define competitive employment, microenterprises, and self-employment for these purposes. This bill would require each regional center planning team, when developing an individual program plan for a transition age youth or working age adult, to consider a specified Employment First Policy. The bill would also require regional centers to ensure that consumers, beginning at 16 years of age, and,

where appropriate, other specified persons, are provided with information about the Employment First Policy, about options for integrated competitive employment, and about services and supports, including postsecondary education, available to enable the consumer to transition from school to work, and to achieve the outcomes of obtaining and maintaining integrated competitive employment. The bill would authorize the department to request information from regional centers on current and planned activities related to the Employment First Policy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4646.5 of the Welfare and Institutions
2 Code is amended to read:
3 4646.5. (a) The planning process for the individual program
4 plan described in Section 4646 shall include all of the following:
5 (1) Gathering information and conducting assessments to
6 determine the life goals, capabilities and strengths, preferences,
7 barriers, and concerns or problems of the person with
8 developmental disabilities. For children with developmental
9 disabilities, this process should include a review of the strengths,
10 preferences, and needs of the child and the family unit as a whole.
11 Assessments shall be conducted by qualified individuals and
12 performed in natural environments whenever possible. Information
13 shall be taken from the consumer, his or her parents and other
14 family members, his or her friends, advocates, authorized
15 representative, if applicable, providers of services and supports,
16 and other agencies. The assessment process shall reflect awareness
17 of, and sensitivity to, the lifestyle and cultural background of the
18 consumer and the family.
19 (2) A statement of goals, based on the needs, preferences, and
20 life choices of the individual with developmental disabilities, and
21 a statement of specific, time-limited objectives for implementing
22 the person's goals and addressing his or her needs. These objectives
23 shall be stated in terms that allow measurement of progress or
24 monitoring of service delivery. These goals and objectives should
25 maximize opportunities for the consumer to develop relationships,
26 be part of community life in the areas of community participation,

1 housing, work, school, and leisure, increase control over his or her
2 life, acquire increasingly positive roles in community life, and
3 develop competencies to help accomplish these goals.

4 (3) When developing individual program plans for children,
5 regional centers shall be guided by the principles, process, and
6 services and support parameters set forth in Section 4685.

7 (4) *When developing an individual program plan for a transition*
8 *age youth or working age adult, the planning team shall consider*
9 *the Employment First Policy described in Chapter 14 (commencing*
10 *with Section 4868).*

11 ~~(4)~~

12 (5) A schedule of the type and amount of services and supports
13 to be purchased by the regional center or obtained from generic
14 agencies or other resources in order to achieve the individual
15 program plan goals and objectives, and identification of the
16 provider or providers of service responsible for attaining each
17 objective, including, but not limited to, vendors, contracted
18 providers, generic service agencies, and natural supports. The
19 individual program plan shall specify the approximate scheduled
20 start date for services and supports and shall contain timelines for
21 actions necessary to begin services and supports, including generic
22 services.

23 ~~(5)~~

24 (6) When agreed to by the consumer, the parents, legally
25 appointed guardian, or authorized representative of a minor
26 consumer, or the legally appointed conservator of an adult
27 consumer or the authorized representative, including those
28 appointed pursuant to subdivision (d) of Section 4548, subdivision
29 (b) of Section 4701.6, and subdivision (e) of Section 4705, a review
30 of the general health status of the adult or child including a medical,
31 dental, and mental health needs shall be conducted. This review
32 shall include a discussion of current medications, any observed
33 side effects, and the date of *the* last review of the medication.
34 Service providers shall cooperate with the planning team to provide
35 any information necessary to complete the health status review. If
36 any concerns are noted during the review, referrals shall be made
37 to regional center clinicians or to the consumer's physician, as
38 appropriate. Documentation of health status and referrals shall be
39 made in the consumer's record by the service coordinator.

40 ~~(6)~~

1 (7) (A) The development of a transportation access plan for a
2 consumer when all of the following conditions are met:

3 (i) The regional center is purchasing private, specialized
4 transportation services or services from a residential, day, or other
5 provider, excluding vouchered service providers, to transport the
6 consumer to and from day or work services.

7 (ii) The planning team has determined that a consumer's
8 community integration and participation could be safe and
9 enhanced through the use of public transportation services.

10 (iii) The planning team has determined that generic
11 transportation services are available and accessible.

12 (B) To maximize independence and community integration and
13 participation, the transportation access plan shall identify the
14 services and supports necessary to assist the consumer in accessing
15 public transportation and shall comply with Section 4648.35. These
16 services and supports may include, but are not limited to, mobility
17 training services and the use of transportation aides. Regional
18 centers are encouraged to coordinate with local public
19 transportation agencies.

20 ~~(7)~~

21 (8) A schedule of regular periodic review and reevaluation to
22 ascertain that planned services have been provided, that objectives
23 have been fulfilled within the times specified, and that consumers
24 and families are satisfied with the individual program plan and its
25 implementation.

26 (b) For all active cases, individual program plans shall be
27 reviewed and modified by the planning team, through the process
28 described in Section 4646, as necessary, in response to the person's
29 achievement or changing needs, and no less often than once every
30 three years. If the consumer or, where appropriate, the consumer's
31 parents, legal guardian, authorized representative, or conservator
32 requests an individual program plan review, the individual program
33 shall be reviewed within 30 days after the request is submitted.

34 (c) (1) The department, with the participation of representatives
35 of a statewide consumer organization, the Association of Regional
36 Center Agencies, an organized labor organization representing
37 service coordination staff, and the Organization of Area Boards
38 shall prepare training material and a standard format and
39 instructions for the preparation of individual program plans, which
40 embodies an approach centered on the person and family.

1 (2) Each regional center shall use the training materials and
2 format prepared by the department pursuant to paragraph (1).

3 (3) The department shall biennially review a random sample of
4 individual program plans at each regional center to ~~assure~~ *ensure*
5 that these plans are being developed and modified in compliance
6 with Section 4646 and this section.

7 SEC. 2. Section 4868 of the Welfare and Institutions Code is
8 amended to read:

9 4868. (a) The State Council on Developmental Disabilities
10 shall form a standing Employment First Committee consisting of
11 the following members:

12 (1) One designee of each of the members of the state council
13 specified in subparagraphs (B), (C), (D), (F), and (H) of paragraph
14 (2) of subdivision (b) of Section 4521.

15 (2) A member of the consumer advisory committee of the state
16 council.

17 (b) In carrying out the requirements of this section, the
18 committee shall meet and consult, as appropriate, with other state
19 and local agencies and organizations, including, but not limited
20 to, the Employment Development Department, the Association of
21 Regional Center Agencies, one or more supported employment
22 provider organizations, an organized labor organization
23 representing service coordination staff, and one or more consumer
24 family member organizations.

25 (c) The responsibilities of the committee shall include, but need
26 not be limited to, all of the following:

27 (1) Identifying the respective roles and responsibilities of state
28 and local agencies in enhancing integrated and gainful employment
29 opportunities for people with developmental disabilities.

30 (2) Identifying strategies, best practices, and incentives for
31 increasing integrated employment and gainful employment
32 opportunities for people with developmental disabilities, including,
33 but not limited to, ways to improve the transition planning process
34 for students 14 years of age or older, and to develop partnerships
35 with, and increase participation by, public and private employers
36 and job developers.

37 (3) Identifying existing sources of employment data and
38 recommending goals for, and approaches to, measuring progress
39 in; increasing integrated employment and gainful employment of
40 people with developmental disabilities.

1 (4) Recommending legislative, regulatory, and policy changes
2 for increasing the number of individuals with developmental
3 disabilities in integrated employment, self-employment, and
4 microenterprises and who earn wages at or above minimum wage,
5 including, but not limited to, recommendations for improving
6 transition planning and services for students with developmental
7 disabilities who are 14 years of age or older. This shall include,
8 but shall not be limited to, the development of ~~an Employment~~
9 ~~First Policy~~ *a policy with the intended outcome of which is a*
10 ~~significant increase in~~ *significantly increasing* the number of
11 individuals with developmental disabilities who engage in
12 integrated employment, self-employment, and microenterprises
13 and in the number of individuals who earn wages at or above
14 minimum wage. This proposed policy shall be in furtherance of
15 the intent of this division that services and supports be available
16 to enable persons with developmental disabilities to approximate
17 the pattern of everyday living available to people without
18 disabilities of the same age and that support their integration into
19 the mainstream life of the community, and that those services and
20 supports result in more independent, productive, and normal lives
21 for the persons served. The proposed ~~Employment First Policy~~
22 *policy* shall not limit service and support options otherwise
23 available to consumers, or the rights of consumers, or, where
24 appropriate, parents, legal guardians, or conservators to make
25 choices in their own lives.

26 (d) For purposes of this chapter, ~~“integrated employment” shall~~
27 ~~have the same definition as “integrated work” as defined in~~
28 ~~subdivision (o) of Section 4851.~~ *the following definitions shall*
29 *apply:*

30 (1) *“Competitive employment” means work in the competitive*
31 *labor market that is performed on a full-time or part-time basis*
32 *in an integrated setting and for which an individual is compensated*
33 *at or above the minimum wage, but not less than the customary*
34 *wage and level of benefits paid by the employer for the same or*
35 *similar work performed by individuals who are not disabled.*

36 (2) *“Integrated employment” means “integrated work” as*
37 *defined in subdivision (o) of Section 4851.*

38 (3) *“Microenterprises” means small businesses owned by*
39 *individuals with developmental disabilities who have control and*
40 *responsibility for decisionmaking and overseeing of the business,*

1 *with accompanying business licenses, taxpayer identification*
2 *numbers other than social security numbers, and separate business*
3 *bank accounts. Microenterprises may be considered integrated*
4 *competitive employment.*

5 (4) *“Self-employment” means an employment setting in which*
6 *an individual works in a chosen occupation, for profit or fee, in*
7 *his or her own small business, with control and responsibility for*
8 *decisions affecting the conduct of the business.*

9 (e) The committee, by July 1, 2011, and annually thereafter,
10 shall provide a report to the appropriate policy committees of the
11 Legislature and to the Governor describing its work and
12 recommendations. The report due by July 1, 2011, shall include
13 the proposed ~~Employment First Policy~~ *policy* described in
14 paragraph (4) of subdivision (c).

15 SEC. 3. Section 4869 is added to the Welfare and Institutions
16 Code, to read:

17 4869. (a) (1) It is the policy of the state that integrated,
18 competitive employment is the priority outcome for working age
19 individuals with developmental disabilities. This policy shall be
20 known as the Employment First Policy.

21 (2) This policy is in furtherance of the intent of this division to
22 make services and supports available to enable persons with
23 developmental disabilities to approximate the pattern of everyday
24 living available to people without disabilities of the same age, to
25 support the integration of persons with developmental disabilities
26 into the mainstream life of the community, and to bring about more
27 independent, productive, and normal lives for the persons served.

28 (3) Implementation of the policy shall be consistent with, and
29 shall not infringe upon, the rights established pursuant to this
30 division, including the right of people with developmental
31 disabilities to make informed choices with respect to services and
32 supports through the individual program planning process.

33 (4) Integrated competitive employment is intended to be the
34 first option considered by planning teams for working age
35 individuals, but individuals may choose goals other than integrated
36 competitive employment.

37 (5) This chapter shall not be construed to expand the existing
38 entitlement to services for persons with developmental services
39 described in this division.

1 (b) Regional centers shall ensure that consumers, beginning at
2 16 years of age, and, where appropriate, their parents, legal
3 guardians, or conservators, are provided with information, in a
4 language that the consumer and, as appropriate, the consumer's
5 representative understand, about the Employment First Policy,
6 about options for integrated competitive employment, and about
7 services and supports, including postsecondary education, available
8 to enable the consumer to transition from school to work, and to
9 achieve the outcomes of obtaining and maintaining integrated
10 competitive employment.

11 (c) The department may request information from regional
12 centers on current and planned activities related to the Employment
13 First Policy.

O

BILL ANALYSIS

AB 254
Page 1

Date of Hearing: January 19, 2012

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Felipe Fuentes, Chair

AB 254 (Beall) - As Amended: January 4, 2012

Policy Committee: Human
ServicesVote:4 - 2

Urgency: No State Mandated Local Program:
No Reimbursable:

SUMMARY

This bill requires Regional Centers (RCs), under the jurisdiction of the California Department of Developmental Services (DDS), to use an employment first policy defined in the bill for Individual Program Planning (IPP) for consumers 14 years and older. Specifically, this bill:

- 1)States that it is the policy of the state that integrated, competitive employment is the priority outcome for working-age individuals with developmental disabilities.
- 2)Requires RCs be guided by the employment first policy when developing individual program plans for transition-age youth and working-age adults.
- 3)Requires RCs to ensure that, beginning at age 14, consumers and their parents or legal guardians be provided with the employment first policy, options for integrated employment, and services and supports that enable consumers to transition from school to work.

FISCAL EFFECT

- 1)Unknown costs, potentially in excess of a few hundred thousand dollars, for DDS to include school-to-work plans in IPPs for consumers between the ages of 14 and 16 years old. Under current, law local educational agencies are responsible for developing that portion of the IPP, in conjunction with RCs, for school-age consumers who are 16 and older.
- 2)Unknown, potentially significant costs, to the extent this

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bill broadens the entitlement contained in the Lanterman Developmental Disabilities Services Act (Lanterman Act) to include an entitlement that all working-age consumers receive a prevailing wage job. This could cause significant increases in supportive and supplemental employment programs and job training programs, particularly during periods of high unemployment. These costs could be partially offset by shifting consumers from other day programs to

employment-related programs and if more consumers become employed in non-subsidized jobs.

- 3) Unknown costs, likely in excess of \$100,000, should DDS decide to revise their data collection to include data on the number of consumers with prevailing wage jobs, ethnicity, and level of disability. DDS does not currently collect this information.

COMMENTS

1) Rationale . The purpose of this bill is to help further the goals of the Lanterman Act, which requires that services and support be available for people with developmental disabilities that allows them to approximate a pattern of everyday life that is available to people without disabilities. The author argues that competitive employment for working-age adults is a key component of everyday life.

2) California's Developmental Services System annually assists approximately 250,000 individuals with developmental disabilities and their families through a statewide system of 21 regional centers. Of the \$4.7 billion (\$2.7 billion GF) proposed for the 2012-13 budget year, \$4 billion (\$2.3 billion GF) is for services provided through the regional centers. The system employs 90,000 workers. Almost 99% of consumers receive community-based services and live with their parents or other relatives, in their own homes or apartments, or in group homes designed to meet their medical and behavioral needs.

In addition, the state's four Developmental Centers (Fairview, Lanterman, Porterville, and Sonoma) and one smaller, community facility (Canyon Springs) provide 24-hour care to about 1,700 individuals with developmental disabilities. The DCs provide a

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full range of care, including medical and recreational services.

3) Special Education and Employment Services . Under the federal Individuals with Disabilities Education Act, every special education student is entitled to an IEP, which is reviewed periodically between school district officials and a student's parents. This bill will increase the participation of both the RCs and schools in IEPs for DDS consumers.

DDS consumers work in a variety of settings. Those requiring supported employment settings may participate in the Habilitation Services Program which consists of the Work Activity Program (WEP) and Supported Employment Program (SEP). The WEP services are reimbursed at a daily per capita rate and provide a sheltered work environment. Consumers participating in SEP work in the community with support services provided by community rehabilitation programs.

4) Related Legislation .

- a) AB 287 (Beall; Chapter 231, Statutes of 2009) established the Employment First Committee as a standing

committee of the State Council on Developmental Disabilities to identify strategies and best practices for significantly increasing the numbers of people with developmental disabilities in competitive integrated employment and the number who earn wages at or above minimum wage.

- b) AB 2424 (Beall), 2008 would have established an employment first policy. Unlike this bill, AB 2424 also made significant changes to the IPP process and imposed responsibilities on regional centers and DDS related to the development of materials, the provision of information, and the conduct of IPP meetings. AB 2424 also addressed non-employment-related integrated activities. AB 2424 was held in the Senate Appropriations Committee.

Analysis Prepared by : Julie Salley-Gray / APPR. / (916)
319-2081

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LEGISLATIVE AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: AB 1657 – Wieckowski – Spinal Cord Injury Research

BILL SUMMARY: This bill would impose an additional penalty of \$3 on every traffic violation (after conviction) to fund the spinal cord injury research fund created with the University of California system.

BACKGROUND: Existing law authorizes the University of California to establish a spinal cord injury research fund, independent of the State Treasury, to accept public and private funds for spinal cord injury research programs and grants.

ANALYSIS/DISCUSSION: Prior to the transfer of funds to the fund, the county treasurer may withhold an amount necessary to reimburse the county and the courts for their actual, reasonable and necessary costs with administering this mandate.

It is unclear at this time what would be the projected amount of funding for the fund.

COUNCIL STRATEGIC PLAN OBJECTIVE: Goal #10 - Individuals with developmental disabilities understand their options regarding health services and have access to a full range of coordinated health, dental and mental health services in their community.

PRIOR COUNCIL/COMMITTEE ACTIVITY: None

STAFF RECOMMENDATION: Watch AB 1657 since there is no detailed, technical information.

ATTACHMENT: AB 1657

PREPARED: Melissa C. Corral – February 24, 2012

ASSEMBLY BILL

No. 1657

Introduced by Assembly Member Wieckowski

February 13, 2012

An act to add Section 1463.29 to the Penal Code, relating to traffic offenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 1657, as introduced, Wieckowski. Traffic offenses: additional penalty: spinal cord injury research.

Existing law requires that all fines and forfeitures imposed and collected for crimes other than parking offenses resulting from a filing in a court be deposited with the county treasurer, to be distributed monthly, as required by law. Existing law authorizes the University of California to establish a spinal cord injury research fund, independent of the State Treasury, to accept public and private funds for spinal cord injury research programs and grants.

This bill would impose an additional penalty of \$3 to be imposed upon every conviction for a violation of state or local traffic laws, as specified, except for offenses relating to parking. The bill would require the penalty to be deposited with the county treasurer and distributed each month for transfer to the spinal cord injury research fund created within the University of California. The bill would also provide that, prior to the transfer of funds to the spinal cord injury research fund, the county treasurer may withhold a sufficient amount necessary to reimburse the county and the courts for their actual, reasonable, and necessary costs associated with administering these provisions. If those amounts are withheld, the bill would authorize the county to send an

accounting report detailing its costs to the Regents of the University of California.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1463.29 is added to the Penal Code, to
2 read:

3 1463.29. (a) Subject to subdivision (b), an additional penalty
4 in an amount equal to three dollars (\$3) shall be imposed upon
5 every conviction for a violation of any provision of Division 11
6 (commencing with Section 21000) of the Vehicle Code, or a
7 violation of any local ordinance adopted pursuant to the Vehicle
8 Code, except offenses relating to parking as defined in subdivision
9 (i) of Section 1463.

10 (b) The additional penalty imposed pursuant to this section shall
11 only be imposed or collected within a county or city and county
12 if the county board of supervisors adopts an ordinance that
13 expressly provides that the additional penalty imposed pursuant
14 to subdivision (a) shall be imposed for offenses committed within
15 the jurisdiction of that county or city and county.

16 (c) Penalties imposed and collected pursuant to this section shall
17 be deposited with the county treasurer and distributed each month
18 in accordance with Section 1463.001 for transfer to the spinal cord
19 injury research fund created within the University of California
20 pursuant to the Roman Reed Spinal Cord Injury Research Act of
21 1999 (Chapter 2 (commencing with Section 104335) of Part 2 of
22 Division 103 of the Health and Safety Code). Prior to the transfer
23 of funds to the spinal cord injury research fund, the county treasurer
24 may withhold a sufficient amount necessary to reimburse the
25 county and the courts for their actual, reasonable, and necessary
26 costs associated with administering this section. To the extent
27 moneys are withheld by the county treasurer, an accounting report
28 detailing these costs may be sent by the county to the Regents of
29 the University of California.

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LEGISLATIVE AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: SB 1123 Section 22511.5 Vehicle Code related to parking

SUMMARY: Existing law authorizes the Department of Motor Vehicles to issue and renew distinguishing placards to persons or veterans with disabilities to be used for parking purposes. Prior to issuing an original distinguishing placard, existing law requires the submission of a certificate, signed by an authorized health care professional, providing a full description substantiating the applicant's disability, unless the disability is readily observable and uncontested. This bill would additionally require that submission prior to renewing a distinguishing placard.

BACKGROUND: A person or veteran with disabilities may apply to the department for the issuance of a distinguishing placard. The placard may be used in lieu of the special license plate or plates issued when (A) suspended from the rearview mirror, (B) if there is no rearview mirror, when displayed on the dashboard of a vehicle, or (C) inserted in a clip designated for a distinguishing placard and installed by the manufacturer on the driver's side of the front window. It is the intent of the Legislature to encourage the use of distinguishing placards because they provide law enforcement officers with a more readily recognizable symbol for distinguishing vehicles qualified for the parking privilege. The placard shall be the size, shape, and color determined by the department and shall bear the International Symbol of Access, commonly known as the "wheelchair symbol." The department shall incorporate instructions for the lawful use of a placard, and a summary of the penalties for the unlawful use of a placard, into the identification card issued to the placard owner.

ANALYSIS/DISCUSSION: The Department of Motor Vehicles has the authority to establish procedures for the issuance and renewal of the placards in lieu of license plates. The main emphasis in SB 1123 is the necessity of resubmitting initially required documents and certificates at the time of renewals. The placards have a fix expiration date of June 30 of every two years. A person who is issued a distinguishing placard may apply for a substitute placard without certification of eligibility if that placard is lost or stolen.

COUNCIL STRATEGIC PLAN OBJECTIVE: Goal #13 Individuals with developmental disabilities and their families have access to community based services and supports available to the general population (such as recreation, transportation, childcare, etc.) that enable them to live productive and inclusive lives.

PRIOR COUNCIL ACTIVITY: None

STAFF RECOMMENDATION: Watch

ATTACHMENT: SB 1123

PREPARED: Karim Alipourfard, March 1, 2012

Introduced by Senator De León

February 17, 2012

An act to amend Section 22511.55 of the Education Code, relating to parking.

LEGISLATIVE COUNSEL'S DIGEST

SB 1123, as introduced, De León. Distinguishing placards: renewal. Existing law authorizes the Department of Motor Vehicles to issue and renew distinguishing placards to disabled persons or disabled veterans to be used for parking purposes, as described. Prior to issuing an original distinguishing placard, existing law requires the submission of a certificate, signed by an authorized health care professional, providing a full description substantiating the applicant's disability, unless the disability is readily observable and uncontested.

This bill would additionally require that submission prior to renewing a distinguishing placard.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 22511.55 of the Vehicle Code is amended
- 2 to read:
- 3 22511.55. (a) (1) A disabled person or disabled veteran may
- 4 apply to the department for the issuance of a distinguishing placard.
- 5 The placard may be used in lieu of the special license plate or
- 6 plates issued under Section 5007 for parking purposes described
- 7 in Section 22511.5 when (A) suspended from the rearview mirror,
- 8 (B) if there is no rearview mirror, when displayed on the dashboard

1 of a vehicle, or (C) inserted in a clip designated for a distinguishing
2 placard and installed by the manufacturer on the driver's side of
3 the front window. It is the intent of the Legislature to encourage
4 the use of distinguishing placards because they provide law
5 enforcement officers with a more readily recognizable symbol for
6 distinguishing vehicles qualified for the parking privilege. The
7 placard shall be the size, shape, and color determined by the
8 department and shall bear the International Symbol of Access
9 adopted pursuant to Section 3 of Public Law 100-641, commonly
10 known as the "wheelchair symbol." The department shall
11 incorporate instructions for the lawful use of a placard, and a
12 summary of the penalties for the unlawful use of a placard, into
13 the identification card issued to the placard owner.

14 (2) (A) The department may establish procedures for the
15 issuance and renewal of the placards. The procedures shall include,
16 but are not limited to, advising an applicant in writing on the
17 application for a placard of the procedure to apply for a special
18 license plate or plates, as described in Section 5007, and the fee
19 exemptions established pursuant to Section 9105 and in subdivision
20 (a) of Section 10783 of the Revenue and Taxation Code. The
21 placards shall have a fixed expiration date of June 30 every two
22 years. A portion of the placard shall be printed in a contrasting
23 color that shall be changed every two years. The size and color of
24 this contrasting portion of the placard shall be large and distinctive
25 enough to be readily identifiable by a law enforcement officer in
26 a passing vehicle.

27 (B) As used in this section, "year" means the period between
28 the inclusive dates of July 1 through June 30.

29 (C) Prior to the end of each year, the department shall, for the
30 most current three years available, compare its record of disability
31 placards issued against the records of the Office of Vital Records
32 of the State Department of Public Health, or its successor, and
33 withhold any renewal notices that otherwise would have been sent
34 for a placardholder identified as deceased.

35 (3) Except as provided in paragraph (4), a person shall not be
36 eligible for more than one placard at a time.

37 (4) Organizations and agencies involved in the transportation
38 of disabled persons or disabled veterans may apply for a placard
39 for each vehicle used for the purpose of transporting disabled
40 persons or disabled veterans.

1 (b) (1) Except as provided in paragraph (4), prior to issuing an
2 original distinguishing placard to, *or renewing that placard for*, a
3 disabled person or disabled veteran, the department shall require
4 the submission of a certificate, in accordance with paragraph (2),
5 signed by the physician and surgeon, or to the extent that it does
6 not cause a reduction in the receipt of federal aid highway funds,
7 by a nurse practitioner, certified nurse midwife, or physician
8 assistant, substantiating the disability, unless the applicant's
9 disability is readily observable and uncontested. The disability of
10 a person who has lost, or has lost use of, one or more lower
11 extremities or one hand, for a disabled veteran, or both hands, for
12 a disabled person, or who has significant limitation in the use of
13 lower extremities, may also be certified by a licensed chiropractor.
14 The blindness of an applicant shall be certified by a licensed
15 physician and surgeon who specializes in diseases of the eye or a
16 licensed optometrist. The physician and surgeon, nurse practitioner,
17 certified nurse midwife, physician assistant, chiropractor, or
18 optometrist certifying the qualifying disability shall provide a full
19 description of the illness or disability on the form submitted to the
20 department.

21 (2) The physician and surgeon, nurse practitioner, certified nurse
22 midwife, physician assistant, chiropractor, or optometrist who
23 signs a certificate submitted under this subdivision shall retain
24 information sufficient to substantiate that certificate and, upon
25 request of the department, shall make that information available
26 for inspection by the Medical Board of California or the appropriate
27 regulatory board.

28 (3) The department shall maintain in its records all information
29 on an applicant's certification of permanent disability and shall
30 make that information available to eligible law enforcement or
31 parking control agencies upon a request pursuant to Section
32 22511.58.

33 (4) For a disabled veteran, the department shall accept, in lieu
34 of the certificate described in paragraph (1), a certificate from the
35 United States Department of Veterans Affairs that certifies that
36 the applicant is a disabled veteran as described in Section 295.7.

37 (c) A person who is issued a distinguishing placard pursuant to
38 subdivision (a) may apply to the department for a substitute placard
39 without recertification of eligibility, if that placard is lost or stolen.

- 1 (d) The distinguishing placard shall be returned to the
2 department not later than 60 days after the death of the disabled
3 person or disabled veteran to whom the placard was issued.
- 4 (e) The department shall print on any distinguishing placard
5 issued on or after January 1, 2005, the maximum penalty that may
6 be imposed for a violation of Section 4461. For purposes of this
7 subdivision, the “maximum penalty” is the amount derived from
8 adding all of the following:
- 9 (1) The maximum fine that may be imposed under Section 4461.
10 (2) The penalty required to be imposed under Section 70372 of
11 the Government Code.
12 (3) The penalty required to be levied under Section 76000 of
13 the Government Code.
14 (4) The penalty required to be levied under Section 1464 of the
15 Penal Code.
16 (5) The surcharge required to be levied under Section 1465.7
17 of the Penal Code.
18 (6) The penalty authorized to be imposed under Section 4461.3.

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LEGISLATIVE AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: AB 1564 – Lara – Child Abuse Reporting

BILL SUMMARY: This bill would include volunteers as mandated reporters for both private and public organizations (non-profits as well) whose duties require direct contact with and supervision of children as mandated reporters.

In addition, this bill would require the Franchise Tax Board to revoke the tax exemption (non-profit status) of the organization if a person who is a mandated reporter in the scope of his or her duties has been found guilty of a misdemeanor for failure to report an incident of known or reasonably suspected child sexual abuse in the scope of his or her duties in the organization.

BACKGROUND: Existing law requires a mandated reporter to report whenever he or she, within the scope of their employment, has knowledge of or observed a child who the mandated reported knows or reasonably suspects has been the victim of child abuse.

Failure to report a suspected incident of abuse is a crime punishable by imprisonment in a county jail for six months (misdemeanor.) Existing law also excludes volunteers from mandated reporting requirements.

ANALYSIS/DISCUSSION: This bill states, “in the wake of recent reports of sexual abuse cover-ups by nonprofit organizations, immediate action is needed to deter nonprofit organizations from concealing, fostering, or failing to report abuse of children.” Therefore, this bill is reacting to current very public instances of failure to report allegations of child sexual abuse.

The inclusion of volunteers as mandated reporters is intended to include all classes of personnel within any organization that may have custody and/or control over minors as a proactive protection.

However, the removal of non-profit status for an organization that may have a volunteer or employee who fails to report may be excessively punitive since it does not provide any opportunity for the organization to defend their: 1) training program, 2) reporting protocol, or 3) dismissal of a convicted employee.

The only manner in which the organization can regain their nonprofit status would be to prove that the conviction of the employee/volunteer has been overturned.

COUNCIL STRATEGIC PLAN OBJECTIVE: Goal #4- Public safety agencies, other first responders and the justice system get information and assistance to be knowledgeable and aware of the needs of individuals with developmental disabilities so they can respond appropriately when individuals with developmental disabilities may have experienced abuse, neglect, sexual or financial exploitation or violation of legal or human rights.

PRIOR COUNCIL/COMMITTEE ACTIVITY: None

STAFF RECOMMENDATION: Watch AB 1564

ATTACHMENT: AB 1564

PREPARED: Melissa C. Corral – February 24, 2012

ASSEMBLY BILL

No. 1564

Introduced by Assembly Member Lara

January 30, 2012

An act to amend Sections 11165.7 and 11166.5 of the Penal Code, and to add Section 23701.1 to the Revenue and Taxation Code, relating to child abuse reporting, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1564, as introduced, Lara. Child abuse reporting: mandated reporters: tax-exempt organizations.

(1) Existing law, the Child Abuse and Neglect Reporting Act, requires a mandated reporter, as defined, to report whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Failure to report an incident is a crime punishable by imprisonment in a county jail for a period of 6 months, a fine of up to \$1,000, or by both that imprisonment and fine. Existing law excludes volunteers of public or private organizations whose duties require direct contact with and supervision of children from the list of mandated reporters. Existing law also strongly encourages employers to provide training in child abuse and neglect identification and reporting to their employees who are mandated reporters, and encourages public and private organizations to provide their volunteers whose duties require direct contact with and supervision of children with training in child abuse and neglect identification and reporting.

This bill would include volunteers of public or private organizations, including nonprofit organizations, whose duties require direct contact with and supervision of children in the list of individuals who are mandated reporters. The bill would also require employers to provide training in child abuse and neglect identification and reporting to their employees and volunteers who are mandated reporters.

By imposing the reporting requirements on a new class of persons, for whom failure to report specified conduct is a crime, this bill would impose a state-mandated local program.

(2) The Corporation Tax Law exempts the income of organizations that are organized and operated for specified nonprofit purposes from state income taxes, as provided.

This bill would require, for taxable years beginning on and after the date this bill is operative, the Franchise Tax Board to revoke the exemption of an organization if a person who is a mandated reporter in the scope of his or her duties in the organization has been found guilty of a misdemeanor, as provided, with respect to failure to report an incident of known or reasonably suspected child sexual abuse, as defined, in the scope of his or her duties in the organization. This bill would require the board to reinstate the exemption if the organization provides notification that the guilty verdict of the person has been overturned.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Studies indicate that one in four girls and one in seven boys
- 4 will be the victim of some type of sexual abuse or assault before
- 5 18 years of age.

1 (b) Studies also indicate that child sexual abuse is 1.7 times
2 more common than childhood obesity and is 1.1 times more
3 common than the rates of teen pregnancy.

4 (c) In the wake of recent reports of sexual abuse cover-ups by
5 nonprofit organizations, immediate action is needed to deter
6 nonprofit organizations from concealing, fostering, or failing to
7 report abuse of children. Nonprofit organizations should be held
8 accountable for their actions and failures to act, and legislation is
9 needed to prevent additional lives from being damaged and to deter
10 nonprofit organizations from concealing reports of abuse.

11 SEC. 2. Section 11165.7 of the Penal Code is amended to read:

12 11165.7. (a) As used in this article, “mandated reporter” is
13 defined as any of the following:

14 (1) A teacher.

15 (2) An instructional aide.

16 (3) A teacher’s aide or teacher’s assistant employed by any
17 public or private school.

18 (4) A classified employee of any public school.

19 (5) An administrative officer or supervisor of child welfare and
20 attendance, or a certificated pupil personnel employee of any public
21 or private school.

22 (6) An administrator of a public or private day camp.

23 (7) An administrator or employee of a public or private youth
24 center, youth recreation program, or youth organization.

25 (8) An administrator or employee of a public or private
26 organization whose duties require direct contact and supervision
27 of children.

28 (9) Any employee of a county office of education or the State
29 Department of Education, whose duties bring the employee into
30 contact with children on a regular basis.

31 (10) A licensee, an administrator, or an employee of a licensed
32 community care or child day care facility.

33 (11) A Head Start program teacher.

34 (12) A licensing worker or licensing evaluator employed by a
35 licensing agency as defined in Section 11165.11.

36 (13) A public assistance worker.

37 (14) An employee of a child care institution, including, but not
38 limited to, foster parents, group home personnel, and personnel of
39 residential care facilities.

40 (15) A social worker, probation officer, or parole officer.

- 1 (16) An employee of a school district police or security
2 department.
- 3 (17) Any person who is an administrator or presenter of, or a
4 counselor in, a child abuse prevention program in any public or
5 private school.
- 6 (18) A district attorney investigator, inspector, or local child
7 support agency caseworker unless the investigator, inspector, or
8 caseworker is working with an attorney appointed pursuant to
9 Section 317 of the Welfare and Institutions Code to represent a
10 minor.
- 11 (19) A peace officer, as defined in Chapter 4.5 (commencing
12 with Section 830) of Title 3 of Part 2, who is not otherwise
13 described in this section.
- 14 (20) A firefighter, except for volunteer firefighters.
- 15 (21) A physician and surgeon, psychiatrist, psychologist, dentist,
16 resident, intern, podiatrist, chiropractor, licensed nurse, dental
17 hygienist, optometrist, marriage and family therapist, clinical social
18 worker, professional clinical counselor, or any other person who
19 is currently licensed under Division 2 (commencing with Section
20 500) of the Business and Professions Code.
- 21 (22) Any emergency medical technician I or II, paramedic, or
22 other person certified pursuant to Division 2.5 (commencing with
23 Section 1797) of the Health and Safety Code.
- 24 (23) A psychological assistant registered pursuant to Section
25 2913 of the Business and Professions Code.
- 26 (24) A marriage and family therapist trainee, as defined in
27 subdivision (c) of Section 4980.03 of the Business and Professions
28 Code.
- 29 (25) An unlicensed marriage and family therapist intern
30 registered under Section 4980.44 of the Business and Professions
31 Code.
- 32 (26) A state or county public health employee who treats a minor
33 for venereal disease or any other condition.
- 34 (27) A coroner.
- 35 (28) A medical examiner, or any other person who performs
36 autopsies.
- 37 (29) A commercial film and photographic print processor, as
38 specified in subdivision (e) of Section 11166. As used in this
39 article, "commercial film and photographic print processor" means
40 any person who develops exposed photographic film into negatives,

1 slides, or prints, or who makes prints from negatives or slides, for
2 compensation. The term includes any employee of such a person;
3 it does not include a person who develops film or makes prints for
4 a public agency.

5 (30) A child visitation monitor. As used in this article, “child
6 visitation monitor” means any person who, for financial
7 compensation, acts as monitor of a visit between a child and any
8 other person when the monitoring of that visit has been ordered
9 by a court of law.

10 (31) An animal control officer or humane society officer. For
11 the purposes of this article, the following terms have the following
12 meanings:

13 (A) “Animal control officer” means any person employed by a
14 city, county, or city and county for the purpose of enforcing animal
15 control laws or regulations.

16 (B) “Humane society officer” means any person appointed or
17 employed by a public or private entity as a humane officer who is
18 qualified pursuant to Section 14502 or 14503 of the Corporations
19 Code.

20 (32) A clergy member, as specified in subdivision (d) of Section
21 11166. As used in this article, “clergy member” means a priest,
22 minister, rabbi, religious practitioner, or similar functionary of a
23 church, temple, or recognized denomination or organization.

24 (33) Any custodian of records of a clergy member, as specified
25 in this section and subdivision (d) of Section 11166.

26 (34) Any employee of any police department, county sheriff’s
27 department, county probation department, or county welfare
28 department.

29 (35) An employee or volunteer of a Court Appointed Special
30 Advocate program, as defined in Rule ~~1424~~ 5.655 of the California
31 Rules of Court.

32 (36) A custodial officer as defined in Section 831.5.

33 (37) Any person providing services to a minor child under
34 Section 12300 or 12300.1 of the Welfare and Institutions Code.

35 (38) An alcohol and drug counselor. As used in this article, an
36 “alcohol and drug counselor” is a person providing counseling,
37 therapy, or other clinical services for a state licensed or certified
38 drug, alcohol, or drug and alcohol treatment program. However,
39 alcohol or drug abuse, or both alcohol and drug abuse, is not in
40 and of itself a sufficient basis for reporting child abuse or neglect.

1 (39) A clinical counselor trainee, as defined in subdivision (g)
2 of Section 4999.12 of the Business and Professions Code.

3 (40) A clinical counselor intern registered under Section 4999.42
4 of the Business and Professions Code.

5 ~~(b) Except as provided in paragraph (35) of subdivision (a),~~
6 ~~volunteers of public or private organizations whose duties require~~
7 ~~direct contact with and supervision of children are not mandated~~
8 ~~reporters but are encouraged to obtain training in the identification~~
9 ~~and reporting of child abuse and neglect and are further encouraged~~
10 ~~to report known or suspected instances of child abuse or neglect~~
11 ~~to an agency specified in Section 11165.9.~~

12 (41) *Volunteers of public or private organizations, including*
13 *nonprofit organizations, whose duties require direct contact with*
14 *and supervision of children.*

15 (e)

16 ~~(b) Employers are strongly encouraged to shall provide their~~
17 ~~employees and volunteers who are mandated reporters with training~~
18 ~~in the duties imposed by this article. This training shall include~~
19 ~~training in child abuse and neglect identification and training in~~
20 ~~child abuse and neglect reporting. Whether or not employers~~
21 ~~provide their employees with training in child abuse and neglect~~
22 ~~identification and reporting, the~~ *The* employers shall provide their
23 employees *and volunteers* who are mandated reporters with the
24 statement required pursuant to subdivision (a) of Section 11166.5.

25 ~~(d) School districts that do not train their employees specified~~
26 ~~in subdivision (a) in the duties of mandated reporters under the~~
27 ~~child abuse reporting laws shall report to the State Department of~~
28 ~~Education the reasons why this training is not provided.~~

29 (e)

30 (c) Unless otherwise specifically provided, the absence of
31 training shall not excuse a mandated reporter from the duties
32 imposed by this article.

33 ~~(f) Public and private organizations are encouraged to provide~~
34 ~~their volunteers whose duties require direct contact with and~~
35 ~~supervision of children with training in the identification and~~
36 ~~reporting of child abuse and neglect.~~

37 SEC. 3. Section 11166.5 of the Penal Code is amended to read:

38 11166.5. (a) (1) On and after January 1, 1985, any mandated
39 reporter as specified in Section 11165.7, with the exception of
40 child visitation monitors, prior to commencing his or her

1 employment, and as a prerequisite to that employment, shall sign
2 a statement on a form provided to him or her by his or her employer
3 to the effect that he or she has knowledge of the provisions of
4 Section 11166 and will comply with those provisions. The
5 statement shall inform the employee that he or she is a mandated
6 reporter and inform the employee of his or her reporting obligations
7 under Section 11166 and of his or her confidentiality rights under
8 subdivision (d) of Section 11167. The employer shall provide a
9 copy of Sections 11165.7, 11166, and 11167 to the employee.

10 (2) *On or after the date the act adding this paragraph is*
11 *operative, the employer shall also provide a copy of Section 152.3*
12 *to any mandated reporter that is a current employee and to any*
13 *new mandated reporter prior to commencing his or her*
14 *employment.*

15 ~~On~~

16 (3) *On and after January 1, 1993, any person who acts as a child*
17 *visitation monitor, as defined in paragraph (30) of subdivision (a)*
18 *of Section 11165.7, prior to engaging in monitoring the first visit*
19 *in a case, shall sign a statement on a form provided to him or her*
20 *by the court which ordered the presence of that third person during*
21 *the visit, to the effect that he or she has knowledge of the provisions*
22 *of Section 11166 and will comply with those provisions.*

23 ~~The~~

24 (4) *The signed statements shall be retained by the employer or*
25 *the court, as the case may be. The cost of printing, distribution,*
26 *and filing of these statements shall be borne by the employer or*
27 *the court.*

28 ~~This~~

29 (5) *This subdivision is not applicable to persons employed by*
30 *public or private youth centers, youth recreation programs, and*
31 *youth organizations as members of the support staff or maintenance*
32 *staff and who do not work with, observe, or have knowledge of*
33 *children as part of their official duties.*

34 (b) *On and after January 1, 1986, when a person is issued a state*
35 *license or certificate to engage in a profession or occupation, the*
36 *members of which are required to make a report pursuant to Section*
37 *11166, the state agency issuing the license or certificate shall send*
38 *a statement substantially similar to the one contained in subdivision*
39 *(a) to the person at the same time as it transmits the document*
40 *indicating licensure or certification to the person. In addition to*

1 the requirements contained in subdivision (a), the statement also
2 shall indicate that failure to comply with the requirements of
3 Section 11166 is a misdemeanor, punishable by up to six months
4 in a county jail, by a fine of one thousand dollars (\$1,000), or by
5 both that imprisonment and fine.

6 (c) As an alternative to the procedure required by subdivision
7 (b), a state agency may cause the required statement to be printed
8 on all application forms for a license or certificate printed on or
9 after January 1, 1986.

10 (d) On and after January 1, 1993, any child visitation monitor,
11 as defined in paragraph (30) of subdivision (a) of Section 11165.7,
12 who desires to act in that capacity shall have received training in
13 the duties imposed by this article, including training in child abuse
14 identification and child abuse reporting. The person, prior to
15 engaging in monitoring the first visit in a case, shall sign a
16 statement on a form provided to him or her by the court which
17 ordered the presence of that third person during the visit, to the
18 effect that he or she has received this training. This statement may
19 be included in the statement required by subdivision (a) or it may
20 be a separate statement. This statement shall be filed, along with
21 the statement required by subdivision (a), in the court file of the
22 case for which the visitation monitoring is being provided.

23 (e) Any person providing services to a minor child, as described
24 in paragraph (37) of subdivision (a) of Section 11165.7, shall not
25 be required to make a report pursuant to Section 11166 unless that
26 person has received training, or instructional materials in the
27 appropriate language, on the duties imposed by this article,
28 including identifying and reporting child abuse and neglect.

29 SEC. 4. Section 23701.1 is added to the Revenue and Taxation
30 Code, to read:

31 23701.1. (a) Notwithstanding any other law, for taxable years
32 beginning on or after the date the act adding this section is
33 operative, no exemption from taxes imposed under this part shall
34 apply to, and the Franchise Tax Board shall revoke the exemption
35 from taxes imposed under this part of, an organization that meets
36 the following conditions:

37 (1) Is organized and operated for nonprofit purposes within the
38 provisions of a specified section of this article.

39 (2) An administrator, employee, volunteer, or other person of
40 the organization is a mandated reporter, as defined under Section

1 11165.7 of the Penal Code, in the scope of his or her duties in the
2 organization, and that person has been found guilty of a
3 misdemeanor on or after the date the act adding this section is
4 operative, under subdivision (c) of Section 11166 of the Penal
5 Code, for a failure to report an incident of known or reasonably
6 suspected child sexual abuse in the scope of his or her duties in
7 the organization, as defined under the Child Abuse and Neglect
8 Reporting Act (Article 2.5 (commencing with Section 11164) of
9 Chapter 2 of Title 1 of Part 4 of the Penal Code).

10 (b) The board shall reinstate the exemption if the organization
11 provides notification that a guilty verdict of the person as described
12 in paragraph (2) of subdivision (a) has been overturned and the
13 organization otherwise meets all the other requirements of this
14 chapter.

15 SEC. 5. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.

24 SEC. 6. This act is an urgency statute necessary for the
25 immediate preservation of the public peace, health, or safety within
26 the meaning of Article IV of the Constitution and shall go into
27 immediate effect. The facts constituting the necessity are:

28 In order to protect victims of child abuse and to deter nonprofit
29 organizations from concealing reports of child abuse at the earliest
30 possible date, it is necessary that this act take effect immediately.

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LPPC AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: Assembly Bill (AB) 1729, pupil rights: suspension or expulsion

BILL SUMMARY: Under some circumstances (such as bringing a firearm to school) school administrators may be required to suspend or expel a student. If they wish, the administrator may seek an alternative to suspension or expulsion, such as counseling or anger management.

AB 1729 requires:

- alternatives to suspension or expulsion that a superintendent of a school district selects must be age appropriate and designed to address the root cause of the behavior;
- for students in special education, an individualized education program (IEP) meeting must be held within three days to discuss the behavior, determine if a “fundamental behavioral assessment and behavioral plan are needed to address the behavior”, and the student cannot be suspended or expelled but will instead receive an appropriate assessment identifying behavioral need, proposed behavioral goals to address identified needs, and appropriate related services; and,
- alternatives to suspension or expulsion may include, but are not limited to, positive behavioral support (using conferences between school staff, the student and family; referrals for case management and counseling; intervention-related teams to develop and implement “individualized plans” to address the behavior; assessments for the purpose of developing an IEP or 504 plan; enrollment in a program to teach prosocial behavior or anger management; or participation in a restorative justice program), community service at school, afterschool programs “operated in collaboration with local parent and community groups that are designed to address specific behavioral issues or to expose pupils to positive activities and behaviors”.

ANALYSIS/DISCUSSION: Under current law, when students in special education are subject to suspension or expulsion, administrators may consider alternatives to these actions. Under this bill, an IEP meeting would be required to occur in lieu of suspension or expulsion to determine if the behavioral services are sufficient and adjust the IEP as necessary. When suspension or expulsion are considered, the needs of students in special education are supported (when otherwise they might not have been) because this process provides the opportunity to alter services so they are sufficient to address the behaviors that led to the considered suspension or expulsion.

COUNCIL STRATEGIC PLAN OBJECTIVE: The Council will take a position on proposed state and federal legislation and proposed regulations that impact people 45

with developmental disabilities, will communicate those positions to legislators and their staff, and will disseminate this information to all interested parties.

PRIOR COUNCIL ACTIVITY: N/A

RECOMMENDATION(S): Support AB 1729 because when students are considered for suspension or expulsion, this bill requires an IEP meeting to be held to ensure appropriate services are provided to that student.

ATTACHMENT(S): AB 1729

PREPARED: Christofer Arroyo, February 27, 2012

ASSEMBLY BILL

No. 1729

Introduced by Assembly Member Ammiano

February 16, 2012

An act to amend Sections 48900 and 48900.5 of the Education Code, relating to pupil rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 1729, as introduced, Ammiano. Pupil rights: suspension or expulsion.

Existing law provides that a pupil shall not be suspended from school or recommended for expulsion unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed a specified act. Existing law also authorizes a superintendent of the school district or principal to use his or her discretion to provide alternatives to suspension or expulsion, including, but not limited to, counseling and an anger management program, for a pupil subject to discipline under this provision.

This bill would instead authorize a superintendent of the school district or principal to use alternatives to suspension or expulsion that are age appropriate and designed to address and correct the root causes of the pupil's specific misbehavior, as specified. The bill would require, if an individual with exceptional needs is subject to discipline under this provision, an individualized education program team to hold a meeting within 3 days to discuss behavior of the individual with exceptional needs and determine if a functional behavioral assessment and behavioral intervention plan are needed to address the behavior. The bill would also provide that an individual with exceptional needs is not subject to suspension, except as specified, expulsion, or other behavioral

interventions, but instead will receive an appropriate assessment identifying behavioral needs, proposed behavioral goals to address the identified needs, and appropriate related services. By requiring an individualized education program team meeting, the bill would impose a state-mandated local program.

Existing law requires the imposition of suspension only when other means of correction fail to bring about proper conduct but authorizes the suspension of a pupil, including an individual with exceptional needs, upon a first offense if the principal or superintendent of schools determines that specified offenses were committed or that the pupil’s presence causes a danger to persons or property or threatens to disrupt the instructional process.

This bill would require documentation of other means of correction used. The bill would also specify that other means of correction include, but are not limited to, a positive behavior support approach with tiered interventions, conferences between school personnel, parents, and pupils, and participation in a restorative justice program. By requiring documentation of other means of correction used, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The public policy of this state is to ensure that school
- 4 discipline policies and practices support the creation of safe,
- 5 positive, supportive, and equitable school environments where
- 6 pupils can learn.
- 7 (b) The overuse of school suspension and expulsion undermines
- 8 the public policy of this state and does not result in safer school
- 9 environments or improved pupil behavior. Moreover, such highly

1 punitive, exclusionary practices are associated with lower academic
2 achievement, lower graduation rates, and a worse overall school
3 climate.

4 (c) Failing to teach and develop social and behavior skills in
5 pupils leads to the depletion of funding through decreased average
6 daily attendance, increased rates of teacher turnover, and increased
7 pupil dropout rates.

8 (d) School suspension and expulsion are disproportionately
9 imposed on pupils of color, pupils with disabilities, lesbian, gay,
10 bisexual, and transgender pupils, and other vulnerable pupil
11 populations.

12 (e) In 2006, the suspension rate of African American elementary
13 and secondary pupils in this state was more than double the rate
14 of suspensions for White, Hispanic, or Asian students, and there
15 is no evidence demonstrating that pupils of color or other pupil
16 populations misbehave at greater rates than their peers.

17 (f) Research has found that nonpunitive classroom discipline
18 and in-school discipline strategies are more effective and efficient
19 than suspension and expulsion for addressing the majority of pupil
20 misconduct.

21 (g) The public policy of this state is to provide effective
22 interventions for pupils who engage in acts of problematic behavior
23 to help them change their behavior and avoid exclusion from
24 school.

25 (h) The public policy of this state is to ensure that school
26 discipline policies and practices are implemented and enforced
27 evenhandedly and are not disproportionately applied to any class
28 or group of pupils.

29 (i) The intent of this act is to clarify existing law on school
30 discipline and ensure the discretion of superintendents of schools
31 and principals to implement school discipline policies and practices
32 other than school suspension and expulsion.

33 SEC. 2. Section 48900 of the Education Code, as amended by
34 Section 6 of Chapter 732 of the Statutes of 2011, is amended to
35 read:

36 48900. A pupil shall not be suspended from school or
37 recommended for expulsion, unless the superintendent *of the school*
38 *district* or the principal of the school in which the pupil is enrolled
39 determines that the pupil has committed an act as defined pursuant
40 to any of subdivisions (a) to (r), inclusive:

- 1 (a) (1) Caused, attempted to cause, or threatened to cause
2 physical injury to another person.
- 3 (2) Willfully used force or violence upon the person of another,
4 except in self-defense.
- 5 (b) Possessed, sold, or otherwise furnished a firearm, knife,
6 explosive, or other dangerous object, unless, in the case of
7 possession of an object of this type, the pupil had obtained written
8 permission to possess the item from a certificated school employee,
9 which is concurred in by the principal or the designee of the
10 principal.
- 11 (c) Unlawfully possessed, used, sold, or otherwise furnished,
12 or been under the influence of, a controlled substance listed in
13 Chapter 2 (commencing with Section 11053) of Division 10 of the
14 Health and Safety Code, an alcoholic beverage, or an intoxicant
15 of any kind.
- 16 (d) Unlawfully offered, arranged, or negotiated to sell a
17 controlled substance listed in Chapter 2 (commencing with Section
18 11053) of Division 10 of the Health and Safety Code, an alcoholic
19 beverage, or an intoxicant of any kind, and either sold, delivered,
20 or otherwise furnished to a person another liquid, substance, or
21 material and represented the liquid, substance, or material as a
22 controlled substance, alcoholic beverage, or intoxicant.
- 23 (e) Committed or attempted to commit robbery or extortion.
- 24 (f) Caused or attempted to cause damage to school property or
25 private property.
- 26 (g) ~~Stolen~~ *Stole* or attempted to steal school property or private
27 property.
- 28 (h) Possessed or used tobacco, or products containing tobacco
29 or nicotine products, including, but not limited to, cigarettes, cigars,
30 miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew
31 packets, and betel. However, this section does not prohibit use or
32 possession by a pupil of his or her own prescription products.
- 33 (i) Committed an obscene act or engaged in habitual profanity
34 or vulgarity.
- 35 (j) Unlawfully possessed or unlawfully offered, arranged, or
36 negotiated to sell drug paraphernalia, as defined in Section 11014.5
37 of the Health and Safety Code.
- 38 (k) Disrupted school activities or otherwise willfully defied the
39 valid authority of supervisors, teachers, administrators, school

1 officials, or other school personnel engaged in the performance of
2 their duties.

3 (l) Knowingly received stolen school property or private
4 property.

5 (m) Possessed an imitation firearm. As used in this section,
6 “imitation firearm” means a replica of a firearm that is so
7 substantially similar in physical properties to an existing firearm
8 as to lead a reasonable person to conclude that the replica is a
9 firearm.

10 (n) Committed or attempted to commit a sexual assault as
11 defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal
12 Code or committed a sexual battery as defined in Section 243.4
13 of the Penal Code.

14 (o) Harassed, threatened, or intimidated a pupil who is a
15 complaining witness or a witness in a school disciplinary
16 proceeding for the purpose of either preventing that pupil from
17 being a witness or retaliating against that pupil for being a witness,
18 or both.

19 (p) Unlawfully offered, arranged to sell, negotiated to sell, or
20 sold the prescription drug Soma.

21 (q) Engaged in, or attempted to engage in, hazing. For purposes
22 of this subdivision, “hazing” means a method of initiation or
23 preinitiation into a pupil organization or body, whether or not the
24 organization or body is officially recognized by an educational
25 institution, which is likely to cause serious bodily injury or personal
26 degradation or disgrace resulting in physical or mental harm to a
27 former, current, or prospective pupil. For purposes of this
28 subdivision, “hazing” does not include athletic events or
29 school-sanctioned events.

30 (r) Engaged in an act of bullying. For purposes of this
31 subdivision, the following terms have the following meanings:

32 (1) “Bullying” means any severe or pervasive physical or verbal
33 act or conduct, including communications made in writing or by
34 means of an electronic act, and including one or more acts
35 committed by a pupil or group of pupils as defined in Section
36 48900.2, 48900.3, or 48900.4, directed toward one or more pupils
37 that has or can be reasonably predicted to have the effect of one
38 or more of the following:

39 (A) Placing a reasonable pupil or pupils in fear of harm to that
40 pupil’s or those pupils’ person or property.

1 (B) Causing a reasonable pupil to experience a substantially
2 detrimental effect on his or her physical or mental health.

3 (C) Causing a reasonable pupil to experience substantial
4 interference with his or her academic performance.

5 (D) Causing a reasonable pupil to experience substantial
6 interference with his or her ability to participate in or benefit from
7 the services, activities, or privileges provided by a school.

8 (2) “Electronic act” means the transmission of a communication,
9 including, but not limited to, a message, text, sound, or image, or
10 a post on a social network Internet Web site, by means of an
11 electronic device, including, but not limited to, a telephone,
12 wireless telephone or other wireless communication device,
13 computer, or pager.

14 (3) “Reasonable pupil” means a pupil, including, but not limited
15 to, an exceptional needs pupil, who exercises average care, skill,
16 and judgment in conduct for a person of his or her age, or for a
17 person of his or her age with his or her exceptional needs.

18 (s) A pupil shall not be suspended or expelled for any of the
19 acts enumerated in this section, unless that act is related to school
20 activity or school attendance occurring within a school under the
21 jurisdiction of the superintendent of the school district or principal
22 or occurring within any other school district. A pupil may be
23 suspended or expelled for acts that are enumerated in this section
24 and related to school activity or attendance that occur at any time,
25 including, but not limited to, any of the following:

26 (1) While on school grounds.

27 (2) While going to or coming from school.

28 (3) During the lunch period whether on or off the campus.

29 (4) During, or while going to or coming from, a
30 school-sponsored activity.

31 (t) A pupil who aids or abets, as defined in Section 31 of the
32 Penal Code, the infliction or attempted infliction of physical injury
33 to another person may be subject to suspension, but not expulsion,
34 pursuant to this section, except that a pupil who has been adjudged
35 by a juvenile court to have committed, as an aider and abettor, a
36 crime of physical violence in which the victim suffered great bodily
37 injury or serious bodily injury shall be subject to discipline pursuant
38 to subdivision (a).

39 (u) As used in this section, “school property” includes, but is
40 not limited to, electronic files and databases.

1 (v) ~~A~~ For a pupil subject to discipline under this section, a
2 superintendent of the school district or principal may use his or
3 her discretion to provide alternatives to suspension or expulsion,
4 including, but not limited to, counseling and an anger management
5 program, for a pupil subject to discipline under this section that
6 are age appropriate and designed to address and correct the root
7 causes of the pupil's specific misbehavior as specified in Section
8 48900.5.

9 (w) For an individual with exceptional needs, as defined in
10 Section 56026, subject to discipline under this section, an
11 individualized education program (IEP) team meeting will be held
12 within three days to discuss the behavior. The IEP team will
13 determine if a fundamental behavioral assessment and behavioral
14 intervention plan are needed to address the behavior of the
15 individual with exceptional needs. The individual with exceptional
16 needs will not be subject to suspension except as provided in
17 subdivision (a) of Section 48900.5, expulsion, or other behavioral
18 intervention, but instead will receive an appropriate assessment
19 identifying behavioral need, proposed behavioral goals to address
20 the identified needs, and appropriate related services.

21 (w)

22 (x) It is the intent of the Legislature that alternatives to
23 suspension or expulsion be imposed against a pupil who is truant,
24 tardy, or otherwise absent from school activities.

25 SEC. 3. Section 48900.5 of the Education Code is amended to
26 read:

27 48900.5. (a) Suspension, including supervised suspension as
28 described in Section 48911.1, shall be imposed only when other
29 means of correction have been documented and fail to bring about
30 proper conduct. However, a pupil, including an individual with
31 exceptional needs, as defined in Section 56026, may be suspended,
32 subject to Section 1415 of Title 20 of the United States Code and
33 subdivision (w) of Section 48900, for any of the reasons enumerated
34 in Section 48900 upon a first offense, if the principal or
35 superintendent of schools determines that the pupil violated
36 subdivision (a), (b), (c), (d), or (e) of Section 48900 or that the
37 pupil's presence causes a danger to persons or property or threatens
38 to disrupt the instructional process.

39 (b) Other means of correction shall include, but are not limited
40 to, the following:

1 (1) A positive behavior support approach with tiered
2 interventions that occur during the schoolday on campus, using
3 any of the following activities:

4 (A) Conferences between school personnel, parents, and pupils.

5 (B) Referrals to the school counselor, psychologist, social
6 worker, child welfare attendance personnel, or other school
7 support service personnel for case management and counseling.

8 (C) Study teams, guidance teams, resource panel teams, or other
9 intervention-related teams that assess the root causes of the
10 behavior, and develop and implement individualized plans to
11 address the behavior in partnership with the pupil and his or her
12 parents.

13 (D) Referral for a comprehensive psychosocial or
14 psychoeducational assessment, including for purposes of creating
15 an individualized education program, or a plan adopted pursuant
16 to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C.
17 Sec. 794(a)).

18 (E) Enrollment in a program for teaching prosocial behavior
19 or anger management.

20 (F) Participation in a restorative justice program.

21 (2) Any of the alternatives described in Section 48900.6.

22 (3) After-school programs operated in collaboration with local
23 parent and community groups that are designed to address specific
24 behavioral issues or to expose pupils to positive activities and
25 behaviors.

26 SEC. 4. If the Commission on State Mandates determines that
27 this act contains costs mandated by the state, reimbursement to
28 local agencies and school districts for those costs shall be made
29 pursuant to Part 7 (commencing with Section 17500) of Division
30 4 of Title 2 of the Government Code.

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LEGISLATIVE AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: AB 1714 – Halderman – Elder and dependent abuse – In-Home Supportive Services.

BILL SUMMARY: This bill would add the offenses of forgery, embezzlement, extortion, and identity theft to the list of criminal convictions that would preclude an individual from providing supportive services without a waiver.

BACKGROUND: Existing law bars individuals who have been convicted of specified crimes from providing supportive services to recipients for 10 years from the date of conviction. Currently, those crimes are: 1) violent felonies, 2) felonies which require registration as a sex offender, and 3) public benefit fraud.

There is a process for recipients to request a waiver for a convicted individual if they wish to hire them to provide services.

ANALYSIS/DISCUSSION: This season, there is at least one other bill (AB 1525) that also addresses financial abuse for dependent adults. This bill strengthens protections by putting in place a proactive protection which would prohibit individuals from serving IHSS recipients if they have been convicted within the last 10 years of forgery, embezzlement, extortion or identity theft.

However, the bill also continues to allow a waiver process for recipients who currently have a caregiver who may fall into this category, or they wish to hire someone who falls into this category, thereby allowing provider choice while also attempting to provide disclosure and protection.

COUNCIL STRATEGIC PLAN OBJECTIVE: Goal #4- Public safety agencies, other first responders and the justice system get information and assistance to be knowledgeable and aware of the needs of individuals with developmental disabilities so they can respond appropriately when individuals with developmental disabilities may have experienced abuse, neglect, sexual or financial exploitation or violation of legal or human rights.

PRIOR COUNCIL/COMMITTEE ACTIVITY: None

STAFF RECOMMENDATION: Support AB 1714

ATTACHMENT: AB 1714

PREPARED: Melissa C. Corral – February 24, 2012

ASSEMBLY BILL

No. 1714

Introduced by Assembly Member Halderman

February 16, 2012

An act to amend Section 12305.87 of the Welfare and Institutions Code, relating to in-home supportive services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1714, as introduced, Halderman. In-home supportive services: providers.

Existing law provides for the county-administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. Existing law prohibits a person from providing supportive services if he or she has been convicted of specified crimes in the previous 10 years. Under existing law, the State Department of Social Services and the State Department of Health Care Services are required to develop a provider enrollment form that each person seeking to provide supportive services is required to complete, sign under penalty of perjury and submit to the county, containing designated statements relating to the provider's criminal history. Existing law authorizes a recipient of services who wishes to employ a provider applicant who has been convicted of a specified offense to submit to the county a prescribed individual waiver, signed by the recipient, or by the recipient's authorized representative, and returned to the county welfare department.

This bill would add the offenses of forgery, embezzlement, extortion, and identity theft to the list of criminal convictions that would preclude an individual from providing supportive services. The bill would require

the State Department of Social Services to revise the provider enrollment form to account for these additional criminal exclusions. By changing the definition of the crime of perjury, and by increasing the duties of counties in administering the In-Home Supportive Services program, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12305.87 of the Welfare and Institutions
2 Code is amended to read:
3 12305.87. (a) (1) Commencing 90 days following the effective
4 date of the act that adds this section, a person specified in paragraph
5 (2) shall be subject to the criminal conviction exclusions provided
6 for in this section, in addition to the exclusions required under
7 Section 12305.81.
8 (2) This section shall apply to a person who satisfies either of
9 the following conditions:
10 (A) He or she is a new applicant to provide services under this
11 article.
12 (B) He or she is an applicant to provide services under this
13 article whose application has been denied on the basis of a
14 conviction and for whom an appeal of that denial is pending.
15 (b) Subject to subdivisions (c), (d), and (e), an applicant subject
16 to this section shall not be eligible to provide or receive payment
17 for providing supportive services for 10 years following a
18 conviction for, or incarceration following a conviction for, any of
19 the following:

1 (1) A violent or serious felony, as specified in subdivision (c)
2 of Section 667.5 of the Penal Code and subdivision (c) of Section
3 1192.7 of the Penal Code.

4 (2) A felony offense for which a person is required to register
5 under subdivision (c) of Section 290 of the Penal Code. For
6 purposes of this paragraph, the 10-year time period specified in
7 this section shall commence with the date of conviction for, or
8 incarceration following a conviction for, the underlying offense,
9 and not the date of registration.

10 (3) A felony offense described in paragraph (2) of subdivision
11 (c) or paragraph (2) of subdivision (g) of Section 10980.

12 (4) *Forgery, as specified in Section 470 of the Penal Code.*

13 (5) *Embezzlement, as specified in Section 503 of the Penal Code.*

14 (6) *Extortion, as specified in Section 518 of the Penal Code.*

15 (7) *Identity theft, as specified in Section 530.5 of the Penal*
16 *Code.*

17 (c) Notwithstanding subdivision (b), an application shall not be
18 denied under this section if the applicant has obtained a certificate
19 of rehabilitation under Chapter 3.5 (commencing with Section
20 4852.01) of Title 6 of Part 3 of the Penal Code or if the information
21 or accusation against him or her has been dismissed pursuant to
22 Section 1203.4 of the Penal Code.

23 (d) (1) Notwithstanding subdivision (b), a recipient of services
24 under this article who wishes to employ a provider applicant who
25 has been convicted of an offense specified in subdivision (b) may
26 submit to the county an individual waiver of the exclusion provided
27 for in this section. This paragraph shall not be construed to allow
28 a recipient to submit an individual waiver with respect to a
29 conviction or convictions for offenses specified in Section
30 12305.81.

31 (2) The county shall notify a recipient who wishes to hire a
32 person who is applying to be a provider and who has been
33 convicted of an offense subject to exclusion under this section of
34 that applicant's relevant criminal offense convictions that are
35 covered by subdivision (b). The notice shall include both of the
36 following:

37 (A) A summary explanation of the exclusions created by
38 subdivision (b), as well as the applicable waiver process described
39 in this subdivision and the process for an applicant to seek a general
40 exception, as described in subdivision (e). This summary

1 explanation shall be developed by the department for use by all
2 counties.

3 (B) An individual waiver form, which shall also be developed
4 by the department and used by all counties. The waiver form shall
5 include both of the following:

6 (i) A space for the county to include a reference to any Penal
7 Code sections and corresponding offense names or descriptions
8 that describe the relevant conviction or convictions that are covered
9 by subdivision (b) and that the provider applicant has in his or her
10 background.

11 (ii) A statement that the service recipient, or his or her authorized
12 representative, if applicable, is aware of the applicant's conviction
13 or convictions and agrees to waive application of this section and
14 employ the applicant as a provider of services under this article.

15 (3) To ensure that the initial summary explanation referenced
16 in this subdivision is comprehensible for recipients and provider
17 applicants, the department shall consult with representatives of
18 county welfare departments and advocates for, or representatives
19 of, recipients and providers in developing the summary explanation
20 and offense descriptions.

21 (4) The individual waiver form shall be signed by the recipient,
22 or by the recipient's authorized representative, if applicable, and
23 returned to the county welfare department by mail or in person.
24 Except for a parent, guardian, or person having legal custody of a
25 minor recipient, a conservator of an adult recipient, or a spouse or
26 registered domestic partner of a recipient, a provider applicant
27 shall not sign his or her own individual waiver form as the
28 recipient's authorized representative. The county shall retain the
29 waiver form and a copy of the provider applicant's criminal offense
30 record information search response until the date that the
31 convictions that are the subject of the waiver request are no longer
32 within the 10-year period specified in subdivision (b).

33 (5) An individual waiver submitted pursuant to this subdivision
34 shall entitle a recipient to hire a provider applicant who otherwise
35 meets all applicable enrollment requirements for the In-Home
36 Supportive Services program. A provider hired pursuant to an
37 individual waiver may be employed only by the recipient who
38 requested that waiver, and the waiver shall only be valid with
39 respect to convictions that are specified in that waiver. A new
40 waiver shall be required if the provider is subsequently convicted

1 of an offense to which this section otherwise would apply. A
2 provider who wishes to be listed on a provider registry or to provide
3 supportive services to a recipient who has not requested an
4 individual waiver shall be required to apply for a general exception,
5 as provided for in subdivision (e).

6 (6) Nothing in this section shall preclude a provider who is
7 eligible to receive payment for services provided pursuant to an
8 individual waiver under this subdivision from being eligible to
9 receive payment for services provided to one or more additional
10 recipients who obtain waivers pursuant to this same subdivision.

11 (7) The state and a county shall be immune from any liability
12 resulting from granting an individual waiver under this subdivision.

13 (e) (1) Notwithstanding subdivision (b), an applicant who has
14 been convicted of an offense identified in subdivision (b) may seek
15 from the department a general exception to the exclusion provided
16 for in this section.

17 (2) Upon receipt of a general exception request, the department
18 shall request a copy of the applicant's criminal offender record
19 information search response from the applicable county welfare
20 department. Notwithstanding any other provision of law, the county
21 shall provide a copy of the criminal offender record information
22 search response, as provided to the county by the Department of
23 Justice, to the department. The county shall provide this
24 information in a manner that protects the confidentiality and
25 privacy of the criminal offender record information search
26 response. The state or federal criminal history record information
27 search response shall not be modified or altered from its form or
28 content as provided by the Department of Justice.

29 (3) The department shall consider the following factors when
30 determining whether to grant a general exception under this
31 subdivision:

32 (A) The nature and seriousness of the conduct or crime under
33 consideration and its relationship to employment duties and
34 responsibilities.

35 (B) The person's activities since conviction, including, but not
36 limited to, employment or participation in therapy education, or
37 community service, that would indicate changed behavior.

38 (C) The number of convictions and the time that has elapsed
39 since the conviction or convictions.

1 (D) The extent to which the person has complied with any terms
2 of parole, probation, restitution, or any other sanction lawfully
3 imposed against the person.

4 (E) Any evidence of rehabilitation, including character
5 references, submitted by the person, or by others on the person's
6 behalf.

7 (F) Employment history and current or former employer
8 recommendations. Additional consideration shall be given to
9 employer recommendations provided by a person who has received
10 or has indicated a desire to receive supportive or personal care
11 services from the applicant, including, but not limited to, those
12 services, specified in Section 12300.

13 (G) Circumstances surrounding the commission of the offense
14 that would demonstrate the unlikelihood of repetition.

15 (H) The granting by the Governor of a full and unconditional
16 pardon.

17 (f) If the department makes a determination to deny an
18 application to provide services pursuant to a request for a general
19 exception, the department shall notify the applicant of this
20 determination by either personal service or registered mail. The
21 notice shall include the following information:

22 (1) A statement of the department's reasons for the denial that
23 evaluates evidence of rehabilitation submitted by the applicant, if
24 any, and that specifically addresses any evidence submitted relating
25 to the factors in paragraph (3) of subdivision (e).

26 (2) A copy of the applicant's criminal offender record
27 information search response, even if the applicant already has
28 received a copy pursuant to Section 12301.6 or 12305.86. The
29 department shall provide this information in a manner that protects
30 the confidentiality and privacy of the criminal offender record
31 information search response.

32 (A) The state or federal criminal history record shall not be
33 modified or altered from its form or content as provided by the
34 Department of Justice.

35 (B) The department shall retain a copy of each individual's
36 criminal offender record information search response until the date
37 that the convictions that are the subject of the exception are no
38 longer within the 10-year period specified in subdivision (b), and
39 shall record the date the copy of the response was provided to the
40 individual and the department.

1 (C) The criminal offender record information search response
2 shall not be made available by the department to any individual
3 other than the provider applicant.

4 (g) (1) Upon written notification that the department has
5 determined that a request for exception shall be denied, the
6 applicant may request an administrative hearing by submitting a
7 written request to the department within 15 business days of receipt
8 of the written notification. Upon receipt of a written request, the
9 department shall hold an administrative hearing consistent with
10 the procedures specified in Section 100171 of the Health and Safety
11 Code, except where those procedures are inconsistent with this
12 section.

13 (2) A hearing under this subdivision shall be conducted by a
14 hearing officer or administrative law judge designated by the
15 director. A written decision shall be sent by certified mail to the
16 applicant.

17 (h) The department shall revise the provider enrollment form
18 developed pursuant to Section 12305.81 to include both of the
19 following:

20 (1) The text of subdivision (c) of Section 290 of the Penal Code,
21 subdivision (c) of Section 667.5 of the Penal Code, subdivision
22 (c) of Section 1192.7 of the Penal Code, and paragraph (2) of
23 subdivisions (c) and (g) of Section 10980.

24 (2) A statement that the provider understands that if he or she
25 has been convicted, or incarcerated following conviction for, any
26 of the crimes specified in the provisions identified in ~~paragraph~~
27 ~~(b)~~ *paragraphs (1) to (7), inclusive, of subdivision (b)*, in the last
28 10 years, and has not received a certificate of rehabilitation or had
29 the information or accusation dismissed, as provided in subdivision
30 (c), he or she shall only be authorized to receive payment for
31 providing in-home supportive services under an individual waiver
32 or general exception as described in this section, and upon meeting
33 all other applicable criteria for enrollment as a provider in the
34 program.

35 (i) (1) Notwithstanding the rulemaking provisions of the
36 Administrative Procedure Act (Chapter 3.5 (commencing with
37 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
38 Code), the department may implement and administer this section
39 through all-county letters or similar instructions from the
40 department until regulations are adopted. The department shall

1 adopt emergency regulations implementing these provisions no
2 later than July 1, 2011. The department may readopt any emergency
3 regulation authorized by this section that is the same as or
4 substantially equivalent to an emergency regulation previously
5 adopted under this section.

6 (2) The initial adoption of emergency regulations pursuant to
7 this section and one readoption of emergency regulations shall be
8 deemed an emergency and necessary for the immediate
9 preservation of the public peace, health, safety, or general welfare.
10 Initial emergency regulations and the one readoption of emergency
11 regulations authorized by this section shall be exempt from review
12 by the Office of Administrative Law. The initial emergency
13 regulations and the one readoption of emergency regulations
14 authorized by this section shall be submitted to the Office of
15 Administrative Law for filing with the Secretary of State and each
16 shall remain in effect for no more than 180 days, by which time
17 final regulations may be adopted.

18 (j) In developing the individual waiver form and all-county
19 letters or information notices or similar instructions, the department
20 shall consult with stakeholders, including, but not limited to,
21 representatives of the county welfare departments, and
22 representatives of consumers and providers. The consultation shall
23 include at least one in-person meeting prior to the finalization of
24 the individual waiver form and all-county letters or information
25 notices or similar instructions.

26 SEC. 2. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution for certain
28 costs that may be incurred by a local agency or school district
29 because, in that regard, this act creates a new crime or infraction,
30 eliminates a crime or infraction, or changes the penalty for a crime
31 or infraction, within the meaning of Section 17556 of the
32 Government Code, or changes the definition of a crime within the
33 meaning of Section 6 of Article XIII B of the California
34 Constitution.

35 However, if the Commission on State Mandates determines that
36 this act contains other costs mandated by the state, reimbursement
37 to local agencies and school districts for those costs shall be made

1 pursuant to Part 7 (commencing with Section 17500) of Division
2 4 of Title 2 of the Government Code.

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LEGISLATIVE AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: AB 1610: Special access: liability

SUMMARY: AB 1610 would prohibit a person with a disability from starting a civil action for discrimination based on the failure to remove a structural barrier to entry into an existing public accommodation as allowed by the Americans with Disabilities Act (ADA) of 1990. The bill contains legislative findings and declarations regarding the abuse of special access laws through vexatious litigation, and the intent of the Legislature to restrict the filing of special access lawsuits under California law by requiring that: (1) the owner or operator of such accommodation is provided with a written notice specific enough to identify such barrier by the aggrieved party; (2) the owner, agent, or other responsible party respond within 30 days and (3) and have another 120 days to respond and agree to fix the alleged violation or refuse with specific objections. The bill declares that its provisions do not apply to claims for recovery of special damages for an injury. The bill would further state the intent of the Legislature to institute certain educational programs related to special access laws to educate affected business owners on access laws.

BACKGROUND: Existing federal law, the Americans with Disabilities Act (ADA) provides that no individual shall be discriminated against on the basis of disability. Persons with a disability have the right to full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or operates a place of public accommodation (42 U.S.C. Sec.12181). According to the ADA (section 302(b) (2)) persons with disabilities have the right to start a civil action if the responsible party fails to remove the structural barriers to entry into existing public accommodations.

Existing California law, the Unruh Civil Rights Act, declares that all persons, regardless of sex, race, color, religion, ancestry, national origin, disability or medical condition, are entitled to the full and equal accommodations, advantages, facilities privileges, or services in all business establishments of every kind whatsoever. A violation of the ADA also constitutes a violation of Unruh. The violation of this section is subject to actual damages incurred by an injured party, treble actual damages but not less than \$1,000, and any attorney's fees as the court may determine to be proper. (Civ. Code Sec.51)

ANALYSIS/DISCUSSION: AB 1610 is substantially similar to Senate Bill (SB) 783 that was introduced last year by Senator Dutton. SB 783 suggested similar pre-litigation procedural requirements before a person could pursue a lawsuit under the state civil rights and equal access to the public or housing accommodation laws, including the ADA. The Senate Judiciary Committee analysis traced the history of these types of lawsuits in the California Legislature and illustrated that the strategy of “notice and delay” bills have been used as a means to undermine the ADA access laws since its 1990 enactment. SB 783 did not become law following the path of previous failures.

The impact of yet another state legislative effort to create pre-litigation hurdles for persons with disabilities is an inequity since other protected classes are not subject to these delaying procedures.

While the intent of this legislation is stated to be preventing vexatious litigation and inhibiting waste of public and private resources, the author fails to provide valid statistics to support the line of reasoning.

COUNCIL STRATEGIC PLAN OBJECTIVE: Goal #13: Individuals with developmental disabilities and their families have access to community based services and supports available to the general population (such as recreation, transportation, childcare, etc.) that enable them to live productive and inclusive lives

PRIOR COUNCIL ACTIVITY: The Council has opposed similar legislation in the past since it creates legal barriers for persons with disabilities when attempting to achieve physical integration into community life.

STAFF RECOMMENDATION: Oppose

ATTACHMENT: AB 1610

PREPARED: Karim Alipourfard, March 1, 2012

ASSEMBLY BILL

No. 1610

Introduced by Assembly Member Wagner

February 7, 2012

An act to add Sections 55.4 and 55.41 to the Civil Code, and to amend Section 4452 of the Government Code, relating to special access.

LEGISLATIVE COUNSEL'S DIGEST

AB 1610, as introduced, Wagner. Special access: liability.

Under existing law, a person, firm, or corporation that interferes with the access rights of a disabled individual is liable for the actual damages of each offense and any amount determined by a judge or jury of up to 3 times the amount of the actual damages, but in no case less than \$1,000. Existing law requires the State Architect to develop and submit for approval and adoption building standards for making buildings, structures, sidewalks, curbs, and related facilities accessible to, and usable by, persons with disabilities, as specified.

This bill would establish notice requirements for an alleged aggrieved party to follow before bringing an action against a business for an alleged violation of the above-described provisions. The bill would require that party to provide specified notice to the owner of the property, agent, or other responsible party where the alleged violation occurred. The bill would require that owner, agent, or other responsible party to respond within 30 days with a description of the improvements to be made or with a rebuttal to the allegations, as specified. If that owner, agent, or other responsible party elects to fix the alleged violation, the bill would provide 120 days to do so. The bill would provide that its provisions do not apply to claims for recovery of special damages for an injury in fact, and would authorize the court to consider

previous or pending actual damage awards received or prayed for by the alleged aggrieved party for the same or similar injury. The bill would further state the intent of the Legislature to institute certain educational programs related to special access laws.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The federal Americans with Disabilities Act of 1990 (Public
4 Law 101-336) and this state’s complementary special access laws
5 set forth in Sections 51, 52, 54, 54.1, and 54.3 of the Civil Code
6 and Sections 4450 and 4452 of the Government Code are intended
7 to protect Californians with special needs from unlawful and unfair
8 restrictions on access to the full and free use of the streets,
9 highways, sidewalks, walkways, public buildings, medical
10 facilities, including hospitals, clinics, and physicians’ offices,
11 public facilities, and other public places.

12 (b) These special access laws are susceptible to abuse through
13 vexatious litigation that is not pursued with the primary intent of
14 rectifying a wrong or advancing or creating a public benefit.

15 (c) Vexatious special access lawsuits unduly burden our courts
16 and taxpayers and do not result in improved access for those with
17 special access needs. Those lawsuits cost California jobs and
18 economic prosperity, unfairly threaten small businesses, force
19 businesses to respond with higher costs for goods and services,
20 and have adverse impacts on levels of employment and employee
21 compensation.

22 (d) It is the intent of the Legislature in enacting this act to
23 eliminate vexatious special access lawsuits while protecting the
24 right of individuals to retain counsel and file an action for relief
25 pursuant to the federal Americans with Disabilities Act of 1990
26 (Public Law 101-336) and Sections 51, 52, 54, 54.1, and 54.3 of
27 the Civil Code and Sections 4450 and 4452 of the Government
28 Code.

29 (e) It is the intent of the Legislature in enacting this act to restrict
30 the filing of special access lawsuits under California law without
31 first notifying and allowing property owners, agents, or other

1 responsible parties the opportunity to improve access by curing
2 any violations.

3 (f) It is not the intent of the Legislature in enacting this act to
4 prohibit the filing of special access lawsuits where, because of an
5 alleged violation of this state's special access laws, an individual
6 has suffered an injury in fact for which a proceeding in a court of
7 competent jurisdiction is proper.

8 SEC. 2. Section 55.4 is added to the Civil Code, to read:

9 55.4. (a) Notwithstanding any other provision of law, prior to
10 filing a claim under Section 51, 52, 54, 54.1, or 54.3, or Section
11 4450 or 4452 of the Government Code, the alleged aggrieved party
12 shall notify the owner of the property, agent, or other responsible
13 party where the alleged violation occurred by personal service, in
14 accordance with applicable state or federal laws, or certified mail,
15 of all alleged special access violations for which a claim may be
16 filed by the alleged aggrieved party. That notice shall contain the
17 following language:

18 "This letter is to inform you that the property located at (address
19 of property), for which you are the property owner, agent, or other
20 responsible party, may be in violation of federal and/or state special
21 access laws pursuant to (expressly cite the federal and/or California
22 statute of which the property is believed to be in violation) and
23 caused harm to (list the name of the alleged aggrieved party).

24 Specifically, the possible violation(s) has/have been identified
25 as follows: (Notice must identify the specific facts that constitute
26 the alleged violation, including the date on which the alleged
27 violation occurred and identification of the location of the alleged
28 violation with sufficient detail, so that the location can be identified
29 by the property owner, agent, or other responsible party).

30 Under Section 55.4 of the California Civil Code, you have 30
31 days to respond to this notice by certified mail or personal service.
32 Your response must be addressed to (give address where personal
33 service may be received or certified mail may be sent). California
34 law allows you to respond in one of three ways:

35 (1) You may expressly state that improvements will be made
36 to bring the premises into compliance with applicable special
37 access laws. If you respond in this fashion, you have a maximum
38 of 120 days to make these improvements or repairs. The 120-day
39 period shall begin on the date your response to this notice is
40 received at the address given above. If the improvements or repairs

1 necessary to bring the property into compliance with federal and
2 state special access laws are not completed in 120 days, a lawsuit
3 may be brought against you.

4 (2) You may challenge the validity of the alleged violations. If
5 you respond in this fashion, a lawsuit may be brought against you
6 immediately.

7 (3) If the violations listed above are the same or similar to
8 previous violations that you believe have been corrected, you may
9 respond by stating that the necessary repairs have been made to
10 bring the property into compliance with federal and state special
11 access laws. You must also attach evidence that verifies those
12 improvements.

13 If you have any questions about this notice or your rights under
14 federal or California law, please contact your legal counsel.”

15 (b) Beginning with the date of notice, the property owner, agent,
16 or other responsible party where the alleged violation occurred
17 shall have 30 days to respond by certified mail or personal service
18 to the alleged aggrieved party. That response shall communicate
19 any of the following:

20 (1) Expressly state that improvements will be made to bring the
21 premises into compliance with applicable laws. A response in this
22 fashion by the property owner, agent, or other responsible party
23 where the alleged violation occurred shall not be considered an
24 admission of guilt and is inadmissible in any future claims based
25 on the same facts filed against the property owner, agent, or other
26 responsible party.

27 (2) Challenge the validity of the alleged violation. If the property
28 owner, agent, or other responsible party where the alleged violation
29 occurred so responds, the alleged aggrieved party may file a claim,
30 subject to any applicable statutes of limitations, any time after
31 receipt of notice as prescribed in this section.

32 (3) State that the alleged violations identified by the alleged
33 aggrieved party have been corrected to comply with applicable
34 state and federal special access laws. The property owner, agent,
35 or other responsible party where the alleged violation occurred
36 shall also attach evidence that verifies those improvements.

37 (c) If the property owner, agent, or responsible party where the
38 alleged violation occurred responds in the manner described in
39 paragraph (1) of subdivision (b), the property owner, agent, or
40 responsible party where the alleged violation occurred shall have

1 120 days to remedy the alleged violation. The 120-day period shall
2 begin on the date the alleged aggrieved party receives a response,
3 pursuant to subdivision (b), from the owner, agent, or responsible
4 party where the alleged violation occurred.

5 (d) If, at the end of the 120-day period, the property owner,
6 agent, or responsible party where the alleged violation occurred
7 has not made the improvements described in paragraph (1) of
8 subdivision (b) and fails to provide satisfactory explanation as to
9 why those repairs were not yet completed, the alleged aggrieved
10 party may file a claim.

11 (e) If the property owner, agent, or other responsible party where
12 the alleged violation occurred has made the improvements
13 described in paragraph (1) of subdivision (b), no current or future
14 alleged aggrieved party shall receive any damages or attorney's
15 fees, other than special damages, for any claim arising out of the
16 same or similar facts that served as a basis for the alleged violation.

17 (f) This section applies to all claims for damages or fees, other
18 than those praying for special damages arising out of injuries in
19 fact. This section shall not be construed to limit claims for recovery
20 of special damages filed by any person who suffers an injury in
21 fact because they were denied full and equal access to an
22 accommodation as required by Section 51, 52, 54, 54.1, or 54.3,
23 or Section 4450 or 4452 of the Government Code.

24 (g) In making a determination of the amount of damages
25 awarded to a successful plaintiff, a court or jury shall consider
26 previous or pending actual damage awards received or prayed for
27 by that plaintiff for the same or similar injury.

28 SEC. 3. Section 55.41 is added to the Civil Code, to read:

29 55.41. It is the intent of the Legislature to institute programs
30 to educate business property owners and local municipalities about
31 the accessibility requirements of federal and state special access
32 laws.

33 SEC. 4. Section 4452 of the Government Code is amended to
34 read:

35 4452. (a) It is the intent of the Legislature that the building
36 standards published in the State Building Standards Code relating
37 to access by the physically handicapped and the other regulations
38 adopted by the State Architect pursuant to Section 4450 shall be
39 used as minimum requirements to insure that buildings, structures
40 and related facilities covered by this chapter are accessible to, and

1 functional for, the physically handicapped to, through, and within
2 their doors, without loss of function, space, or facility where the
3 general public is concerned.

4 ~~Any~~

5 *(b) Any* unauthorized deviation from ~~such~~ *those* regulations or
6 building standards shall be rectified by full compliance within 90
7 days after discovery of the deviation.

8 *(c) Notwithstanding subdivision (b), prior to any action*
9 *commenced for an alleged violation of Section 4450 or this section,*
10 *the notice requirements specified in Section 55.4 of the Civil Code*
11 *shall apply to the alleged aggrieved party.*

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LPPC AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: Assembly Bill (AB) 1705 (Silva), pupil assessment: high school exit examination: eligible pupil with disabilities

BILL SUMMARY: Under current law, all students must pass the high school exit exam in order to obtain a diploma. Alternatively, if a school district certifies a student in special education or with a 504 plan has satisfied, or will satisfy, all other requirements, they may award a high school diploma. Additionally, current law exempts students in special education or with 504 plans from the high school exit exam requirement until the California State Board of Education makes a determination whether or not it is feasible to have alternative means to the high school exit exam for such students. On July 14, 2010, the State Board of Education determined that alternative means to the high school exit exam are feasible and adopted regulations in February 2011 extending the implementation regulations date for alternative means from January 1, 2011 to July 1, 2012. The exemption from meeting the high school exit exam requirement for students in special education or with a 504 plan remains in place until June 30, 2012. The exemption from meeting the high school exit exam requirement ends June 30, 2012, unless legislation extending the exemption is enacted or the State Board of Education adopts regulations extending the implementation date for alternative means through December 31, 2012. It appears that AB 1705 is such legislation.

AB 1705 indicates that students in special education who graduate after July 1, 2015, will use the alternative method as described by the regulations that will be adopted by the State Board of Education by July 1, 2015, in order to meet the requirements to obtain a diploma – *instead* of being certified by the school district as having satisfied all other requirements.

BACKGROUND: No Child Left Behind requires students to demonstrate that they have sufficiently mastered high school academics before they may graduate. In California, the high school exit exam is the method by which students in high school demonstrate their mastery of high school academics so they may receive a diploma.

Other bills in recent years have attempted to provide for alternatives to the high school exit exam, but none have passed.

ANALYSIS/DISCUSSION: The high school exit exam has been a divisive issue for the disability community. Some families and students in special education believe that the high school exit exam demonstrates if their child has sufficient information to be successful in life, and in some cases, if the school adequately educated the student. 73

Other families and students in special education believe that the high school exit exam is not a fair way to measure if the student has mastered their academics and other, fairer ways to measure this exist, such as if the student has met their IEP goals.

Regardless of how families and students in special education feel about the high school exit exam, an alternative method, if fair and reasonable, can only provide additional options to students in special education in order to obtain a diploma – which can be invaluable to obtain employment or further education.

However, because this alternative method is intended to *replace* the current practice of certifying if a student in special education has met all other requirements in order to obtain a diploma, both options – an alternative method and a certification from the school district that the student in special education has otherwise satisfied all other requirements – are not available under the provisions of AB 1705.

COUNCIL STRATEGIC PLAN OBJECTIVE: The Council will take a position on proposed state and federal legislation and proposed regulations that impact people with developmental disabilities, will communicate those positions to legislators and their staff, and will disseminate this information to all interested parties.

PRIOR COUNCIL ACTIVITY: N/A

RECOMMENDATION(S): Support if amended such that both methodologies – an alternative method as described in regulations and certified by the school district as having satisfied all other requirements – to obtain a diploma co-exist.

ATTACHMENT(S): AB 1705

PREPARED: Christofer Arroyo, February 29, 2012

ASSEMBLY BILL

No. 1705

Introduced by Assembly Member Silva

February 15, 2012

An act to amend Sections 60852.1 and 60852.2 of the Education Code, relating to pupil assessment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1705, as introduced, Silva. Pupil assessment: high school exit examination: eligible pupils with disabilities.

Existing law requires each pupil completing grade 12 to successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school. Existing law requires by October 1, 2010, that the State Board of Education, taking into consideration specified findings and recommendations, adopt regulations for alternative means by which eligible pupils with disabilities, as defined, may demonstrate that they have achieved the same level of academic achievement in the content standards required for passage of the high school exit examination.

Existing law defines an eligible pupil with a disability as a pupil who has, among other things, an anticipated graduation date and is scheduled to receive a high school diploma on or after January 1, 2011, and the school district or state special school certifies that the pupil has satisfied or will satisfy all other state and local requirements for the receipt of a high school diploma on or after January 1, 2011. Existing law authorizes an eligible pupil with a disability, commencing January 1, 2011, to participate in the alternative means of demonstrating the level of academic achievement in the content standards required for passage of

the high school exit examination in the manner prescribed by the regulations adopted by the state board.

This bill would instead define an eligible pupil with a disability as a pupil who has, among other things, an anticipated graduation date and is scheduled to receive a high school diploma on or after July 1, 2015, and the school district or state special school certifies that the pupil has satisfied or will satisfy all other state and local requirements for the receipt of a high school diploma on or after July 1, 2015. The bill would instead authorize an eligible pupil with a disability, commencing July 1, 2015, to participate in the alternative means of demonstrating the level of academic achievement in the content standards required for passage of the high school exit examination in the manner prescribed by the regulations adopted by the state board. The bill would also make conforming and technical, nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 60852.1 of the Education Code is
2 amended to read:

3 60852.1. (a) The Superintendent shall recommend, and the
4 state board shall select, members of a panel that will convene to
5 make recommendations regarding alternative means for eligible
6 pupils with disabilities to demonstrate that they have achieved the
7 same level of academic achievement in the content standards in
8 English language arts or mathematics, or both, required for passage
9 of the high school exit examination.

10 (1) The panel shall be composed of educators and other
11 individuals who have experience with the population of pupils
12 with disabilities eligible for alternative means of demonstrating
13 academic achievement, as defined in Section 60852.2, and
14 educators and other individuals who have expertise with multiple
15 forms of assessment. The panel shall consult with experts in other
16 states that offer alternative means for pupils with disabilities to
17 demonstrate academic achievement. A majority of the panel shall
18 be classroom teachers.

19 (2) The panel shall make findings and recommendations
20 regarding all of the following:

1 (A) Specific options for alternative assessments, submission of
2 evidence, or other alternative means by which eligible pupils with
3 disabilities may demonstrate that they have achieved the same
4 level of academic achievement in the content standards in English
5 language arts or mathematics, or both, required for passage of the
6 high school exit examination.

7 (B) Scoring or other evaluation systems designed to ensure that
8 the pupil has achieved the same competence in the content
9 standards required for passage of the high school exit examination.

10 (C) Processes to ensure that the form, content, and scoring of
11 assessments, evidence, or other means of demonstrating academic
12 achievement are applied uniformly across the state.

13 (D) Estimates of one-time or ongoing costs, and whether each
14 option should be implemented on a statewide or regional basis, or
15 both.

16 (3) The panel shall present its options and make its findings and
17 recommendations to the Superintendent and to the state board by
18 October 1, 2009.

19 (b) ~~By October 1, 2010, for~~ For those portions of, or those
20 academic content standards assessed by, the high school exit
21 examination for which the state board determines it is feasible to
22 create alternative means by which eligible pupils with disabilities
23 may demonstrate the same level of academic achievement required
24 for passage of the high school exit examination, the state board,
25 taking into consideration the findings and recommendations of the
26 panel, shall adopt regulations for alternative means by which
27 eligible pupils with disabilities, as defined in Section ~~60952.2~~
28 *60852.2*, may demonstrate that they have achieved the same level
29 of academic achievement in the content standards required for
30 passage of the high school exit examination. The regulations shall
31 include appropriate timelines and the manner in which pupils and
32 school districts shall be timely notified of the results.

33 SEC. 2. Section 60852.2 of the Education Code is amended to
34 read:

35 60852.2. (a) For purposes of this chapter, "eligible pupil with
36 a disability" means a pupil who meets all of the following criteria:

37 (1) The pupil has an operative individualized education program
38 adopted pursuant to the federal Individuals with Disabilities
39 Education Act (20 U.S.C. Sec. 1400 et seq.) or a plan adopted
40 pursuant to Section 504 of the federal Rehabilitation Act of 1973

1 (29 U.S.C. Sec. 794–(a)) that indicates that the pupil has an
2 anticipated graduation date and is scheduled to receive a high
3 school diploma on or after ~~January 1, 2011~~ *July 1, 2015*.

4 (2) The pupil has not passed the high school exit examination.

5 (3) The school district or state special school certifies that the
6 pupil has satisfied or will satisfy all other state and local
7 requirements for the receipt of a high school diploma on or after
8 ~~January 1, 2011~~ *July 1, 2015*.

9 (4) The pupil has attempted to pass those sections not yet passed
10 of the high school exit examination at least twice after grade 10,
11 including at least once during the current enrollment of the pupil
12 in grade 12, with the accommodations or modifications, if any,
13 specified in the individualized education program *adopted pursuant*
14 *to the federal Individuals with Disabilities Education Act (20*
15 *U.S.C. Sec. 1400 et seq.)* or the *plan adopted pursuant to Section*
16 *504-plan of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec.*
17 *794(a))* of the pupil.

18 (b) Commencing ~~January 1, 2011~~, *July 1, 2015*, an eligible pupil
19 with a disability may participate in the alternative means of
20 demonstrating the level of academic achievement in the content
21 standards required for passage of the high school exit examination
22 in the manner prescribed by the regulations adopted pursuant to
23 Section 60852.1. The state board may, by regulation, extend this
24 date by up to two years if it determines that an extension is
25 necessary for the appropriate implementation of the regulations
26 adopted pursuant to Section 60852.1.

27 (c) An eligible pupil with a disability shall be deemed to have
28 satisfied the requirements of Section 60851 for those parts of the
29 high school exit examination that the pupil has not passed if the
30 school district in which the pupil is enrolled is notified that the
31 pupil has successfully demonstrated the same level of academic
32 achievement in the statewide content standards as the level of
33 academic achievement that is necessary to pass the high school
34 exit examination through one or more of the alternative means
35 prescribed in the regulations adopted pursuant to Section 60852.1.

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LEGISLATIVE AGENDA ITEM DETAIL SHEET

BILL NUMBER: AB 1641: Health care coverage: durable medical equipment

SUMMARY: Existing law, the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act), provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of that act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Under existing law, health care service plans and health insurers are required to offer specified types of coverage as part of their group plan contracts or group policies. This bill would require a health care service plan and a health insurer to provide coverage for durable medical equipment, as defined, as part of their plan, contracts or health insurance policies.

BACKGROUND: Existing law requires full-service health plans licensed under the Knox-Keene Health Care Service Plan Act of 1975 to cover all medically necessary basic health care services. DME items are usually external, reusable equipment used in conjunction with medical care to treat a medical condition or injury or to preserve a patient's functioning and quality of life. DME can be used on a long-term basis to treat a chronic illness or to cope with a physical disability or the consequences of treatment for a disease.

ANALYSIS/DISCUSSION: This bill would require insurers issuing group or individual health insurance to provide coverage for DME and services under the terms and conditions that may be agreed upon between the policyholder and the insurer. The amount of the benefit for DME and services shall not be less than the annual lifetime benefit maximums applicable to basic health care services required to be provided under Section 1367 according to which healthcare service plans are allowed to charging subscribers or enrollees a co payment or a deductible for a basic health care service or from setting forth, by contract, limitations on maximum coverage of basic health care services, provided that the copayments, deductibles, or limitations are reported to, and held unobjectionable by, the director and set forth to the subscriber or enrollee pursuant to the disclosure provisions of the law.

Examples of DME range from:

Wheelchairs
Walkers
Portable oxygen tanks

Hospital electric beds

Medicare supplement, short-term limited duration health insurance, vision-only, or Civilian Health and Medical Program of the Uniformed Services CHAMPUS)-supplement insurance, or hospital indemnity, hospital-only, accident-only, or specified disease insurance that does not pay benefits on a fixed benefit, cash payment only basis, are exempted from the provisions of this bill.

COUNCIL STRATEGIC PLAN OBJECTIVE: Goal #10: Individuals with developmental disabilities understand their options regarding health services and have access to a full range of coordinated health, dental and mental health services in their community.

PRIOR COUNCIL ACTIVITY: None

STAFF RECOMMENDATION: Watch- Allison Ruff, Legislative Director for Assemblymember Lowenthal, indicated that due to a change in the Assembly Health Committee's policy regarding mandates bills, the author will not be pursuing the bill in its current form. Most likely, the bill will be amended to a different subject.

ATTACHMENT: AB 1641

PREPARED: Karim Alipourfard, March 1, 2012

ASSEMBLY BILL

No. 1641

Introduced by Assembly Member Bonnie Lowenthal

February 13, 2012

An act to add Section 1367.27 to the Health and Safety Code, and to add Section 10123.24 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1641, as introduced, Bonnie Lowenthal. Health care coverage: durable medical equipment.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act), provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of that act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Under existing law, health care service plans and health insurers are required to offer specified types of coverage as part of their group plan contracts or group policies.

This bill would require a health care service plan and a health insurer to provide coverage for durable medical equipment, as defined, as part of their plan contracts or health insurance policies.

Because this bill would specify additional requirements under the Knox-Keene Act, the willful violation of which would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1367.27 is added to the Health and Safety
2 Code, to read:

3 1367.27. (a) Every health care service plan, except a
4 specialized health care service plan, that covers hospital, medical,
5 or surgical expenses on a group or individual basis that is issued,
6 amended, received, or delivered on or after January 1, 2013, shall
7 provide coverage for durable medical equipment (DME) and
8 services under the terms and conditions that may be agreed upon
9 between the subscriber and the plan. Every plan shall communicate
10 the availability of that coverage to all group or individual
11 contractholders and to all prospective group or individual
12 contractholders with whom they are negotiating. Coverage for
13 DME shall provide for coverage when the equipment, including
14 original and replacement devices, is prescribed by a physician and
15 surgeon or doctor of podiatric medicine acting within the scope
16 of his or her license, or is ordered by a licensed health care provider
17 acting within the scope of his or her license. Every plan shall have
18 the right to conduct a utilization review to determine medical
19 necessity prior to authorizing these services.

20 (b) The amount of the benefit for DME and services shall be
21 no less than the annual and lifetime benefit maximums applicable
22 to the basic health care services required to be provided under
23 Section 1367. If the contract does not include any annual or lifetime
24 benefit maximums applicable to basic health care services, the
25 amount of the benefit for DME and services shall not be subject
26 to an annual or lifetime maximum benefit level. Any copayment,
27 coinsurance, deductible, or maximum out-of-pocket amount applied
28 to the benefit for DME and services shall be no more than the most
29 common amounts applied to the basic health care services required
30 to be provided under Section 1367.

31 (c) "Durable medical equipment" consists of equipment that is
32 used for the treatment of a medical condition or injury or to
33 preserve the patient's functioning and that is designed for repeated

1 use and includes, but is not limited to, manual and motorized
2 wheelchairs, scooters, oxygen equipment, crutches, walkers,
3 electric beds, shower and bath seats, and mechanical patient lifts.

4 SEC. 2. Section 10123.24 is added to the Insurance Code, to
5 read:

6 10123.24. (a) On and after January 1, 2013, every insurer
7 issuing group or individual health insurance shall provide coverage
8 for durable medical equipment (DME) and services under the terms
9 and conditions that may be agreed upon between the policyholder
10 and the insurer. Every insurer shall communicate the availability
11 of that coverage to all group or individual policyholders and to all
12 prospective group or individual policyholders with whom they are
13 negotiating. Coverage for DME shall provide for coverage when
14 the equipment, including original and replacement devices, is
15 prescribed by a physician and surgeon or doctor of podiatric
16 medicine acting within the scope of his or her license, or is ordered
17 by a licensed health care provider acting within the scope of his
18 or her license. Every insurer shall have the right to conduct a
19 utilization review to determine medical necessity prior to
20 authorizing these services.

21 (b) The amount of the benefit for DME and services shall be
22 no less than the annual and lifetime benefit maximums applicable
23 to all benefits in the policy. Any copayment, coinsurance,
24 deductible, or maximum out-of-pocket amount applied to the
25 benefit for DME and services shall be no more than the most
26 common amounts contained in the policy.

27 (c) "Durable medical equipment" consists of equipment that is
28 used for the treatment of a medical condition or injury or to
29 preserve the patient's functioning and that is designed for repeated
30 use and includes, but is not limited to, manual and motorized
31 wheelchairs, scooters, oxygen equipment, crutches, walkers,
32 electric beds, shower and bath seats, and mechanical patient lifts.

33 (d) This section shall not apply to specialized health insurance,
34 Medicare supplement, short-term limited duration health insurance,
35 CHAMPUS supplement insurance, TRICARE supplement, or to
36 hospital indemnity, accident only, or specified disease insurance.

37 SEC. 3. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

- 1 infraction, eliminates a crime or infraction, or changes the penalty
- 2 for a crime or infraction, within the meaning of Section 17556 of
- 3 the Government Code, or changes the definition of a crime within
- 4 the meaning of Section 6 of Article XIII B of the California
- 5 Constitution.

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LPPC AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: Senate Bill (SB) 1050, autism screenings: pilot program

BILL SUMMARY: SB 1050 is a spot bill to create a pilot program that promotes the use of technology and telehealth systems to screen, diagnose, and evaluate children with autism spectrum disorders. The bill also specifies that the pilot program would be created by an academic institution in collaboration with school districts and regional centers and funded through private-public partnerships (such as foundations and high tech companies).

BACKGROUND: People in rural areas sometimes have difficulty obtaining screening, diagnosis, or evaluation of children with autism. It has been reported that research indicates telehealth systems can effectively meet this need.

ANALYSIS/DISCUSSION: SB 1050 is presently a spot bill and no further specifics are available at the time of this writing.

COUNCIL STRATEGIC PLAN OBJECTIVE: The Council will take a position on proposed state and federal legislation and proposed regulations that impact people with developmental disabilities, will communicate those positions to legislators and their staff, and will disseminate this information to all interested parties.

PRIOR COUNCIL ACTIVITY: The Council has watched SB 764 [(Steinberg), developmental services: telehealth systems program] which was a spot bill and substantially similar to SB 1050.

RECOMMENDATION(S): Watch SB 1050.

ATTACHMENT(S): SB 1050

PREPARED: Christofer Arroyo, February 29, 2012

Introduced by Senator Alquist

February 8, 2012

An act relating to autism and autism spectrum disorders.

LEGISLATIVE COUNSEL'S DIGEST

SB 1050, as introduced, Alquist. Autism screening: pilot program.

Existing law requires the State Department of Developmental Services to develop evaluation and diagnostic procedures for the diagnosis of autism disorder and other autistic spectrum disorders, as specified. Existing law also requires the Superintendent of Public Instruction to convene, with input from the University of California, the California State University, the department, and other appropriate entities, an advisory committee to develop recommendations identifying the means by which public and nonpublic schools, including charter schools, can better serve pupils with autism spectrum disorders and their parents.

This bill would declare the intent of the Legislature to enact legislation to establish a pilot program to promote the use of technology and telehealth systems for the screening, diagnosis, and evaluation of children with autism spectrum disorders. The pilot program would be established by an academic institution, in collaboration with school districts and regional centers, and would be funded through private-public partnerships, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) It is the intent of the Legislature to enact
2 legislation to establish a pilot program to promote the use of

- 1 technology and telehealth systems for the screening, diagnosis,
2 and evaluation of children with autism spectrum disorders (ASD).
3 The pilot program would also focus on providing services, through
4 the use of technology and telehealth, to underserved populations.
- 5 (b) It is the intent of the Legislature that the pilot program be
6 established by an academic institution, in collaboration with one
7 or more regional centers, one or more school districts, or a
8 combination of one or more regional centers and one or more
9 school districts.
- 10 (c) It is the intent of the Legislature that the pilot program be
11 funded through public-private partnerships with entities such as
12 foundations and high-tech companies.

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Finance Bulletin

Ana J. Matosantos, Director

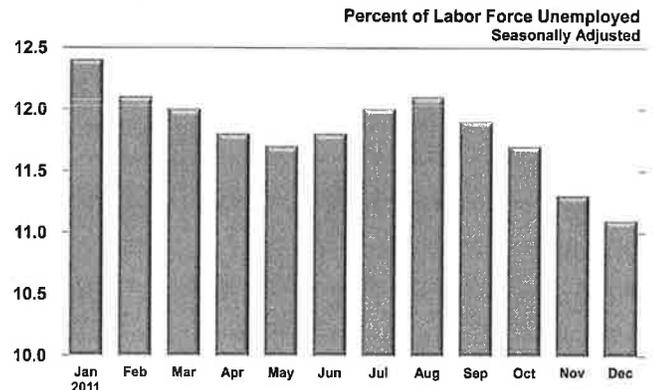
Economic Update

Most economic readings for the final months of 2011 indicate that the economy shrugged off the midyear slowdown and that the recovery may have become self-sustaining. Labor markets made steady progress. Real estate markets improved slightly. Construction activity accelerated modestly, but remained very subdued.

LABOR MARKET CONDITIONS

- California's labor market definitely picked up the pace in the closing months of 2011. In the four months ending with December, nonfarm employment rose 112,300 versus gaining only 25,800 in the preceding four months. The unemployment rate dropped a full percentage point during the final four months, compared to rising 0.3 percentage point in the preceding four months.
- The employment report for December 2011 contained good news across the board. Nonfarm jobs grew 10,700—the fifth consecutive month-over-month gain. November's gain was revised up to 24,700—an 18,200-job improvement from originally reported 6,500 gain.
- The unemployment rate tumbled 0.2 percentage point to 11.1 percent—the lowest rate since April 2009. In December, the number of Californians employed rose 73,000, unemployment dropped 37,000, and the labor force grew by 37,000.
- Looking at the industry employment trends; five industries gained jobs and six lost. The best gain in December was in professional and business services (13,400) and followed by construction (4,800) and then information (3,600), government (1,500) (mainly local education—state government payrolls dropped 1,300), and education and health services (600).
- The biggest loss in December was in trade, transportation and utilities (4,200)—likely due to post-holiday draw downs in retail trade and delivery services. Employment also fell in leisure and hospitality (3,400), manufacturing (2,500), other services (1,900), mining and logging (600), and financial activities (600).
- The employment estimates for 2007 through 2011 will change on March 9 following the annual benchmark revision process. The month-to-month pattern evident in the most recent months will still be evident, but the employment levels will be different.

Unemployment Rates Improves



BUILDING ACTIVITY

- Even though it faltered in December, home building activity followed a moderately—but volatile—rising trend during 2011. Despite this trend, home building remained at a relatively subdued level.
- Residential permits were issued at a seasonally adjusted annual rate of 51,813 units in December, down almost 19 percent from November. Single-family permits were down 12 percent, while multi-family permitting was down 23 percent.
- New home permitting during the 2011 as a whole was up 5 percent from 2010, but was down a substantial 78 percent from the prerecession peak in 2004.
- Similarly, after slowing sharply in 2008, nonresidential construction also gradually improved throughout 2011. Nonresidential permitting rose 18 percent in December from a year earlier. For 2011 as a whole, the pace of nonresidential permitting accelerated 16.3 percent from 2010. This gain was broad based with slowdowns in only two sectors, amusement parks and service stations.

REAL ESTATE

- Existing home markets firmed up slightly in the last two months of 2011, with modest improvement in prices and sales. However, both measures were still softer than a year earlier. Sales of existing, single-family detached homes in December totaled 520,940 units at a seasonally adjusted annualized rate, off nearly 7 percent from the pace set at the end of 2010. The median price of existing, single-family homes sold was \$285,920, down 6.2 percent from a year earlier.
- The inventory picture was mixed in December. The unsold inventory index slipped to 4.2 months—the lowest level since December 2009. Conversely, the median number of days needed to sell a home rose to 59 days, up slightly from a year earlier.

Monthly Cash Report

Preliminary General Fund agency cash for January was \$630 million below the 2012-13 Governor's Budget forecast of \$10.215 billion. Year-to-date revenues are \$625 million below forecast.

- Personal income tax revenues to the General Fund were \$679 million below the month's forecast of \$7.852 billion. The final estimated payment for the 2011 tax year, which was due in mid-January, came in \$609 million below the projected level of \$3.754 billion. This represented a year-over-year decline of 12.4 percent, which is in contrast to the 18.3-percent growth rate seen in the other estimated payment months for the 2011 tax year. Additional information on this reversal will not be known until after final 2011 income tax payments are made in mid-April. Withholding was \$19 million above the estimate of \$4.306 billion. Other receipts were \$13 million below the forecast of \$330 million and refunds were \$83 million higher than the \$402 million that was expected. Proposition 63 requires that 1.76 percent of total monthly personal income tax collections be transferred to the Mental Health Services Fund (MHSF). The amount transferred to the MHSF in January was \$7 million below the estimate of \$136 million. Year-to-date General Fund income tax revenues are \$631 million below estimate.
- Sales and use tax receipts were \$89 million above the month's forecast of \$1.932 billion. January cash represents the final payment for fourth quarter sales, which was due at the end of January, and a portion of this payment is received in early February. Year-to-date, the sales tax cash is \$36 million above forecast.
- Corporation tax revenues were \$127 million below the month's estimate of \$262 million. Prepayments were \$153 million below the forecast of \$353 million and other payments totaled \$85 million. Refunds were \$26 million below the projected level of \$176 million. Year-to-date revenues are \$122 million below estimate.
- Total Vehicle License Fee General Fund revenues reported in January were \$1 million lower than the estimate of \$4 million. Year-to-date revenues are \$2 million below forecast.
- Insurance tax revenues were \$10 million above the month's estimate of \$0 million, primarily due to the revised timeline for issuing refunds resulting from a Board of Equalization (BOE) decision in the California Automobile Insurance Company case. The forecast assumed that \$11 million of refunds attributable to the BOE decision would be issued this month; however, recent information indicates that refunds will be delayed. Year-to-date insurance tax revenues are \$16 million above the forecasted \$1,047 million. Adjusting for the delayed refunds, year-to-date revenues would be \$4 million below forecast.
- Revenues from the estate, alcoholic beverage, tobacco taxes and pooled money interest came in \$3 million above the \$43 million that was expected. "Other" revenues were \$75 million above the month's estimate of \$122 million.

2011-12 Comparison of Actual and Forecast Agency General Fund Revenues

Revenue Source	JANUARY 2012				2011-12 YEAR-TO-DATE			
	Forecast	Actual	Change	Percent Change	Forecast	Actual	Change	Percent Change
Personal Income	\$7,852	\$7,173	-\$679	-8.6%	\$30,101	\$29,470	-\$631	-2.1%
Sales & Use (a)	1,932	2,021	89	4.6%	11,859	11,895	36	0.3%
Corporation	262	135	-127	-48.5%	3,390	3,268	-122	-3.6%
Insurance	0	10	10	n/a	1,047	1,063	16	1.5%
Estate	0	0	0	0.0%	0	0	0	0.0%
Pooled Money Interest	3	1	-2	-66.7%	16	14	-2	-12.5%
Alcoholic Beverages	32	36	4	12.5%	205	209	4	2.0%
Tobacco	8	9	1	12.5%	58	59	1	1.7%
Vehicle License Fees	4	3	-1	-25.0%	64	62	-2	-3.1%
Other	122	197	75	61.5%	1,192	1,267	75	6.3%
Total	\$10,215	\$9,585	-\$630	-6.2%	\$47,932	\$47,307	-\$625	-1.3%

This is an agency cash report and the data may differ from the Controller's report to the extent that cash received by agencies has not yet been reported to the Controller.

Totals may not add due to rounding. The forecast is from the 2012-13 Governor's Budget.



The 2012-13 Budget:

Developmental Services Budget Update

MAC TAYLOR • LEGISLATIVE ANALYST • MARCH 1, 2012

Summary

Over the three-year period from 2009-10 to 2011-12, the Department of Developmental Services' (DDS) General Fund spending has remained relatively flat. (This is in contrast to earlier in the decade when spending grew rapidly.) This has been the case in spite of rapidly growing caseloads and other cost pressures. For example, during this time Regional Centers (RCs)—by far the largest DDS program—saw an average annual caseload growth rate of 3.4 percent. In this brief, we discuss the measures adopted by the Legislature over these three years to reduce General Fund costs in both Developmental Centers (DCs) and RCs.

In 2009-10, the Legislature reduced the DDS General Fund budget by drawing down more federal funds, reducing RC and DC operations, and by changing the standards as to how RCs authorize services for consumers. The Legislature also imposed provider payment rate reductions on RC providers in order to achieve savings. While the provider payment reduction was implemented initially for one year, it has been renewed by the Legislature for each of the subsequent years. In 2010-11, additional reductions to the DDS General Fund budget were made, including obtaining additional federal funds and using First Five Commission funds in lieu of General Fund. During 2011-12, the DDS General Fund budget was automatically reduced by \$100 million due to the operation of a budget trigger mechanism that came into play when the state's revenues came in under budget projections. Also in 2011-12, the Legislature adopted RC best practices and accountability measures, creating additional savings. During this three-year period, the Legislature adopted mostly ongoing savings, making long-term changes to DDS programs.

BACKGROUND

Developmental disabilities include, but are not limited to, cerebral palsy, autism, mental retardation, and disabling conditions closely related to mental retardation. The Lanterman Developmental Disabilities Services Act of 1969 forms the basis of the state's commitment to provide developmentally disabled individuals with a variety of services, which are overseen by DDS. Unlike most other public social services or medical services programs, services are generally provided to the developmentally disabled without any requirements that recipients demonstrate that they or their families do not have the financial means to pay for the services themselves.

Lanterman Act Establishes State's Responsibility to the Developmentally Disabled.

The Lanterman Act establishes the state's responsibility for ensuring that persons with developmental disabilities, regardless of age, have access to services that sufficiently meet their needs and goals in the least restrictive setting. More than 99 percent receive services under the Community Services Program and live with their parents or other relatives, in their own houses or apartments, or in group homes designed to meet their needs. These community-based services are coordinated through nonprofit organizations called RCs, which provide diagnosis, assessment of eligibility, and help consumers coordinate and access the services they need. Less than 1 percent live in state-operated, 24-hour facilities, known as DCs, which we describe in more detail later in this analysis.

AN OVERVIEW OF DDS PROGRAMS AND RECENT FUNDING AND CASELOAD TRENDS

Due in large part to the deterioration of the state's fiscal condition over the last several years, the Legislature has taken a series of actions to control costs in DDS programs. Below, we provide an overview of DDS programs and describe recent funding and caseload trends.

DC PROGRAM OVERVIEW

Four DCs and One Leased Facility. The DDS operates four DCs (Fairview in Orange County, Lanterman in Los Angeles County, Porterville in Tulare County, and Sonoma in Sonoma County) and one smaller leased facility (Canyon Springs in Riverside County) which provide 24-hour care and supervision to approximately 1,760 residents in 2011-12. All of the facilities provide residential and day programs, as well as health care and assistance with activities of daily living, education, and

employment. The DCs face many physical structure challenges, as many buildings are over 50 years old and in need of capital outlay improvements. For example, for 2012-13 the department is requesting approximately \$25 million for a kitchen upgrade for Porterville DC.

Secure Treatment Program. The DC consumers admitted through the criminal justice system receive competency training and behavioral supports and interventions as needed so that they can be successfully moved into the community. The Porterville DC operates the secure treatment program to provide services to consumers who have: (1) mild to moderate mental retardation, (2) have come into contact with the criminal justice system, (3) have been determined to be a danger to themselves or others and/or incompetent to stand trial, and (4) have been determined by the court to

meet the criteria requiring treatment in a secure setting.

Two Main Components of DC Costs.

There are two main drivers of DC costs: personnel and operating expenses and equipment (OE&E). Figure 1 shows the 2011-12 costs for each operating DC based on the 2011-12 enacted budget. The figure includes costs listed under a “6th center,” which reflects unallocated funds that may be dispersed to the DCs when they need additional funding. This allows DDS to make its final allocation of funds to the DCs later in the fiscal year when there is a more accurate estimate of what each DC’s costs will be. For 2011-12, Sonoma DC has the highest estimated caseload and annual facility cost. The Porterville DC has the second highest estimated annual facility cost, in part because of the secure treatment area.

DC Caseload Has Been Declining in Recent Years. The population within DCs has been on a steady decline in recent years. This is mainly the result of RCs working to find placements for consumers in the community. This is consistent

with federal and state policy to provide services to disabled persons in the least restrictive environments. Figure 2 shows that the DC population is projected to decrease from 2,317 total consumers in 2008-09 to 1,533 in 2012-13, or at an average annual decline of about 10 percent.

DC Closures. As Figure 2 reflects, Sierra Vista was closed in 2009. The next planned closure is at Lanterman DC, which has seen a steady decline of its population since 2010. The Governor’s budget assumes almost 100 consumers will leave Lanterman DC and move into community placements or to other DCs in 2012-13. However, the administration has declined to give a target date for the closure of Lanterman DC due mainly to

**Figure 1
Developmental Center Costs^a**

2011-12 (Dollars in Millions, All Funds)

	Caseload	Number of Personnel Years	Personnel Cost	OE&E Cost	Total Cost
Lanterman	271	1,051	\$86.2	\$9.5	\$95.7
Porterville	499	1,481	118.6	24.4	143.0
Sonoma	555	1,630	139.3	18.0	157.3
Fairview	377	1,263	101.4	13.5	114.9
Canyon Springs	50	122	9.6	3.9	13.5
6 th Center	—	25	8.5	44.2	52.7
Totals	1,752	5,572	\$463.6	\$113.5	\$577.1

^a Total cost based on enacted budget. OE&E = operating expenses and equipment.

**Figure 2
Developmental Center Caseload Trends**

Developmental Center	Caseload					Average Annual Decrease 2008-09 to 2012-13
	2008-09	2009-10	2010-11	2011-12 ^a	2012-13 ^a	
Lanterman	439	377	340	271	174	-20.7%
Porterville	616	604	557	499	451	-7.5
Sonoma	664	651	613	555	513	-6.2
Fairview	505	487	413	377	344	-9.2
Canyon Springs	53	54	56	50	51	-1.0
Sierra Vista	40	39	—	—	—	—
Totals	2,317	2,212	1,979	1,752	1,533	-9.8%

^a Estimated caseload.

uncertainties about how long it will take to develop the resources necessary to ensure a safe and successful transition of Lanterman DC consumers to appropriate living arrangements.

Cost Per DC Resident. Figure 3 shows the average cost per DC resident for 2010-11. Staff-to-patient ratios, OE&E, and medical services provided are all factors that drive costs for the DCs. Lanterman DC shows the highest average cost per consumer for 2010-11. As DDS moves consumers into the community, there are fewer consumers to spread over the fixed costs of maintaining the centers, thereby increasing the average cost per consumer.

COMMUNITY SERVICES PROGRAM OVERVIEW

The state provides community-based services to consumers through 21 nonprofit corporations known as RCs, which are located throughout the state. The RCs are responsible for eligibility determinations and client assessment, the development of an individual program plan (IPP) for each consumer, and case management. The RC budget is comprised of two main expenditure areas: RC operations and purchase of services.

RC Operations. The RCs contract with DDS to provide or coordinate services for consumers. The RC operations include:

- **Eligibility Determinations.** The RCs provide diagnosis services and determine an individual’s eligibility for RC services.

There is no charge for the diagnosis and eligibility assessment.

- **Case Management.** Once eligibility is determined, a case manager or service coordinator is assigned to each consumer to help develop an IPP for the services that will be provided to the consumer. Some of the services coordinated by the case managers include counseling, family support, assistance in finding and using community resources, and the purchase of necessary services included in the IPP.
- **Payments to Service Providers and Vendors.** The RCs select appropriate vendors to provide services to consumers. The providers submit bills to the RCs for the services, and in turn, the RCs reimburse them.

Purchase of Services. The RCs generally only pay for services if an individual does not have private insurance or they cannot refer an individual to so-called “generic” services that are provided at the local level by counties, cities, school districts, or other agencies. (We discuss generic services further below.) As the payer of last resort, RCs purchase services from vendors for about 250,000 consumers in the current year. These services include day programs, transportation, residential care provided by community care facilities, and support services that assist individuals to live in the community. The RCs purchase more than 100 different services on behalf of consumers. These services are grouped into ten main categories, as shown in Figure 4. The figure also shows the Governor’s proposed spending plan in these categories in 2011-12 and 2012-13.

Generic Services. Under state law, generic services are defined as those being provided by federal, state, and local agencies which have a legal responsibility to serve all members of the general

Figure 3
Average Cost Per Consumer

2010-11	
Developmental Center	Cost
Lanterman	\$362,544
Porterville	305,492
Sonoma	280,496
Fairview	355,424
Canyon Springs	292,125
Average	\$317,593

public and that receive public funds for providing such services. There are more than a dozen different generic services that are regularly accessed by RC consumers. For example, medical services for an RC consumer might be provided through the Medi-Cal health care program for low-income persons, the aged, and disabled. City or county park and recreation programs also provide generic services that are available to all, including developmentally disabled persons.

Caseload Trends. Between 2002-03 and 2012-13, the RC caseload is projected to grow from about 190,000 to almost 258,000, an annual average growth rate of 3.4 percent. The caseload trend is shown in Figure 5.

Several key factors appear to be contributing to ongoing growth in the RC caseload. Medical professionals are identifying persons with a developmental disability at an earlier age and referring more persons to DDS programs. Improved medical care and technology has increased life expectancies for individuals with developmental disabilities who receive services from DDS programs. The RC caseload growth also reflects a significant increase in the diagnosed cases of autism, the causes of which are not fully understood. The growth rate has slowed somewhat in recent years, with the administration estimating increases of around 2 percent in 2011-12 and 2012-13. Significant cost-control measures adopted by the Legislature may have had an impact on the number of individuals accessing RC services

Figure 4
Regional Centers' Purchase of Services
Spending by Service Category

(Dollars in Millions)

Service Category	2011-12	2012-13	Year-to-Year Change	
			Amount	Percent
Day programs	\$761	\$811	\$50	7%
Community care facilities	833	901	68	8
Support services	695	752	57	8
Miscellaneous ^a	406	446	40	10
Transportation	201	213	12	6
In-home respite	205	228	23	11
Habilitation services program	134	133	-1	-1
Health care	80	86	6	8
Out-of-home respite	51	53	2	4
Medical facilities	29	31	2	7
Totals	\$3,395	\$3,654	\$259	8%

^a This includes, for example, tutors and special education teacher aides.

in recent years. We describe these cost control measures in the next part of this analysis.

Overall Spending and Cost Per RC Consumer.

Figure 6 (see next page) shows total RC spending over the past decade has grown by 76 percent since 2002-03. However, due to caseload growth, total per person spending over the same period increased by 26 percent.

Figure 5
Regional Center
Caseload Growth Trends

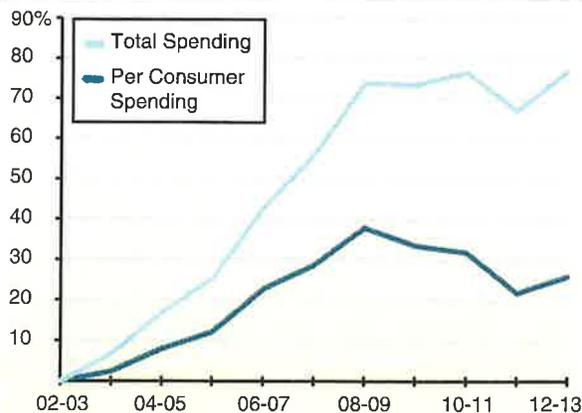
Fiscal Year	Average Annual Population	Caseload	Increase From Prior Year	
			Amount	Percent
2003-04		190,030	7,855	4.3%
2004-05		197,355	7,325	3.9
2005-06		203,823	6,468	3.3
2006-07		212,225	8,402	4.1
2007-08		221,069	8,844	4.2
2008-09		229,675	8,606	3.9
2009-10		236,858	7,183	3.1
2010-11		244,108	7,250	3.0
2011-12		249,827	5,719	2.0
2012-13		256,059	6,232	2.0
Averages			7,388	3.4%

COST-CONTROL MEASURES FOR DDS PROGRAMS: A THREE-YEAR LOOK BACK

In this section, we provide a three-year look back at actions the Governor proposed and measures adopted by the Legislature to achieve savings in DDS. These measures were driven by the deteriorating state fiscal condition. The state was also able to achieve savings in recent years from an enhanced Federal Medical Assistance Percentage (FMAP). Under the American Recovery and Reinvestment Act (ARRA), California benefited from temporary changes to the FMAP, which adjusted the federal share for most Medi-Cal services from 50 percent to 62 percent. This additional federal funding was phased out in 2010-11, so in 2011-12 the state had to backfill approximately \$190 million worth of AARA funding. This placed pressure on the department to identify other savings in order to meet budgetary goals. The department was able to offset some of this loss of ARRA funds by identifying additional federal funds in other areas. In each of the three years described below, the stated savings are relative to the “workload budget”—that is, the baseline budget adjusted to account for changes in caseload, workload, costs, and utilization.

Figure 6

Percentage Change in Regional Center Spending Relative to 2002-03



Governor’s 2009-10 Budget Proposal and Legislative Actions

In January of 2009, the Governor proposed to reduce support for the workload budget of DDS programs by \$334 million from the General Fund in 2009-10. In February of 2009, the Legislature enacted a \$100 million General Fund reduction (as part of its enactment of the *2009-10 Budget Act*) and adopted trailer bill language to require DDS to submit a plan to the Legislature to achieve the reduction. The trailer bill required DDS to meet with stakeholders (to include consumers, family members, providers, and advocates), and consider their input as part of the plan development process. In May of 2009, the Governor proposed to reduce General Fund support for DDS by an additional \$224 million. In July of 2009, the Legislature revised the February budget act to include the additional \$224 million in General Fund savings, bringing the overall General Fund reduction to DDS to \$334 million in 2009-10. In enacting the budget, the Legislature adopted further savings.

These General Fund reductions were achieved in the following ways:

- Reduction to RC and DC Spending (\$334 Million).** A \$334 million mostly ongoing reduction to the DDS budget was accomplished through: (1) proposals to draw down additional federal financial participation, (2) changes to the scope and level of RC services, (3) changes in standards for how RCs authorize services for consumers, (4) reductions to RC operations, and (5) reductions to the DC budget. When full-year savings were achieved in 2010-11, an additional \$61 million in savings was realized.
- Continuation of 3 Percent Provider Payment Reduction (\$60 Million).** The Legislature approved the continuation of a

3 percent provider payment reduction until the end of 2009-10 to achieve savings of \$60 million.

- **Governor's Veto (\$50 Million).** The Governor vetoed \$50 million for the RCs to purchase services for children up to age five. The First Five Commission, established under Proposition 10, in effect provided a backfill to this veto. (The First Five Commission receives revenues from taxes on tobacco products that were established through passage of Proposition 10.)

Governor's 2010-11 Budget Proposal and Legislative Actions

In January of 2010, the Governor proposed to achieve \$286 million in General Fund savings to the workload budget through the following three proposals: (1) \$25 million from additional program reforms to be identified through a workgroup process, (2) \$61 million from continuation of the 3 percent RC provider payment reduction, and (3) \$200 million from using First Five Commission funds in lieu of General Fund.

In May of 2010, the Governor withdrew the proposal to use \$200 million in First Five Commission funds in lieu of General Fund because the voter initiative that would have authorized the use of the First Five Commission funds was not approved to be placed on a June 2010 ballot. However, in May the Governor put forward two new proposals. One was to increase the provider payment reduction by an additional 1.25 percent (creating an additional \$25 million in savings) and the other was to draw down additional federal funds by modifying how Intermediate Care Facilities for the Developmentally Disabled (ICF/DD) bill for their services and are paid.

Ultimately, the Legislature adopted \$190 million in savings in the 2010-11 budget:

- **Provider Payment Reduction (\$86 Million).** The Legislature approved the 4.25 percent provider payment reduction through the end of 2010-11 proposed by the Governor, generating \$86 million in General Fund savings.
- **Federal Fund Increase to Offset General Fund (\$54 Million).** The Legislature adopted the administration's proposal to modify ICF/DD billing and payment mechanisms in order to draw down federal funding and offset General Fund expenditures on an ongoing basis.
- **First Five Commission Funds (\$50 Million).** The First Five Commission provided \$50 million in continued funding in 2010-11 to offset General Fund monies that had been previously eliminated by a Governor's veto in 2009-10.

Governor's 2011-12 Budget Proposal and Legislative Actions

In January of 2011, the Governor proposed to achieve a \$750 million General Fund reduction to the DDS workload budget in 2011-12 through the following proposals:

- **Implementation of Best Practices (\$534 Million).** The budget plan proposed to achieve system-wide mostly ongoing savings through a variety of mechanisms, including DC expenditure reductions, increased accountability and transparency, and implementation of statewide service standards.
- **Continued Savings From Extending Existing Measures (\$142 Million).** The budget plan proposed to continue for another year: (1) the 4.25 percent provider

payment reductions (\$92 million) and (2) the First Five Commission funding (\$50 million).

- ***Increasing Federal Financial Participation to Offset General Fund (\$75 Million).*** The budget plan proposed to increase federal financial participation through: (1) amendments to the state's Medicaid plan and maximizing the use of federal "Money Follows the Person" funding for individuals placed out of institutions (\$65 million), and (2) certification of the secure treatment facility at Porterville DC (\$10 million).

The Legislature ultimately adopted the following major savings provisions in the 2011-12 budget, totaling approximately \$660 million:

- ***DC Reductions to OE&E, Personnel, Capital Outlay (\$40 Million).*** The Legislature adopted a series of one-time and ongoing reductions in OE&E, personnel, and capital outlay in DCs. For example, budgets for DCs were reduced due to reductions in staff and a Sonoma DC capital outlay project was deleted.
- ***RC Reductions and Cost Control Measures (\$174 Million).*** In order to achieve savings, RCs were charged by the Legislature with the task of implementing best practices and cost-control measures in an effort to reduce General Fund spending by \$174 million. For example, RCs maximized their use of generic resources in education and helped consumers access the lowest cost transportation option available. The department phased out the Prevention Program for at-risk babies and required RCs to refer at-risk babies to Family Resource Centers.
- ***Increasing Federal Financial Participation to Offset General Fund (\$88 Million).*** The Legislature approved a modified version of the Governor's proposal to increase federal financial participation. Through a number of federal initiatives, the department was able to secure approximately \$88 million in funding. Use of the federal Money Follows the Person grant and the Home and Community-Based Waiver for RC Operations generated substantial General Fund savings.
- ***Continuation of First Five Commission Funding (\$50 Million).*** Similar to the previous fiscal years, the Legislature approved a continuation of First Five Commission funding for 2011-12.
- ***Continuation of 4.25 Percent Provider Payment Reduction (\$92 Million).*** The Legislature adopted the administration's proposal to continue for another year the 4.25 percent provider payment reduction.
- ***Transfer Prevention Program to Family Resource Centers (\$8 Million).*** The Early Start Prevention Program, geared for children between the ages of 0 and 35 months who are at risk for a developmental disability, was eliminated and then transferred to the Family Resource Centers. As Family Resource Centers are paid with Proposition 10 dollars, this action reduced the General Fund obligation by \$7.5 million.
- ***Accountability Measures (\$110 Million).*** The Legislature adopted statutory language intended to improve RC accountability. For example, it placed administrative cost

caps on RCs and vendors, changed audit provisions for RC services, and required RCs to submit a conflict of interest policy to ensure RC employees and board members do not have a conflict of interest with an entity that receives RC funding. These measures were anticipated to create \$110 million of General Fund savings.

- ***Budget Trigger Cuts (\$100 Million).*** In the *2011-12 Budget Act*, the Legislature approved a \$100 million reduction in RCs to be triggered if revenues fell below levels assumed in the budget. The trigger was pulled and it appears that the department will reach its \$100 million savings goal “on the natural” in the current year without the implementation of specifically identified savings measures.

Review of DC Budget Methodology. In addition to the savings measures described above, the Legislature acted to improve oversight of DCs. Chapter 37, Statutes of 2011 (AB 104, Committee on Budget), requires DDS to reimburse the Office of Statewide Audits and Evaluations (OSAE) within the Department of Finance to conduct a review and analysis of the budget methodology used to

determine the annual budget for the DCs. It was the intent of the Legislature for DDS to proceed with the review in the fall of 2011. According to the administration, OSAE expects to release its review in May 2012.

Three-Year Summary of Savings Measures

Spending in DDS has remained relatively flat over the last three years mainly because the Legislature has adopted various savings measures that have largely offset growth in costs due to increases in caseload and utilization of services. There have been three main sets of strategies that have been used to create General Fund savings from the department’s workload budget. First, there has been an increased use of non-General Fund monies, including federal funds and First Five Commission revenues. Second, there has been a reduction in provider payment rates. This reduction was initially adopted on a one-time basis, but has been renewed by the Legislature for subsequent fiscal years. Finally, some savings were created through the implementation of best practices, cost-control measures, and a scaling back in the provision of some services. Some of these savings were identified by stakeholder working groups.

2012-13 BUDGET

2012-13 BUDGET

AN LAO BRIEF

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This brief was prepared by Lishaun Francis, and reviewed by Shawn Martin. The Legislative Analyst's Office (LAO) is a nonpartisan office that provides fiscal and policy information and advice to the Legislature.

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**Specify Certain Recipients who would be Preapproved for IHSS
Supplemental Care Applications Relating to 20 Percent Reduction
Issue #633**

Section 12301.07 of the Welfare and Institutions Code is amended to read:

(a) (1) Notwithstanding any other provision of law, if subdivision (b) of Section 3.94 of the Budget Act of 2011 is operative, the department shall implement a ~~20 percent~~ 20 percent reduction in authorized hours of service to each in-home supportive services recipient as specified in this section, effective January 1, 2012, which shall be applied to the recipient's hours as authorized pursuant to his or her most recent assessment.

(2) The reduction required by this section shall not preclude any reassessment to which a recipient would otherwise be entitled. However, hours authorized pursuant to a reassessment shall be subject to the reduction required by this section.

(3) For those recipients who have a documented unmet need, excluding protective supervision, because of the limitations contained in Section 12303.4, this reduction shall be applied first to the unmet need before being applied to the authorized hours. If the recipient believes he or she will be at serious risk of out-of-home placement as a consequence of the reduction, the recipient may apply for a restoration of the reduction of authorized service hours, pursuant to subdivision (f).

(4) A recipient of services under this article may direct the manner in which the reduction of hours is applied to the recipient's previously authorized services.

(5) The reduction in service hours made pursuant to paragraph (2) shall not apply to in-home supportive services recipients who also receive services under Section 9560, subdivision (t) of Section 14132, and Section 14132.99.

(b) The department shall work with the counties to develop a process to allow for counties to preapprove IHSS Care Supplements described in subdivision (f), to the extent that the process is permissible under federal law. The preapproval process shall be subject to the following conditions:

(1) The preapproval process shall rely on the criteria for assessing IHSS Supplemental Care applications, developed pursuant to subdivision (f).

(2) Preapproval shall be granted only to individuals who would otherwise be granted a full restoration of their hours pursuant to subdivision (f) or who:

(i) Receive Early and Periodic Screening, Diagnosis, and Treatment services;

(ii) Are authorized to receive the statutory maximum of 283 hours per month;

- (iii) Are assessed for Protective Supervision;
- (iv) Have a functional ranking of 5 in the following activities:
 - (A) mobility inside, which includes assisting the recipient with walking or moving from place to place inside the home,
 - (B) bowel, bladder and menstrual functions,
 - (C) transfer, which includes assisting from standing, sitting, or prone position to another position and/or from piece of equipment or furniture to another, or
 - (D) eating.

(3) With respect to existing recipients as of the effective date of this section, all efforts shall be made to ensure that counties complete the process on or before a specific date, as determined by the department, in consultation with counties in order to allow for the production, printing, and mailing of notices to be issued to remaining recipients who are not granted preapproval and who thereby are subject to the reduction pursuant to this section.

(4) The department shall work with counties to determine how to apply a preapproval process with respect to new applicants to the IHSS program who apply after the effective date of this section.

(c) The notice of action informing each recipient who is not preapproved for an IHSS Care Supplement pursuant to subdivision (b) shall be mailed at least 15 days prior to the reduction going into effect. The notice of action shall be understandable to the recipient and translated into all languages spoken by a substantial number of the public served by the In-Home Supportive Services program, in accordance with Section 7295.2 of the Government Code. The notice shall not contain any recipient financial or confidential identifying information other than the recipient's name, address, and Case Management Information and Payroll System (CMIPS) client identification number, and shall include, but not be limited to, all of the following information:

(1) The aggregate number of authorized hours before the reduction pursuant to paragraph (1) of subdivision (a) and the aggregate number of authorized hours after the reduction.

(2) That the recipient may direct the manner in which the reduction of authorized hours is applied to the recipient's previously authorized services.

(3) How all or part of the reduction may be restored, as set forth in subdivision (f), if the recipient believes he or she will be at serious risk of out-of-home placement as a consequence of the reduction.

(d) The department shall inform providers of any reduction to recipient hours through a statement on provider timesheets, after consultation with counties.

(e) The IHSS Care Supplement application process described in subdivision (f) shall be completed before a request for a state hearing is submitted. If the IHSS Care Supplement application is

filed within 15 days of the notice of action required by subdivision (c), or before the effective date of the reduction, the recipient shall be eligible for aid paid pending. A revised notice of action shall be issued by the county following evaluation of the IHSS Care Supplement application.

(f) Any aged, blind, or disabled individual who is eligible for services under this chapter who receives a notice of action indicating that his or her services will be reduced under subdivision (a) but who believes he or she is at serious risk of out-of-home placement unless all or part of the reduction is restored may submit an IHSS Care Supplement application. When a recipient submits an IHSS Care Supplement application within 15 days of receiving the reduction notice or prior to the implementation of the reduction, the recipient's in-home supportive services shall continue at the level authorized by the most recent assessment, prior to any reduction, until the county finds that the recipient does or does not require restoration of any hours through the IHSS Care Supplement. If the recipient disagrees with the county's determination concerning the need for the IHSS Care Supplement, the recipient may request a hearing on that determination.

(1) The department shall develop an assessment tool, in consultation with stakeholders, to be used by the counties to determine if a recipient is at serious risk of out-of-home placement as a consequence of the reduction of services pursuant to this section. The assessment tool shall be developed utilizing standard of care criteria for relevant out-of-home placements that serve individuals who are aged, blind, or who have disabilities and who would qualify for IHSS if living at home, including, but not limited to, criteria set forth in Chapter 7.0 of the Manual of Criteria for Medi-Cal Authorization published by the State Department of Health Care Services, as amended April 15, 2004, and the IHSS uniform assessment guidelines.

(2) Counties shall give a high priority to prompt screening of persons specified in this section to determine their need for an IHSS Care Supplement.

(g) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer this section through all-county letters or similar instruction from the department until regulations are adopted. The department shall adopt emergency regulations implementing this section no later than March 1, 2013. The department may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section.

(2) The initial adoption of emergency regulations implementing

this section and the one readoption of emergency regulations authorized by this subdivision shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

(h) If the Director of Health Care Services determines that federal approval is necessary to implement this section, this section shall be implemented only after any state plan amendments required pursuant to Section 14132.95 are approved.

**Issue 634:
Eliminate Domestic and Related IHSS Services
in Shared Living Arrangements**

Section 12300 of the Welfare and Institutions Code is amended to read:

12300. (a) The purpose of this article is to provide in every county in a manner consistent with this chapter and the annual Budget Act those supportive services identified in this section to aged, blind, or disabled persons, as defined under this chapter, who are unable to perform the services themselves and who cannot safely remain in their homes or abodes of their own choosing unless these services are provided.

(b) Supportive services shall include domestic services and services related to domestic services, heavy cleaning, personal care services, accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites, yard hazard abatement, protective supervision, teaching and demonstration directed at reducing the need for other supportive services, and paramedical services which make it possible for the recipient to establish and maintain an independent living arrangement.

(c) Personal care services shall mean all of the following:

- (1) Assistance with ambulation.
- (2) Bathing, oral hygiene, and grooming.
- (3) Dressing.
- (4) Care and assistance with prosthetic devices.
- (5) Bowel, bladder, and menstrual care.
- (6) Repositioning, skin care, range of motion exercises, and transfers.
- (7) Feeding and assurance of adequate fluid intake.
- (8) Respiration.
- (9) Assistance with self-administration of medications.

(d) Personal care services are available if these services are provided in the beneficiary's home and other locations as may be authorized by the director. Among the locations that may be authorized by the director under this paragraph is the recipient's place of employment if all of the following conditions are met:

(1) The personal care services are limited to those that are currently authorized for a recipient in the recipient's home and those services are to be utilized by the recipient at the recipient's place of employment to enable the recipient to obtain, retain, or return to work. Authorized services utilized by the recipient at the recipient's place of employment shall be services that are relevant and necessary in supporting and maintaining employment. However, workplace services shall not be used to supplant any reasonable accommodations required of an employer by the Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.; ADA) or other legal entitlements or third-party obligations.

(2) The provision of personal care services at the recipient's place of employment shall be authorized only to the extent that the total hours utilized at the workplace are within the total personal care services hours authorized for the recipient in the home. Additional personal care services hours may not be authorized in connection with a recipient's employment.

(e) Where supportive services are provided by a person having the legal duty pursuant to the Family Code to provide for the care of his or her child who is the recipient, the provider of supportive services shall receive remuneration for the services only when the provider leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care.

These providers shall be paid only for the following:

(1) Services related to domestic services, but only if the presumption in section 12301(c)(2) is rebutted.

(2) Personal care services.

(3) Accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites.

(4) Protective supervision only as needed because of the functional limitations of the child.

(5) Paramedical services.

(f) To encourage maximum voluntary services, so as to reduce governmental costs, respite care shall also be provided. Respite care is temporary or periodic service for eligible recipients to relieve persons who are providing care without compensation.

(g) A person who is eligible to receive a service or services under an approved federal waiver authorized pursuant to Section 14132.951, or a person who is eligible to receive a service or services authorized pursuant to Section 14132.95, shall not be eligible to receive the same service or services pursuant to this article. In the event that the waiver authorized pursuant to Section 14132.951, as approved by the federal government, does not extend eligibility to all persons otherwise eligible for services under this article, or does not cover a service or particular services, or does not cover the scope of a service that a person would otherwise be eligible to receive under this article, those persons who are not eligible for services, or for a particular service under the waiver or Section 14132.95 shall be eligible for services under this article.

(h) (1) All services provided pursuant to this article shall be equal in amount, scope, and duration to the same services provided pursuant to Section 14132.95, including any adjustments that may be made to those services pursuant to subdivision (e) of Section 14132.95.

(2) Notwithstanding any other provision of this article, the rate of reimbursement for in-home supportive services provided through any mode of service shall not exceed the rate of reimbursement established under subdivision (j) of Section 14132.95 for the same mode of service unless otherwise provided in the annual Budget Act.

(3) The maximum number of hours available under Section 14132.95, Section 14132.951, and this section, combined, shall be 283 hours per month. Any recipient of services under this article shall receive no more than the applicable maximum specified in Section 12303.4.

(i) The amendments made to subdivision (e) of this section by the act that added this subdivision shall become operative on the first day of the first month following 90 days after the effective date of the act that added this subdivision, or July 1, 2012, whichever is later. If the Director of Health Care Services determines that federal approval from the Centers for Medicare and Medicaid Services is required to implement the changes contemplated by the amendments to subdivision (e), then he or she shall promptly seek that approval, and implementation shall not occur until the effective date of such approval.

Section 12301 of the Welfare and Institutions Code is amended to read:

12301. (a) The intent of the Legislature in enacting this article is to provide supplemental or additional services to the social and rehabilitative services in Article 6 (commencing with

Section 12250) of this chapter. The Legislature further intends that necessary in-home supportive services shall be provided in a uniform manner in every county based on individual need consistent with this chapter and, ~~for the 1992-93 fiscal year, the appropriation provided for these services in the Budget Act,~~ in the absence of alternative in-home supportive services provided by an able and willing individual or local agency at no cost to the recipient, except as required under Section 12304.5. An able spouse who is available to assist the recipient shall be deemed willing to provide at no cost any services under this article except nonmedical personal services and paramedical services. When a spouse leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care, the spouse shall also be paid for accompaniment when needed during necessary travel to health-related appointments and protective supervision.

(b) Each county shall be notified of its allocation and projected caseload by July 31 of each fiscal year, or 30 days after the enactment of the Budget Act, whichever occurs later.

~~(e) This section shall remain operative until July 1, 1993, and on and after that date, shall remain inoperative until July 1, 1994, at which date, this section shall become operative:~~

(c) (1) The legislature finds that domestic services, services related to domestic services, heavy cleaning, and yard hazard abatement benefit all members of a household and are reasonably necessary to the routine functioning of a household, regardless of the ability or inability of any particular member of the household to perform those services.

(2) There shall be a rebuttable presumption that domestic services, services related to domestic services, heavy cleaning, and yard hazard abatement, when needed, will be provided or arranged by one or more members of a recipient's household to meet the common needs of all and there shall be no payment to a provider for these services. When all members of a household are recipients of supportive services, this presumption shall not apply. When the presumption is applicable, it may be rebutted by reliable evidence that due to physical or mental impairment, there is no member of the household able to provide the service. Reliable evidence of such impairment may include, but is not limited to, social worker observation or medical certification of the impairment.

(d) (1) A recipient who is receiving any of the services specified in paragraph (1) of subdivision (c), and whose service hours have not been prorated to reflect a need being met in

common, shall continue to be authorized to receive payment for that service until the effective date of the notice resulting from his or her next assessment. At that reassessment, the recipient shall be assessed to determine whether the presumption in paragraph (2) of subdivision (c) is rebutted, in which case the necessary services may be authorized for payment.

(2) A recipient who is receiving any of the services specified in paragraph (1) of subdivision (c), and whose service hours have been prorated to reflect a need being met in common, shall continue to be authorized to receive payment for that service until the effective date of the notice pursuant to subdivision (e) reducing the authorization for those services. The recipient may request authorization for payment for those services, and such services may be authorized for payment if the presumption in paragraph (2) of subdivision (c) is rebutted.

(3) An applicant may request authorization for payment for any service specified in paragraph (1) of subdivision (c) and such services may be authorized for payment if the presumption in paragraph (2) of subdivision (c) is rebutted.

(4) The department, in consultation with the State Department of Health Care Services and other stakeholders, shall develop policies and procedures to implement this section.

(e) A county shall provide notice to each recipient who receives a reduction in authorized hours as a result of implementing this section. This notice may be combined with any similar notice resulting from an assessment or reassessment. The notice shall include all of the following information:

(1) The amount of authorized hours the recipient received prior to the implementation of the reduction and the amount of hours the recipient is to receive as a result of the reduction.

(2) The reason for the reduction.

(3) The date on which the reduction is effective.

(4) A statement that the claimant may provide evidence to rebut the presumption in paragraph (2) of subdivision (c), or request a state hearing to appeal the reduction pursuant to this section.

(f) Notwithstanding Section 11004, in any proceeding pursuant to Section 10950 where it has been determined that the sole issue was a reduction in hours required by this section, no aid paid pending the hearing shall be issued.

(g) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the

Government Code, the department may implement and administer this section through all-county letters or similar instruction from the department until regulations are adopted. The department shall adopt emergency regulations implementing this section no later than July 1, 2013. The department may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section.

(2) The initial adoption of emergency regulations implementing this section and the one readoption of emergency regulations authorized by this subdivision shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

(h) The amendments made by the addition of subdivisions (c) to (g), inclusive to this section by the act that added this subdivision shall become operative on the first day of the first month following 90 days after the effective date of the act that added this subdivision, or July 1, 2012, whichever is later. If the Director of the Department of Health Care Services determines that federal approval from the Centers for Medicare and Medicaid Services is required to implement the changes contemplated by subdivisions (c) through (g), then he or she shall promptly seek that approval, and implementation shall not occur until the effective date of such approval.