



COUNCIL MEETING NOTICE/AGENDA

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DATE: Thursday, May 17, 2012
TIME: 10 a.m. – 5 p.m.
LOCATION: Hilton Sacramento Arden West
2200 Harvard Street
Sacramento, CA 95815
(916) 922-4700

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 this meeting should contact Robin Maitino at (916) 322-8481 or email robin.maitino@scdd.ca.gov. Requests must be received by 5:00 pm, May14, 2012.

**Denotes action items*

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1. CALL TO ORDER	L. Shipp
2. ESTABLISHMENT OF QUORUM	L. Shipp
3. WELCOME/INTRODUCTIONS	L. Shipp
4. PUBLIC COMMENTS	

*This item is for members of the public only to provide comments and/or present information to the Council 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 Council will provide a public comment period, not to exceed a total of seven minutes, for public comment prior to action on each agenda item.*

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	D. EMPLOYMENT FIRST COMMITTEE	O. Raynor	
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9. ***GOVERNOR’S BUDGET MAY REVISION**

- | | | |
|-------|--------------------------------------|---------------|
| (i) | Health and Human Services Agency | P. Barth |
| (ii) | Department of Developmental Services | T. Delgadillo |
| (iii) | Department of Rehabilitation | B. Moore |
| (iv) | Department of Health Care Services | J. Clarkson |
| (v) | Department of Education | D. Boomer |
| (vi) | Department of Aging | L. Connolly |

10. **STATEWIDE SELF-ADVOCACY NETWORK**

J. Allen

11. **COUNCIL MEMBERS’ UPDATES**

All

12. **ADJOURNMENT**

L. Shipp

For additional information regarding this agenda, please contact Robin Maitino,
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DRAFT

**Council Meeting Minutes
January 25, 2012**

Members Present

Jennifer Allen
Dan Boomer
Ray Ceragioli
Lisa Cooley
Bill Moore
Kerstin Williams
David Mulvaney
Jennifer Walsh
Catherine Blakemore
Max Duley
Terri Delgadillo
Robin Hansen
Wayne Sauseda
Steve Silvius
Leroy Shipp
Lora Connolly
Jonathan Clarkson
Molly Kennedy
Tony Sauer

Members Absent

Denise Filz
Robert Jacobs
Olivia Raynor
Patty O'Brien-Peterson
Jorge Aguliar

Others Attending

Dena Hernandez
Angie Lewis
Robin Maitino
Rocio Smith
Mary Agnes Nolan
Joan Burg
Chris Arroyo
Cheryl Scott
Melissa Corral
Barbara Wheeler
Bob Phillips
Marilyn Barraza
Dawn Morley
Sarah May
Matt Silvius
Lynn Rivas
Vicki Smith
Mark Starford
Lois Cissell
Tom Heintz
Tammy Eudy
Len Finocchio

1. CALL TO ORDER/ESTABLISHMENT OF QUORUM

Leroy Shipp, Chairperson called the meeting to order at 10:10 a.m. and established a quorum present at 10:15 a.m.

2. WELCOME AND INTRODUCTIONS

Council members and others attending introduced themselves.

3. PUBLIC COMMENT

My name is Patrick Henning and I have served Governor Brown as the Chief Deputy of Appointments for him and the state. Our job is to fill the over 3,000 political exempt positions within the state and provide leadership to the rest of the civil servants to ensure that we move the state in a direction that the Governor wants. We have over 9,000 applicants and we cull through those daily. The appointments deputy handles these issues and several of the health issues for the state and for the governor.

My mother served on Area Board 9. I am a family member of somebody who struggled with developmental disabilities and I have served on many committees that dealt with employment issues and I have dedicated my life to the service of working men and women throughout the state. I used to serve on the Prop 63 Commission under Governor Schwarzenegger during that period of time. So these issues of the disability community are near and dear to my heart and that is why it is particularly gratifying to be here today. I know there has been an expression of frustration with the pace of appointments. If it was up to me they would all be done on day one, unfortunately we have a lot to get through. The state is in a time of economic peril that with the Governor at the helm, I believe we are going to start taking the actions to move us from there. And I think we already have. But I know for the folks with disabilities where there is a greatest need, I think some of the cuts have cut the deepest. We want to take the appointments sooner rather than later. And we have set up interviews with over 50 different people that have expressed interest to this committee. We are continuing to reach out to the legislators who have this community in their heart, but also to communities of interest to make sure we get the widest and brightest for our community here. Please be patient as much as you can with us. We are working very hard on this. And you see today that when we need, and when we hear from your offices here and from your board that there needs to be assistance, we will do everything we can to make sure we do that.

Molly Kennedy was sworn in by Patrick Henning from the Governor's Appointments office as a member of the State Council on Developmental Disabilities representing Area Board 13.

4. APPROVAL OF SEPTEMBER AND NOVEMBER 2011 MEETING MINUTES

It was moved/seconded (Mulvaney/Hansen) and carried to approve the September 21, 2011, Council meeting minutes as presented.
(3 abstentions)

It was moved/seconded (Mulvaney/Ceragioli) and carried to approve the November 17, 2011, Council meeting minutes as presented.
(8 abstentions)

5. THE CALIFORNIA SUPPORTED EMPLOYMENT FIELD DEMONSTRATION PROJECT

Lynn Rivas, Executive Director of Consumer Directed Services Network, and Tom Heintz, Director of Eastbay Innovations, presented the California Supported Employment Field Demonstration Project.

The Field Demonstration Project supports the development of public policy that improves the opportunities for persons with developmental disabilities to participate in integrated competitive employment. They are testing a new key intervention modeled on Ticket to Work that rewards successful outcomes for consumers. It incentivizes supported employment providers to develop jobs with better pay and employer based health benefits.

The goal of this project is to increase the quality and quantity of supported employment services in order to increase the number of individuals with developmental disabilities who get better paying jobs with benefits.

Following the presentation, it was moved/seconded (Kennedy/Allen) and carried to partner with the California Supported Employment Field Demonstration Project.

6. AREA BOARD 2 EXECUTIVE DIRECTOR APPOINTMENT

It was moved/seconded (Silvius/Cooley) and carried to approve Carol Risley's recommendation to appoint Sarah May as Area Board 2 Executive Director.

7. COMMITTEE REPORTS

a. EMPLOYMENT FIRST

Carol Risley provided the Employment First report in the absence of Olivia Raynor. Carol reported that discussions are underway in terms of priorities/strategies and work plans that can be pursued with limited resources.

Focus has begun on raising the expectations of families and persons with developmental disabilities in grammar through high school, that work is a reality and a viable option. The Committee also wants to start working with Family Resource Centers and show family members exactly what kinds of resources are available.

At the January 18, 2012 meeting, participating departments shared current activities that are in sync with the Employment First Report . Despite the loss of the EFC legislation, the Committee is making forward process.

b. LEGISLATIVE AND PUBLIC POLICY

Ray Ceragioli presented the Committee's discussion and recommendations on the following items:

- (i.) H.R. 3356 – Americans with Disabilities Act of 1990: It was moved/seconded (Boomer/Mulvaney) and carried to oppose H.R. 3356. (2 abstentions)
- (ii.) H.R. 3086 – Fair Wages for Workers with Disabilities Act of 2011: It was moved/seconded (Blakemore/Duley) and carried to support H.R. 3086. (3 abstentions)
- (iii.) H.R. 3610 – Streamlining Workforce Development Programs Act 2011: It was moved/seconded (Silvius/Kennedy) and carried to watch H.R. 3610. (4 abstentions)

- (iv.) S. 2020 – Keeping All Students Safe Act: It was moved/seconded (Blakemore/Silvius) and carried to support S. 2020. (4 abstentions)
- (v.) Assembly Bill 254 – Employment First. Ray Ceragioli reviewed the bill's intent and advised that AB 254 did not make it out of the Appropriations Committee. Carol Risley further communicated that Assembly member Beall will not be carrying again.

c. EXECUTIVE COMMITTEE

- (i.) Amendments to Council Bylaws – Leroy Shipp presented the proposed Bylaw changes to the Council.

It was moved/seconded (Blakemore/Kennedy) and carried to adopt the recommended changes with the following changes: Section 4 Vacancies, Item (b): retain and further explore the legality. Section 4 Vacancies, Item (l): add language to ensure individuals would be given reasonable opportunity to comply. Section 3 Quorum, Item (b): retain the word “*appointed.*” Article VIII, Section 1 Appointment, Item (a): retain the word “*requirements.*”

Article IX, Section 1, Item (a) and Section 2 (e) (2) [b]: It was moved/seconded (Delgadillo/Kennedy) and carried to delete the proposed change that would authorize the Legislative and Public Policy Committee to act for the Council; and change “Review, and comment, and take positions” to “Review, and comment, and recommend positions...”

Article XIII. Indemnification: It was moved/seconded (Blakemore/Hansen) and carried to retain the Indemnification Clause provisions until such time as other proposals can be researched and considered by the Council.

d. SELF-ADVOCATES ADVISORY COMMITTEE

Jennifer Allen highlighted the Committee's accomplishments in their first year. Accomplishments included: creating individual advocacy mission statements; creating and approving Operating Guidelines; leadership training for the Chair and Vice Chair; and members committing themselves to giving four presentations a year about the Council and the newly developed Statewide Advocacy Network.

8. 2012-13 GOVERNOR'S BUDGET HIGHLIGHTS

Wayne Sauseda, Assistant Secretary, Health and Human Service Agency, offered introductory comments and an overview of the Governor's State of the State speech. Although there has been great progress on the deficit from a year ago, there is still a structural gap in the budget. The current proposal is a combination of expenditure reductions as well as tax revenue proposals.

Len Finocchio, Associate Director, Department of Health Care Services reported that DHCS is faced with large reductions (approximately \$1 billion) and are focusing on delivering services in a more efficient way with fewer resources. Half of DHCS' Medi-Cal resources come from the federal government.

Len discussed the Connective Care and Rebalancing Initiative that takes seniors and persons with disabilities and provides more coordinated services for them by using coordinated care management. This initiative will have three broad themes. The first theme is to promote corrective care. This combines strong beneficiary connections with the entire continuum of care. The goal is to promote accountability, coordination, improved care, continuity across medical services, long term care supports and services, and behavioral health care services. The next theme is to enhance the quality of home and community-based services by incorporating long term supports and services into managed care and increase access to home and community-based medical and associated services.

The last theme is to allow Medi-Cal and Medicare Health Incentives. This initiative would work with both Medi-Cal and Medicare to ensure better communication and coordination between the two programs. The

initiative will be phased in over a three year period. Phase one/year one: IHSS and other health care services will become managed care benefits. Phase two/year two: managed care plans will take a more active role in the assessment process for home and community-based services including IHSS. Phase three/year three: a uniform assessment tool will be developed with consumers and other stakeholders and have a single point of entry for home and community-based services within managed care, including IHSS.

Additionally, DHCS is proposing to pay federally qualified health centers differently. Instead of paying them a fee every time they provide a service, provide them with a monthly amount.

Len went on to report that the Governor has proposed eliminating both the Departments of Mental Health and Alcohol and Drug Programs. The programs will remain and be folded into DHCS. There is also a proposal to consolidate the Office of Women's Health, the Office of Multi-Cultural Health, the Healthy Places Team, and the Office of Multi-Cultural Services into one office called the Office of Health Equity.

Terri Delgadillo, Director, Department of Developmental Services, first discussed the amended current year budget stating that the budget would decrease by \$157.2 million. The decrease would involve a numerous things, the largest being an \$8.1 million decrease in the developmental centers, \$3 million in DDS' headquarters budget, and \$146 million in the regional centers. The total includes the \$100 million trigger reduction pulled in December 2011 for the current fiscal year. After reviewing current trends, DDS believes they will be able to achieve \$100 million of additional savings without impacting services.

The Governor's budget for 2012-13 assumes \$4.7 billion for the system, an increase of \$218 million over the revised 2011-12 budget. This amount includes extension of the \$100 million trigger reduction for 2011-12 to 2012-13 for a full year impact of \$200 million.

DDS has requested representatives be appointed to eight workgroups to discuss ways to address the \$200 million savings. The stakeholder process has been utilized for several years. This year DDS will try and address concerns that have been expressed in past years. The Department will hold six workgroup meetings throughout the state.

Locations include Los Angeles, San Diego, Riverside, Fresno, Oakland, and Sacramento.

Since the announcement of the Lanterman Developmental Center closure, 85 people have moved into the community. To date, 285 residents remain at Lanterman. DDS continues to receive over 100 admissions to developmental centers each year. As individuals come through the court system, it is determined that the community is unable to meet their needs. This is one issue that DDS will be bringing to the workgroups in an effort to determine services that are missing in the community and how the department can address them to allow individuals to stay in their community.

DDS is researching the emerging technologies trends in other states to determine if there are any cost savings that would benefit California. Other states have demonstrated significant cost savings while maintaining a high quality of services.

The Dental Program went live on January 13, 2012 and the glitches have been worked out.

Questions were brought up about rumors of pulling out of Part C, Early Intervention services. Terri Delgadillo stated that it is not a budget consideration and that the federal government has new regulations that make it difficult for states to comply.

Several Council members asked questions regarding DDS' budget and the impact of reductions on consumers in other budget areas. Terri noted that often DDS is provided with additional funds to back-fill the reductions in other departments when services to consumers will be impacted.

Bill Moore, Department of Rehabilitation (DOR), talked about how the budget cuts have impacted DOR's ability to serve the number of consumers that were served in the past. DOR's proposed budget for next fiscal year is \$421,287,000. That dollar amount includes state general funds as well as federal funds. The proposed budget for 2012-13 will enable DOR to continue to serve the most significant and the significantly disabled. Total positions that are budgeted for next

fiscal year are 1,884.4, which include 1,792.4 permanent positions and 92 temporary positions.

The Rehabilitation Appeals Board is slated to be eliminated. Consumer appeals would be reviewed by qualified impartial hearing officers or administrative law judges through an interagency agreement.

As of October 3, 2011, DOR implemented a VR Team Model Pilot. This pilot was launched to create efficiencies and enhance services to consumers. The system is being piloted in every district statewide. The model calls for a team approach in the provision of services rather than a one on one relationship with the DOR counselor. The pilot will be measuring the affects of the team approach and if successful, DOR will roll it out in 2013. Thus far the feedback from the pilot participants has been positive.

Daniel Boomer, California Department of Education, reported that the proposed 2012-13 budget provides \$3.2 billion from the General Fund and \$1,246,540,000 from the Federal Individuals with Disabilities Education Act. According to the Governor's Budget Summary, special education will receive an increase of \$12.3 million in Proposition 98 General Fund for average daily attendance growth. The proposed budget does not provide a cost-of-living-adjustment (COLA) for special education or any K-14 program in 2012-13 which served 6,000 students. Funds for special education programs total \$3.220 billion and consist of \$3,149,721 plus the \$72 million of early education programs for individuals with exceptional needs.

9. **NOMINATING COMMITTEE REPORT**

Steve Silvius reported that he contacted all self and family advocates that currently sit on the Council. He received the responses of interest from: Jennifer Allen, Lisa Cooley, Kerstin Williams, Ray Ceragioli, and Patti O'Brien.

It was moved/seconded (Silvius/Hansen) and carried to accept the January 9, 2012, Nominating Committee report as presented.

10. ELECTION OF VICE-CHAIRPERSON

Following the Nominating Committee Report, the floor was opened up for additional nominations. Molly Kennedy nominated Jennifer Walsh and a public vote was taken for each nominee. Lisa Cooley was subsequently elected Vice Chairperson to fill out Michael Bailey's term.

11. SPONSORSHIP REQUESTS

The Supported Life Institute requested a sponsorship of \$999 to help keep registration fees low for consumers and family members for the 2nd Annual Assistive Technology Expo and Training to be held March 20, 2012. It was moved/seconded (Silvius/Allen) and carried to approve the sponsorship request.

Tarjan Center requested a sponsorship of \$999 to support the registration and/or travel of family members, self advocates, postsecondary education and other agency professionals to attend a working conference, "Supporting Students with Autism and Intellectual Disabilities in Postsecondary Education as a Pathway to Employment Conference" on March 13, 2012. It was moved/seconded (Kennedy/Duley) and carried to approve the sponsorship request.

12. ADJOURNMENT

Meeting was adjourned at 3:45 p.m.



DRAFT

**Council Meeting Minutes
March 21, 2012**

Members Present

April Lopez
Bill Moore
Dan Boomer
Jennifer Allen
Jennifer Walsh
Jonathan Clarkson
Kerstin Williams
Leroy Shipp
Lisa Cooley
Mark Hutchinson
Molly Kennedy
Peter Barth
Ray Ceragioli
Robin Hansen
Steve Silvius

Members Absent

Catherine Blakemore
Jorge Aguliar
Lora Connolly
Max Duley
Olivia Raynor
Patty O'Brien-Peterson
Robert Jacobs

Others Attending

Anastasia Bacigalupo
Angie Lewis
Carol Risley
Barbara Wheeler
Bob Phillips
Dawn Morley
Dena Hernandez
Dennis Craig
Jean Gonsier-Gerdin
Joan Burg
Joe Bowling
Kathy Gee
Lois Cissell
Margaret Shipp
Marilyn Barraza
Mark Starford
Mary Agnes Nolan
Mary Ellen Stives
Matthew Shipp
Melissa Corral
Roberta Newton
Robin Maitino
Sam Seaton
Sarah May
Tammy Eudy
Vicki Smith

1. CALL TO ORDER/ESTABLISHMENT OF QUORUM

Leroy Shipp, Chair called the meeting to order at 10:30 a.m. A quorum was not available.

2. WELCOME AND INTRODUCTIONS

Council members and others attending introduced themselves.

3. PUBLIC COMMENT

Anonymous spoke about the Golden Gate Regional Center (GGRC) stating that they are in violation of their contract with the State of California. According to anonymous, \$150 million is being paid out to subcontractors for services. Anonymous has requested to review the contracts several times. On each occasion he was refused access to the contracts. GGRC is under suspicion in violation of Penal Code 2680, denying clients notice of decisions made concerning them and depriving them of due process and the right to appeal. Anonymous claims GGRC performs pain inducing treatments on clients, of coordinating the behavioral use of anti-psychotic medications, intimidating and/or harassing clients, and suffocation. According to anonymous, GGRC continues to conceal \$150 million worth of contracts funded entirely by taxpayer dollars from public view. Pursuant to the Section of the Welfare and Institutions Code, anonymous stated he alerted Terri Delgadillo, Director of DDS of the violations on December 30, 2010, January 16, 2011, and January 31, 2011. Anonymous received no reply. He is demanding that the contracts be made available so he can conduct an investigation.

Mary Ellen Stives, Area Board 13, announced that approval for the health and safety waivers from the Department of Developmental Services (DDS) is a really cumbersome and slow process. It is causing people to lose their supported living programs.

4. APPROVAL OF JANUARY 2012 MEETING MINUTES

Since a quorum was not present, no action was taken. These will be considered at the May Council Meeting.

5. **BOARDS FOR ALL TRAINING PROGRAM**

Molly Kennedy and Mark Starford presented on the Boards for All Training Program. The training program is in plain language and offers straightforward training and tools for all users to learn about the importance of civic engagement and performing effectively as a member of a board of directors, advisory committee, or council.

The presentation outlined boardsmanship responsibilities and went through the basics of the webcast training. The Boards for All Training Program can be found at

[http://www.scddadvocacy.org/SCDD Board Training/index.shtml](http://www.scddadvocacy.org/SCDD_Board_Training/index.shtml) and is broke up into five (5) topics:

- Board of Directors
- Role of Board Members
- Purpose of Committees
- Board Development
- Facilitation and Mentoring

6. **BAGLEY-KEENE PUBLIC MEETING TRAINING**

Melissa Corral, Staff Counsel, presented training on the Bagley-Keene Open Meeting Act. The training reviewed the rules under Government Code Section 11120-11132. All state multimember boards and commissions, committees, subcommittees, and area boards are required to follow the rules set forth in the Bagley-Keene Open Meeting Act.

7. **COMMITTEE REPORTS**

a. **LEGISLATIVE AND PUBLIC POLICY** – Due to the lack of a quorum, no action was taken on the following:

- (i) Assembly Bill 2338 - Employment First – LPPC recommends a support position for AB 2338.
- (ii) Assembly Bill 171 - PDD/Autism – LPPC recommends a support with amendments position for AB171.

- (iii) Assembly Bill 1244 - Self-Determination – LPPC recommends a support with amendments position for AB 1244.
- (iv) Assembly Bill 1553 - Medi-Cal Managed Care – LPPC recommends a support position for AB 1553.
- (v) Assembly Bill 1554 - Regional Centers – LPPC recommends a support if amended position for AB 1554.
- (vi) Assembly Bill 1525 – Abuse – LPPC recommends a support position with a training component added to AB 1525.
- (vii) 2012-13 Governor’s Budget – Carol Risley presented the 2012-13 LPPC recommendations for positions on various items in the 2012-13 Governor’s Budget.

b. SELF-ADVOCATES ADVISORY COMMITTEE (SAAC)

Jennifer Allen provided the Committee’s report. SAAC met on March, 20, 2012. The committee is concerned about reports of abuse coming from the developmental centers and as self advocates, SAAC believes people ought to be respected and treated with dignity.

Jennifer also reported that there is a new SCDD advocacy website with new materials produced by SCDD and other advocacy groups. The materials are available at www.scddadvocacy.org.

Jennifer Allen has been elected to represent SCDD on the Statewide Self-Advocacy Network. Jenifer will report progress and updates back to SAAC and the Council.

8. TASH CONFERENCE PRESENTATION

Dr. Jean Gonsier-Gerdin and Dr. Kathy Gee presented information on the upcoming Annual TASH Conference to be held November 28 through December 1, 2012 in Long Beach California.

TASH’s mission is to promote the full inclusion and participation of children and adults with significant disabilities in every aspect of their

community, and to eliminate the social injustices that diminish human rights. This year the conference will focus on employment, inclusive education, community living, diversity and cultural competency, and human rights.

For additional information on this conference contact www.tash.org/2012TASH.

9. **SPONSORSHIP REQUEST**

College Bound is a weeklong on-campus living and learning experience for youth with developmental disabilities who have a goal to attend college. This is the second year to offer the program to approximately 12-15 adults. The program addresses areas critical to college success.

College Bound believes that the weeklong program is a great first start for students to enhance their potential at success in college.

The program will be offered on the campus of the University of San Diego, July 8-13, 2012. Students will stay on campus Sunday evening through Friday afternoon.

SCDD funds would be used to assist in paying stipends for the Director and other staff who provide supervision and support throughout the week. Due to lack of quorum, this was referred to the Executive Committee for action.

10. **COUNCIL MEMBERS' UPDATES**

Lisa Cooley will be doing a presentation at a local employment day program in Sacramento. The program is starting a consumer advocacy council. Lisa will be talking about how to become a member of a board and committee.

April Lopez thanked the Council for her recent appointment and expressed her enthusiasm to be part of this cause. She has already met with Senator Correa to discuss proper training for classroom aids and is planning on continuing her advocacy efforts to improve the rights of persons with developmental disabilities.

Peter Barth, Assistant Secretary, Health and Human Services Agency, introduced himself as the Council's new delegate for Secretary Dooley. Peter has been with the Agency for five years and has also worked for the Department of Mental Health and the Department of State Hospitals and Rehabilitation.

Peter is a family member of a person with a developmental disability and is excited to be joining the Council.

Robin Hansen, UCEDD at the M.I.N.D. Institute, reported on behalf of Olivia Raynor and Barbara Wheeler stating that the Tarjan UCEDD and the U.C. Davis UCEDD have instituted a think center with speakers including Bob Stoddard from Hawaii UCEDD. A mentoring program for families who have young adults or adolescent children was started a month ago. The program will help families sort out transition planning, postsecondary education, and employment.

The M.I.N.D. Institute has held sibling workshops for the purpose of getting siblings together to talk about their lives and their families. They also hosted a Statewide Interagency Autism Planning Group which they have been collaborating with the USC UCEDD to maintain and sustain the training for which a grant was received to do evidence based practices and training for interventions primarily for children with autism.

The M.I.N.D. Institute has several upcoming events. Their annual summer workshop is August 3, 2012. This is a full day event for professionals, families, and advocates. The Institute is working with Disability Rights California (DRC) to conduct a half day workshop on special education law as well as doing a workshop on using video modeling to teach skills and support positive behaviors. They are also hosting an assistive technology resource fair on May 3, 2012.

Molly Kennedy worked in collaboration with UCLA and USC to hold an conference for adults with cerebral palsy on March 9-10, 2012. Over 80 people were in attendance.

On March 17, 2012, Area Board 13 held an IEP Conference and Molly spoke on self-advocacy. This year AB 13 created a track for transition for high school and middle school parents.

On Monday, March 19, 2012, Molly joined other self-advocates in Yuba City to discuss *My Health Journal*, a booklet designed to help people keep track of their health care.

Dan Boomer, Department of Education, attended the State Independent Council meeting on March 20, 2012. Among the speakers was Carol Risley, Executive Director, SCDD.

Jennifer Walsh participated in the San Francisco bay area march with more than 300 other people in Concord's Plaza in response to the proposed massive cuts to IHSS. There was an opportunity for letter writing and video recording statements on how the cuts would impact people with disabilities. These letters and recordings will be given to the Legislature.

A town hall meeting is scheduled at 1515 Clay Street in Oakland. This meeting will focus on the attempts that are being made to dismantle the Lanterman Act.

Rocio Smith, Executive Director, Area Board 5 received an award at the Cal-TASH Conference for women in leadership roles.

Bill Moore, Department of Rehabilitation (DOR), announced that the Youth Leadership Forum will be held on July 23-28, 2012. This is an extensive leadership training opportunity for California youth with disabilities.

DOR is teaming up with the Koegel Autism Center and U.C. Santa Barbara to provide personal, vocational, and social adjustment services to individuals with autism spectrum disorder. These direct services will target the necessary social and behavior skills so that individuals can

work toward success and employment and be fully integrated into a work life community. This program will serve 20 persons annually, many of you which will be regional center consumers.

DOR currently has contracts with a hundred school districts for the provision of vocational services for special education students including students with supportive employment plans. These programs serve over 15,000 students annually. DOR has revised its scope of the contracts to create greater prevocational services and support. By doing this, DOR hopes to improve the outcome of consumers as they exit high school.

The VR Model Pilot used to modernize the vocational delivery system is now being piloted in all of the districts.

Mark Hutchinson, Department of Developmental Services (DDS), started his report by clarifying the upcoming budget hearings. The first is a Senate hearing scheduled for Monday, March 26 and the second is scheduled Wednesday, March 28 with the Assembly.

As DDS continues to work on the May revise, Mark reminded folks that DDS held workgroups in February and March to provide input to the department on how to achieve \$200 million in General Fund savings. The workgroup participants were not chosen by DDS but by different groups throughout the state. There were a total of six workgroups that took place throughout the state.

At the conclusion of the workgroups in March, DDS' attention was immediately diverted to allegations of abuse in the developmental centers. As a result, DDS released a press release on March 13, 2012 that stated new measures that will be taken to improve safety and strengthen protections for residents of the state's developmental centers. The measures include independent oversight by a nationally recognized law enforcement specialist, new protocols for first responders to the scenes of possible abuse, new rules for investigations and additional training requirements for DDS peace officers.

DDS is currently operating under the existing federal Home and Community-Based Waiver. Mark stated that after numerous extensions, the new federal waiver should be approved by March 29, 2012.

Jonathan Clarkson, Department of Health Care Services (DHCS), suggested inviting a budget or legislative person to a Council meeting to talk members about the responsibility of departments. Jonathan believes since a large portion of the Council members are non-state employee's this would be beneficial to have clarification for new members on how things work and what departments can and cannot do.

Kerstin Williams announced the 25th Annual Choices Conference on April 13, 2012 in Stockton. Area Board 6 is part of the planning team sessions include: micro business, a legislator panel, and performances from advocates. Website and registration information was provided to Council members.

Steve Silvius welcomed new council members and thanked them for their service. Steve also stated that Matt Silvius would be participating at the upcoming Choices Conferences as a micro business owner.

Jennifer Allen announced that she was chosen by SAAC to participate as a member on the new Statewide Self-Advocate Network. The first meeting will take place on April 11 and 12, 2012. The purpose of the network is to connect self-advocates, their communities, and statewide organizations to increase leadership by persons with disabilities by developing a network comprised of the 13 regions throughout the state, the three UCEDDs, Disability Rights California, DDS' Consumer Advisory Committee, ARCA's Consumer Advisory Committee, Independent Living Centers, People First of California, and the Council's self-advocates consumer advisory committee.

Leroy Shipp reported that the nine county northern area is becoming more cohesive. His area has started a business for self advocates in Hamilton City.

11. **ADJOURNMENT**

Meeting was adjourned at 4:30 p.m.

COUNCIL AGENDA ITEM DETAIL SHEET

ISSUE: FAR NORTHERN REGIONAL CENTER WAIVER REQUEST

BACKGROUND: Welfare and Institutions Code Section 4628, provides that the director of the Department of Developmental Services may waive the conflict of interest criteria if a regional center has a good reason for being unable to meet all of the criteria set out in the law if both the local area board and State Council approve the waiver. This waiver of conflict may not exceed one year pursuant to the WIC.

If there is good reason that a RC is unable to meet all of the criteria for their board, the director of DDS may waive the criteria for a period of time, not to exceed one year, with the approval of the appropriate area board and the Council in accordance with WIC 4628.

The Council/area board procedure for evaluating requests for waiver shall be:

1. When area board receives a request for a waiver, it shall be scheduled for discussion and action during the next available area board meeting.
2. When evaluating a request for waiver, the area board shall discuss and analyze the following:
 - a. Does the RC have and utilize a public board member recruitment process? If not, what recruitment efforts were implemented with respect to the board member in question?
 - b. What specific criteria are involved in the request? Is the individual prohibited from serving based on the statute (C. 1-4 above) or regulation (C. 5-7 above) or both?
 - c. Does the proposed mitigation plan effectively address avoidance of the identified conflict of interest?
 - d. What impact will the approval/denial of the waiver have on the RC board?
 - e. Has the RC requested a wavier on behalf of the same individual before? If so, how long ago?

3. Upon evaluating the request, the area board shall take action to approve/deny the waiver request unless additional information is requested from RC.
4. Within 5 business days of taking action, the area board shall forward their analyses and action to the Council.
5. The Council shall schedule a discussion and action for the next available regular Council meeting. During the discussion, the Council shall review the area board analyses. The Council shall take action to approve/deny the waiver unless further information is requested from the area board.
6. The Council shall submit their action to DDS within 5 business days.

ANALYSIS/DISCUSSION: COI situation(s) occur when a prospective or current regional center board member has an interest outside of their regional center board member duties that can affect their vote while on the regional center board. Therefore, a statutory and regulatory process has been established that waives (forgives) the legal criteria that create conflict and allows the individual to serve on the regional center board for a maximum of one year by the Executive Director of the Department of Developmental Services.

It is important to note that the decision by the area board and State Council is to waive the conflict of interest **criteria** and not the conflict itself. This means that the individual may continue to have a conflict while sitting on the regional center board. Although they may take actions to mitigate the conflict, it will not be eliminated by virtue of the decision.

Ms. Michelle Phillips's sister works for a vendor of Far Northern Regional Center, Parent Infant Program. Ms. Phillips mitigation plan is that: 1) she will refrain from voting on all matters relevant to the conflict of interest, 2) she will not participate in the preparation, presentation, formulation or approval of reports, plans, policies, analyses, opinions or recommendations regarding the conflict of interest situation when the exercise of judgment is required and the purpose is to influence the decision and, 3) she shall not be involved in the negotiation, obligation, or commitment of the regional center to a course of action involving the conflict of interest situation.

COUNCIL STATE STRATEGIC PLAN OBJECTIVE: None

PRIOR COUNCIL ACTIVITY: In September 2011, the Council approved the procedure outlined above for consideration of conflict of interest waiver request.

STAFF RECOMMENDATION: Review and act on the request.

ATTACHMENTS(S): Waiver request and associated documents

PREPARED: Melissa C. Corral – April 16, 2012



Area Board 2

State Council on
Developmental
Disabilities

April 16, 2012

BUTTE

GLENN

Leroy Shipp, Council Chair
State Council on Developmental Disabilities
1507 21st Street, Suite 210
Sacramento, CA 95811

LASSEN

Dear Mr. Shipp:

MODOC

This is in regards to the request from Far Northern Regional Center to the Department of Developmental Disabilities to grant a waiver regarding the Conflict of Interest, Sec 54520, for Michelle Phillips.

PLUMAS

At the April 12, 2012 Area Board 2 meeting, the board discussed the waiver request for Ms. Phillips and took into consideration, Title 17, that provides additional conflict of interest criteria which may or may not encompass the criteria set forth in statute. In accordance with 17 CCR 54520, the following constitute conflicts of interest for RC board members:

SISKIYOU

“When a member of the board or their family member is: a) a director, officer, owner, partner, shareholder, trustee or employee of any business entity or provider, b) holds any position of management in any business entity or provider or, 3) has decision or policymaking authority in such an entity or provider.”

SHASTA

Far Northern Regional Center has devised a plan to avoid any conflict of interest regarding the regional center vendor, “Parent Infant Program” by having Ms. Phillips abstain from any voting or other processes involved with this particular vendor.

TEHAMA

Therefore, the board voted unanimously to approve the Conflict of Interest waiver for Ms. Phillips.

TRINITY

Sincerely,



Sarah M. May, Executive Director
Area Board 2

Cc: Carol Risley, SCDD Executive Director

Attachments



Far Northern Regional Center

Providing services and supports that allow persons with developmental disabilities to live productive and valued lives

Laura Larson
Executive Director

February 24, 2012



California State Council
on Developmental Disabilities
1507 21st St., Suite 210
Sacramento, CA 95814

Re: Conflict of Interest Waivers

To whom it may concern:

Enclosed, please find a copy of the letter sent to Maria Pena of the Department of Developmental Services. This letter is in regards to a Conflict of Interest for **Michelle Phillips**, a board member of the Far Northern Regional Center Board of Directors. Please review this letter and forward your decision to Ms. Pena within twenty (20) calendar days, pursuant to §54524, Title 17, Division 2.¹

Thank you for your cooperation.

Sincerely,


Cynthia R. Presidio
Executive Assistant

¹ California Code of Regulations
Title 17, Division 2
Chapter 3 - Community Services
SubChapter 3 - Regional Center Administration Practices and Procedures
Article 1 - Regional Center Conflict of Interest Standards and Procedures
§54524. Response to Requests for Waiver.

a) Within twenty (20) calendar days after the area board in the area and the State Council receive copies of a request for waiver packet regarding a regional center governing board member, the area board in the area and the State Council, respectively, shall provide to the Department their written approval or disapproval of such request. The Department may not approve the request for waiver of a regional center governing board member without the approval of both the area board in the area and the State Council.

www.farnorthernrc.org



Far Northern Regional Center

Providing services and supports that allow persons with developmental disabilities to live productive and valued lives

Laura Larson
Executive Director

February 24, 2012

Maria Pena
Dept. Of Developmental Services
1600 Ninth Street, Room 320, MS 3-9
Sacramento, CA 95814

Dear Maria:

FNCC Board member, **Michelle Phillips**, has a conflict of interest according to Section 54520, Title 17, California Code of Regulations. Specifically, **Michelle Phillips' sister, Julie Daniels** is the Program Director of the Parent Infant Program in Chico, a service provider of Far Northern Regional Center.

At this time, this letter serves as the Request for Waiver as prescribed by Section 54522 of the above referenced regulation. It is requested the waiver be granted for a period of one year, providing the following conditions are met:

1. **Michelle Phillips** shall abstain from voting on all matters relevant to the conflict of interest situation;
2. **Michelle Phillips** shall not participate in the preparation, presentation, formulation or approval of reports, plans, policies, analyses, opinions or recommendations regarding the conflict of interest situation when the exercise of judgment is required and the purpose is to influence the decision; and
3. **Michelle Phillips** shall not be involved in the negotiation, obligation, or commitment of the regional center to a course of action involving the conflict of interest situation.

The Board Chairperson, with support from remaining Board members, shall be responsible for ensuring that the conditions stated herein are applied and monitored.

Please contact me should you have questions concerning this matter. I look forward to your response.

Sincerely,

Laura L. Larson
Executive Director

LL/cp

Enclosure

cc: Area II Board
State Council
FNCC Executive Committee
Michelle Phillips

www.farnorthernrc.org



Far Northern Regional Center

Providing services and supports that allow persons with developmental disabilities to live productive and valued lives

Laura Larson
Executive Director

February 24, 2012

California State Council
on Developmental Disabilities
1507 21st St., Suite 210
Sacramento, CA 95814

Re: Conflict of Interest Waivers

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Thank you for your cooperation.

Sincerely,



Cynthia R. Presidio
Executive Assistant

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www.farthernrc.org



Far Northern Regional Center

Providing services and supports that allow persons with developmental disabilities to live productive and valued lives

Laura Larson
Executive Director

February 24, 2012

Area II Board
1367 E. Lassen Ave., #B3
Chico, CA 95926

Attention: Sarah May, Executive Director

Re: Conflict of Interest Waiver

Dear Robin:

Enclosed, please find a copy of the letter sent to Maria Pena of the Department of Developmental Services. This letter is in regards to a Conflict of Interest for **Michelle Phillips**, a board member of the Far Northern Regional Center Board of Directors. Please review this letter and forward your decisions to Ms. Pena within twenty (20) calendar days, pursuant to §54524, Title 17, Division 2.¹

Thank you for your cooperation.

Sincerely,


Cynthia R. Presidio
Executive Assistant

¹ California Code of Regulations
Title 17, Division 2
Chapter 3 - Community Services
SubChapter 3 - Regional Center Administration Practices and Procedures
Article 1 - Regional Center Conflict of Interest Standards and Procedures
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www.farnorthernrc.org

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CHICO OFFICE: 1377 East Lassen Ave. Chico, CA 95973-7824 (530) 895-8633 FAX (530) 895-1501

REGIONAL OFFICES in Lake Almanor and Mount Shasta

Michelle Phillips
41 Rio Vista
Red Bluff, Ca 96080

February 8, 2012

Ms. Laura Larson
Executive Director
Far Northern Regional Center
P. O. Box 4924181
Redding, California 96049

Re: Conflict of Interest

Dear Ms. Larson:

I am notifying you of the conflict of interest I may have with my position as a member of the Far Northern Coordinating Council board.

My sister, Julie, works at the Parent Infant Program, a vendor of Far Northern Regional Center.

I will refrain from voting on any issue that may occur during any FNCC board meeting that I may be attending.

Thank you for your consideration.

Sincerely,


Michelle Phillips

Risley, Carol@SCDD

From: Risley, Carol@SCDD
Sent: Monday, April 30, 2012 2:22 PM
To: SCDD Members
Cc: SCDD AB Directors
Subject: Ensuring Fair & Equal Access to Regional Center Services

Interesting and well attended (by legislators) hearing today. Rocio Smith, Area Board 5 was on one of the panels, did a great job as always.

Closing remarks from Senator Steinberg noted that he heard some of the following messages:

- There needs (and formerly was) more flexibility for regional centers to purchase gap services
- Notices to parents need to be provided in appropriate languages
- Need for autism outreach
- Should build upon community (cultural) forums

With respect to action, Steinberg discussed the bill he carried when in the Assembly, AB 636 that established outcome measures for county child welfare systems. He stated that the State (DDS) and regional centers need to be held accountable, have outcome measures and be transparent. By doing so, we will force change as has occurred in the child welfare system. He believes that the regional center system needs to be outcome based and is willing to replicate AB 636 in the developmental services system. Finally it acknowledged that there are significant challenges in the system.

The hearing ended on his remarks; therefore it is not clear what the next steps might be.

Carol J. Risley, Executive Director
State Council on Developmental Disabilities
1507 21st Street, Suite 210
Sacramento, CA 95811
(916) 322-8481
(916) 443-4957 (fax)
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www.scdd.ca.gov

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latimes.com/news/local/la-me-0501-autism-hearing-20120501,0,6943341.story

latimes.com

California agency ripped over disparities in autism spending

Advocates for children with autism testify at hearing that families with the least resources also get the least help from California's Department of Developmental Services.

By Alan Zarembo, Los Angeles Times

1:03 AM PDT, May 1, 2012

California lawmakers and advocates for children with autism assailed the state advertisement Department of Developmental Services during a hearing Monday over the deep racial and ethnic disparities in how it spends money on the disorder.

"Families that are already the most disadvantaged get the least," Martha Matthews, an attorney for the advocacy group Public Counsel, testified before a panel of legislators in Sacramento. "This is exactly the opposite of what it should be."

State Sen. Darrell Steinberg, who heads a committee on autism, called for legislation to provide greater accountability in the \$4-billion-a-year entitlement program for people with developmental disabilities. Autism now accounts for about a quarter of the 252,000 people in the state system and 45% of all new disability cases it accepts. Budgets have not kept pace.

Steinberg ordered the hearing in response to articles in The Times documenting how obtaining help for an autistic child can require waging battle against the gatekeepers of state services. Parents with the time and resources to fight receive significantly more, resulting in enormous racial and socioeconomic disparities.

It is not uncommon for autistic children from affluent families to receive 25 hours a week of one-on-one behavioral therapy. Advocates for poorer families, on the other hand, said parents aren't necessarily even told what public services are available.

Matthews recounted the case of a severely autistic 6-year-old boy whose parents, a laborer and a seamstress who speak only Spanish, asked for individual behavioral therapy. The request was denied, despite a doctor's insistence that it was necessary. Instead, the state provided a month's supply of diapers, bus passes and 10 group classes in

behavior management.

"This is such a hellish nightmare," state Sen. Mark Leno responded.

In its December series, The Times found that for autistic children ages 3 to 6 — a critical period for treating the disorder — the Developmental Services department spent an average of \$11,723 per child on whites in 2010, compared with \$11,063 on Asians, \$7,634 on Latinos and \$6,593 on blacks.

"Black and brown children are discriminated against," testified Areva Martin, a Los Angeles lawyer who runs the Special Needs Network, which advocates for poor minority children. "Parents should not be expected to sell their homes, quit their jobs and relocate to access services."

State money for the developmentally disabled flows to service providers through 21 nonprofit regional centers, which decide whether a child has a qualifying condition and what services to provide. Services are free for life, regardless of a family's means. In principle — but not in practice — everybody has the same opportunity for help. Regional center officials testified that the state budget crisis has worsened long-standing inequities.

Harried case workers have less time to find "creative solutions," said George Stevens, head of the North Los Angeles County Regional Center. The process used to award services is "slowly crashing down on clients it was intended to serve," he said.

Dexter Henderson, head of the South Central Los Angeles Regional Center, said many families in his largely impoverished area did not aggressively pursue services and the regional center "has zero dollars to advertise" them.

In 2010, the center spent an average of \$1,991 on each autistic child age 3 to 6 — the lowest in the state. The center in Orange County had the highest average spending, at \$18,356 per child.

Terri Delgadillo, head of the state Developmental Services department, testified that regional center budgets eventually will be set so that similar amounts of funding are available for clients with similar needs.

alan.zaremba@latimes.com

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California's protection and advocacy system

ADMINISTRATION
1831 K Street
Sacramento, CA 95811-4114
Tel: (916) 504-5800
TTY: (800) 719-5798
Fax: (916) 504-5802
www.disabilityrightsca.org

Senate Select Committee on Autism & Related Disorders

Ensuring Fair & Equal Access to Regional Center Services
For Autism Spectrum Disorders
April 30, 2012

Testimony of Catherine Blakemore, Executive Director

Thank you for the opportunity to address the committee today concerning the important issues of ensuring fair and equal access to regional center services. Disability Rights California is the agency mandated by federal law to protect and advocate for Californians with disabilities. Last year, we assisted nearly 27,000 Californians with disabilities. Of that number, we provided assistance to 10,641 individuals with developmental disabilities, including 3,427 with autism spectrum disorders. While individuals with developmental disabilities and their families contacted us about a wide range of issues, the most frequently requested areas for assistance were: regional center services, education, health, income maintenance and housing.

The issue of equal access to services for Californians with developmental disabilities from diverse communities has been the subject of conversation and study during much of the past two decades. Since 1992, there have been at least 3 studies about Purchase of Service (POS) variance rates, each of which have concluded differences in the average POS for persons from different ethnic groups and wide variation across regional centers in average service costs. For example, the most recent study, by Drs. Charlene Harrington and Taewoon Kang, found that minority groups were 23-31% less likely to receive any regional center services than were individuals who identify as white. And for those who did receive services,

the expenditures were significantly lower than for individuals who identified as white.¹

The issue of racial and ethnic or geographic disparities in service delivery is not unique to the regional center system. The same researchers also found disparities in the number of In-Home Supportive Services (IHSS) hours with traditional racial minority groups receiving 16-39 fewer IHSS hours than whites. Disparities have also been documented in the mental health system where racial/ethnic minorities receive mental health services less often as compared with individuals who identify as white.² Similarly, the Los Angeles Times series of articles “Discovering Autism” found not only geographic and racial and ethnic disparities in the regional center system, but also significant disparities in school systems; with one Orange County School District identifying 3% of its students with autism and other Northern California rural school districts identifying less than half of 1% of students with autism. Thus, individuals with autism and other developmental disabilities from racial and ethnic minority communities and some geographic regions face greater difficulty accessing services from all service systems.

Since at least 2005, the Legislature has considered this issue in at least three modest policy bills. None of the legislative efforts were successful. The modest legislative efforts would have required, for example, annual reports of expenditures aggregated by race and ethnicity, and service termination and denial information by race and native language (AB 1535, Bass); a requirement that DDS monitor regional centers and assist in determining whether purchase of service funds are being spent equitably among the state’s linguistic and ethnically diverse populations (AB 302, Beall); and the most modest proposal, to require DDS to consider California’s diversity when convening stakeholder groups (AB 2204, Beall). Sadly, none of the efforts were successful and, too often, the reasons given for the failure were budget constraints. Perhaps most troubling was the recent effort to simply require DDS to ensure that the stakeholder groups reflected the state’s diversity. While it was acknowledged that the workload for implementing the requirement was small, the bill was nonetheless placed into suspense, because “... there could be General Fund and

¹ Harrington C. & Kang T., *Disparities in service utilization and expenditures for individuals with developmental disabilities*, Disability & Health Journal, 1:184, 193 (2008).

² Cauce AM, Domenech-Rodriguez M, Paradise M., et. Al. *Cultural and contextual influences in mental health help seeking: a focus on ethnic minority youth*. J Consult Clin Psychol. 44-55 (2002).

federal funds cost pressure to the extent that the stakeholders may work to increase the amount spent per consumer to create purchase of service parity among ethnic groups.”³

The adverse economic climate and resulting budget decisions may also have had other unintended consequences on regional centers’ ability to serve individuals from diverse communities. First, for much of the past two years regional centers have necessarily had to focus on implementing a significant number of new trailer bill requirements, which undoubtedly have made it more challenging for the Department and regional centers to devote the time required to provide leadership around the more complex issue of equal access, which one regional center director described as the “... issue that has bedeviled our system for years and years.” In addition, some of the budget changes may have changed services in an unintended, but particularly disadvantageous way for individuals from underserved communities. For example, did taking the Early Start program to the federal minimum requirements make it less likely that families of color would initially access regional center services? Or, did caps on respite services disproportionately impact minority families who were more likely to value that service given the lower rates of out-of-home placements in some communities? Or, did changes requiring parents to participate in orientation or behavioral therapy sessions impact low income families who have less time to participate in those requirements due to work demands? While we don’t know the answers to these questions, future work on fair and equal access to services may want to consider the impact of budget driven requirements on access to services.

While we have not made significant progress in addressing these barriers, there have been some successes. For example, in 2005 we were able to work with the Department to ensure that hearing forms, including the Notice of Proposed Action and Fair Hearing Request forms, were translated into 11 additional languages. We appreciate DDS’ efforts in this regard. More recently, Disability Rights California has worked with one regional center to provide joint training for consumers and their families from the African American and Latino communities about regional center services and special education and we are in the planning phase with another regional center to provide joint training for Vietnamese and Hmong consumers and families. We believe these joint initiatives provide a promising practice of

³ See Senate Appropriations Committee Fiscal Summary for AB 2204 (Beall).

ensuring that consumers and families from traditional minority communities have access to information about their rights and services and benefits available from a variety of disability programs.

California is the most culturally and linguistically diverse state in the nation and DDS data shows that nearly 60% of consumers in the developmental disabilities service system are from traditional minority communities. As a state we can and must do better towards ensuring that all individuals with autism spectrum disorders and other developmental disabilities, regardless of race or ethnicity or geographic regions in the state, have fair and equal access to regional center services, other health and human service programs and education. It is no longer time to discuss whether there are disparities, but instead to look forward and provide leadership to ensure that disparities are addressed.

We encourage the convening of a statewide commission to specifically look at solutions to address issues concerning racial, ethnic and geographic disparities. The solutions should include:

1. Ensure that all consumers and their families have access to information about the service delivery system in languages which they can understand, including information about the range of services available and how consumers and parents can meaningfully participate in the IPP process.
2. Strategies to help regional centers meet their language access obligations, including providing interpreters at IPP meetings and a written translation of the IPP in a timely manner.
3. Ensure greater consistency with eligibility standards and services, so that families of children with autism spectrum disorders and individuals with other developmental disabilities can anticipate the same eligibility decisions and receipt of similar services between regional center catchment areas.
4. Review and ensure that the array of services offered by regional centers reflect norms of individuals and their families, and that services are offered by vendors who have culturally and linguistically competent staff.

5. Ensure that the twenty-one Regional Center Boards are reflective of the ethnic diversity of their catchment area and that any statewide stakeholder groups are reflective of the ethnic and language diversity of the state.
6. Develop a mechanism to publicly report on expenditures for the purchase of services and denials/termination of eligibility aggregated by race and ethnicity of the consumers.

DRC is dedicated to working with stakeholders within the developmental disabilities system to ensure that the promises of the Lanterman Act are achieved for all Californians with developmental disabilities and their families. We think this can best be accomplished by a clear, focused, deliberate and collaborative effort to identify strategies and approaches to eliminate any service disparities and efforts to enhance the system, so that it models cultural and linguistic competence in all aspects of service delivery.

DARRELL STEINBERG
CHAIR

MEMBERS

ELAINE K. ALQUIST
TOM BERRYHILL
ELLEN CORBETT
LOU CORREA
KEVIN DE LEÓN
MARK DESAULNIER
BOB DUTTON
BILL EMMERSON
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LOIS WOLK

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LOUIS A. VISMARA, MD
POLICY CONSULTANT

MARK A. TEEMER, JR.
ASSISTANT

WWW.SENATE.CA.GOV/AUTISM

California Legislature
Senate Select Committee
on
Autism & Related Disorders



**Ensuring Fair & Equal Access to Regional Center Services
for Autism Spectrum Disorders (ASD)**

APRIL 30, 2012 (10AM to Noon)
The State Capitol Building; Room 3191

AGENDA

- I. Welcome & Opening Remarks** (10-10:05AM)
Senator Darrell Steinberg and Members

- II. An Overview of California's Services for Individuals with ASD**
(10:05-10:20AM)
Terri Delgadillo, *Director, Department of Developmental Disabilities*
 1. The Lanterman Act
 2. The California Regional Center System – Structure, Operations, Funding, Oversight.

- III. Identifying the Gaps & Inequities in Regional Center Services for ASD**
(10:20-10:45AM)
Areva Martin, *Martin & Martin & Co-Founder, Special Needs Network*;
Dr. BJ Freeman, *Clinical Psychologist, Professor Emerita, UCLA School of Medicine*;
Martha Matthews, *Directing Attorney, Children's Rights Project, Public Counsel*;
Catherine Blakemore, *Executive Director, Disability Rights California*
 1. Public Policy Perspective and an Overview of the Issues
 2. The Impact of Disparities in Early Intervention Services on the Lives of Children with ASD and Their Families.
 3. A Synopsis of the Data, Information & Studies on the Distribution of Services for ASD and Other Developmental Disabilities.

IV. Regional Centers & Their Systems of Care (10:45-11:10 AM)

Jim Burton, *Executive Director, Regional Center of the East Bay*;
George Stevens, *Executive Director, North Los Angeles County Regional Center*;
Dexter Henderson, *Executive Director, South Central Los Angeles Regional Center*;
Robert Riddick, *Executive Director, Central Valley Regional Center*

1. Regional Center Funding & Services for Individuals with ASD
2. Innovative Approaches to Effective Community Outreach

V. Moving Towards a Solution: Recommendations & Discussion

(11:10-11:45AM)

Dr. Sergio Aguilar-Gaxiola, *Director, UC Davis Center for Reducing Health Disparities*;

Dr. Barbara Wheeler, *Associate Director, USC University Center for Excellence in Developmental Disabilities, Children's Hospital Los Angeles*;

Dr. Jan Blacher, *Distinguished Professor of Education-UC Riverside & Founding Director, SEARCH*;

Rocio deMateo Smith, *Executive Director, Area 5 Board-State Council on Developmental Disabilities*;

Phil Bonnet, *Executive Director, Alta California Regional Center*;

Areva Martin, *Martin & Martin & Co-Founder, Special Needs Network*

VI. Public Comment (11:45-11:55AM)

VI. Closing Comments & Adjournment (11:55AM-12:00PM)

DARRELL STEINBERG
CHAIR

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ELAINE K. ALQUIST
TOM BERRYHILL
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ASSISTANT

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California Legislature
Senate Select Committee
on
Autism & Related Disorders



Ensuring Fair & Equal Access to Regional Center Services for ASD

April 30, 2012 (10AM to Noon)

The State Capitol Building, Room 3191

HEARING OVERVIEW

Agenda item II: An Overview of California's Services for Individuals with ASD

The hearing will begin with a review of the Lanterman Act by Ms. Delgadillo, Director, Department of Developmental Services (DDS). This statute, enacted by the California in 1969, sets out the rights and responsibilities of persons with developmental disabilities, and creates the agencies, including regional centers, responsible for planning and coordinating services and supports for persons with developmental disabilities and their families. This entitlement means that individuals with developmental disabilities (mental retardation, cerebral palsy, epilepsy, autism, pervasive developmental disorder-not otherwise specified) and their families have the right to receive services and supports which will enable them to make decisions and choices about how, and with whom, they want to live their lives; achieve the highest self-sufficiency possible; and lead productive, independent and satisfying lives as part of the communities in which they live.

Ms. Delgadillo will provide an overview of DDS, which has the responsibility of providing statewide policy direction and leadership to ensure that persons with developmental disabilities shall have the opportunity to lead more independent, productive and satisfying lives. She will also review the funding streams, as well as the requisite monitoring/oversights, by which DDS contracts with regional centers provide

the services and supports best suited to each individual consumer. The regional center has the mandate to ensure that the consumers for whom it is responsible receive services and supports which will assist them in living productively in their communities. The regional center may accomplish this task by securing services and supports directly, or by assisting consumers and families to locate and access services and supports from other agencies.

Agenda Item III: Identifying Gaps & Inequities in Regional Center Services for ASD

This panel will initiate a discussion on identifying the gaps and challenges that face underserved communities in accessing appropriate services and interventions for children with ASD. **Ms. Martin**, a nationally recognized disability rights attorney/advocate and co-founder and President of the Special Needs Network, Inc., will provide a public policy perspective on the inequities that currently face many families of color and those in low-income communities. **Dr. Freeman**, Professor Emerita of Medical Psychology, UCLA School of Medicine and internationally recognized authority on ASD, will discuss the impact of disparities in early intervention services on the lives of children with ASD and their families. **Ms. Matthews**, Directing Attorney of the Children's Rights Project at Public Counsel, will discuss data and legal efforts to promote the equitable distribution of services for ASD and other developmental disabilities. Public Counsel is the largest pro bono law office in the nation and impacts a wide spectrum of people who live at or below the poverty level. Volunteer attorneys work extensively in the areas of children's rights, early care, and education. **Ms. Blakemore**, Executive Director of Disability Rights California, the agency established under federal law to protect and advocate for individuals with disabilities. She will discuss state and national efforts to enhance the rights of individuals with ASD and other disabilities.

Agenda Item IV: Regional Centers and Their Systems of Care

This panel will focus on services and supports that are provided by regional centers to individuals with ASD and their families. The 21 regional centers, distributed throughout California, are 501C3 non-profit corporations designated by the Lanterman Act as having the responsibility of providing life-long services to consumers and their families. These supports include: community outreach, eligibility assessment/evaluation, preventive counseling/services, services for infants at high risk for developmental disabilities, service coordination, cost-effective, flexible, services/supports that are individualized and promote community integration,

assurance of quality/effective supports, and protection of consumer civil/legal rights. Consumers obtain regional center services by the development of an Individual Program Plan (IPP), through a person-centered planning process, which states the specific outcomes the consumer is trying to achieve, and the services and supports required to meet those outcomes.

In addition, the Lanterman Act requires the regional centers be accountable for the monies received to ensure the following: 1) Operate with a specified annual budget; 2) Develop innovative and cost effective ways to achieve the desired outcomes for consumers; 3) Secure services from qualified service providers, and only continue those services where there is reasonable progress; 4) Take into account parental responsibility for minor consumers when making a decision about the purchase of services or supports, but provide funds only for those interventions that are above what a parent would provide for a child without a disability; 5) Pursue all possible sources of funding, and ensure that the regional center does not pay for services and supports which should be provided by a generic agency such as the Department of Education.

Mr. Burton, Executive Director of the Regional Center of the East Bay, will provide an overview of the funding streams and process by which regional centers budgets established and purchase of services funds are allocated. Mr. Burton has a degree in economics from U.C. Berkeley and previously served for 25 years as a regional center chief financial officer. **Mr. Stevens**, Executive Director of the North Los Angeles County Regional Center, is a licensed clinical social worker and a political science graduate from UCLA. He will discuss the Individual Program Plan (IPP) and the process by which the needs of ASD consumers are assessed and implemented. Subsequent presentations by **Mr. Henderson**, Executive Director, South Central Los Angeles Regional Center, and **Mr. Riddick**, Executive Director, Central Valley Regional Center, will discuss programs by which their respective regional centers are providing innovative approaches for effective community outreach, with a particular emphasis on reaching underserved communities. Mr. Henderson has provided civic leadership capacities including serving on the Inglewood School District Board of Trustees, Los Angeles City Disability Compliance Program, and South Center Los Angeles Low Income Housing Project. Mr. Riddick is a licensed clinical social worker and has served as Co-Chair of the Central Valley Autism Regional Taskforce.

Agenda Item V: Moving Towards a Solution.

The final panel will provide an opportunity for an interactive discussion on potential

next steps and specific recommendations to address the inequities and reduce the barriers that have been identified during this hearing. The framework for this discussion will be provided by an esteemed panel of researchers and advocates.

Dr. Aguilar-Gaxiola, Professor of Medicine, UC Davis School of Medicine and Founding Director of the Center for Reducing Health Disparities, will review the challenges of providing appropriate and equitable healthcare to minorities and underserved populations. **Dr. Wheeler**, Associate Director, USC Center of Excellence in Developmental Disabilities, will review her extensive research in studying and addressing racial disparities for individuals with developmental disabilities. **Dr. Blacher**, Distinguished Professor of Education, UC Riverside and Founding Director of SEARCH-a newly established family resource center, will outline her innovative approaches to effective community outreach for ASD with particular emphasis on connecting with Latino families who are often living in remote, rural areas. **Ms. deMateo Smith**, Executive Director, Area Board 5 on Developmental Disabilities, will provide specific recommendations for providing supports and services to Latino families who are in an urban environment. **Mr. Bonnet**, Executive Director, Alta California Regional Center in Sacramento, and **Ms. Martin** will also participate in this discussion.

The hearing will conclude with “public input” and “closing comments” by the Committee Members.

Respectfully submitted,

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Ensuring Fair & Equal Access to Regional Center Services for ASD

April 30, 2012 (10AM to Noon) The State Capitol Building, Room 3191

BACKGROUND & REVIEW OF THE LITERATURE

The Autism Epidemic

Autism spectrum disorders (ASD) are complex neurological disorders that have an onset in infancy and can cause mild to severe difficulties in childhood development, including language delays, communication problems, limited social skills, and repetitive and other unusual behaviors. Although the etiology of ASD is unknown, experts believe there is more than one cause for ASD. Genetics appear to play a role, and there is growing scientific evidence about the role of environmental influences. Research is underway to investigate the extent genetic and environmental factors contribute to ASD.

The dramatic growth in the number of children diagnosed with ASD in California and the United States is a public health crisis that must be addressed. A recent study (TAB 1) by the U.S. Centers for Disease Control & Prevention (CDC) reported that the prevalence of ASD, based on data analyzed from 2008, had risen to 1 in every 88 children (1.13 percent). Within this study that included 337,093 children, one in 54 boys and one in 252 girls were identified with ASD. This report indicated that ASD prevalence had increased 23 percent from the prior analysis in 2006 and that the incidence of ASD has almost doubled in just six years (2002 incidence 6.4 per 1,000 vs. 2008 incidence 11.4 per thousand.) The increase in ASD over the past six year was similar for both males and females. During the past two years of this study there was a marked spike in the prevalence of ASD among children of color with 42 percent increase among black children; a 29 percent increase among Hispanic children, and only a 16 percent ASD prevalence increase among white children.

Racial & Ethnic Disparities in ASD

(The demographic and ethnic/racial terms used in the following discussion will vary to appropriately reflect the designations used in each of the studies that are cited)

According to the CDC (TAB 1), the prevalence of ASD also varies significantly by racial/ethnic demographics and can be summarized as follows: non-Hispanic white children = 1.2 percent or one for every 83 children; non-Hispanic black children = 1.02 percent or one per 98 children; Hispanic children = .08 percent or one per 127 children. Only two of the 14 CDC monitoring sites reported an incidence of ASD among Hispanic children that was comparable to the incidence noted in non-Hispanic white children.

Children of color with ASD are also diagnosed at an older age. In 2002 Dr. Mandell and colleagues reported [*Race Differences in the Age at Diagnosis Among Medicaid-Eligible Children with Autism*, J Am. Acad. Child Adolesc. Psychiatry (2002) 14:12, 1447-1453] that among 406 children receiving Medicaid services, white children with ASD were diagnosed at an average age of 6.3 years as compared to 7.9 years for black children and 8.8 years for Latino children. Seventy-two percent of white children and 58 percent of African-American children were diagnosed with ASD on their first mental health evaluation. Black children required three times the number of visits over a period three times as long, while Latino children required twice as many visits as white children before being appropriately diagnosed with ASD. These authors concluded that important sociocultural factors were associated with the appropriate evaluation and diagnosis of ASD.

A study of 406 ASD children (Mandell, *Disparities in Diagnoses Received Prior to a Diagnosis of ASD*, J Autism Dev. Disord. (2007) 37:9, 1795-1802) confirmed that African-American children were 2.6 times less likely than white children to be appropriately diagnosed with ASD on their first specialty evaluation. Importantly, this study noted that racial disparities existed during the evaluation process and that African-American children were nearly three times more likely than white children to receive another diagnosis, which most often was considered to be a "conduct or adjustment disorder."

A subsequent study of 2568 children with ASD (Mandel, *Racial/Ethnic Disparities in the Identification of Children with Autism Spectrum Disorders*, Am. J. of Public Health (2009) 99:3, 493-498) also concluded that significant racial/ethnic disparities existed in the recognition of ASD and that children who were black had a significantly greater degree of intellectual impairment while children who were Hispanic or of other ethnicity manifested a high incidence of co-occurring intellectual disabilities. These authors suggested that "racial differences in diagnostic patterns might be attributable to

institutional factors such as access to health care, general prejudices held by clinician, clinicians' and families' interpretation of symptoms and clinicians' erroneous interpretation of algorithms on the likelihood of a child having ASD." The study emphasized the important of identifying and implementing strategies that will lead the early identification of children with ASD who currently are overlooked.

The significance of socioeconomic, psychosocial, and cultural factors in the evaluation and treatment of ASD are considered to be very important, but unresolved, issues. According to data from the National Survey of Children's Health (Tab 1), the prevalence of ASD was lower for Latinos than for non-Latinos while children that were white and African-American had comparable rates. Latinos and poor families rated their children's autism as being more severe. Being black, Latino, or poor was associated with decreased access to services.

Researchers in Atlanta, Georgia, that followed children with ASD in from 2000 to 2006, concluded that non-Hispanic black children had more severe manifestations of ASD than white children. However, the potential underlying causes and precipitating factors for these disparities remain issues of ongoing investigation. For example, data from the Texas Educational Agency {Palmer, *Explaining Low Rates of Autism Among Hispanic Schoolchildren in Texas*, Am. J of Public Health (2010) 100:2, 270-272} indicate that although ASD rates were two to three times higher among non-Hispanic whites as among Hispanics, socioeconomic factors failed to explain the much lower ASD prevalence among Hispanic schoolchildren in Texas. In contrast, a recent study {Fountain, *Six Developmental Trajectories Characterize Children with Autism*, Pediatrics (2012) 129:5, 2011-2020} underscored the potential significance of socioeconomic factors. In the longitudinal evaluation of 6,000 children with ASD receiving regional center services, researchers concluded that low-functioning children were more likely to have mother who were minority/foreign born, less educated, and on Medi-Cal while high-functioning children were more likely to have mother who were white, more educated and not on Medi-Cal.

Disparities in Mental Health Services

The U.S. Surgeon General, in an extensive 200-page report published in 2001, noted that minorities and underserved communities face significant challenges in obtaining mental health services and that these groups are more likely to receive poor quality care. The key findings of this report included:

- Disproportionate numbers of African Americans are represented in the most vulnerable segments of the population – people who are homeless, incarcerated,

in the child welfare system, victims of trauma – all populations with increased risks for mental disorders;

- Most Hispanic-Americans have limited access to ethnically or linguistically similar providers.
- The suicide rate among American Indians/Alaska Natives is 50 percent higher than the national rate
- Asian Americans/Pacific Islanders who seek care for a mental illness often present with more severe illnesses than do other racial or ethnic groups.

A study by Dr. Aguilar-Gaxiola (*Disparities in Mental Health Status and Care in the U.S. Population Mental Health: Evidence, Policy, and Public Health Practice*; (2010) Taylor & Francis Books, 69-91) also provides a comprehensive review of disparities in the mental health status and care in the U.S. This study notes that while minorities (Latino, African-American, Asian American and Pacific Islanders) tend to have a lower prevalence of psychiatric disorders, these groups tend to have more persistent illnesses, with symptoms that may be more severe and disabling. Furthermore, immigrants were less likely to see physicians and also to use medications than their U.S.-born counterparts but it was unclear whether these disparities were related to stigma, lack of access to medical care and outpatient therapy for mental health issues, or fragmented case management.

The National Institute on Minority Health & Health Disparities states that disparate mental health status can be attributed to a complex interaction among multiple factors. Socioeconomic differences are largely responsible for the widening differences in health status among racial and ethnic lines. But, even after controlling for socioeconomic status, there seem to be other factors that further influence health disparities, including gender, genetics, environment, and racial bias. Access, utilization, and quality of medical care contribute to these inequities. And, language and culture pose additional barriers to good health for racial and ethnic minorities and other medically-underserved individuals. Barriers to mental health care include the cost of care, societal stigma, and the fragmented organization of services. Additional barriers include the client's fear and mistrust of treatment.

Researchers (Tab 1) have provided specific strategies to mitigate and correct these racial and ethnic disparities in pediatric mental health that include:

1. Appointing a government taskforce to address the current gaps and unmet needs.

2. Evaluating the role of community-sources of care such as schools and community agencies.
3. Providing culturally appropriate information to assist parents and families in making informed decisions about mental health evaluation and therapy.
4. Evaluating treatment preferences among minority youths and their families and ensuring that minority parents collaborate with providers in order to ensure that cultural values are acknowledged and maintained.
5. Providing assessment instruments that are culturally appropriate for minority populations.

Racial & Ethnic Disparities in Healthcare

Information from the Agency for Healthcare Research and Quality (AHRQ) as well as the 2010 National Healthcare Disparities Report noted that disparities are most easily identified when there is a clear reference point for what is appropriate and reasonable to expect. Although there may be uncertainty regarding many aspects of clinical care, and variation in patients' medical conditions and severity of illness, there should be little deviation from specific quality measures associated with population. This report provided compelling evidence of healthcare inequalities in the U.S. and specific examples that included the following:

- About 30 percent of Hispanic and 20 percent of black Americans lack usual sources of healthcare as compared with less than 16 percent of whites; Hispanic children are nearly three times as likely as non-Hispanic white children to lack a usual healthcare source.
- African Americans and Hispanic Americans are far more likely to rely on hospitals or clinics for their usual source of healthcare (16 percent & 13 percent respectively vs. 8 percent for white Americans.)
- Minorities are more likely to be diagnosed with late-stage breast cancer colorectal cancer compared with whites.
- Patients of lower socioeconomic position are less likely to receive recommended diabetic services and more likely to be hospitalized for diabetes.
- When hospitalized for acute myocardial infarction, Hispanics are less likely to receive optimal care.
- Infants born to black women are 1.5 to 3 times more likely to die than infants born to women of other races/ethnicities.

- Many racial and ethnic minorities and persons of lower socioeconomic position are less likely to receive childhood immunizations.
- Many racial and ethnic minorities and individuals of lower socioeconomic status are less likely to receive recommended immunizations for influenza and pneumococcal disease.

These studies identified complicated interrelationships between race, ethnicity, and socioeconomic status that may result in healthcare disparities. However, a consistent and pervasive finding included the lack of information and knowledge that was provided to underserved communities and included the following examples:

- Significantly lower rates of smoking cessation offered to minority patients.
- Many racial and ethnic groups, as well as poor and less educated patients, reported having poor communication with their physicians and more problems with some aspects of patient-provider relationships.
- Asians, Hispanics, and those of lower socioeconomic status had greater difficulty accessing health care information, including information on prescription drugs.

There are also large racial/ethnic disparities in preventable hospitalizations with blacks experiencing a rate more than double that of whites. Data from the AHRQ indicates that eliminating these disparities would prevent approximately one million hospitalizations and save \$6.7 billion in healthcare costs annually. Furthermore, the Joint Center for Political & Economic Studies reported the following:

- Between 2003-2006, 30.6 percent of medical care expenditures for African Americans, Hispanics and Asians were excess costs due to health inequities.
- Between 2003-2006, the combined costs of health inequities and premature death in the U.S. were \$1.24 trillion.
- Eliminating health disparities for minorities would have reduced direct medical care expenditures by \$119.4 billion for the years 2003-2006.

Ethnic and social class disparities are evident across a broad spectrum of markers of psychological, behavioral and physical health (Tab 1). These patterns frequently involve complex interactions of numerous risk factors (e.g. poverty, lack of contextual diversity, linguistic barriers) and protective dynamics (e.g. family support, cultural identity.) Thus, any evaluation and analysis of services for ASD must be considered within the context of our current healthcare system.

The Series on Autism Reported in the Los Angeles Times

In December, 2011, the Los Angeles Times staff writer Alan Zarembo and his data team authored a four part series on autism (Tab 3) that was based on extensive interviews with researchers, parents, clinicians, educators and other stakeholders. In addition to an extensive review of scientific studies, Mr. Zarembo and his team apparently reviewed thousands of pages of information obtained from the California Department of Developmental Services (DDS) and other sources. The ensuing series included:

1. Part 1: An Epidemic of Disease or Discovery?
2. Part 2: Services Go to Those That Fight the Hardest.
3. Part 3: Families Chase the Dream of Recovery.
4. Part 4: Finding Traces of Autism in Earlier Eras.

The series provided a multifaceted and kaleidoscopic view of ASD. Furthermore, these articles provided data and information with regards to potential inequities in ASD services by regional centers that are highly relevant to this hearing and can be summarized as follows:

- For 3-6 year old children with ASD, DDS spent an average of \$11,723 per child on whites, compared with \$11,063 on Asians, \$7,634 on Latinos, and \$6,593 on blacks.
- In 2010 regional centers provided services to 16,367 autistic children 3-6 years of age with an average of \$9,751 per case statewide. However, these expenditures varied widely from an average of \$1,991 per child at the regional center in South Los Angeles to \$18,356 at the one in Orange County.
- At 14 of the 21 regional centers, average spending on white children exceeded that for both blacks and Latinos.
- At the Lanterman Regional Center spending on white youngsters with ASD averaged \$12,794 per child, compared with \$9,449 for Asians, \$5,094 for blacks, and \$4,652 for Latinos.
- Anecdotal reports that aggressive and informed parents are much more likely to obtain more extensive regional center services for ASD.
- Anecdotal indications that minorities and underserved communities face formidable challenges and barriers in accessing appropriate ASD

Disparities in accessing ASD services from school districts and other providers were also reviewed in the L.A. Times series. However, inequities in educational services and community-based supports, while of critical concern and importance, are beyond the scope of today's hearing.

Respectfully submitted,

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COUNCIL AGENDA ITEM DETAIL SHEET

ISSUE: 2013 State Council Grant Cycle

BACKGROUND: Each federal fiscal year, the Council administers grants to community-based organizations to fund new and innovative program development projects. All projects are designed to implement the California State Strategic Plan on Developmental Disabilities (Plan) goals and objectives and improve and enhance services for Californians with developmental disabilities and their families. Program Development Grants (PDG) provides funding for new approaches to serving Californians with developmental disabilities that are part of an overall strategy for systemic change. Available grant funds included in the Council budget are approximately \$1 million annually, however subject to federal appropriations to the Council.

During 2012 (current year) each area board was given \$35,000 to solicit and fund projects consistent with the Plan. In addition, funding was awarded, via RFP, to provide support and facilitation services to self-advocate council members; self-advocates on the Council's Employment First committee, and to support and facilitate the implementation of the Statewide Self-Advocacy Network including funds for support of regional self-advocacy activities that build into the statewide network.

ANALYSIS/DISCUSSION: Due to lack of Council appointees (quorum) and staff resources (no appointments), the 2013 grant process has yet to be established, however must be at the May Council meeting in order to establish a timeline that will allow for the solicitation, awarding and contracting process for projects to begin October 1, 2012 (federal fiscal year 2013).

Because the grant process was addressed via the area board during 2012, on March 22, 2012, area board executive directors met with Council staff to review the 2012 process, timeline for 2013 and develop recommendations for the 2013 grant cycle. Based upon their experiences from 2010 and 2012 which varied from small (\$10,000) mini grants to larger (\$35,000) local allocations, the executive directors recommended the following for 2013:

1. Each area be allocated \$20,000 for local projects consistent with the State Plan and local priorities.
2. Area boards will fund no more than two projects from the allocation in order to reduce the contracting workload.
3. Area boards are encouraged to solicit regional projects (more than one area board).

4. The remainder of the funding (absent that already committed to support of self-advocacy activities and based upon the actual level of funds available) be used in a request for proposal for larger, potentially statewide impact, project(s). This portion would be managed by the Council's Program Development Committee based upon Council identification of a selected priority(s) from the Plan.

Under this approach and assuming \$1 million will be available for the 2013 cycle, \$260,000 would be managed by the area boards; the Council has already committed \$280,000 for support of consumer participation on the Council, Employment First Committee, and for support of the Statewide Self-Advocacy Network and \$100,000 for support of regional self-advocacy activities designed to build the statewide network, approximately \$670,000 of the \$1 million is committed toward implementing State Plan goals and objectives. Therefore approximately \$360,000 is available for the Council to determine how to use focused one or more State Plan goals other than self-advocacy (i.e. employment, emergency preparedness, public safety, school to work transition, early intervention, health care, affordable housing, etc.)

COUNCIL STRATEGIC PLAN OBJECTIVE: All goals and objectives in the 2012-16 Plan.

PRIOR COUNCIL ACTIVITY: On April 10, 2012, the Council Executive committee adopted the recommendation from the area boards to allocate each area \$20,000 for local projects; limiting local projects to no more than two per area; encouraging regional collaboration; use remaining funds for a statewide, potentially multi-year project; and require a standardized evaluation process be developed and implemented for all projects.

On April 18, 2012, the Council Employment First Committee met and discussed a set of principles for the use of the grant funds as well as identified some potential concepts for consideration related to State Plan employment goals and objectives.

PDC RECOMMENDATION(S): Pending. Committee meets on May 14, 2012 and will present its recommendation at the Council meeting.

ATTACHMENTS: 2012-16 California State Plan on Developmental Disabilities; and principles and concepts from the Council's Employment First committee.

PREPARED: Carol J. Risley May 2, 2012

**Employment First Committee
Concepts for 2013 SCDD Grants
April 18, 2012**

Principles

- Have statewide impact
- Reflect cross disabilities approach
- Reflect collaboration
- Reflect cross cultural approach
- Include an evaluation structure
- Be replicable
- Potentially be multi-year

Concepts

- Build expectations with families regarding the abilities of their children
- Increase the capacity of Family Resource Centers
- Use of media to profile employment of people with disabilities
- Focus on benefits education
- Arts as an employment outcome



2012-2016 State Plan

Introduction

State Councils on Developmental Disabilities are funded by the Administration on Developmental Disabilities (ADD) under federal law 42 USC 15021 SEC. 121 to “engage in advocacy, capacity building, and systemic change activities that contribute to a coordinated, consumer- and family-centered, consumer- and family-directed, comprehensive system of community services, individualized supports, and other forms of assistance that enable individuals with developmental disabilities to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life.”

State Councils on Developmental Disabilities (SCDD) develop 5 year State Plans which identify goals and objectives that fall under one or more federal areas of emphasis: quality assurance, education and early intervention, child care, health, employment, housing, transportation, recreation, and other services available or offered to individuals in a community, including formal and informal community supports that affect their quality of life.

California is the most diverse and populous state in the nation. The state encompasses vast rural and agricultural areas that are sparsely populated as well as densely populated metropolitan areas, including Los Angeles, with over 3 million residents. Culturally and ethnically, there is no majority group in the state but a great variety of cultures, ethnic and racial groups. Over 200 different languages are spoken in California, with large populations of households having limited English proficiency.

Because of the vast size, complexity, and diversity of the State of California, it is critical to engage local communities in the development and implementation of the State Plan. The California SCDD is unique in having a network of 13 regional offices, known as the Area Boards on Developmental Disabilities. The Council, in concert with its area boards, has engaged the

local communities in initiating planning for the 2012-2016 State Plan over the past year. This entailed a community-based public process that enabled the Council to develop local goals and objectives based on the State Plan requirements, essentially building the State Plan from the ground up. These local plans are the basis for the California State Plan which also incorporates statewide system change projects. By developing the State Plan in a locally responsive manner, the SCDD believes that its goals, objectives and priorities will more effectively reflect the cultural, ethnic and language diversity of communities at both a local and state level.

The Local Plans, goals and objectives for each local area board are an appendix to the State Plan and give details as to how statewide goals will be implemented in the local area based on local needs and resources.

2012-16 STATE GOALS

Goal #1

Individuals with developmental disabilities have the information, skills, opportunities and support to advocate for their rights and services and to achieve self determination, independence, productivity, integration and inclusion in all facets of community life.

Areas of Emphasis:

Quality Education and Early Intervention
Health Employment Housing Formal
and Informal community supports Cross
cutting

Objectives

1a) The Council will promote the stability and expansion of a statewide self-advocacy network through financial and in-kind support, which includes ensuring that local delegates are able to participate effectively in statewide meetings and events.



1b) The Council will strengthen existing self-advocacy groups and promote establishment of new groups at the local level. At least 23 new self-advocacy groups will

be developed in new geographic areas. The number of self-advocates who participate in self-advocacy efforts as a result of this support will increase by 370 statewide annually.



1c) The Council will help to educate self-advocates so they are better able to assert their human, service and civil rights, prevent abuse, neglect, sexual and financial exploitation and be better informed on issues that affect them. At least 2800 self-advocates will be reached annually.

1d) The Council will collaborate with at least 31 local and statewide groups to

promote and support the efforts of cross-disability and youth disability organizations to expand and strengthen their leadership network.

1e) At least 125 individuals with developmental disabilities will be supported and trained to become effective trainers of other individuals with developmental disabilities who in turn, will assume leadership roles.

Goal #2:

Individuals with developmental disabilities and their families become aware of their rights and receive the supports and services they are entitled to by law across the lifespan, including early intervention, transition into school, education, transition to adult life, adult services and supports, and senior services and supports.

Areas of Emphasis:

Quality Education and Early Intervention Health Employment Housing Formal and Informal community supports Cross cutting



Objectives

2a) On an annual basis, the Council will provide advocacy regarding education, early intervention, regional center (community) services and other services and supports to at least 1,700 individuals and/or families, at least 300 of who are non-English speaking or limited English proficiency.

2b) Individuals with developmental disabilities, their families and their support

and/or professional staff will increase their knowledge and skills so as to effectively access needed educational and/or community-based services through at least 225 trainings, conferences, workshops, webinars, and/or resource materials developed by the Council on topics such as rights under IDEA, rights under California's Lanterman Act etc. on an annual basis.



2c) The Council will participate in cross-training, outreach, resource fairs and other forms of collaboration with a minimum of 80 local schools, Special Education Local Plan Areas (SELPA), Community Advisory Committee (CAC)s, Family Resource Centers, provider organizations and others in order to improve outcomes for youth and adults with developmental disabilities

2d) The Council will collaborate with federal developmental disability partners and other key stakeholders to protect the rights of residents in Developmental Centers and other large facilities. The Council will be involved in the planning and implementation of any closure process of a Developmental Center.

Goal #3:

Individuals with developmental disabilities and their families express the degree to which they are satisfied with their services and the extent to which they feel their needs are being met.

Areas of Emphasis:

Quality Education and Early Intervention Health Employment Housing Formal and Informal community supports Cross cutting

Objectives

3a) The Council will implement the Quality Assurance Program, in accordance with the requirements of the Council's contract with the Department of Developmental Services and participate in analyses of its findings and implications for system improvement. At least 8400 surveys will be completed.

3b) On a statewide and local level, the Council will advocate and promote innovation in service delivery including but not limited to self determination.



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.

Areas of Emphasis:

Quality Education and Early Intervention Health Employment Housing Formal and Informal community supports Cross cutting

Objectives

4a) The Council will maintain or develop collaborative relationships with at least 20 local law enforcement agencies and others to improve the awareness and education of public safety personnel and the justice system on the unique needs and contributions of individuals with developmental disabilities.



Goal #5

Individuals with developmental disabilities and their families get the information to be prepared for emergencies.

Areas of Emphasis:

Quality Education and Early Intervention Health Employment Housing Formal and Informal community supports Cross cutting

Objectives

5a) At least 400 individuals and families will be prepared in case of an emergency through the efforts of the Council in collaboration with others.

Goal #6

Young adults with developmental disabilities and their families get the information and support to be prepared for and experience a successful transition to adult life.



5

Areas of Emphasis:

Quality Education and Early Intervention Health Employment Housing Formal and Informal community supports Cross cutting

Objectives

6a) At least 450 students with developmental disabilities and their families will receive information, advocacy and support during transition to adult life.

Goal #7

Children birth to 3 who are at risk of or have a developmental delay and their families receive the early intervention services they need to achieve their potential.

Areas of Emphasis:

Quality Education and Early Intervention Health
Employment Housing Formal and Informal community supports Cross cutting

Objectives

7a) At least 235 parents of young children will learn to navigate the service system and understand their rights through trainings and materials presented by the Council.

7b) Three hundred and fifty families of young children who experience barriers to accessing early intervention services and child welfare workers, medical personnel and others who serve them will receive technical assistance, information and advocacy through the Council in partnership with Family Resource Centers and others.



Goal #8

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.

Areas of Emphasis:

Quality Education and Early Intervention Health Employment Housing Formal and Informal community supports Cross cutting

Objectives

8a) The State Council's Employment First Committee will continue to identify strategies and monitor progress towards implementation of the employment first policy

Goal #9

Working age adults with developmental disabilities have the necessary information, tools and supports to succeed in inclusive and gainful work opportunities



Areas of Emphasis:

- Quality
- Education and Early Intervention
- Health
- Employment
- Housing
- Formal and Informal community supports
- Cross cutting

Objectives

9a) The Council will collaborate locally with 130 collaborators to expand employment and self employment opportunities for

individuals with developmental disabilities. Seventy five people will be employed as a result.

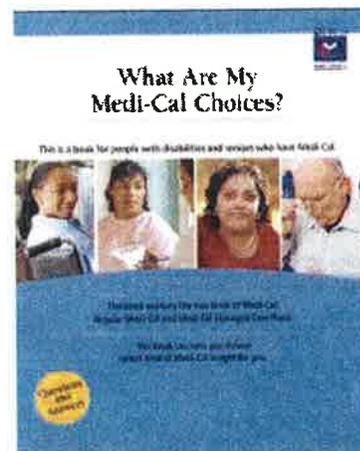
9b) The Council collaborates with colleges, federal partners and others to develop and expand post-secondary educational (PSE) options, work training programs, national service, internships and other opportunities that lead to inclusive and gainful employment. Forty five collaborations will take place at the local and regional level.

9c) Two thousand three hundred individuals with developmental disabilities, their families and others who support them are informed about the benefits and opportunities of employment through trainings, workshops and conferences.

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.

Areas of Emphasis:



Quality Education and Early Intervention Health Employment Housing Formal and Informal community supports Cross cutting

Objectives

10a) At least 200 self-advocates, family members and advocates will receive information/training on Medi-Cal (Medicaid) managed care and the implementation of the 1115 waiver and other health related initiatives, including the availability of alternative sources for free or low cost health care services.

10b) The Council will monitor the transition to Medi-Cal (Medicaid) managed care at the county level, advocate and assist 25 individuals in the process so as to ensure effective access to needed services.

Goal #11

Individuals with developmental disabilities have access to affordable and accessible housing that provides control, choice and flexibility regarding where and with whom they live.

Areas of Emphasis:

Quality Education and Early Intervention Health Employment Housing Formal and Informal community supports Cross cutting

Objectives:

11a) The Council will participate in regional centers' resource development and implementation of their Community Placement Plan to facilitate the movement of residents of developmental centers into community based living arrangements of their choosing

11b) Five hundred twenty individuals with developmental disabilities and their families will receive information on available housing options

Goal #12

Affordable and accessible housing units are developed in local communities to expand housing options for individuals with developmental disabilities.

Areas of Emphasis:

Quality Education and Early Intervention
Health Employment Housing Formal and Informal community supports Cross cutting

Objectives



12a) The Council will collaborate with at least 10 local non-profit housing corporations to monitor and influence the housing plans of municipalities to reflect the needs of individuals with developmental disabilities.

12b) The Council will identify and advocate for legislative and regulatory changes designed to increase the availability of affordable housing, including the opportunity for home ownership by individuals with developmental disabilities.

12c) The Council will publicize and advocate against incidents of “not in my back yard” (NIMBY). The Council will collaborate with federal partners, advocates, public interest law firms, and others to ensure that the media and government officials are aware of these incidents

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.

Areas of Emphasis:

Quality Education and Early Intervention
Health Employment Housing Formal and Informal community supports Cross cutting



Objectives

13a) The Council will collaborate with 150 local community agencies and organizations –including child care, recreation, transportation and others - to protect the rights of individuals with developmental disabilities and ensure their inclusion in the community.

Goal #14

Public policy in California promotes the independence, productivity, inclusion and self determination of individuals with developmental disabilities and their families

Areas of Emphasis:

Quality Education and Early Intervention Health Employment Housing Formal and Informal community supports Cross cutting



Objectives

14a) 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.

14b) One hundred twenty five Legislators and local officials will be educated and informed on

issues that impact the life of individuals with developmental disabilities on 675 occasions. Legislative staff will be encouraged to utilize the expertise of the Council on issues that impact the community.

14c) The Council will use media, internet, arts and entertainment and social networking to educate the general public about individuals with developmental disabilities. There will be at least 40 media contacts.



Goal #15

Individuals with developmental disabilities and their families have access to information and resources in ways that reflect their language and cultural preferences.

Areas of Emphasis:

Quality Education and Early Intervention Health Employment Housing Formal and Informal community supports Cross cutting

Objectives

15a) Materials developed by the Council will be translated into threshold and plain languages.

COUNCIL AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: Assembly Bill (AB) 2325: Special access: liability

BILL SUMMARY: AB 2325 would prevent a person with a disability from starting a civil action for discrimination based on the failure to remove structural barriers to entry into an existing public accommodation as allowed by the Americans with Disabilities Act (ADA) of 1990. This bill requires 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 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 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 2325 is substantially similar to Senate Bill (SB) 783 that was introduced last year. 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 strategy of "notice and delay" bills has 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.

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.

LPPC RECOMMENDATION: Oppose AB 2325. Although the author has indicated this bill has been withdrawn, it is important to make them aware of opposition to this type of approach.

ATTACHMENT: AB 2325

PREPARED: Karim Alipourfard, May 1, 2012

ASSEMBLY BILL

No. 2325

Introduced by Assembly Member Norby

February 24, 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, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2325, as introduced, Norby. 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.

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

Vote: $\frac{2}{3}$. 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 55.4 is added to the Civil Code, to read:
 2 55.4. (a) Notwithstanding any other provision of law, prior to
 3 filing a claim under Section 51, 52, 54, 54.1, or 54.3 of this code,
 4 or Section 4450 or 4452 of the Government Code, the alleged
 5 aggrieved party shall notify the owner of the property, agent, or
 6 other responsible party where the alleged violation occurred by
 7 personal service, in accordance with applicable state or federal
 8 laws, or certified mail, of all alleged special access violations for
 9 which a claim may be filed by the alleged aggrieved party. That
 10 notice shall contain the following language:

11
 12 “This letter is to inform you that the property located at (address
 13 of property), for which you are the property owner, agent, or other
 14 responsible party, may be in violation of federal and/or state special
 15 access laws pursuant to (expressly cite the federal and/or California
 16 statute of which the property is believed to be in violation) and
 17 caused harm to (list the name of the alleged aggrieved party).

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

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

1 (1) You may expressly state that improvements will be made
2 to bring the premises into compliance with applicable special
3 access laws. If you respond in this fashion, you have a maximum
4 of 120 days to make these improvements or repairs. The 120-day
5 period shall begin on the date your response to this notice is
6 received at the address given above. If the improvements or repairs
7 necessary to bring the property into compliance with federal and
8 state special access laws are not completed in 120 days, a lawsuit
9 may be brought against you.

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

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

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

21
22 (b) Beginning with the date of notice, the property owner, agent,
23 or other responsible party where the alleged violation occurred
24 shall have 30 days to respond by certified mail or personal service
25 to the alleged aggrieved party. That response shall communicate
26 any of the following:

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

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

39 (3) State that the alleged violations identified by the alleged
40 aggrieved party have been corrected to comply with applicable

1 state and federal special access laws. The property owner, agent,
2 or other responsible party where the alleged violation occurred
3 shall also attach evidence that verifies those improvements.

4 (c) If the property owner, agent, or responsible party where the
5 alleged violation occurred responds in the manner described in
6 paragraph (1) of subdivision (b), the property owner, agent, or
7 responsible party where the alleged violation occurred shall have
8 120 days to remedy the alleged violation. The 120-day period shall
9 begin on the date the alleged aggrieved party receives a response,
10 pursuant to subdivision (b), from the owner, agent, or responsible
11 party where the alleged violation occurred.

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

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

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

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

35 SEC. 2. Section 55.41 is added to the Civil Code, to read:

36 55.41. It is the intent of the Legislature to institute programs
37 to educate business property owners and local municipalities about
38 the accessibility requirements of federal and state special access
39 laws.

1 SEC. 3. Section 4452 of the Government Code is amended to
2 read:

3 4452. (a) It is the intent of the Legislature that the building
4 standards published in the State Building Standards Code relating
5 to access by the physically handicapped and the other regulations
6 adopted by the State Architect pursuant to Section 4450 shall be
7 used as minimum requirements to insure that buildings, structures
8 and related facilities covered by this chapter are accessible to, and
9 functional for, the physically handicapped to, through, and within
10 their doors, without loss of function, space, or facility where the
11 general public is concerned.

12 (b) Any unauthorized deviation from those regulations or
13 building standards shall be rectified by full compliance within 90
14 days after discovery of the deviation.

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

19 SEC. 4. This act is an urgency statute necessary for the
20 immediate preservation of the public peace, health, or safety within
21 the meaning of Article IV of the Constitution and shall go into
22 immediate effect. The facts constituting the necessity are:

23 Small business owners across the state have been hit recently
24 with a spate of frivolous and vexatious lawsuits, threatening the
25 viability of small businesses. In order to protect small business
26 owners and ensure that these lawsuits stop, it is necessary that this
27 act take effect immediately.

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COUNCIL AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: Senate Bill (SB) 1163: Special access: liability

BILL SUMMARY: Sponsored by Cummings Myers, Civil Justice Association of California, Citizens Against Lawsuit Abuse, Lawyers Against Lawsuit Abuse and Islands Restaurant, SB 1186 establishes notice requirements for an alleged aggrieved party to follow before bringing an action against a business for an alleged violation of existing law that provides a person, firm, or corporation that interferes with the access rights of a disabled individual is liable for the actual damages of each offense. 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. This 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, 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. According to ADA, 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.

ANALYSIS/DISCUSSION: SB 1163, along with about 10 other similar bills, is mostly similar to Senate Bill (SB) 783 that was introduced last year by Senator Dutton who is also the author of SB 1163. 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 ADA. The strategy of “notice and delay” bills has 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.

While the intent of this bill 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. SB 1163 findings are without factual foundation and the numbers given in their fact sheets differ from one legislator to another. The SB 1163 factsheet prepared by the author’s staff says: 1) of the total U.S. ADA lawsuits filed- 42% are filed in California; 2) since 2008- 35,000 lawsuits have been filed in California 3) some attorneys have filed 4000 ADA lawsuits each and 4) a select few individuals make a living from suing small business owners for violating existing code. The figures are highly exaggerated and saying that there are some individuals who make a living from suing small businesses is disrespectful and improper.

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.

LPPC RECOMMENDATION: Oppose SB 1163

ATTACHMENT: SB 1163

PREPARED: Karim Alipourfard, May1, 2012

Introduced by Senator WaltersFebruary 22, 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, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1163, as introduced, Walters. 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.

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

Vote: 2/3. 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

1 first notifying and allowing property owners, agents, or other
2 responsible parties the opportunity to improve access by curing
3 any violations.

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

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

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

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

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

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

37 (1) You may expressly state that improvements will be made
38 to bring the premises into compliance with applicable special
39 access laws. If you respond in this fashion, you have a maximum
40 of 120 days to make these improvements or repairs. The 120-day

1 period shall begin on the date your response to this notice is
2 received at the address given above. If the improvements or repairs
3 necessary to bring the property into compliance with federal and
4 state special access laws are not completed in 120 days, a lawsuit
5 may be brought against you.

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

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

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

17

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

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

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

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

1 (c) If the property owner, agent, or responsible party where the
2 alleged violation occurred responds in the manner described in
3 paragraph (1) of subdivision (b), the property owner, agent, or
4 responsible party where the alleged violation occurred shall have
5 120 days to remedy the alleged violation. The 120-day period shall
6 begin on the date the alleged aggrieved party receives a response,
7 pursuant to subdivision (b), from the owner, agent, or responsible
8 party where the alleged violation occurred.

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

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

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

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

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

33 55.41. It is the intent of the Legislature to institute programs
34 to educate business property owners and local municipalities about
35 the accessibility requirements of federal and state special access
36 laws.

37 SEC. 4. Section 4452 of the Government Code is amended to
38 read:

39 4452. (a) It is the intent of the Legislature that the building
40 standards published in the State Building Standards Code relating

1 to access by the physically handicapped and the other regulations
 2 adopted by the State Architect pursuant to Section 4450 shall be
 3 used as minimum requirements to insure that buildings, structures
 4 and related facilities covered by this chapter are accessible to, and
 5 functional for, the physically handicapped to, through, and within
 6 their doors, without loss of function, space, or facility where the
 7 general public is concerned.

8 ~~Any~~
 9 (b) Any unauthorized deviation from ~~such~~ those regulations or
 10 building standards shall be rectified by full compliance within 90
 11 days after discovery of the deviation.

12 (c) Notwithstanding subdivision (b), prior to any action
 13 commenced for an alleged violation of Section 4450 or this section,
 14 the notice requirements specified in Section 55.4 of the Civil Code
 15 shall apply to the alleged aggrieved party.

16 SEC. 5. This act is an urgency statute necessary for the
 17 immediate preservation of the public peace, health, or safety within
 18 the meaning of Article IV of the Constitution and shall go into
 19 immediate effect. The facts constituting the necessity are:

20 Small business owners across the state have been hit recently
 21 with a spate of frivolous and vexatious lawsuits, threatening the
 22 viability of small businesses. In order to protect small business
 23 owners and ensure that these lawsuits stop, it is necessary that this
 24 act take effect immediately.

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COUNCIL AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: Assembly Bill (AB) 1994: Disability access: liability

BILL SUMMARY: Sponsored by the author, AB1994 intends to delay starting of a civil action for discrimination by a person with disability 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. This bill would direct every county to establish a program requiring that every aggrieved party to file a complaint with the county planning department and through them the complaint is given to a Certified Access Specialist and follow particular procedures in order to establish validity of the claim.

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 \$4,000.

Existing law requires the State Architect to develop and submit for approval and adoption building standards for making building structures, sidewalks, curbs, and related facilities accessible to, and usable by, persons with disabilities, as specified.

BACKGROUND: Existing federal law, 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. According to ADA 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 constitutes a violation of Unruh too. 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.

ANALYSIS/DISCUSSION: AB 1994 establishes lengthy compliance procedures to delay starting of a civil action allowed by ADA. However, the language is less accusatory and by engaging the counties in advance problem solving configures a different methodology. The aim is to encourage the owner or responsible parties of such properties or public accommodations to remove obstacles to access in compliance with federal and state laws. This bill would require every county to establish a program that requires an alleged aggrieved party under the state access laws to file a complaint with the county planning department in which an alleged violation occurred. In this process attorneys have fewer opportunities to start litigation early on. From county planning department the complaint goes to a certified access specialist to determine what measures are necessary to remedy the alleged violation and the estimated timeframe for remedy. This bill allows the county to charge a fee to the responsible parties of alleged violation therefore federal reimbursement is not required.

For the complainants AB 1994 is also another legislative effort that creates pre-litigation hurdles. For persons with disabilities it creates inequity since other protected classes are not subject to these delaying procedures.

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.

LPPC RECOMMENDATION: Oppose AB 1994. Although the author indicates this is a “spot bill”, it is inconsistent with the Council’s historical position on similar bills.

ATTACHMENT: AB 1994

PREPARED: Karim Alipourfard, May 1, 2012

ASSEMBLY BILL

No. 1994

Introduced by Assembly Member Huber

February 23, 2012

An act to add Sections 55.5 and 55.6 to the Civil Code, and to amend Section 4452 of the Government Code, relating to disability access.

LEGISLATIVE COUNSEL'S DIGEST

AB 1994, as introduced, Huber. Disability access: causes of action.

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 require every county to establish a program that requires an alleged aggrieved party under the state access laws to file a complaint with the county planning department in which an alleged violation occurred. The bill would require the county planning department to refer every complaint received under this act to a certified access specialist to determine what measures are necessary to remedy the alleged violation and the estimated timeframe for remedy. The bill would require the adoption of a compliance schedule and require issuance of building permits to the owner, agent, or responsible party of the alleged violation. The bill would require all complaints to be subject to the compliance schedule prior to a cause of action being filed. The bill would authorize the county to charge a fee to the owner, agent,

or responsible party of the alleged violation for the costs of the program and the compliance schedule.

By imposing additional duties on a county, this bill would create 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 55.5 is added to the Civil Code, to read:

2 55.5. (a) Notwithstanding any other law, every county shall
3 establish a program that requires an alleged aggrieved party under
4 this chapter to file a complaint with the county planning department
5 in which an alleged violation occurred.

6 (b) A county planning department shall refer every complaint
7 received under this section to a certified access specialist to
8 determine what measures are necessary to remedy the alleged
9 violation and the estimated timeframe for remedy. The county
10 planning department shall notify the owner of the property, agent,
11 or other responsible party where the alleged violation occurred of
12 any complaint filed under this section and the measures that are
13 required to be taken to remedy the alleged violation and the
14 timeframe for compliance.

15 (c) The county planning department shall be guided by the
16 recommendations of the certified access specialist, but may modify
17 the recommendations, as needed. The county planning department
18 shall approve the final guidelines and timeframe for compliance
19 and shall expeditiously submit the compliance schedule to the
20 alleged aggrieved party and the owner of the property, agent, or
21 other responsible party. The owner of the property, agent, or other
22 responsible party shall be subject to the compliance schedule for
23 repair of any alleged violation.

24 (d) The county planning department or other county entity shall
25 issue building permits to the owner of the property, agent, or other
26 responsible party for purposes of compliance with this section.

1 The issuance of building permits shall be subject to existing statutes
2 and regulations, including existing fees.

3 (e) If the owner of the property, agent, or other responsible party
4 fails to comply with the compliance schedule or any of the
5 timeframes for repair, the alleged aggrieved party may file a cause
6 of action at any point in time thereafter.

7 (f) Notwithstanding subdivision (e), the county planning
8 department may, at any point during the time for repair, amend
9 the compliance schedule upon the request of the owner of the
10 property, agent, or other responsible party, if the following
11 requirements are met:

12 (1) The owner, agent, or other responsible party proves that he
13 or she has been diligent in meeting, and has made progress in
14 attempting to meet, the requirements of the compliance schedule.
15 The circumstances for which the county planning department may
16 approve the amendment of the compliance schedule include proof
17 of incremental weather or backordered, destroyed, or stolen
18 supplies or equipment.

19 (2) The alleged aggrieved party is provided notice of the
20 amendment prior to amendment.

21 (3) The alleged aggrieved party is provided an opportunity to
22 rebut the statements of the owner, agent, or other responsible party.

23 (4) The county planning department weighs the evidence and
24 provides on the record the reason for approving or denying the
25 amendment of the compliance schedule.

26 (g) All alleged violations under this chapter shall be subject to
27 this section prior to a cause of action being filed.

28 (h) A county may charge the owner, agent, or other responsible
29 party a reasonable fee that does not exceed the costs of operating
30 the program and implementation of compliance schedules.

31 SEC. 2. Section 55.6 is added to the Civil Code, to read:

32 55.6. Notwithstanding any other law, prior to filing a claim
33 under Section 51, 52, 54, 54.1, or 54.3, or Section 4450 or 4452
34 of the Government Code, an alleged aggrieved party shall notify
35 the county in which the alleged violation occurred by personal
36 service, in accordance with applicable state or federal laws, or
37 certified mail, of all alleged special access violations for which a
38 claim may be filed by the alleged aggrieved party. The alleged
39 aggrieved party may not file any cause of action for an alleged
40 violation until the county determines that the alleged violation has

1 not been remedied pursuant to the requirements set forth in Section
2 55.5.

3 SEC. 3. Section 4452 of the Government Code is amended to
4 read:

5 4452. (a) It is the intent of the Legislature that the building
6 standards published in the State Building Standards Code relating
7 to access by the physically handicapped and the other regulations
8 adopted by the State Architect pursuant to Section 4450 shall be
9 used as minimum requirements to insure that buildings, structures
10 and related facilities covered by this chapter are accessible to, and
11 functional for, the physically handicapped to, through, and within
12 their doors, without loss of function, space, or facility where the
13 general public is concerned.

14 ~~Any~~

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

18 (c) *Notwithstanding subdivision (b), prior to any action*
19 *commenced for an alleged violation of Section 4450 or this section,*
20 *the notice requirements and procedures specified in Sections 55.5*
21 *and 55.6 of the Civil Code shall apply to the alleged aggrieved*
22 *party.*

23 SEC. 4. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 a local agency or school district has the authority to levy service
26 charges, fees, or assessments sufficient to pay for the program or
27 level of service mandated by this act, within the meaning of Section
28 17556 of the Government Code.

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COUNCIL AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: AB 2623 – Peace officer use of firearms in state hospitals

BILL SUMMARY: Sponsored by the author, this bill would require peace officers of state hospitals (Patton, Coalinga, Napa, Atascadero, and Metropolitan) to carry a firearm while performing assigned functions outside of the secure treatment area of the hospital.

BACKGROUND: Existing law provides authorization for peace officers of a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services to carry firearms only as authorized and under the terms and conditions specified by their employing agency.

ANALYSIS/DISCUSSION: This bill is intended to address issues related to the increased admissions of individuals with psychiatric disabilities who are admitted for criminal/legal (forensic) reasons. The bill specifies that more admissions are made for individuals who have committed, “heinous and violent crimes against other human beings, including rape, assault with a deadly weapon, and murder.” In addition, the bill states that hospital peace officers may be assigned duties such as, patrolling hospital grounds, conducting vehicle stops, pursuing and apprehending individuals who have escaped, providing off-grounds custody to patients, and transporting individuals off grounds. The intent language in the bill also provides that this bill will provide the neighboring communities with more protection of having officers with firearms.

Recently, the director of DDS, Terri Delgadillo, testified during a legislative committee meeting and stated that one of the reasons she has consistently declined to provide firearms to peace officers in developmental centers is because firearms have not shown to either: 1) improve investigation of abuse and neglect, or 2) improve the quality of life for residents of the facility. Although this bill specifically outlines Department of Mental health facilities, there are several similarities to developmental centers.

In fact, the role of peace officers in the facility is one that should be well-balanced between the need for safety, and the quality of life of residents. It may negatively impact the quality of life for resident as well as be quite intimidating to have armed peace officers on the grounds of resident living quarters.

Finally, existing law does provide for the use of firearms by DMH and DDS peace officers when specifically authorized to do so by their employing agency.

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 ACTIVITY: The Legislative and Public Policy Committee met on April 19, 2012 and took action to recommend that the Council oppose this bill.

LPPC RECOMMENDATION(S): Oppose AB 2623.

ATTACHMENT(S): AB 2623

PREPARED: Melissa C. Corral – April 23, 2012

ASSEMBLY BILL

No. 2623

Introduced by Assembly Member Allen

February 24, 2012

An act to amend Section 830.38 of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2623, as introduced, Allen. State hospitals: peace officers.

Under existing law, peace officers of a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services are authorized to carry firearms only as authorized and under terms and conditions specified by their employing agency.

This bill would instead require peace officers of those state hospitals to carry a firearm while performing assigned functions outside of the secure treatment area of the hospital.

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Over the years, the patient population in state hospitals has
- 4 changed from virtually all the clients being civil commitments to
- 5 the current population of over 92 percent forensic commitments.
- 6 The majority of these patients have been committed to the state

1 hospitals for heinous and violent crimes against other human
2 beings, including rape, assault with a deadly weapon, and murder.

3 (b) Hospital police officers (HPOs) are employed at the
4 following state hospitals: Patton, Coalinga, Napa, Atascadero, and
5 Metropolitan. HPOs are peace officers pursuant to Section 830.38
6 of the Penal Code, and they perform their duties without a firearm.
7 Each hospital works under the auspices of the State Department
8 of Mental Health.

9 (c) HPOs at each facility have varying roles. HPOs are
10 responsible for enforcing the law on hospital grounds 24 hours a
11 day and seven days a week. Inside each facility is a forensic
12 compound, which is surrounded by an 18-foot fence. Housed within
13 these compounds are forensic patients who, among other things,
14 have been found not guilty by reason of insanity, incompetent to
15 stand trial, and have been transferred from prison for psychiatric
16 treatment.

17 (d) Most HPOs work any one of three shifts during a 24-hour
18 period and may be assigned duties that include patrolling hospital
19 grounds in a vehicle, conducting vehicle stops, pursuing and
20 apprehending escaped patients, providing off-grounds custody to
21 patients, transporting a patient on a compassionate leave visit, or
22 transporting patients off grounds.

23 (e) At Patton and Coalinga State Hospitals, transportation,
24 custody, and perimeter patrol functions outside the secure treatment
25 area are performed by armed correctional officers. HPOs provide
26 these same functions, as well as mutual aid to local law
27 enforcement agencies, at Napa, Metropolitan, and Atascadero State
28 Hospitals.

29 (f) It is the intent of the Legislature in enacting this legislation
30 to provide the surrounding communities of Napa, Metropolitan,
31 and Atascadero State Hospitals with the same level of protection
32 and security that Patton and Coalinga State Hospitals currently
33 enjoy. This legislation shall only apply to functions performed
34 outside the secure treatment area during the prescribed functions
35 in Section 830.38 of the Penal Code.

36 SEC. 2. Section 830.38 of the Penal Code is amended to read:
37 830.38. The officers of a state hospital under the jurisdiction
38 of the State Department of Mental Health or the State Department
39 of Developmental Services appointed pursuant to Section 4313 or
40 4493 of the Welfare and Institutions Code, are peace officers whose

1 authority extends to any place in the state for the purpose of
2 performing their primary duty or when making an arrest pursuant
3 to Section 836 as to any public offense with respect to which there
4 is immediate danger to person or property, or of the escape of the
5 perpetrator of that offense, or pursuant to Section 8597 or 8598 of
6 the Government Code provided that the primary duty of the peace
7 officers shall be the enforcement of the law as set forth in Sections
8 4311, 4313, 4491, and 4493 of the Welfare and Institutions Code.
9 Those peace officers ~~may~~ *shall* carry firearms ~~only if authorized~~
10 ~~and under terms and conditions specified by their employing~~
11 ~~agency while performing assigned functions outside of the secure~~
12 ~~treatment area of the hospital.~~

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COUNCIL AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: SB 1377 –Protection and advocacy agencies; confidential client information

BILL SUMMARY: Sponsored by Disability Rights California, this bill would provide access to unredacted (non-confidential) citation, licensing, or survey reports prepared by a department responsible for issuing a license or certificate to a program, facility, plan of correction, survey report, or service serving and individual with a disability.

BACKGROUND: Existing law provides authority to the protection and advocacy agency to investigate any incident of abuse or neglect of persons with developmental disabilities or persons with mental illness if the complaints are reported to the protection and advocacy agency or if probable cause exists to believe that abuse or neglect has occurred. This authority includes authorization to examine all records and interview any facility or program service recipient, employee or other person who may have knowledge of the incident.

ANALYSIS/DISCUSSION: In order to ensure that the protection and advocacy agency of California (DRC) receives the appropriate information and facts to identify situations of abuse and neglect, it is imperative that they receive reports quickly and thoroughly.

Leslie Morrison, DRC testified at a recent legislative committee meeting that in many instances, reports are transmitted to DRC completely redacted, thereby eliminating critical information that would be used to identify possible witnesses and other information that would assist in the investigation process.

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 LPPC ACTIVITY: The Legislative and Public Policy Committee met on April 19, 2012, and took action to recommend to the Council a position of support.

LPPC RECOMMENDATION(S): Support SB 1377

ATTACHMENT(S): SB 1377, Disability Rights California Fact Sheet, Senate Judiciary Analysis

PREPARED: Melissa C. Corral – April 24, 2012

AMENDED IN SENATE APRIL 19, 2012

SENATE BILL

No. 1377

Introduced by Senator Corbett

February 24, 2012

An act to amend Sections 4514, 4903, and 5328.15 of the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

SB 1377, as amended, Corbett. Protection and advocacy agencies.

Existing law prescribes, in accordance with federal law, the powers of the protection and advocacy agency, which is a private, nonprofit corporation charged with protecting and advocating for the rights of persons with developmental disabilities and mental disorders. Under existing law, a protection and advocacy agency's powers include the authority to investigate any incident of abuse or neglect of persons with developmental disabilities or persons with mental illness if the complaints are reported to the protection and advocacy agency or if probable cause exists to believe that abuse or neglect has occurred. This authority includes the authorization to examine all relevant records and interview any facility or program service recipient, employee, or other person who might have knowledge of the alleged abuse or neglect. Existing law requires the agency to have access to the records of specified people with disabilities, including reports prepared by an agency charged with investigating reports of incidents of abuse, neglect, injury, or death occurring at the program, facility, or service.

This bill would provide that the authority to access these records includes access to an unredacted citation *report*, *unredacted* licensing *report*, ~~or unredacted~~ survey report, *unredacted plan of correction*, or *unredacted statement of deficiency* prepared by a department responsible

for issuing a license or certificate to a program, facility, or service serving an individual with a disability.

Existing law requires the confidentiality of all information and records obtained in the course of providing intake, assessment, and services pursuant to specified provisions of existing law to persons with developmental disabilities and to voluntary or involuntary recipients of services under the existing Lanterman-Petris Short Act or within a prescribed state or county hospital.

This bill would authorize disclosure of the above-described confidential information to a protection and advocacy agency to the extent that the information is incorporated within ~~a~~ *an unredacted citation report, unredacted licensing report, unredacted survey report, unredacted plan of correction, unredacted survey report, or unredacted statement of deficiency prepared by authorized licensing personnel or authorized representatives of the State Department of Health Care Services or the State Department of Social Services.*

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 4514 of the Welfare and Institutions Code
2 is amended to read:

3 4514. All information and records obtained in the course of
4 providing intake, assessment, and services under Division 4.1
5 (commencing with Section 4400), Division 4.5 (commencing with
6 Section 4500), Division 6 (commencing with Section 6000), or
7 Division 7 (commencing with Section 7100) to persons with
8 developmental disabilities shall be confidential. Information and
9 records obtained in the course of providing similar services to
10 either voluntary or involuntary recipients prior to 1969 shall also
11 be confidential. Information and records shall be disclosed only
12 in any of the following cases:

13 (a) In communications between qualified professional persons,
14 whether employed by a regional center or state developmental
15 center, or not, in the provision of intake, assessment, and services
16 or appropriate referrals. The consent of the person with a
17 developmental disability, or his or her guardian or conservator,
18 shall be obtained before information or records may be disclosed
19 by regional center or state developmental center personnel to a

1 professional not employed by the regional center or state
2 developmental center, or a program not vendored by a regional
3 center or state developmental center.

4 (b) When the person with a developmental disability, who has
5 the capacity to give informed consent, designates individuals to
6 whom information or records may be released, except that nothing
7 in this chapter shall be construed to compel a physician and
8 surgeon, psychologist, social worker, marriage and family therapist,
9 professional clinical counselor, nurse, attorney, or other
10 professional to reveal information that has been given to him or
11 her in confidence by a family member of the person unless a valid
12 release has been executed by that family member.

13 (c) To the extent necessary for a claim, or for a claim or
14 application to be made on behalf of a person with a developmental
15 disability for aid, insurance, government benefit, or medical
16 assistance to which he or she may be entitled.

17 (d) If the person with a developmental disability is a minor,
18 dependent ward, or conservatee, and his or her parent, guardian,
19 conservator, limited conservator with access to confidential records,
20 or authorized representative, designates, in writing, persons to
21 whom records or information may be disclosed, except that nothing
22 in this chapter shall be construed to compel a physician and
23 surgeon, psychologist, social worker, marriage and family therapist,
24 professional clinical counselor, nurse, attorney, or other
25 professional to reveal information that has been given to him or
26 her in confidence by a family member of the person unless a valid
27 release has been executed by that family member.

28 (e) For research, provided that the Director of Developmental
29 Services designates by regulation rules for the conduct of research
30 and requires the research to be first reviewed by the appropriate
31 institutional review board or boards. These rules shall include, but
32 need not be limited to, the requirement that all researchers shall
33 sign an oath of confidentiality as follows:

34
35 “ _____
36 Date

37
38 As a condition of doing research concerning persons with
39 developmental disabilities who have received services from _____
40 (fill in the facility, agency or person), I, _____, agree to obtain the

1 prior informed consent of persons who have received services to
 2 the maximum degree possible as determined by the appropriate
 3 institutional review board or boards for protection of human
 4 subjects reviewing my research, or the person’s parent, guardian,
 5 or conservator, and I further agree not to divulge any information
 6 obtained in the course of the research to unauthorized persons, and
 7 not to publish or otherwise make public any information regarding
 8 persons who have received services so those persons who received
 9 services are identifiable.

10 I recognize that the unauthorized release of confidential
 11 information may make me subject to a civil action under provisions
 12 of the Welfare and Institutions Code.

13
 14 _____”
 15 Signed

- 16
- 17 (f) To the courts, as necessary to the administration of justice.
- 18 (g) To governmental law enforcement agencies as needed for
 19 the protection of federal and state elective constitutional officers
 20 and their families.
- 21 (h) To the Senate Committee on Rules or the Assembly
 22 Committee on Rules for the purposes of legislative investigation
 23 authorized by the committee.
- 24 (i) To the courts and designated parties as part of a regional
 25 center report or assessment in compliance with a statutory or
 26 regulatory requirement, including, but not limited to, Section
 27 1827.5 of the Probate Code, Sections 1001.22 and 1370.1 of the
 28 Penal Code, and Section 6502 of the Welfare and Institutions Code.
- 29 (j) To the attorney for the person with a developmental disability
 30 in any and all proceedings upon presentation of a release of
 31 information signed by the person, except that when the person
 32 lacks the capacity to give informed consent, the regional center or
 33 state developmental center director or designee, upon satisfying
 34 himself or herself of the identity of the attorney, and of the fact
 35 that the attorney represents the person, shall release all information
 36 and records relating to the person except that nothing in this article
 37 shall be construed to compel a physician and surgeon, psychologist,
 38 social worker, marriage and family therapist, professional clinical
 39 counselor, nurse, attorney, or other professional to reveal
 40 information that has been given to him or her in confidence by a

1 family member of the person unless a valid release has been
2 executed by that family member.

3 (k) Upon written consent by a person with a developmental
4 disability previously or presently receiving services from a regional
5 center or state developmental center, the director of the regional
6 center or state developmental center, or his or her designee, may
7 release any information, except information that has been given
8 in confidence by members of the family of the person with
9 developmental disabilities, requested by a probation officer charged
10 with the evaluation of the person after his or her conviction of a
11 crime if the regional center or state developmental center director
12 or designee determines that the information is relevant to the
13 evaluation. The consent shall only be operative until sentence is
14 passed on the crime of which the person was convicted. The
15 confidential information released pursuant to this subdivision shall
16 be transmitted to the court separately from the probation report
17 and shall not be placed in the probation report. The confidential
18 information shall remain confidential except for purposes of
19 sentencing. After sentencing, the confidential information shall be
20 sealed.

21 (l) Between persons who are trained and qualified to serve on
22 “multidisciplinary personnel” teams pursuant to subdivision (d)
23 of Section 18951. The information and records sought to be
24 disclosed shall be relevant to the prevention, identification,
25 management, or treatment of an abused child and his or her parents
26 pursuant to Chapter 11 (commencing with Section 18950) of Part
27 6 of Division 9.

28 (m) When a person with a developmental disability dies from
29 any cause, natural or otherwise, while hospitalized in a state
30 developmental center, the State Department of Developmental
31 Services, the physician and surgeon in charge of the client, or the
32 professional in charge of the facility or his or her designee, shall
33 release information and records to the coroner. The State
34 Department of Developmental Services, the physician and surgeon
35 in charge of the client, or the professional in charge of the facility
36 or his or her designee, shall not release any notes, summaries,
37 transcripts, tapes, or records of conversations between the resident
38 and health professional personnel of the hospital relating to the
39 personal life of the resident that is not related to the diagnosis and
40 treatment of the resident’s physical condition. Any information

1 released to the coroner pursuant to this section shall remain
2 confidential and shall be sealed and shall not be made part of the
3 public record.

4 (n) To authorized licensing personnel who are employed by, or
5 who are authorized representatives of, the State Department of
6 Public Health, and who are licensed or registered health
7 professionals, and to authorized legal staff or special investigators
8 who are peace officers who are employed by, or who are authorized
9 representatives of, the State Department of Social Services, as
10 necessary to the performance of their duties to inspect, license,
11 and investigate health facilities and community care facilities, and
12 to ensure that the standards of care and services provided in these
13 facilities are adequate and appropriate and to ascertain compliance
14 with the rules and regulations to which the facility is subject. The
15 confidential information shall remain confidential except for
16 purposes of inspection, licensing, or investigation pursuant to
17 Chapter 2 (commencing with Section 1250) and Chapter 3
18 (commencing with Section 1500) of Division 2 of the Health and
19 Safety Code, or a criminal, civil, or administrative proceeding in
20 relation thereto. The confidential information may be used by the
21 State Department of Public Health or the State Department of
22 Social Services in a criminal, civil, or administrative proceeding.
23 The confidential information shall be available only to the judge
24 or hearing officer and to the parties to the case. Names which are
25 confidential shall be listed in attachments separate to the general
26 pleadings. The confidential information shall be sealed after the
27 conclusion of the criminal, civil, or administrative hearings, and
28 shall not subsequently be released except in accordance with this
29 subdivision. If the confidential information does not result in a
30 criminal, civil, or administrative proceeding, it shall be sealed after
31 the State Department of Public Health or the State Department of
32 Social Services decides that no further action will be taken in the
33 matter of suspected licensing violations. Except as otherwise
34 provided in this subdivision, confidential information in the
35 possession of the State Department of Public Health or the State
36 Department of Social Services shall not contain the name of the
37 person with a developmental disability.

38 (o) To any board which licenses and certifies professionals in
39 the fields of mental health and developmental disabilities pursuant
40 to state law, when the Director of Developmental Services has

1 reasonable cause to believe that there has occurred a violation of
2 any provision of law subject to the jurisdiction of a board and the
3 records are relevant to the violation. The information shall be
4 sealed after a decision is reached in the matter of the suspected
5 violation, and shall not subsequently be released except in
6 accordance with this subdivision. Confidential information in the
7 possession of the board shall not contain the name of the person
8 with a developmental disability.

9 (p) To governmental law enforcement agencies by the director
10 of a regional center or state developmental center, or his or her
11 designee, when (1) the person with a developmental disability has
12 been reported lost or missing or (2) there is probable cause to
13 believe that a person with a developmental disability has
14 committed, or has been the victim of, murder, manslaughter,
15 mayhem, aggravated mayhem, kidnapping, robbery, carjacking,
16 assault with the intent to commit a felony, arson, extortion, rape,
17 forcible sodomy, forcible oral copulation, assault or battery, or
18 unlawful possession of a weapon, as provided in any provision
19 listed in Section 16590 of the Penal Code.

20 This subdivision shall be limited solely to information directly
21 relating to the factual circumstances of the commission of the
22 enumerated offenses and shall not include any information relating
23 to the mental state of the patient or the circumstances of his or her
24 treatment unless relevant to the crime involved.

25 This subdivision shall not be construed as an exception to, or in
26 any other way affecting, the provisions of Article 7 (commencing
27 with Section 1010) of Chapter 4 of Division 8 of the Evidence
28 Code, or Chapter 11 (commencing with Section 15600) and
29 Chapter 13 (commencing with Section 15750) of Part 3 of Division
30 9.

31 (q) To the Division of Juvenile Facilities and Department of
32 Corrections and Rehabilitation or any component thereof, as
33 necessary to the administration of justice.

34 (r) To an agency mandated to investigate a report of abuse filed
35 pursuant to either Section 11164 of the Penal Code or Section
36 15630 of the Welfare and Institutions Code for the purposes of
37 either a mandated or voluntary report or when those agencies
38 request information in the course of conducting their investigation.

39 (s) When a person with developmental disabilities, or the parent,
40 guardian, or conservator of a person with developmental disabilities

1 who lacks capacity to consent, fails to grant or deny a request by
2 a regional center or state developmental center to release
3 information or records relating to the person with developmental
4 disabilities within a reasonable period of time, the director of the
5 regional or developmental center, or his or her designee, may
6 release information or records on behalf of that person provided
7 both of the following conditions are met:

8 (1) Release of the information or records is deemed necessary
9 to protect the person's health, safety, or welfare.

10 (2) The person, or the person's parent, guardian, or conservator,
11 has been advised annually in writing of the policy of the regional
12 center or state developmental center for release of confidential
13 client information or records when the person with developmental
14 disabilities, or the person's parent, guardian, or conservator, fails
15 to respond to a request for release of the information or records
16 within a reasonable period of time. A statement of policy contained
17 in the client's individual program plan shall be deemed to comply
18 with the notice requirement of this paragraph.

19 (t) (1) When an employee is served with a notice of adverse
20 action, as defined in Section 19570 of the Government Code, the
21 following information and records may be released:

22 (A) All information and records that the appointing authority
23 relied upon in issuing the notice of adverse action.

24 (B) All other information and records that are relevant to the
25 adverse action, or that would constitute relevant evidence as
26 defined in Section 210 of the Evidence Code.

27 (C) The information described in subparagraphs (A) and (B)
28 may be released only if both of the following conditions are met:

29 (i) The appointing authority has provided written notice to the
30 consumer and the consumer's legal representative or, if the
31 consumer has no legal representative or if the legal representative
32 is a state agency, to the clients' rights advocate, and the consumer,
33 the consumer's legal representative, or the clients' rights advocate
34 has not objected in writing to the appointing authority within five
35 business days of receipt of the notice, or the appointing authority,
36 upon review of the objection has determined that the circumstances
37 on which the adverse action is based are egregious or threaten the
38 health, safety, or life of the consumer or other consumers and
39 without the information the adverse action could not be taken.

1 (ii) The appointing authority, the person against whom the
2 adverse action has been taken, and the person's representative, if
3 any, have entered into a stipulation that does all of the following:

4 (I) Prohibits the parties from disclosing or using the information
5 or records for any purpose other than the proceedings for which
6 the information or records were requested or provided.

7 (II) Requires the employee and the employee's legal
8 representative to return to the appointing authority all records
9 provided to them under this subdivision, including, but not limited
10 to, all records and documents or copies thereof that are no longer
11 in the possession of the employee or the employee's legal
12 representative because they were from any source containing
13 confidential information protected by this section, and all copies
14 of those records and documents, within 10 days of the date that
15 the adverse action becomes final except for the actual records and
16 documents submitted to the administrative tribunal as a component
17 of an appeal from the adverse action.

18 (III) Requires the parties to submit the stipulation to the
19 administrative tribunal with jurisdiction over the adverse action
20 at the earliest possible opportunity.

21 (2) For the purposes of this subdivision, the State Personnel
22 Board may, prior to any appeal from adverse action being filed
23 with it, issue a protective order, upon application by the appointing
24 authority, for the limited purpose of prohibiting the parties from
25 disclosing or using information or records for any purpose other
26 than the proceeding for which the information or records were
27 requested or provided, and to require the employee or the
28 employee's legal representative to return to the appointing authority
29 all records provided to them under this subdivision, including, but
30 not limited to, all records and documents from any source
31 containing confidential information protected by this section, and
32 all copies of those records and documents, within 10 days of the
33 date that the adverse action becomes final, except for the actual
34 records and documents that are no longer in the possession of the
35 employee or the employee's legal representatives because they
36 were submitted to the administrative tribunal as a component of
37 an appeal from the adverse action.

38 (3) Individual identifiers, including, but not limited to, names,
39 social security numbers, and hospital numbers, that are not

1 necessary for the prosecution or defense of the adverse action,
2 shall not be disclosed.

3 (4) All records, documents, or other materials containing
4 confidential information protected by this section that have been
5 submitted or otherwise disclosed to the administrative agency or
6 other person as a component of an appeal from an adverse action
7 shall, upon proper motion by the appointing authority to the
8 administrative tribunal, be placed under administrative seal and
9 shall not, thereafter, be subject to disclosure to any person or entity
10 except upon the issuance of an order of a court of competent
11 jurisdiction.

12 (5) For purposes of this subdivision, an adverse action becomes
13 final when the employee fails to answer within the time specified
14 in Section 19575 of the Government Code, or, after filing an
15 answer, withdraws the appeal, or, upon exhaustion of the
16 administrative appeal or of the judicial review remedies as
17 otherwise provided by law.

18 (u) To the person appointed as the developmental services
19 decisionmaker for a minor, dependent, or ward pursuant to Section
20 319, 361, or 726.

21 (v) To a protection and advocacy agency established pursuant
22 to Section 4901 to the extent that the information is incorporated
23 within ~~a~~ *an unredacted* citation report, *unredacted licensing report*,
24 *unredacted survey report*, *unredacted* plan of correction,
25 ~~unredacted survey report~~, or *unredacted* statement of deficiency
26 prepared by authorized licensing personnel or authorized
27 representatives described in subdivision (n). This information shall
28 remain confidential and subject to the confidentiality requirements
29 of subdivision (f) of Section 4903.

30 SEC. 2. Section 4903 of the Welfare and Institutions Code is
31 amended to read:

32 4903. (a) The protection and advocacy agency shall have
33 access to the records of any of the following people with
34 disabilities:

35 (1) Any person who is a client of the agency, or any person who
36 has requested assistance from the agency, if that person or the
37 agent designated by that person, or the legal guardian, conservator,
38 or other legal representative of that person, has authorized the
39 protection and advocacy agency to have access to the records and
40 information. If a person with a disability who is able to authorize

1 the protection and advocacy agency to access his or her records
2 expressly denies this access after being informed by the protection
3 and advocacy agency of his or her right to authorize or deny access,
4 the protection and advocacy agency may not have access to that
5 person's records.

6 (2) Any person, including any individual who cannot be located,
7 to whom all of the following conditions apply:

8 (A) The individual, due to his or her mental or physical
9 condition, is unable to authorize the protection and advocacy
10 agency to have access to his or her records.

11 (B) The individual does not have a legal guardian, conservator,
12 or other legal representative, or the individual's representative is
13 a public entity, including the state or one of its political
14 subdivisions.

15 (C) The protection and advocacy agency has received a
16 complaint that the individual has been subject to abuse or neglect,
17 or has determined that probable cause exists to believe that the
18 individual has been subject to abuse or neglect.

19 (3) Any person who is deceased, and for whom the protection
20 and advocacy agency has received a complaint that the individual
21 had been subjected to abuse or neglect, or for whom the agency
22 has determined that probable cause exists to believe that the
23 individual had been subjected to abuse or neglect.

24 (4) Any person who has a legal guardian, conservator, or other
25 legal representative with respect to whom a complaint has been
26 received by the protection and advocacy agency, or with respect
27 to whom the protection and advocacy agency has determined that
28 probable cause exists to believe that the person has been subjected
29 to abuse or neglect, whenever all of the following conditions exist:

30 (A) The representative has been contacted by the protection and
31 advocacy agency upon receipt of the representative's name and
32 address.

33 (B) The protection and advocacy agency has offered assistance
34 to the representatives to resolve the situation.

35 (C) The representative has failed or refused to act on behalf of
36 the person.

37 (b) Individual records that shall be available to the protection
38 and advocacy agency under this section shall include, but not be
39 limited to, all of the following information and records related to
40 the investigation, whether written or in another medium, draft or

1 final, including, but not limited to, handwritten notes, electronic
2 files, photographs, videotapes, or audiotapes:

3 (1) Information and records prepared or received in the course
4 of providing intake, assessment, evaluation, education, training,
5 or other supportive services, including, but not limited to, medical
6 records, financial records, monitoring reports, or other reports,
7 prepared or received by a member of the staff of a facility, program,
8 or service that is providing care, treatment, or services.

9 (2) Reports prepared by an agency charged with investigating
10 reports of incidents of abuse, neglect, injury, or death occurring
11 at the program, facility, or service while the individual with a
12 disability is under the care of a member of the staff of a program,
13 facility, or service, or by or for a program, facility, or service, that
14 describe any or all of the following:

15 (A) Abuse, neglect, injury, or death.

16 (B) The steps taken to investigate the incidents.

17 (C) Reports and records, including, but not limited to, personnel
18 records prepared or maintained by the facility, program, or service
19 in connection with reports of incidents, subject to the following:

20 (i) If a state statute specifies procedures with respect to personnel
21 records, the protection and advocacy agency shall follow those
22 procedures.

23 (ii) Personnel records shall be protected from disclosure in
24 compliance with the fundamental right of privacy established
25 pursuant to Section 1 of Article I of the California Constitution.
26 The custodian of personnel records shall have a right and a duty
27 to resist attempts to allow the unauthorized disclosure of personnel
28 records, and may not waive the privacy rights that are guaranteed
29 pursuant to Section 1 of Article I of the California Constitution.

30 (D) Supporting information that was relied upon in creating a
31 report, including, but not limited to, all information and records
32 that document interviews with persons who were interviewed,
33 physical and documentary evidence that was reviewed, or related
34 investigative findings.

35 (3) Discharge planning records.

36 (c) Information in the possession of a program, facility, or
37 service that must be available to the agency investigating instances
38 of abuse or neglect pursuant to paragraph (1) of subdivision (a) of
39 Section 4902, whether written or in another medium, draft or final,
40 including, but not limited to, handwritten notes, electronic files,

1 photographs, videotapes, audiotapes, or records, shall include, but
2 not be limited to, all of the following:

3 (1) Information in reports prepared by individuals and entities
4 performing certification or licensure reviews, or by professional
5 accreditation organizations, as well as related assessments prepared
6 for a program, facility, or service by its staff, contractors, or related
7 entities, subject to any other provision of state law protecting
8 records produced by medical care evaluation or peer review
9 committees.

10 (2) Information in professional, performance, building, or other
11 safety standards, or demographic and statistical information,
12 relating to the facility.

13 (d) The authority of the protection and advocacy agency to have
14 access to records does not supersede any prohibition on discovery
15 specified in Sections 1157 and 1157.6 of the Evidence Code, nor
16 does it supersede any prohibition on disclosure subject to the
17 physician-patient privilege or the psychotherapist-patient privilege.

18 (e) (1) The protection and advocacy agency shall have access
19 to records of individuals described in paragraph (1) of subdivision
20 (a) of Section 4902 and in subdivision (a), and other records that
21 are relevant to conducting an investigation, under the circumstances
22 described in those subdivisions, not later than three business days
23 after the agency makes a written request for the records involved.

24 (2) The protection and advocacy agency shall have immediate
25 access to the records, not later than 24 hours after the agency makes
26 a request, without consent from another party, in a situation in
27 which treatment, services, supports, or other assistance is provided
28 to an individual with a disability, if the agency determines there
29 is probable cause to believe that the health or safety of the
30 individual is in serious and immediate jeopardy, or in a case of
31 death of an individual with a disability.

32 (f) Confidential information kept or obtained by the protection
33 and advocacy agency shall remain confidential and may not be
34 subject to disclosure. This subdivision shall not, however, prevent
35 the protection and advocacy agency from doing any of the
36 following:

37 (1) Sharing the information with the individual client who is
38 the subject of the record or report or other document, or with his
39 or her legally authorized representative, subject to any limitation
40 on disclosure to recipients of mental health services as provided

1 in subsection (b) of Section 10806 of Title 42 of the United States
 2 Code.

3 (2) Issuing a public report of the results of an investigation that
 4 maintains the confidentiality of individual service recipients.

5 (3) Reporting the results of an investigation to responsible
 6 investigative or enforcement agencies should an investigation
 7 reveal information concerning the facility, its staff, or employees
 8 warranting possible sanctions or corrective action. This information
 9 may be reported to agencies that are responsible for facility
 10 licensing or accreditation, employee discipline, employee licensing
 11 or certification suspension or revocation, or criminal prosecution.

12 (4) Pursuing alternative remedies, including the initiation of
 13 legal action.

14 (5) Reporting suspected elder or dependent adult abuse pursuant
 15 to the Elder Abuse and Dependent Adult Civil Protection Act
 16 (Chapter 11 (commencing with Section 15600) of Part 3 of
 17 Division 9).

18 (g) The protection and advocacy agency shall inform and train
 19 employees as appropriate regarding the confidentiality of client
 20 records.

21 (h) The authority provided pursuant to subdivision (b) shall
 22 include access to an unredacted citation *report, unredacted*
 23 *licensing report, or unredacted survey report, unredacted plan of*
 24 *correction, or unredacted statement of deficiency* prepared by a
 25 department responsible for issuing a license or certificate to a
 26 program, facility, or service serving an individual with a disability.

27 SEC. 3. Section 5328.15 of the Welfare and Institutions Code
 28 is amended to read:

29 5328.15. All information and records obtained in the course
 30 of providing services under Division 5 (commencing with Section
 31 5000), Division 6 (commencing with Section 6000), or Division
 32 7 (commencing with Section 7000), to either voluntary or
 33 involuntary recipients of services shall be confidential. Information
 34 and records may be disclosed, however, notwithstanding any other
 35 provision of law, as follows:

36 (a) To authorized licensing personnel who are employed by, or
 37 who are authorized representatives of, the State Department of
 38 Public Health, and who are licensed or registered health
 39 professionals, and to authorized legal staff or special investigators
 40 who are peace officers who are employed by, or who are authorized

1 representatives of the State Department of Social Services, as
2 necessary to the performance of their duties to inspect, license,
3 and investigate health facilities and community care facilities and
4 to ensure that the standards of care and services provided in such
5 facilities are adequate and appropriate and to ascertain compliance
6 with the rules and regulations to which the facility is subject. The
7 confidential information shall remain confidential except for
8 purposes of inspection, licensing, or investigation pursuant to
9 Chapter 2 (commencing with Section 1250) of, and Chapter 3
10 (commencing with Section 1500) of, Division 2 of the Health and
11 Safety Code, or a criminal, civil, or administrative proceeding in
12 relation thereto. The confidential information may be used by the
13 State Department of Public Health or the State Department of
14 Social Services in a criminal, civil, or administrative proceeding.
15 The confidential information shall be available only to the judge
16 or hearing officer and to the parties to the case. Names which are
17 confidential shall be listed in attachments separate to the general
18 pleadings. The confidential information shall be sealed after the
19 conclusion of the criminal, civil, or administrative hearings, and
20 shall not subsequently be released except in accordance with this
21 subdivision. If the confidential information does not result in a
22 criminal, civil, or administrative proceeding, it shall be sealed after
23 the State Department of Public Health or the State Department of
24 Social Services decides that no further action will be taken in the
25 matter of suspected licensing violations. Except as otherwise
26 provided in this subdivision, confidential information in the
27 possession of the State Department of Public Health or the State
28 Department of Social Services shall not contain the name of the
29 patient.

30 (b) To any board which licenses and certifies professionals in
31 the fields of mental health pursuant to state law, when the Director
32 of Mental Health has reasonable cause to believe that there has
33 occurred a violation of any provision of law subject to the
34 jurisdiction of that board and the records are relevant to the
35 violation. This information shall be sealed after a decision is
36 reached in the matter of the suspected violation, and shall not
37 subsequently be released except in accordance with this
38 subdivision. Confidential information in the possession of the
39 board shall not contain the name of the patient.

1 (c) To a protection and advocacy agency established pursuant
2 to Section 4901 to the extent that the information is incorporated
3 within a *an unredacted* citation report, *unredacted licensing report*,
4 *unredacted survey report*, *unredacted* plan of correction,
5 ~~*unredacted survey report*~~, or *unredacted* statement of deficiency
6 prepared by authorized licensing personnel or authorized
7 representatives described in subdivision (a). This information shall
8 remain confidential and subject to the confidentiality requirements
9 of subdivision (f) of Section 4903.

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Senate Bill 1377

Timely Access to Reports of Abuse and Neglect of Persons with Disabilities Senate Majority Leader Ellen M. Corbett

SUMMARY

Senate Bill 1377 ensures the protection and advocacy agency mandated under federal law to protect and advocate for the rights of persons with disabilities has timely access from the state to reports of abuse and neglect.

BACKGROUND

Federally mandated protection and advocacy agencies such as Disability Rights California (DRC) are charged with protecting and advocating for the rights of persons with disabilities. In order to fulfill this function, federal law grants protection and advocacy agencies the right to access reports prepared by state agencies that investigate reports of abuse, neglect, injury or death of persons with disabilities and perform certification or licensing reviews.

In the past, the Department of Public Health (DPH) provided such reports to DRC in complete and un-redacted form. However, in 2009 the DPH changed this policy for two special populations of vulnerable individuals with disabilities - people with developmental disabilities and people with mental health disabilities.

Citing state privacy laws governing the records of persons with developmental disabilities and mental illness, DPH began forwarding to DRC redacted records with all relevant information about cases involving individuals with either a developmental disability or a mental health disability blacked out. Under DPH's policy, DRC upon receipt of the redacted report must then submit an individual written request to receive an un-redacted record for the case. For cases involving people with all other disabilities, DRC continued to receive reports from DPH in the usual un-redacted form.

This extra step is unnecessary and unwarranted. California law (W&I Code §4903) already requires protection and advocacy agencies to maintain the

confidentiality of this information and the right of P&A's to access this information is not in dispute.

Requiring this extra layer of bureaucratic process creates a significant time lag that often extends months before DRC receives the un-redacted report. In some cases the wait has been almost a year. This delay can jeopardize the well-being of the individuals involved. In addition, the requirement creates more administrative work and unnecessary costs for the State.

SOLUTION

SB 1377 would clarify a protection and advocacy agency's right to review reports of abuse and neglect of individuals with development and mental health disabilities without having to make a separate assertion of probable cause in each case.

SUPPORT

Disability Rights California (Sponsor)
The Arc
CA Advocates for Nursing Home Reform
CA Association of Public Authorities
Disability Rights Education and Defense Fund
Epilepsy California
United Cerebral Palsy

STATUS

Hearing in Senate Judiciary Committee on 4/17

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BILL ANALYSIS

SENATE JUDICIARY COMMITTEE
 Senator Noreen Evans, Chair
 2011-2012 Regular Session

SB 1377 (Corbett)
 As Introduced
 Hearing Date: April 17, 2012
 Fiscal: Yes
 Urgency: No
 RD

SUBJECT

Protection and Advocacy Agencies

DESCRIPTION

Existing federal and state law provides for the designation of a protection and advocacy (P&A) agency in each state, charged with protecting and advocating for the rights of persons with disabilities, as defined. Existing law authorizes P&A agencies to investigate any incident of abuse or neglect, and to review all relevant records of any facility or program service recipient. Further, existing law provides that all information and records obtained in the course of providing intake, assessment and services, as specified, to persons with developmental disabilities or mental health disorders shall be confidential and disclosed only as enumerated.

This bill would specify that the P&A agency's authority to access information and records of persons with disabilities, as otherwise specified, shall include access to specified unredacted records. With respect to persons with developmental disabilities or mental health disabilities, this bill would specify that permissible disclosures of confidential information or records shall also include disclosure to the P&A agency to the extent that the information is contained in specified unredacted records. This bill would also provide that the confidentiality of any information obtained as such must be maintained by the P&A agency. Additionally, this bill would change various references to the Department of Health Care Services to the Department of Public Health and delete a reference to a section of the California Code of Regulations.

(more)

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(This analysis reflects author's amendments to be offered in committee.)

BACKGROUND

In 1975, in response to the inhumane and despicable conditions discovered at New York's Willowbrook State School for persons with developmental disabilities, the United States Congress passed the Developmental Disabilities Assistance and Bill of Rights Act (the DD Act), mandating the creation of protection and advocacy (P&A) agencies throughout each state. (See Melissa Bowman, Open Debate Over Closed Doors: The Effect of the New Developmental Disabilities Regulations on Protection and Advocacy Programs (1997) 85 KY Law Journal 955, 956.) That DD Act has since been repealed and replaced with the Developmental Disabilities Assistance and Bill of Rights Act of 2000. (See 42 U.S.C. 15001 et seq. and 45 C.F.R. Part 1386, referred to as the "PADD Act.")

Additional federal legislation was passed in 1986, expanding the duty and authority of P&A agencies to cover persons with mental

health disabilities in the Protection and Advocacy of Mentally Ill Individuals (PAIMI) Act. (See 42 U.S.C. 10801 et seq. and 42 C.F.R. Part 51). Then in 1993, Congress again expanded P&A agencies' jurisdiction to cover all other persons with disabilities that had not yet been covered by either the PADD or PAIMI programs in the Protection and Advocacy of Individual Rights (PAIR) Act. (See 29 U.S.C. 794e and 34 C.F.R. Part 381.) More recently, in 2000, amendments to the PAIMI Act shifted responsibility for people with psychiatric disabilities who live outside of residential treatment facilities from the PAIR program to the PAIMI program. (See also the National and Disability Rights Network's summary of federal legislation providing for P&A agencies < <http://www.napas.org/en/about/paacap-network.html> > (as of March 31, 2012).)

The California Legislature passed SB 1088 in 1991 to enact this state's protection and advocacy system and bring California into compliance with federal law, and in doing so authorized the formation of an independent nonprofit corporation, originally called the Protection and Advocacy, Inc. (PAI) and now known as the Disability Rights California (DRC), to execute the investigatory mandate. (SB 1088 (McCorquodale, Ch. 534, Stats. 1991).) Then in 2003, the Legislature passed SB 577 (Kuehl, Ch. 878, Stats. 2003) to further conform to federal laws and

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regulations governing P&A agencies, and also expanded the availability of P&A services to all persons with disabilities as defined under California law.

P&A agencies, as provided for by these laws, are charged with providing advocacy services to people with disabilities, including investigating incidents of abuse or neglect and otherwise protecting their legal and civil rights. Among other things, existing law specifies that in order to fulfill its investigatory authority, the P&A agency shall have access to relevant records, as specified. (See Welf. & Inst. Code Secs. 4902(a)(1), 4903(b).)

This bill, sponsored by DRC, would specify that certain records, including citation reports, licensing reports, survey reports, plans of correction, and statements of deficiencies prepared, as specified, shall be provided in unredacted form. With respect to persons with developmental disabilities or mental health disabilities, specifically, where existing law would prohibit the disclosure of certain confidential information or records subject only to limited statutory exceptions, this bill would add to those enumerated exceptions that such information and records shall also be disclosed to the P&A agency to the extent that the information is contained in an unredacted citation report, unredacted licensing report, unredacted survey report, unredacted plan of correction, or unredacted statement of deficiency prepared by an authorized licensing personnel or authorized representatives described, as specified. The bill would also specify that information obtained in those records must be kept confidential by the P&A agency pursuant to existing law.

CHANGES TO EXISTING LAW

1. Existing federal law mandates the creation and maintenance of a protection and advocacy system in each state, for the purpose of investigating allegations of abuse or neglect of several classes of disabled persons: the developmentally disabled, the mentally ill, and other disabled persons that qualify for the services provided by the system. (PADD Act, 42 U.S.C. 15041 et seq.; PAIMI Act, 42 U.S.C. 10801 et seq.; and PAIR Act, 29 U.S.C. 794e.) The establishment of a P&A system is required for a state to receive federal funding for services provided to the specified disabled persons.

Existing law provides that an independent private, nonprofit

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corporation designated by the Governor, shall act as the P&A agency for the state, and requires that agency meet all requirements of federal law applicable to P&A systems for people with disabilities. (Welf. & Inst. Code Sec. 4901.)

Existing law defines "disability" as a developmental disability, as defined in the federal PADD Act, a mental illness, as defined in the federal PAIMI Act, or a disability as defined under the federal Americans with Disabilities Act of 1990, or as defined under the California Fair Employment and Housing Act. (Welf. & Inst. Code Sec. 4900(a)(d).)

Existing law specifies the authorities of the P&A agency, pursuant to its federal mandate, including the authority to investigate any incident of abuse or neglect of any person with a disability if the incident is reported to the P&A agency or if the P&A determines there is probable cause to believe the abuse or neglect occurred. Among other things, existing law provides that this investigatory authority shall include reasonable access to a facility or program and authority to examine all relevant records and interview any facility or program service recipient, employee, or other person who might have knowledge of the alleged abuse or neglect. (Welf. & Inst. Code Sec. 4902(a)(1).)

Existing law requires that the P&A agency have access to the records of a person with disabilities where specified circumstances exist. (Welf. & Inst. Code Sec. 4903(a).)

Existing law provides that the P&A agency shall have access to various individual records, whether written or in another medium, draft or final, including, but not limited to, handwritten notes, electronic files, photographs, videotapes, or audiotapes. Such individual records include, but are not limited to, specified records relating to the provision of services, reports of investigations of specified claims including their supporting documents, as well as any discharge records. (Welf. & Inst. Code Sec. 4903(b)(1)-(3).)

Existing law also otherwise lists the types of information in the possession of a program, facility, or service that must be available to the agency investigating instances of abuse or neglect, as specified. (Welf. & Inst. Code Sec. 4903(c).)

Existing law requires that the P&A agency be given access to the records of specified individuals, and other records that

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are relevant to conducting an investigation of potential instances of abuse or neglect with respect to specified persons with disabilities not later than three business days after the agency makes a written request. Existing law requires that immediate access be granted not later than 24 hours after the P&A agency makes a request, without consent from another party, in specified circumstances, if the agency determines there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy, or in a case of death of an individual with a disability. (Welf. & Inst. Code Sec. 4903(e).)

Existing law requires that confidential information kept or obtained by the P&A agency remain confidential and prohibits that information from being subject to disclosure, except that the P&A agency shall not be prevented from, among other things, issuing a public report of the results of an investigation that maintains the individual service recipients' confidentiality or reporting the investigation results to responsible agencies should an investigation reveal information warranting possible sanctions or corrective action, as specified. (Welf. & Inst. Code Sec. 4903(f).)

Existing law requires the P&A agency to inform and train employees as appropriate regarding the confidentiality of client records. (Welf. & Inst. Code Sec. 4903(g).)

This bill would provide that the authority provided under (b) of Section 4903 above, shall include access to the following unredacted records: a citation report, licensing report, survey report, plan of correction, or statement of deficiency prepared by a department responsible for issuing a license or certificate to a program, facility, or service serving an individual with a disability.

2. Existing law requires that, notwithstanding the section above, information and records be disclosed, as specified, to the P&A agency designated by the Governor in this state to fulfill the requirements and assurances of the federal PADD Act for the protection and advocacy of the rights of persons with developmental disabilities, as defined (42 U.S.C. Section 15002(8)). (Welf. & Inst. Code Sec. 4514.3(a).)

Existing law requires that all information and records obtained in the course of providing intake, assessment, and service, as specified, to persons with developmental

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disabilities be held confidential, and that information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential, except that such information and records shall be disclosed in specified cases. (Welf. & Inst. Code Sec. 4514(a)-(u).)

This bill would add to the enumerated exceptions to Section 4514 above, that the information and records otherwise subject to the confidentiality requirements of Section 4514 shall also be disclosed to the P&A agency to the extent that the information is contained in an unredacted version of any of the following: a citation report, licensing report, survey report, plan of correction, or statement of deficiency prepared by an authorized licensing personnel or authorized representatives described, as specified.

This bill would provide that the information obtained in those records is subject to the confidentiality requirements of Section 4903(f) of the Welfare and Institutions Code.

This bill replaces several references to Department of Health Care Services with the Department of Public Health.

This bill deletes a reference to Section 56557 of Title 17 of the California Code of Regulations.

3. Existing law provides that, notwithstanding Section 5328 of the Welfare and Institutions Code, information and records shall be disclosed to the P&A agency established in this state to fulfill the requirements and assurances of the federal PAIMI Act of 1991, for the protection and advocacy of the rights of people with mental disabilities, including people with mental health disabilities, as defined (42 U.S.C. Section 19802(4)). (Welf. & Inst. Code Sec. 5328.06.)

Existing law provides that all information and records obtained in the course of providing specified services to either voluntary or involuntary recipients of community mental health services shall be confidential, except that information and records may be disclosed, notwithstanding any other provision of law, as specified. (Welf. & Inst. Code Sec. 5328.15(a)-(b).)

This bill would add to the enumerated exceptions to Section 5328.15 above, that the information and records otherwise

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subject to the confidentiality requirements of Section 5328.15 shall also be disclosed to the P&A agency to the extent that the information is contained in an unredacted version of any of the following: a citation report, licensing report, survey report, plan of correction, or statement of deficiency prepared by an authorized licensing personnel or authorized representatives described, as specified.

This bill would provide that the information obtained in those records is subject to the confidentiality requirements of Section 4903(f) of the Welfare and Institutions Code.

COMMENT

1. Stated need for the bill

According to the author, "SB 1377 would clarify a protection and advocacy agency's right to review reports of abuse and neglect of individuals with developmental and mental health disabilities without having to make a separate assertion of probable cause in each case." The author further explains the need for such clarification as follows:

Federally mandated protection and advocacy agencies such as Disability Rights California (DRC) are charged with protecting and advocating for the rights of persons with disabilities. In order to fulfill this function, federal law grants protection and advocacy (P&A) agencies the right to access reports prepared by state agencies that investigate reports of abuse, neglect, injury or death of persons with disabilities and perform certification or licensing reviews.

In the past, the Department of Public Health (DPH) provided such reports to DRC in complete and unredacted form. However, in 2009 the DPH changed this policy for two special populations of vulnerable individuals with disabilities—people with developmental disabilities and people with mental health disabilities. Citing state privacy laws governing the records of persons with developmental disabilities (W&I Code Sec. 4514) and mental health disabilities (W&I Code Sec. 5328), DPH began forwarding to DRC redacted records with all relevant information about cases involving individuals with either a developmental disability or mental health disability blacked out. Under DPH's policy, DRC upon receipt of the redacted report must then submit an individual written request to receive an unredacted record for the case. For cases involving people with all other disabilities, DRC continued to

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receive reports from DPH in the usual unredacted form.

This extra step is unnecessary and unwarranted. California law (W&I Code Sec. 4903) already requires the P&A agencies to maintain the confidentiality of this information and the right to P&A's to access this information is not in dispute. Requiring this extra layer of bureaucratic process creates a significant time lag that often extends months before DRC receives the unredacted report. In some cases the wait has been almost a year. This delay can jeopardize the well-being of the individuals involved. In addition, the requirement creates more administrative work and unnecessary costs for the State.

2. Timely access to reports is integral to the intended functions of P&A agencies

Existing law provides for numerous types of reports that the P&A agency shall have access to under subdivision (b) of Section 4903 of the Welfare and Institutions Code. This bill would require that the P&A agency have access to the unredacted versions of the following records: citation reports, licensing reports, survey reports, plans of correction, and statements of

deficiency prepared by a department responsible for issuing a licensee or certificate to a program, facility, or service serving an individual with a disability.

As explained by the sponsor of this bill, California's P&A agency, Disability Rights California: "Federally mandated P&A's, such as YDRC] are charged with protecting and advocating for the rights of persons with disabilities. In order to fulfill this function, federal law grants P&A's the right to access reports prepared by state agencies that investigate reports of abuse, neglect with disabilities and perform certification or licensing reviews." And yet, the DRC and the author of this bill comment that in recent years a Department of Public Health policy has created delay in DRC's timely access to unredacted citation reports, licensing reports, survey reports, plans of correction, and statements of deficiencies prepared by the department. Only after the P&A agency receives a redacted version and submits a specific written request will the department provide the unredacted version. (See Comment 1 above for more detail.)

DRC has notified Committee staff that in October 2010, it started tracking how long it took to get unredacted documents

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back from DPH from the date requested. On average, DRC reports, it takes 32 days to get reports back from the date of request to date received. Three reports took 305 days to reach DRC, while another two took 215 days. Those wait times have reportedly shortened since the DRC began working with DPH to develop a standard request form. Even still, the last 10 records requested took an average of 24 days (three weeks), and five of these took 45 days.

As reflected in existing law, timeliness is a vital component to the access that existing law requires P&A agencies be afforded. To the extent that access to these unredacted records has taken an average 32 days to obtain, Committee staff notes that access is arguably not being provided as mandated, or at least envisioned, by the federal and state laws. Committee staff also notes that the production of redacted versions arguably does not translate into any kind of meaningful access, as samples provided to the Committee demonstrate that the redacted versions cause the reports to be almost entirely blacked out. Moreover, the sponsor of this bill represents to Committee staff that unredacted version of these records do in fact redact the actual identity of the individuals, by providing pseudonyms. Samples of unredacted versions confirm that the references are to "Patient A," "Resident A," or "Licensed Nurse 3" and the like.

Thus, by specifying that these specific types of records, in unredacted form, are to be provided to the agency in statute, it is hoped that this bill will eliminate this relatively recent practice that has resulted in substantial delays of records, which are vital to the P&A agency's ability to perform its investigatory duty.

While it is arguable that existing law provisions already give the P&A agency the right to access these reports (Welf. & Inst. Code Secs. 4902(a), 4903(a)-(b)), to the extent that the P&A agency's access to full reports is obstructed by redacting information and only providing the full, unredacted version upon specific written request, the addition of these types of unredacted records to the existing list of records in Section 4903 would arguably add necessary clarity and expedite the process in the interest of these persons with disabilities who are affected by delays in access to records.

3. Confidentiality

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With respect to persons with developmental disabilities or mental health disabilities, this bill would specify that permissible disclosures of confidential information or records shall also include disclosure to the P&A agency to the extent that the information is contained in specified unredacted records. The bill would provide that the confidentiality of any information obtained in those reports must be maintained by the P&A agency as specified under existing law.

The purported reason why redacted versions have been provided in recent years, absent a specific written request, is that existing law requires the confidentiality of specified records relating to persons with developmental disabilities or mental health disabilities and permits disclosure of such records only to specified parties or in specified cases, among which P&A agencies are not listed. (See Welf. & Inst. Code Secs. 4514, 5328.15.)

Still, even where existing law requires the confidentiality of specified records, the fact that the Legislature has carved out statutory exceptions in which disclosure is required, recognizes the importance of releasing even private or sensitive information under certain circumstances or for certain purposes. Given the importance of the function of P&A agencies to safeguarding and advancing the rights of persons with disabilities, public policy considerations justify clarifying in these existing law sections that P&A agencies must have access to unredacted citation reports, licensing reports, survey reports, plans of correction, and statements of deficiencies that are prepared as specified.

Further warranting the provision of such confidential records to the P&A agency is that existing law explicitly requires that confidential information kept or obtained by the P&A agency remain confidential and prohibits that information from being subject to disclosure (except for specified purposes that to go to purpose and function of the agency). This confidentiality requirement would not change with respect to the unredacted reports that this bill would specifically require that the P&A agency have access to under its investigatory authority. Moreover, as noted in Comment 2 above, the unredacted version of records that this bill would require P&A agencies have access to, provide some added measure of confidentiality insofar as they do not reveal the actual identity of any parties discussed in those reports. Thus, confidentiality concerns of providing these specified records in unredacted form to P&A agencies is

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substantially minimized.

4. Author's amendments

The author proposes the following amendments, which amend the bill as described in this analysis:

On page 10, strike lines 21-27 and insert:

(v) To a protection and advocacy agency established pursuant to Section 4901 to the extent that the information is incorporated within a an unredacted citation report, unredacted licensing report, unredacted survey report, unredacted plan of correction, or unredacted statement of deficiency prepared by authorized licensing personnel or authorized representatives described in subdivision (n). This information shall remain confidential and subject to the confidentiality requirements of subdivision (f) of Section 4903.

On page 14, strike lines 19-23 and insert:

(h) The authority provided pursuant to subdivision (b) shall include access to an unredacted citation report, unredacted licensing report, unredacted survey report, unredacted plan of correction, or statement of deficiency prepared by a department responsible for issuing a license or certificate to a program, facility, or service serving an individual with a disability.

On page 10, strike lines 37-40 and insert:

(c) To a protection and advocacy agency established pursuant to Section 4901 to the extent that the information is incorporated within an unredacted citation report, unredacted licensing report, unredacted survey report, unredacted plan of correction, or unredacted statement of deficiency prepared by authorized licensing personnel or authorized representatives described in subdivision (a). This information shall remain confidential and subject to the confidentiality requirements of subdivision (f) of Section 4903.

On page 11, strike lines 1-3



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Support : California Advocates for Nursing Home Reform;
California Association of Public Authorities for IHSS;
Disability Rights Education and Defense Fund, Inc., The Arc and
United Cerebral Palsy in California

Opposition : None Known

HISTORY

Source : Disability Rights California

Related Pending Legislation : None Known

Prior Legislation :

SB 577 (Kuehl, Ch. 878, Stats. 2003) See Background.

SB 1088 (McCorquodale, Ch. 534, Stats. 1991) See Background.

COUNCIL AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: Senate Bill (SB) 764, developmental services: telehealth systems program.

BILL SUMMARY: Sponsored by the author, SB 764 would permit regional centers, through a pilot project, to pay for the provision of applied behavior analysis (ABA) and/or intensive behavioral intervention (IBI) services through telehealth systems. The provision of these services would have to be a part of a person's individual program plan (IPP) and subject to the approval of the individual, or where appropriate, the parents, legal guardian, conservator, or authorized representative.

BACKGROUND: Some individuals with developmental disabilities may have difficulty obtaining needed services if they live in rural areas where providers are few and far between. Telehealth services are a way that services can be provided to individuals whereby the provider is in a distant location from the service recipient. It has been reported that research has indicated that telehealth services result in cost savings (presumably because of the elimination of transportation costs for the individual and service provider to meet in person) and effective.

Research has indicated that nearly all individuals with autism and many with other developmental disabilities benefit from ABA and/or IBI, whereby the symptoms of their condition are reduced or eliminated.

ANALYSIS/DISCUSSION: This bill would serve to demonstrate the provision of ABA and IBI services, for individuals who provide consent, through telehealth. This project could demonstrate how additional ABA and IBI services could be accessed, particularly in rural areas and reduce costs for the provision of these services.

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: Discussed by LPPC on April 19, 2012.

LPPC RECOMMENDATION: Support SB 764 if amended to clarify that telehealth is one of the choices, not necessarily the first or only manner to access ABA or IBI services during the demonstration project; that the use of telehealth is not intended to replace face-to-face services if that option is in the best interests of the consumer and/or family to achieve the outcomes of the IPP; that telehealth services be available and appropriate for California's diverse cultures; and to require the department to issue instructions regarding implementation of telehealth ABA and IBI services during the demonstration to assure statewide continuity and oversight.

(Staff comment: Although not included in the LPPC recommendation, the bill is silent on the length of the demonstration pilot project and does not include any evaluation of the outcomes of the project, therefore the Council may wish to consider these as additional amendments.)

ATTACHMENT(S): SB 764 and analysis from the Senate Floor.

PREPARED: Christofer Arroyo, May 2, 2012

AMENDED IN SENATE JANUARY 12, 2012

AMENDED IN SENATE JANUARY 4, 2012

AMENDED IN SENATE APRIL 14, 2011

SENATE BILL

No. 764

Introduced by Senator Steinberg

February 18, 2011

An act to add Section 4686.21 to the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

SB 764, as amended, Steinberg. Developmental services: telehealth systems program.

Under existing law, the Lanterman Developmental Disabilities Services Act, the State Department of Developmental Services is authorized to contract with regional centers to provide support and services to individuals with developmental disabilities.

This bill would require the department to ~~establish the telehealth systems program to~~, *on a demonstration pilot project basis*, authorize a provider who is currently vendorized with a regional center to provide applied behavioral analysis (ABA) services, intensive behavioral intervention (IBI) services, or both, to provide these services through the use of telehealth systems (THS), as defined, *as part of a consumer's individual program plan* upon approval of a regional center *and the voluntary approval of the consumer or specified persons*.

It

The bill would also require the department, on this basis, to authorize a regional center to purchase ABA or IBI services provided through the use of THS as part of a consumer's individual program plan if the

consumer or specified persons voluntarily approve this use and the provider can demonstrate a potential benefit for the consumer or regional center, or both, through the use of THS and can establish that the services being provided comply with specified requirements.

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 4686.21 is added to the Welfare and
2 Institutions Code, to read:

3 4686.21. (a) The State Department of Developmental Services
4 shall ~~establish the telehealth systems program. The program shall~~
5 ~~accomplish, on a demonstration pilot basis, do~~ all of the following:

6 (1) Authorize a provider who is currently vendorized with a
7 regional center to provide applied behavioral analysis (ABA)
8 services, intensive behavioral intervention (IBI) services, or both,
9 to provide these services through the use of telehealth systems
10 (THS) *as part of a consumer's individual program plan* upon
11 approval of a regional center *and the voluntary approval of the*
12 *consumer, or where appropriate, his or her parents, legal*
13 *guardian, conservator, or authorized representative.*

14 (2) Authorize a regional center to purchase ABA or IBI services
15 *provided through the use of THS as part of a consumer's individual*
16 *program plan if both the consumer, or where appropriate, his or*
17 *her parents, legal guardian, conservator, or authorized*
18 *representative voluntarily approves this use of THS and if the*
19 *provider can demonstrate a potential benefit for the consumer or*
20 *regional center, or both, through the use of THS and can establish*
21 *that the services being provided are in compliance with at least all*
22 *of the following:*

23 (A) ABA and IBI program requirements in existence on the
24 effective date of this section.

25 (B) All requirements related to consumer privacy and
26 confidentiality.

27 (C) The requirements of this division.

28 (D) State and federal requirements with regards to the purchase
29 of regional center services.

30 (E) All federal funding participation guidelines and
31 requirements.

1 (F) *The consumer's individual program plan.*

2 (3) Require regional centers to consider the use of THS in the
3 implementation of parent training for autism ABA or behavior
4 intervention services as specified in clause (i) of subparagraph (B)
5 of paragraph (3) of subdivision (c) of Section 4685, or both.

6 (b) The department shall implement vendorization codes or
7 subcodes, or both, for all THS services and programs that apply
8 pursuant to this section.

9 (c) The provider shall be responsible for all expenses and costs
10 related to the equipment, transmission, storage, infrastructure, and
11 other expenses related to the THS.

12 (d) For purposes of this section, ~~“telehealth~~ *the following*
13 *definitions shall apply:*

14 (1) *“Applied behavioral analysis” and “intensive behavioral*
15 *intervention” have the same meanings as provided in Section*
16 *4686.2.*

17 (2) *“Telehealth systems” means a mode of delivering services*
18 ~~*and that utilizes information that utilizes and communications*~~
19 ~~*technologies to enable facilitate the diagnosis, evaluation,*~~
20 ~~*consultation, and treatment, education, care management, supports,*~~
21 ~~*and self-management of individuals, and the provision of supports,*~~
22 ~~*self-management, and other appropriate services, including*~~
23 ~~*synchronous and asynchronous interactions, to individuals who*~~
24 ~~*are within the purview and responsibility of the regional center*~~
25 ~~*consumers, regardless of the location of the providers or individuals*~~
26 ~~*consumers. Telehealth systems also includes synchronous*~~
27 ~~*interactions and asynchronous store and forward transfers.*~~

28 (e) ~~For purposes of this section, “applied behavioral analysis”~~
29 ~~and “intensive behavioral intervention” have the same meanings~~
30 ~~as provided in Section 4686.2.~~

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BILL ANALYSIS

SENATE RULES COMMITTEE	SB 764
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520 Fax: (916)	
327-4478	

THIRD READING

Bill No: SB 764
 Author: Steinberg (D)
 Amended: 1/12/12
 Vote: 21

SENATE HUMAN SERVICES COMMITTEE : 4-0, 1/10/12
 AYES: Liu, Hancock, Wright, Yee
 NO VOTE RECORDED: Emmerson, Berryhill, Strickland

SENATE APPROPRIATIONS COMMITTEE : 6-2, 1/19/12
 AYES: Kehoe, Alquist, Lieu, Pavley, Price, Steinberg
 NOES: Walters, Emmerson
 NO VOTE RECORDED: Runner

SUBJECT : Developmental services: Autism Telehealth Program

SOURCE : Author

DIGEST : This bill requires the Department of Developmental Services to establish a program to provide certain services to clients with autism spectrum disorders through telehealth systems.

ANALYSIS :

Existing law :

1. Enacts the Telehealth Advancement Act of 2011 and repeals the Telemedicine Development Act of 1996.

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Defines telehealth as a mode of delivering health care and public health services facilitating the diagnosis, consultation, treatment, education, care management and self-management while the patient is at an originating site and the health care provider is at a distant site.

2. Enacts the Lanterman Developmental Disabilities Service Act under the Department of Developmental Services (DDS)

affirming a variety of rights and responsibilities for persons with developmental disabilities, including the right to treatment and habilitation services and supports in the least restrictive environment.

- 3. Establishes regional centers, a network of nonprofit private corporations that operate under contract with DDS to provide or direct the provision of services and supports identified in a client individual program plan.
- 4. Enacts the California Early Intervention Services Act of 1993 establishing a statewide system of family-centered interagency programs responsible for providing appropriate early intervention services and support to all eligible infants and toddlers and their families, also known as "Early Start."
- 5. Enacts, through federal law, the Early Intervention Program for Infants and Toddlers with Disabilities of 1986 under the Individuals with Disabilities Education Act.
- 6. Prohibits health care service plans, health insurers, and the Medi-Cal program from requiring in-person contact to occur between a health provider and a patient before payment is made for covered services appropriately provided through telehealth, subject to the terms and conditions of plan contract or the reimbursement policies adopted by the Department of Health Care Services.

This bill

- 1. Requires DDS to establish a program to provide certain services to clients with autism spectrum disorders through telehealth systems.

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- 2. Authorizes a provider vendorized with a regional center to provide applied behavioral analysis (ABA) services or intensive behavioral intervention (IBI) services to provide such services through THS, subject to approval by a regional center.
- 3. Authorizes a regional center to purchase ABA or IBI services through the use of THS if the provider can demonstrate that the provided services are beneficial for the consumer and are in compliance with existing ABA and IBI program requirements, privacy and confidentiality standards, state and federal requirements and federal funding participation guidelines.
- 4. Requires regional centers to consider the use of THS in implementation of parent training for autism related ABA or behavior intervention as part of the regional centers family support services.
- 5. Requires the department to implement vendorization codes or subcodes for all applicable THS services and programs.

6. States that a provider shall be responsible for all expenses and costs related to the THS.
7. Defines THS as a mode of delivering services and information that utilizes technologies to enable evaluation, consultation, and treatment of individuals and the provision of supports, self-management and other appropriate services, including synchronous and asynchronous interactions to individuals being served by regional centers regardless of the location of the providers or individuals.

Background

Autism . Autism Spectrum Disorders (ASD) is defined as a group of neural development disorders linked to atypical biology and chemistry in the brain and generally appearing within the first three years of life. ASD is further characterized by delayed, impaired or otherwise atypical

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verbal and social communication skills, sensitivity to sensory stimulation, atypical behaviors and body movements, and sensitivity to changes in routines.

According to the Centers for Disease Control and Prevention, the average total ASD prevalence in 2006 (children born in 1998) was 9.0 per 1,000 children, translating to one in 110 children. ASD prevalence was found to be four to five times higher for boys than for girls.

In 2007, the California DDS reported serving 38,000 individuals with ASD reflecting an annual increase of 13.4 percent since 2002, and that, of California children born during 1990-1997, more than 11,000 are enrolled with DDS to receive services for autism.

Public services for children and adults with autism . The Lanterman Developmental Disabilities Service Act administered by the DDS affirms a variety of rights and responsibilities for persons with developmental disabilities, including the right to treatment and habilitation services and supports in the least restrictive environment. Prior to enactment of the Lanterman Act the majority of children with autism were placed in state funded institutions for life at higher average and overall cost to the state.

State law requires the DDS and Regional centers, as their contracted local administrator, to provide a variety of services and supports necessary to prevent institutionalization and to assist families caring for their children at home. Provided services include diagnosis and eligibility assessment services as well as family support or community/independent living services in accordance with an individual program plan (IPP) or an individualized family service plan. Regional centers are permitted to purchase Applied Behavior Analysis or Intensive Behavior Intervention services if the service provider uses evidence-based practices and the services

promote positive social behaviors and help address issues with learning and social interactions.

DDS additionally administers the Early Start program in

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California which provides a broad scope of behavioral intervention and family support services to infants and toddlers under the age of three who are 'developmentally delayed' or have an 'established risk' or are 'at high risk' of a developmental delay.

Telehealth as a treatment modality for autism . Many studies indicate that early diagnosis and intervention is critical for children with ASD, offering significant opportunities to improve quality of life for these children and their families over the short and long term.

Recent studies have evaluated the effectiveness and efficiency of behavioral intervention treatments, functional communication training and functional analysis training for parents conducted through telehealth, including both synchronous (simultaneous exchange of information) and asynchronous (information exchange occurs over a period of time) modalities. These studies have demonstrated that telehealth can result in increased efficiency, cost savings and comparable treatment outcomes.

Prior/Related Legislation

AB 415 (Logue), Chapter 547, Statutes of 2011, repeals the Telemedicine Development Act of 1996, changing the reference from "telemedicine" to "telehealth", revising confidentiality and privacy standards, consent requirements, and other health provider and insurance requirements for telehealth.

ABx4 9 (Evans), Chapter 9, Statutes of 2009-10, Fourth Extraordinary Session, among other provisions, required the least costly available provider of comparable service, including transportation costs, who is able to accomplish all or parts of the consumer's IPP, consistent with the needs of the consumer and family as identified in the IPP, to be selected to deliver services to the consumer.

Statutorily defines ABA and IBI treatments and established a variety of standards and restrictions for vendors providing ABA services or IBI services, or both.

SB 1665 (M. Thompson), Chapter 864, Statutes of 1996,

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enacts the "Telemedicine Development Act of 1996" imposing

several requirements governing the delivery of health care services through telemedicine. Prohibited health insurers from requiring face to face contact between a health care provider and patient for covered services appropriately provided through telemedicine.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

Fiscal Impact (in thousands)

<u>Major Provisions</u>	<u>2012-13</u>	<u>2013-14</u>
<u>2014-15 Fund</u>		
Increased utilization of costs Regional Center services		Unknown potential General
Cost savings from using savings telehealth systems		Unknown potential General

SUPPORT : (Verified 1/23/12)

Behavioral Intervention Association
Capitol Autism Services
The Children's Partnership

ARGUMENTS IN SUPPORT : According to the author's office, this bill is intended to enhance and promote the use of telehealth for the diagnosis and treatment of ASD by DDS and RCs and support the provision of services in the most competent and cost effective manner possible. The author's office notes that there are currently over 53,000 ASD consumers receiving services through regional centers and that remote and underserved communities in particular lack sufficient access to programs and providers to serve these consumers. The author's office states that telehealth applications have been established as highly effective in providing access to services, especially in rural and underserved communities.

The author's office further asserts that the goals and

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objectives of this bill are consistent with the DDS ASD initiative that has emphasized the use of innovative methods and technology to promote best practices in the assessment, diagnosis, treatment, education and training for individuals with ASD and their families.

The author's office states that, as amended, this bill intends to ensure that the proposed telehealth services comply with all existing requirements of the Lanterman Act; comply with all existing privacy and confidentiality requirements and regulations; and also comply with all relevant federal and state requirements.

CTW:do 1/23/12 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

COUNCIL AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: Assembly Bill (AB) 2538 – In Home Support Services, abuse

BILL SUMMARY: Sponsored by the author, this bill would require the Department of Social Services to request a copy of the proposed service provider's criminal record from either the: 1) local county welfare department (currently the law), or 2) from a public authority.

BACKGROUND: Also, existing law authorizes IHSS service provider contracts to be: 1) direct employment by IHSS recipients, 2) between the county welfare department and an entity that provides services (public authority), or 3) between the county welfare department and a non-profit consortium.

Existing law also provides that proposed service providers of IHSS may request a general exception if they have been convicted within the last 10 years of specified crimes (felonies.)

ANALYSIS/DISCUSSION: This bill is one of many bills this legislative session attempting to address possible abuse and neglect within the IHSS system. This bill retains both options available to exempt criminal convictions from barring an individual as an IHSS service provider.

When an individual seeks to provide IHSS services and they have been convicted within the last 10 years of a specified crime (felony), they can submit a request for general exception to the Department of Social Services. DSS then requests a copy of the requestor's criminal record information from the local county welfare department.

This bill would allow DSS to request the information from either the county welfare department or from the public authority that has been contracted by the county welfare department.

Although the public authority should have this information readily available for all of its service providers, staff recommends that information be gathered from the local county welfare office. Governmental agencies should be responsible for information that could affect the health and well-being of individuals served by government programs; although it is not clear what issue this bill is attempting to resolve.

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 LPPC ACTIVITY: The Legislative and Public Policy Committee met on April 19, 2012 and took action to recommend to the Council a watch position due to the lack of clarity with regard to practical implications.

LPPC RECOMMENDATION(S): Watch AB 2538

ATTACHMENT(S): AB 2538, Human Services Committee Analysis

PREPARED: Melissa C. Corral – April 23, 2012

ASSEMBLY BILL

No. 2538

Introduced by Assembly Member John A. Pérez
(Principal coauthor: Senator Steinberg)

February 24, 2012

An act to amend Section 12305.87 of the Welfare and Institutions Code, relating to in-home supportive services, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2538, as introduced, John A. Pérez. In-home supportive services: criminal exclusions.

Existing law provides for the county-administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons are provided with services in order to permit them to remain in their own homes and avoid institutionalization. Existing law authorizes services to be provided under the IHSS program either through the employment of individual providers, a contract between the county and an entity for the provision of services, the creation by the county of a public authority, or a contract between the county and a nonprofit consortium.

Existing law prohibits an applicant from providing supportive services for 10 years following a conviction for, or incarceration following a conviction for, specified felony offenses. Existing law provides an exception to this criminal exclusion under certain circumstances. Existing law requires the State Department of Social Services, upon receipt of an exception request, to request a copy of the applicant's criminal offender record information search response from the applicable county welfare department.

This bill would instead require the department to request a copy of the applicant's criminal offender record information search response from the applicable county welfare department or public authority.

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: no.

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:

20 (1) A violent or serious felony, as specified in subdivision (c)
21 of Section 667.5 of the Penal Code and subdivision (c) of Section
22 1192.7 of the Penal Code.

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

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

1 (c) Notwithstanding subdivision (b), an application shall not be
2 denied under this section if the applicant has obtained a certificate
3 of rehabilitation under Chapter 3.5 (commencing with Section
4 4852.01) of Title 6 of Part 3 of the Penal Code or if the information
5 or accusation against him or her has been dismissed pursuant to
6 Section 1203.4 of the Penal Code.

7 (d) (1) Notwithstanding subdivision (b), a recipient of services
8 under this article who wishes to employ a provider applicant who
9 has been convicted of an offense specified in subdivision (b) may
10 submit to the county an individual waiver of the exclusion provided
11 for in this section. This paragraph shall not be construed to allow
12 a recipient to submit an individual waiver with respect to a
13 conviction or convictions for offenses specified in Section
14 12305.81.

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

21 (A) A summary explanation of the exclusions created by
22 subdivision (b), as well as the applicable waiver process described
23 in this subdivision and the process for an applicant to seek a general
24 exception, as described in subdivision (e). This summary
25 explanation shall be developed by the department for use by all
26 counties.

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

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

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

39 (3) To ensure that the initial summary explanation referenced
40 in this subdivision is comprehensible for recipients and provider

1 applicants, the department shall consult with representatives of
2 county welfare departments and advocates for, or representatives
3 of, recipients and providers in developing the summary explanation
4 and offense descriptions.

5 (4) The individual waiver form shall be signed by the recipient,
6 or by the recipient’s authorized representative, if applicable, and
7 returned to the county welfare department by mail or in person.
8 Except for a parent, guardian, or person having legal custody of a
9 minor recipient, a conservator of an adult recipient, or a spouse or
10 registered domestic partner of a recipient, a provider applicant
11 shall not sign his or her own individual waiver form as the
12 recipient’s authorized representative. The county shall retain the
13 waiver form and a copy of the provider applicant’s criminal offense
14 record information search response until the date that the
15 convictions that are the subject of the waiver request are no longer
16 within the 10-year period specified in subdivision (b).

17 (5) An individual waiver submitted pursuant to this subdivision
18 shall entitle a recipient to hire a provider applicant who otherwise
19 meets all applicable enrollment requirements for the In-Home
20 Supportive Services program. A provider hired pursuant to an
21 individual waiver may be employed only by the recipient who
22 requested that waiver, and the waiver shall only be valid with
23 respect to convictions that are specified in that waiver. A new
24 waiver shall be required if the provider is subsequently convicted
25 of an offense to which this section otherwise would apply. A
26 provider who wishes to be listed on a provider registry or to provide
27 supportive services to a recipient who has not requested an
28 individual waiver shall be required to apply for a general exception,
29 as provided for in subdivision (e).

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

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

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

1 (2) Upon receipt of a general exception request, the department
2 shall request a copy of the applicant's criminal offender record
3 information search response from the applicable county welfare
4 department *or public authority*. Notwithstanding any other
5 provision of law, the county *or public authority* shall provide a
6 copy of the criminal offender record information search response,
7 as provided to the county by the Department of Justice, to the
8 department. The county *or public authority* shall provide this
9 information in a manner that protects the confidentiality and
10 privacy of the criminal offender record information search
11 response. The state or federal criminal history record information
12 search response shall not be modified or altered from its form or
13 content as provided by the Department of Justice.

14 (3) The department shall consider the following factors when
15 determining whether to grant a general exception under this
16 subdivision:

17 (A) The nature and seriousness of the conduct or crime under
18 consideration and its relationship to employment duties and
19 responsibilities.

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

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

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

28 (E) Any evidence of rehabilitation, including character
29 references, submitted by the person, or by others on the person's
30 behalf.

31 (F) Employment history and current or former employer
32 recommendations. Additional consideration shall be given to
33 employer recommendations provided by a person who has received
34 or has indicated a desire to receive supportive or personal care
35 services from the applicant, including, but not limited to, those
36 services, specified in Section 12300.

37 (G) Circumstances surrounding the commission of the offense
38 that would demonstrate the unlikelihood of repetition.

39 (H) The granting by the Governor of a full and unconditional
40 pardon.

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

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

10 (2) A copy of the applicant's criminal offender record
11 information search response, even if the applicant already has
12 received a copy pursuant to Section 12301.6 or 12305.86. The
13 department shall provide this information in a manner that protects
14 the confidentiality and privacy of the criminal offender record
15 information search response.

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

19 (B) The department shall retain a copy of each individual's
20 criminal offender record information search response until the date
21 that the convictions that are the subject of the exception are no
22 longer within the 10-year period specified in subdivision (b), and
23 shall record the date the copy of the response was provided to the
24 individual and the department.

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

28 (g) (1) Upon written notification that the department has
29 determined that a request for exception shall be denied, the
30 applicant may request an administrative hearing by submitting a
31 written request to the department within 15 business days of receipt
32 of the written notification. Upon receipt of a written request, the
33 department shall hold an administrative hearing consistent with
34 the procedures specified in Section 100171 of the Health and Safety
35 Code, except where those procedures are inconsistent with this
36 section.

37 (2) A hearing under this subdivision shall be conducted by a
38 hearing officer or administrative law judge designated by the
39 director. A written decision shall be sent by certified mail to the
40 applicant.

1 (h) The department shall revise the provider enrollment form
2 developed pursuant to Section 12305.81 to include both of the
3 following:

4 (1) The text of subdivision (c) of Section 290 of the Penal Code,
5 subdivision (c) of Section 667.5 of the Penal Code, subdivision
6 (c) of Section 1192.7 of the Penal Code, and paragraph (2) of
7 subdivisions (c) and (g) of Section 10980.

8 (2) A statement that the provider understands that if he or she
9 has been convicted, or incarcerated following conviction for, any
10 of the crimes specified in the provisions identified in paragraph
11 (b) in the last 10 years, and has not received a certificate of
12 rehabilitation or had the information or accusation dismissed, as
13 provided in subdivision (c), he or she shall only be authorized to
14 receive payment for providing in-home supportive services under
15 an individual waiver or general exception as described in this
16 section, and upon meeting all other applicable criteria for
17 enrollment as a provider in the program.

18 (i) (1) Notwithstanding the rulemaking provisions of the
19 Administrative Procedure Act (Chapter 3.5 (commencing with
20 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
21 Code), the department may implement and administer this section
22 through all-county letters or similar instructions from the
23 department until regulations are adopted. The department shall
24 adopt emergency regulations implementing these provisions no
25 later than July 1, 2011. The department may readopt any emergency
26 regulation authorized by this section that is the same as or
27 substantially equivalent to an emergency regulation previously
28 adopted under this section.

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

1 (j) In developing the individual waiver form and all-county
2 letters or information notices or similar instructions, the department
3 shall consult with stakeholders, including, but not limited to,
4 representatives of the county welfare departments, and
5 representatives of consumers and providers. The consultation shall
6 include at least one in-person meeting prior to the finalization of
7 the individual waiver form and all-county letters or information
8 notices or similar instructions.

9 SEC. 2. This act is an urgency statute necessary for the
10 immediate preservation of the public peace, health, or safety within
11 the meaning of Article IV of the Constitution and shall go into
12 immediate effect. The facts constituting the necessity are:

13 In order to ensure the well-being of recipients of social services
14 and the most efficient delivery of these services at the earliest
15 possible time, it is necessary that this act take effect immediately.

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BILL ANALYSIS

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Page 1

Date of Hearing: April 24, 2013

ASSEMBLY COMMITTEE ON HUMAN SERVICES
Jim Beall Jr., Chair
AB 2538 (Speaker Perez) - As Introduced: February 24, 2012

SUBJECT : In-home supportive services: criminal exclusions

SUMMARY : Authorizes In-Home Supportive Services (IHSS) public authorities to provide the State Department of Social Services (DSS) with copies of the criminal offender record information search response pertaining to individuals applying for a general exception to the criminal exclusions applicable to IHSS provider applicants.

EXISTING LAW

- 1) Establishes the IHSS program to provide personal services and home care for approximately 445,000 eligible poor, aged, blind and disabled individuals by approximately 360,000 providers throughout the state to enable recipients to remain in their own homes and avoid institutionalization.
- 2) Authorizes services to be provided under the IHSS program through the employment of individual providers, a contract between the county and an entity for the provision of services, the creation by the county of a public authority, or a contract between the county and a nonprofit consortium.
- 3) Prohibits, under Welfare & Institutions (W&I) Code Section 12305.87, a new provider applicant from providing supportive services under the IHSS program for 10 years following a conviction for any of the following:
 - a) A violent or serious felony as defined in Penal Code Sections 667.5 and 1192.7;
 - b) A felony for which registration is required under the Sex Offender Registration Act, pursuant to Penal Code Section 290; or,
 - c) Obtaining public benefits or services by fraud when the amount of aid exceeds \$950, pursuant to W&I Code Section 10980(c)(2), or fraud in the use of food stamp (CalFresh) benefits in excess of \$950, pursuant to W&I Code Section

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10980(g)(2),

- 4) Authorizes an applicant convicted of an offense described in paragraph 3), above, to seek from DSS a general exception to the exclusions and sets out the procedures to be followed and factors to be considered by DSS in responding to a request for a general exception.
- 5) Requires DSS, upon receipt of a request for a general exception, to request a copy of the applicant's criminal offender record information search response from the applicable county welfare department, and authorizes the county welfare department to provide that information to DSS.

FISCAL EFFECT : Unknown

COMMENTS : The 2010 human services budget trailer bill, AB 1612 (Committee on Budget), Chapter 725, Statutes of 2010, provided for the exclusion, with certain exceptions, of provider applicants for 10 years following a conviction for a violent or

serious felony, as defined in the Penal Code, and other specified felony offenses. These exclusions, for what are referred to as "Tier 2" offenses, apply prospectively, to new provider applicants, beginning 90 days following the effective date of AB 1612. Thus, prospective IHSS home care workers are required to complete an application process which includes a criminal background check conducted by the Department of Justice (DOJ). The results of that background check-the criminal offender record information (CORI)-are confidential unless statute permits sharing of the results.

In its letter in support of this bill, the California Association of Public Authorities (CAPA) notes that DOJ "has very strict rules that prohibit any agency from transmitting a copy of the CORI to another agency without specific statutory authorization for the secondary dissemination of the CORI." SB 930 (Evans), Chapter 649, Statutes of 2011, addressed confidentiality issues by permitting county welfare departments to share CORI information with DSS necessary to, for example, enable DSS to make determinations on eligibility appeals.

An applicant convicted of a Tier 2 offense may request from DSS a general exception to the exclusions, pursuant to procedures and based on considerations specified in statute. As CAPA explains, in order for DSS to process requests for a general

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exception, they need to have a copy of the CORI that was reviewed by the county or public authority as part of the provider enrollment process. However, as CAPA notes, after enactment of SB 930, it was discovered that the IHSS public authority was omitted from the statutory fix in SB 930 related to the general exception process. According to CAPA, "DSS has received approximately 50 requests from individuals for a General Exception where the Public Authority reviewed the CORI to determine if those people were eligible to become IHSS providers. DOJ has indicated Public Authorities do not have authority to provide the CORI for these individuals to DSS under current law; therefore, DSS is unable to process these General Exception requests."

This bill, the author says, is necessary to enact a technical and clarifying revision to current law to ensure that the employee background check process can be completed. It would permit public authorities, as well as county welfare departments, to share the CORI search response with DSS when a provider applicant has requested a general exception.

REGISTERED SUPPORT / OPPOSITION :

Support

California Association of Public Authorities (CAPA)
County Welfare Directors Association of California
Los Angeles County District Attorney's Office

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Opposition

None on file

Analysis Prepared by : Eric Gelber / HUM. S. / (916) 319-2089

COUNCIL AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: AB 1841 – Elimination of IHSS criminal conviction waiver.

BILL SUMMARY: Sponsored by the author, this bill would delete the authority of a recipient of IHSS services to submit a waiver for the purpose of employing a person as a service provider who has been convicted of one of the specified crimes. This bill does not eliminate the general exception process that the proposed service provider submits directly to the Department of Social Services.

BACKGROUND: Existing law provides that recipients of IHSS services may request a waiver for a proposed service provider that has been convicted of specified crimes (felonies) in the previous 10 years.

ANALYSIS/DISCUSSION: The IHSS waiver process currently requires that the individual who receives IHSS services or his/her authorized representative, sign a document that clearly states: 1) that s/he is aware of the proposed service provider's specific convictions and, 2) that s/he accepts the responsibility of hiring the proposed service provider. The Department of Social Services, as well as the local county welfare department, will be free from any liability stemming from this waiver.

Existing law also provides for a general exception which is different than the waiver process above. The general exception request is made by the proposed service provider to the Department of Social Services. The department then evaluates: 1) the nature and seriousness of the crime and its relationship to the proposed duties, 2) the person's activities since conviction, 3) the number of convictions, 4) compliance with probation, parole, restitution, etc., 5) evidence of rehabilitation, 6) employment history, 7) circumstances surrounding the offense that may indicate repetition, and 8) granting of a pardon.

Although this bill intends to protect vulnerable individuals from persons who have been convicted of felonies, it also eliminates individual choice in selecting providers of a personal nature. Therefore, staff recommends that the Committee suggest an alternative method of increasing protection, while retaining individual choice.

Perhaps it could be suggested to the author that amendments be made to continue the waiver with a heightened review process (similar to the general exception already in law.)

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 LPPC ACTIVITY: The Legislative and Public Policy Committee met on April 19, 2012 and discussed possible amendments to this bill. The Committee focused on the need for recipients to have a continued opportunity to voice their individual choice preferences. Therefore, the Committee took action to recommend to the Council a support position if amendments are included that include participation from IHSS recipients when a general exception is requested by a prospective IHSS service provider; or, in the alternative, retain the waiver process with a stronger review process to satisfy the intent of protecting vulnerable individuals.

LPPC RECOMMENDATION(S): Support AB 1841 if amended to include recipient participation in the general exception process or continue the waiver process with a stronger review process.

ATTACHMENT(S): AB 1841, Human Services Committee Analysis

PREPARED: Melissa C. Corral – April 23, 2012

ASSEMBLY BILL

No. 1841

Introduced by Assembly Member Silva

February 22, 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 1841, as introduced, Silva. In-home supportive services providers: criminal exclusions.

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, unless the information or accusation against the person has been dismissed, or he or she has obtained a certificate of rehabilitation, as specified. In addition, 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. Existing law also permits a provider applicant who has been convicted of a specified offense to request from the State Department of Social Services a general exception from exclusion as a potential provider.

This bill would delete the authority of a recipient to submit a waiver for the purpose of employing a person who has been convicted of one of the specified crimes as the recipient's IHSS provider.

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 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 ~~(e)~~, ~~(d)~~, and ~~(e)~~ (c) and (d), an
16 applicant subject to this section shall not be eligible to provide or
17 receive payment for providing supportive services for 10 years
18 following a conviction for, or incarceration following a conviction
19 for, any of the following:

20 (1) A violent or serious felony, as specified in subdivision (c)
21 of Section 667.5 of the Penal Code and subdivision (c) of Section
22 1192.7 of the Penal Code.

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

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

31 (c) Notwithstanding subdivision (b), an application shall not be
32 denied under this section if the applicant has obtained a certificate
33 of rehabilitation under Chapter 3.5 (commencing with Section
34 4852.01) of Title 6 of Part 3 of the Penal Code or if the information

1 or accusation against him or her has been dismissed pursuant to
2 Section 1203.4 of the Penal Code.

3 ~~(d) (1) Notwithstanding subdivision (b), a recipient of services~~
4 ~~under this article who wishes to employ a provider applicant who~~
5 ~~has been convicted of an offense specified in subdivision (b) may~~
6 ~~submit to the county an individual waiver of the exclusion provided~~
7 ~~for in this section. This paragraph shall not be construed to allow~~
8 ~~a recipient to submit an individual waiver with respect to a~~
9 ~~conviction or convictions for offenses specified in Section~~
10 ~~12305.81.~~

11 ~~(2) The county shall notify a recipient who wishes to hire a~~
12 ~~person who is applying to be a provider and who has been~~
13 ~~convicted of an offense subject to exclusion under this section of~~
14 ~~that applicant's relevant criminal offense convictions that are~~
15 ~~covered by subdivision (b). The notice shall include both of the~~
16 ~~following:~~

17 ~~(A) A summary explanation of the exclusions created by~~
18 ~~subdivision (b), as well as the applicable waiver process described~~
19 ~~in this subdivision and the process for an applicant to seek a general~~
20 ~~exception, as described in subdivision (c). This summary~~
21 ~~explanation shall be developed by the department for use by all~~
22 ~~counties.~~

23 ~~(B) An individual waiver form, which shall also be developed~~
24 ~~by the department and used by all counties. The waiver form shall~~
25 ~~include both of the following:~~

26 ~~(i) A space for the county to include a reference to any Penal~~
27 ~~Code sections and corresponding offense names or descriptions~~
28 ~~that describe the relevant conviction or convictions that are covered~~
29 ~~by subdivision (b) and that the provider applicant has in his or her~~
30 ~~background.~~

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

35 ~~(3) To ensure that the initial summary explanation referenced~~
36 ~~in this subdivision is comprehensible for recipients and provider~~
37 ~~applicants, the department shall consult with representatives of~~
38 ~~county welfare departments and advocates for, or representatives~~
39 ~~of, recipients and providers in developing the summary explanation~~
40 ~~and offense descriptions.~~

1 ~~(4) The individual waiver form shall be signed by the recipient,~~
2 ~~or by the recipient's authorized representative, if applicable, and~~
3 ~~returned to the county welfare department by mail or in person.~~
4 ~~Except for a parent, guardian, or person having legal custody of a~~
5 ~~minor recipient, a conservator of an adult recipient, or a spouse or~~
6 ~~registered domestic partner of a recipient, a provider applicant~~
7 ~~shall not sign his or her own individual waiver form as the~~
8 ~~recipient's authorized representative. The county shall retain the~~
9 ~~waiver form and a copy of the provider applicant's criminal offense~~
10 ~~record information search response until the date that the~~
11 ~~convictions that are the subject of the waiver request are no longer~~
12 ~~within the 10-year period specified in subdivision (b).~~

13 ~~(5) An individual waiver submitted pursuant to this subdivision~~
14 ~~shall entitle a recipient to hire a provider applicant who otherwise~~
15 ~~meets all applicable enrollment requirements for the In-Home~~
16 ~~Supportive Services program. A provider hired pursuant to an~~
17 ~~individual waiver may be employed only by the recipient who~~
18 ~~requested that waiver, and the waiver shall only be valid with~~
19 ~~respect to convictions that are specified in that waiver. A new~~
20 ~~waiver shall be required if the provider is subsequently convicted~~
21 ~~of an offense to which this section otherwise would apply. A~~
22 ~~provider who wishes to be listed on a provider registry or to provide~~
23 ~~supportive services to a recipient who has not requested an~~
24 ~~individual waiver shall be required to apply for a general exception,~~
25 ~~as provided for in subdivision (c).~~

26 ~~(6) Nothing in this section shall preclude a provider who is~~
27 ~~eligible to receive payment for services provided pursuant to an~~
28 ~~individual waiver under this subdivision from being eligible to~~
29 ~~receive payment for services provided to one or more additional~~
30 ~~recipients who obtain waivers pursuant to this same subdivision.~~

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

33 ~~(e)~~

34 ~~(d) (1) Notwithstanding subdivision (b), an applicant who has~~
35 ~~been convicted of an offense identified in subdivision (b) may seek~~
36 ~~from the department a general exception to the exclusion provided~~
37 ~~for in this section.~~

38 ~~(2) Upon receipt of a general exception request, the department~~
39 ~~shall request a copy of the applicant's criminal offender record~~
40 ~~information search response from the applicable county welfare~~

1 department. Notwithstanding any other provision of law, the county
2 shall provide a copy of the criminal offender record information
3 search response, as provided to the county by the Department of
4 Justice, to the department. The county shall provide this
5 information in a manner that protects the confidentiality and
6 privacy of the criminal offender record information search
7 response. The state or federal criminal history record information
8 search response shall not be modified or altered from its form or
9 content as provided by the Department of Justice.

10 (3) The department shall consider the following factors when
11 determining whether to grant a general exception under this
12 subdivision:

13 (A) The nature and seriousness of the conduct or crime under
14 consideration and its relationship to employment duties and
15 responsibilities.

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

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

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

24 (E) Any evidence of rehabilitation, including character
25 references, submitted by the person, or by others on the person's
26 behalf.

27 (F) Employment history and current or former employer
28 recommendations. Additional consideration shall be given to
29 employer recommendations provided by a person who has received
30 or has indicated a desire to receive supportive or personal care
31 services from the applicant, including, but not limited to, those
32 services, specified in Section 12300.

33 (G) Circumstances surrounding the commission of the offense
34 that would demonstrate the unlikelihood of repetition.

35 (H) The granting by the Governor of a full and unconditional
36 pardon.

37 (~~F~~)

38 (e) If the department makes a determination to deny an
39 application to provide services pursuant to a request for a general
40 exception, the department shall notify the applicant of this

1 determination by either personal service or registered mail. The
 2 notice shall include the following information:

3 (1) A statement of the department’s reasons for the denial that
 4 evaluates evidence of rehabilitation submitted by the applicant, if
 5 any, and that specifically addresses any evidence submitted relating
 6 to the factors in paragraph (3) of subdivision ~~(e)~~ (d).

7 (2) A copy of the applicant’s criminal offender record
 8 information search response, even if the applicant already has
 9 received a copy pursuant to Section 12301.6 or 12305.86. The
 10 department shall provide this information in a manner that protects
 11 the confidentiality and privacy of the criminal offender record
 12 information search response.

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

16 (B) The department shall retain a copy of each individual’s
 17 criminal offender record information search response until the date
 18 that the convictions that are the subject of the exception are no
 19 longer within the 10-year period specified in subdivision (b), and
 20 shall record the date the copy of the response was provided to the
 21 individual and the department.

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

25 ~~(g)~~

26 ~~(f)~~ (1) Upon written notification that the department has
 27 determined that a request for exception shall be denied, the
 28 applicant may request an administrative hearing by submitting a
 29 written request to the department within 15 business days of receipt
 30 of the written notification. Upon receipt of a written request, the
 31 department shall hold an administrative hearing consistent with
 32 the procedures specified in Section 100171 of the Health and Safety
 33 Code, except where those procedures are inconsistent with this
 34 section.

35 (2) A hearing under this subdivision shall be conducted by a
 36 hearing officer or administrative law judge designated by the
 37 director. A written decision shall be sent by certified mail to the
 38 applicant.

39 ~~(h)~~

1 (g) The department shall revise the provider enrollment form
2 developed pursuant to Section 12305.81 to include both of the
3 following:

4 (1) The text of subdivision (c) of Section 290 of the Penal Code,
5 subdivision (c) of Section 667.5 of the Penal Code, subdivision
6 (c) of Section 1192.7 of the Penal Code, and paragraph (2) of
7 subdivisions (c) and (g) of Section 10980.

8 (2) A statement that the provider understands that if he or she
9 has been convicted, or incarcerated following conviction for, any
10 of the crimes specified in the provisions identified in paragraph
11 (b) in the last 10 years, and has not received a certificate of
12 rehabilitation or had the information or accusation dismissed, as
13 provided in subdivision (c), he or she shall only be authorized to
14 receive payment for providing in-home supportive services under
15 ~~an individual waiver or~~ a general exception as described in this
16 section, and upon meeting all other applicable criteria for
17 enrollment as a provider in the program.

18 (i)

19 (h) (1) Notwithstanding the rulemaking provisions of the
20 Administrative Procedure Act (Chapter 3.5 (commencing with
21 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
22 Code), the department may implement and administer this section
23 through all-county letters or similar instructions from the
24 department until regulations are adopted. The department shall
25 adopt emergency regulations implementing these provisions no
26 later than July 1, 2011. The department may readopt any emergency
27 regulation authorized by this section that is the same as or
28 substantially equivalent to an emergency regulation previously
29 adopted under this section.

30 (2) The initial adoption of emergency regulations pursuant to
31 this section and one readoption of emergency regulations shall be
32 deemed an emergency and necessary for the immediate
33 preservation of the public peace, health, safety, or general welfare.
34 Initial emergency regulations and the one readoption of emergency
35 regulations authorized by this section shall be exempt from review
36 by the Office of Administrative Law. The initial emergency
37 regulations and the one readoption of emergency regulations
38 authorized by this section shall be submitted to the Office of
39 Administrative Law for filing with the Secretary of State and each

1 shall remain in effect for no more than 180 days, by which time
2 final regulations may be adopted.
3 ⊕
4 (i) In developing the ~~individual waiver form~~ and all-county
5 letters or information notices or similar instructions, the department
6 shall consult with stakeholders, including, but not limited to,
7 representatives of the county welfare departments, and
8 representatives of consumers and providers. The consultation shall
9 include at least one in-person meeting prior to the finalization of
10 the ~~individual waiver form~~ and all-county letters or information
11 notices or similar instructions.

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BILL ANALYSIS

AB 1841
Page 1

Date of Hearing: April 10, 2012

ASSEMBLY COMMITTEE ON HUMAN SERVICES
Jim Beall Jr., Chair
AB 1841 (Silva) - As Introduced: February 22, 2012

SUBJECT : In-home supportive services providers: criminal
exclusions

SUMMARY : Deletes the authority of an In-home Supportive
Services (IHSS) recipient to submit a waiver enabling a provider
applicant who has been convicted of specified offenses to be
employed as that individual's IHSS provider.

EXISTING LAW

- 1) Establishes the IHSS program to provide personal services and home care for approximately 445,000 eligible poor, aged, blind and disabled individuals by approximately 360,000 providers throughout the state to enable recipients to remain in their own homes and avoid institutionalization.
- 2) Prohibits, under Welfare & Institutions (W&I) Code Section 12305.81, a person from providing supportive services under the IHSS program for 10 years following a conviction for crimes involving:
 - a) Fraud against a government health care or supportive services program; or,
 - b) Child endangerment, pursuant to PC Section 273a, elder or dependent adult abuse, pursuant to PC Section 368, or similar violations in another jurisdiction.
- 3) Prohibits, under W&I Code Section 12305.87, a new provider applicant from providing supportive services under the IHSS program for 10 years following a conviction for any of the following:
 - a) A violent or serious felony as defined in PC Sections 667.5 and 1192.7;
 - b) A felony for which registration is required under the Sex Offender Registration Act, pursuant to PC Section 290; or,

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Page 2

- c) Obtaining public benefits or services by fraud when the amount of aid exceeds \$950, pursuant to W&I Code Section 10980(c)(2), or fraud in the use of food stamp (CalFresh) benefits in excess of \$950, pursuant to W&I Code Section 10980(g)(2).
- 4) Provides that the prohibitions described in paragraph 3), above, do not apply if the applicant has obtained a certificate of rehabilitation as provided in PC Section 4852.01 et seq., or if the conviction has been expunged, pursuant to PC Section 1203.4.
- 5) Authorizes an applicant convicted of an offense described in paragraph 3), above, to seek from the Department of Social Services (DSS) a general exception to the exclusions and sets out the procedures to be followed and factors to be considered by DSS in responding to a request for a general exception.
- 6) Permits a recipient of IHSS services who wishes to hire a

provider applicant who has been convicted of an offense described in paragraph 3), above, to submit an individual waiver of the exclusion, signed by the recipient or the recipient's authorized representative, if applicable.

- 7) Requires the county to notify a recipient who wishes to hire a provider who has been convicted of an offense described in paragraph 3), above, of the criminal convictions and requires the notice to include the following:
 - a) An explanation of the exclusions described in paragraph 3), above, as well as the waiver process and the process for an applicant to seek a general exception; and,
 - b) A waiver form meeting specified requirements, developed by DSS in consultation with representatives of county welfare departments and advocates for, or representatives of, recipients and providers.
- 8) Prohibits a provider applicant from signing his or her own individual waiver form as the recipient's authorized representative unless the individual is the parent, guardian, or person having legal custody of a minor recipient, a conservator of an adult recipient, or a spouse or registered domestic partner of the recipient.

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9) Provides that a provider hired based on an individual waiver may be employed only by the recipient who requested the waiver, and the waiver shall only be valid with respect to the convictions specified in that waiver.

10) Immunizes the state and county from liability resulting from granting an individual waiver.

FISCAL EFFECT : Unknown

COMMENTS :

Background

The 2009 IHSS budget trailer bill, ABX4 19 (Evans), Chapter 17, Statutes of 2009 4th Extraordinary Session, included provisions intended to prevent fraud in, and enhance the integrity of the IHSS program. As a condition of being placed or maintained on a county's IHSS provider registry, ABX4 19 required criminal background checks to be completed for all prospective IHSS providers as of October 1, 2009, and to be completed by July 2, 2010 for anyone already a provider on October 1, 2009.

Under California law, consistent with federal Medicaid law, an individual may not serve as a provider of services under the IHSS program for 10 years following a conviction for specified crimes involving fraud against a government health care or supportive services program, child endangerment, or elder or dependent adult abuse. (These are commonly referred to as "Tier 1" offenses.) The 2010 human services budget trailer bill, AB 1612 (Committee on Budget), Chapter 725, Statutes of 2010, provided for the additional exclusion, with certain exceptions, of provider applicants for 10 years following a conviction for a violent or serious felony, as defined in the Penal Code, and other specified felony offenses. These exclusions, referred to as "Tier 2" offenses, apply prospectively, to new provider applicants, beginning 90 days following the effective date of that bill. The AB 1612 exclusion for prior convictions of Tier 2 offenses was enacted as part of a larger budget compromise, and was not vetted through legislative policy committees.

With respect to these added, Tier 2, exclusions, AB 1612 provided that a recipient who wishes to employ a provider applicant who has been convicted of such an offense "may submit to the county an individual waiver of the exclusion." The

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waiver form must be signed "by the recipient or by the recipient's authorized representative, if applicable ?." In signing a waiver, the individual agrees that he or she is "accepting the responsibility for this decision and the risk of any potential actions that may occur as a result of this decision." AB 876 (Valadeo), Chapter 73, Statutes of 2011, added the proviso that, except in the case the parent, guardian, or person having legal custody of a minor recipient, a conservator of an adult recipient, or a spouse or registered domestic partner of the recipient, a provider applicant shall not sign his or her own individual waiver form as the recipient's authorized representative. Persons convicted of Tier 2 offenses also have the option of seeking a general exception to the exclusions, under prescribed procedures and criteria.

This bill would delete the provisions by which a recipient or recipient's authorized representative may request a waiver with respect to an individual provider applicant who has been convicted of a Tier 2 felony (Existing Law, paragraph 3, above) within the last 10 years.

Need for this bill

According to the author:

This bill is needed to protect the IHSS program. Eliminating the individual waiver will eliminate a potential source of fraud within IHSS. The crimes listed as "Tier 2" crimes are of the type that would eliminate most applicants from consideration for most jobs, public or private. Employment as an IHSS provider should be no different. A higher level of scrutiny is needed before murderers, rapists and other felons should be able to get a taxpayer-funded job working in IHSS recipients' homes.

(Emphasis in original.)

Is there new information or data to suggest that the individual waiver process has been problematic? According to DSS data provided in early March 2012, there are approximately 528,000 eligible IHSS providers in the state. 747 prospective providers have been disqualified based on a conviction for a Tier 2 felony and 516 individual waivers have been submitted. The author has provided no data on the incidence of victimization of IHSS

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recipients or substantiated fraud with respect to providers for whom an individual waiver has been submitted.

Philosophy of the IHSS program

At the core of the IHSS program is a philosophy that recognizes the dignity of consumers by acknowledging their right to self-determination. Central to that philosophy are the consumer's rights to hire, supervise, and fire the caregiver of their choice. AB 1612 was enacted as a negotiated compromise following unsuccessful efforts by the Schwarzenegger administration to bar individuals convicted of any felony and designated misdemeanors from being employed as IHSS providers. With respect to those felonies classified as Tier 2, AB 1612 preserved consumers' right to hire caregivers of their choosing through individual waivers. That right would be eliminated under this bill. In addition, by eliminating individual waivers, this bill would require IHSS recipients-including young children-to receive services from strangers rather than from

parents, adult children, siblings, spouses, domestic partners, and other trusted friends and relatives.

Opposition

In opposition to this bill, the National Employment law Project says that "the current statute regulating IHSS providers strikes the correct balance of protecting vulnerable persons from harm without having an adverse impact on the pool of available workers or impinging on the rights of individual IHSS recipients to choose a provider with complete knowledge of his or her conviction for a Tier II crime. [This bill] would make it hard for IHSS recipients to be provided with a caregiver of their choice—a caregiver that is frequently a close relative." In a joint opposition letter, the California State Association of Counties, the County Welfare Directors Association, and the California Association of Public Authorities for IHSS say that:

A core provision of the current IHSS program allows recipient to identify and hire the caregivers that will be entering their home and providing domestic and health related services. A recipient who knows and trusts their IHSS provider is more likely to establish a long-term recipient-caregiver relationship, thereby achieving the top goal of the IHSS program: to allow those with documented service needs to receive quality care while remaining in their homes.

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REGISTERED SUPPORT / OPPOSITION :

Support

Office of the District Attorney, Sacramento County

Opposition

American Civil Liberties Union
California Association of Public Authorities for IHSS
California State Association of Counties
Coalition of California Welfare Rights Organizations, Inc.
County Welfare Directors Association
Lawyers' Committee for Civil Rights
Legal Services for Prisoners with Children
National Employment Law Project
United Domestic Workers of America - AFSCME Local 3930

Analysis Prepared by : Eric Gelber / HUM. S. / (916) 319-2089

COUNCIL AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: Assembly Bill (AB) 2074: In-Home Supportive Services program: telehealth training program

BILL SUMMARY: Sponsored by the author, AB 2074 requires the Department of Social Services to develop a training program for in-home supportive services (IHSS) providers on the use of telehealth by January 1, 2014. The training must include:

- how to use applications, tools, and resources available on the internet;
- patient safety, clinical risk management, and the use of computerized health care records;
- standard practices regarding patient data including maintaining confidential records; and,
- the use of devices commonly used in telehealth (such as blood pressure devices, blood glucose devices, electrocardiogram devices, weight scales, pulse oximetry devices, and stethoscopes).

The author's staff indicated, at the time of this writing, that the purpose of this bill is to ensure that providers have access to necessary information so they may provide adequate services. It is acknowledged that at this time counties have different training requirements and this will need to be worked out in subsequent amendments.

BACKGROUND: IHSS provides critical services to adults and children with disabilities who live in the community in their own or family homes so as to avoid unnecessary and costly institutionalization. The California Department of Social Services (CDSS) has oversight of county IHSS operations and the federal and state funds used to pay for services provided. Services provided include personal care (such as dressing, feeding, and grooming), domestic services (such as cleaning, and shopping), related services (such as meal preparation, laundry, and menu planning), and other services (heavy cleaning, respite care, and transportation).

IHSS is predicated on upon providing services and supports in the least restrictive environment (people's homes) so they may avoid unnecessary and costly institutionalization.

ANALYSIS/DISCUSSION: With IHSS' impending absorption into a managed health care system, some believe that this bill provides greater opportunities for recipients of IHSS and ensure providers have the information necessary to provide adequate services. Conversely, others argue that this bill moves IHSS from a social support model to a medically-based service, thus objectionable. Medically-based models have

historically viewed individuals with disabilities as broken and in need of being fixed. Such a perspective generally ignores the choices made by individuals with disabilities.

While this bill does not actually address the movement of IHSS into managed care, it also fails to acknowledge how that change would impact the training provisions addressed by the bill. Generally, the Council is supportive and y opportunity to increase the continuity and quality of care, however it is unclear how managed care and these provisions will be coordinated.

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 taken no prior action related to this bill. However, the Council supports the belief that individuals with developmental disabilities and their families are best suited to identify and understand their unique needs and how to best address those needs.

LPPC RECOMMENDATION: Watch AB 2074

ATTACHMENT: AB 2074 and the staff analysis of the Assembly Human Services Committee

PREPARED: Christofer Arroyo, May 2, 2012

ASSEMBLY BILL

No. 2074

Introduced by Assembly Member Bradford

February 23, 2012

An act to add Section 12300.15 to the Welfare and Institutions Code, relating to in-home supportive services.

LEGISLATIVE COUNSEL'S DIGEST

AB 2074, as introduced, Bradford. In-Home Supportive Services program: telehealth training program.

Existing law provides for the county-administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons are provided with services in order to permit them to remain in their own homes and avoid institutionalization. Existing law authorizes services to be provided under the IHSS program either through the employment of individual providers, a contract between the county and an entity for the provision of services, the creation by the county of a public authority, or a contract between the county and a nonprofit consortium. Existing law requires the department, in consultation with counties, to develop a standardized curriculum, training materials, and work aids, and operate an ongoing statewide training program, on specified matters related to the provision of in-home supportive services.

This bill would require the department to develop a training program, as specified, to train IHSS providers on the utilization of telehealth in home-based care.

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 12300.15 is added to the Welfare and
2 Institutions Code, to read:
- 3 12300.15. (a) For purposes of this section, “telehealth” has
4 the meaning set forth in subparagraph (6) of subdivision (a) of
5 Section 2290.5 of the Business and Professions Code.
- 6 (b) The department shall develop a training program, which
7 includes a standardized curriculum and training materials, to train
8 in-home supportive services (IHSS) providers on the utilization
9 of telehealth, as described in subdivision (a), in home-based care.
- 10 (c) The training program shall instruct IHSS providers in areas
11 relating to telehealth, including, but not limited to, the following:
- 12 (1) The use of relevant Internet tools and resources, and the
13 development of a technical understanding of the Internet and of
14 relevant applications on the Internet.
- 15 (2) Patient safety and clinical risk management, including the
16 prevention and control of risk to patients and the use of
17 computerized health care records.
- 18 (3) Standard practices regarding patient data within a health
19 information system, including the handling of confidential
20 information and personal data, and other responsibilities and
21 prohibitions relating to patient data.
- 22 (4) The use of devices commonly used in telehealth, including,
23 but not limited to, the following:
- 24 (A) Blood pressure devices.
25 (B) Blood glucose devices.
26 (C) Electrocardiogram devices.
27 (D) Weight scales.
28 (E) Pulse oximetry devices.
29 (F) Spirometry devices.
30 (G) Portable sonogram devices.
31 (H) Stethoscopes.
- 32 (e) The department shall develop a program pursuant to this
33 section by January 1, 2014.

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BILL ANALYSIS

AB 2074

Page 1

Date of Hearing: April 24, 2012

ASSEMBLY COMMITTEE ON HUMAN SERVICES
 Jim Beall Jr., Chair
 AB 2074 (Bradford) - As Introduced: February 23, 2012

SUBJECT : In-Home Supportive Services program: telehealth training program

SUMMARY : Requires the Department of Social Services (DSS) to develop a training program for In-Home Supportive Services (IHSS) providers on the utilization of telehealth. Specifically, this bill :

- 1)References the definition of "telehealth" in Business & Professions Code Section 2290.5(a)(6): A mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site and the health care provider is at a distant site.
- 2)Requires DSS, by January 1, 2014, to develop a training program with a standardized curriculum and training materials, to train IHSS providers on the utilization of telehealth in home-based care.
- 3)Requires the training to include, but not be limited to the following areas:
 - a) The use of relevant Internet tools and resources;
 - b) Patient safety and clinical risk management;
 - c) Standard practices regarding patient data within a health information system, including handling of confidential information and personal data; and,
 - d) The use of devices commonly used in telehealth, such as blood pressure devices, blood glucose devices, electrocardiogram devices, weight scales, pulse oximetry devices, spirometry devices, portable sonogram devices, and stethoscopes.

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AB 2074

Page 2

EXISTING LAW

- 1)Establishes the IHSS program to provide personal services and home care for approximately 445,000 eligible poor, aged, blind and disabled individuals by approximately 360,000 providers throughout the state to enable recipients to remain in their own homes and avoid institutionalization.
- 2)Requires DSS, in consultation with counties, to develop a

standardized curriculum, training materials, and work aids, and operate an ongoing statewide training program, on specified matters related to the provision of in-home supportive services.

FISCAL EFFECT : Unknown

COMMENTS : California's health care resources and trained medical experts are poorly distributed across the state. Many urban centers have state-of-the-art medical technologies and specialty resources. In sparsely populated and economically depressed areas (urban as well as rural), however, specialists are a rarity. Telehealth helps bridge the gaps in time, distance, and quality. It has been in use in demonstration projects across the state and around the globe

The author states that, to prepare for demand, IHSS caregivers need to begin training for future technology:

Career readiness has begun amongst physicians, nurses and healthcare administration; it stands to reason that IHSS caregivers will also need specialized training within this growing field of technology. Training IHSS caregivers can help provide critical community based service to low income seniors and people with disabilities to help delay or defer hospitalization or institutionalization.

This bill would require DSS to develop a program to train IHSS providers on the utilization of telehealth in home-based care. This bill lacks detail on the extent and specific nature of the required training. IHSS services include paramedical services, which are provided based on training given by a licensed health care provider and under the direction of a licensed health care provider. That training would be specific to the needs of an

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AB 2074
Page 3

individual IHSS recipient. Thus, presumably, the training required by this bill would be of a more generic nature.

While additional training for IHSS providers is unquestionably desirable, this bill singles out telehealth for particular attention. The Committee may wish to consider whether, in light of proposals to integrate IHSS into managed care, for example, training of IHSS workers requires a more systematic and comprehensive approach.

REGISTERED SUPPORT / OPPOSITION :

Support

Aging Services of California
BIOCOM
Regional Council of Rural Counties (RCRC)

Opposition

None on file.

Analysis Prepared by : Eric Gelber / HUM. S. / (916) 319-2089

COUNCIL AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: Assembly Bill (AB) 2370: Mental Retardation: Change of term to intellectual disability

SUMMARY: Sponsored by Best Buddies California and Special Olympics International, AB 2370 would revise current law that uses "mental retardation or mentally retarded person" to refer instead to "intellectual disability" or "a person with an intellectual disability."

BACKGROUND: It is estimated that seven to eight million Americans or one in ten families in the United States, experience intellectual disabilities. In a survey, conducted by the Special Olympics Global Collaborating Center, it found that 92% of young Americans (ages 8-18) report having heard the "R-Word" used, and 36% have heard the term used toward someone with intellectual disabilities. The R-word, "retard," is slang for the term mental retardation. Mental retardation was what doctors, psychologists, and other professionals used to describe people with significant intellectual impairment. Today the r-word has become a common word used by society as an insult for someone or something stupid.

ANALYSIS/DISCUSSION: The R-word used intentionally or unintentionally demeans and hurts people with intellectual disabilities. It is a term used in bullying and sometime hate crimes.

Like SB 1381, AB 2370 is also a follow up to the Federal legislation S.2781 (Rosa's Law) that was signed into law on October 5, 2010. Rosa's Law, which takes its name and inspiration from the 9-year-old Rosa Marcellino, removes the terms "mental retardation" and "mentally retarded" from federal health, education and labor policy and replaces them with people first language "individual with an intellectual disability" and "intellectual disability." Two other states New York and Maryland have also made this significant change to their laws.

COUNCIL STRATEGIC PLAN OBJECTIVE: Goal #14: Public policy in California promotes the independence, productivity, inclusion and self determination of individuals with developmental disabilities and their families.

PRIOR COUNCIL ACTIVITY: None, although the Council is committed to not labeling individuals with disabilities.

LPPC RECOMMENDATION: Support AB 2370.

ATTACHMENT: Legislative Digest of AB 2370 (bill is very large)

PREPARED: Karim Alipourfard, May 1, 2012

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2370

Introduced by Assembly Member Mansoor
(Coauthors: Assembly Members Ammiano, Beall, Hill, Perea,
V. Manuel Pérez, Valadao, Wieckowski, and Yamada)
(Coauthors: Senators Padilla and Strickland)

February 24, 2012

An act to amend ~~Section~~ *Sections 4502 and 17206.1* of the Business and Professions Code, *to amend Section 1761 of the Civil Code*, to amend Sections 8769, 16191, 16195, 16196, 16200, 41306, 41401, and 51765 of the Education Code, to amend Sections 854.2, 6514, 12428, 12926, 14670.1, 14670.2, 14670.3, 14670.5, 14672.1, 14672.92, 16813, 16814, and 16816 of the Government Code, to amend Sections 1275.5, 1337.1, 1337.3, 13113, 51312, 110403, 123935, 125000, 127260, and 129395 of the Health and Safety Code, *to amend Sections 10118, 10124, and 10203.4 of the Insurance Code*, to amend Sections 1001.20, 1346, 1370.1 ~~and 1376~~, 1376, and 2962 of the Penal Code, to amend Section 1420 of the Probate Code, to amend Section 25276 of the Vehicle Code, and to amend Sections 4417, 4426, 4512, 4801, 5002, 5008, 5325, 5585.25, 6250, 6500, 6502, 6504, 6504.5, 6505, 6506, 6507, 6508, 6509, 6511, 6512, 6513, 6551, 6715, 6717, 6718, 6740, 6741, 7275, ~~and 7351~~ 7351, and 11014 of, ~~and~~ to amend the heading of Article 2 (commencing with Section 6500) of Chapter 2 of, ~~and~~ to amend the heading of Article 4 (commencing with Section 6715) of Chapter 3 of, *and to amend the heading of Article 4 (commencing with Section 6740) of Chapter 4 of*, Part 2 of Division 6 of, the Welfare and Institutions Code, relating to intellectual disabilities.

LEGISLATIVE COUNSEL’S DIGEST

AB 2370, as amended, Mansoor. Mental retardation: change of term to intellectual disabilities.

Existing federal Medicaid provisions require a state to describe its Medicaid program in its state plan, which is required by federal law to provide for, among other things, a public process for determination of rates of payment under the plan for hospital services, nursing facility services, and services of intermediate care facilities for the mentally retarded.

Under existing law, various state statutes refer to mentally retarded persons in provisions relating to, among other things, services, commitment to state facilities, and criminal punishment.

This bill, *which would be known as the Shriver “R-Word” Act*, would revise various statutes to, instead, refer to a person with an intellectual disability. The bill would also state the intent of the Legislature not to make a change to services or the eligibility for services.

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. This act shall be known, and may be cited, as the
2 Shriver “R-Word” Act.

3 SECTION 1.

4 SEC. 2. Section 4502 of the Business and Professions Code is
5 amended to read:

6 4502. As used in this chapter, “psychiatric technician” means
7 any person who, for compensation or personal profit, implements
8 procedures and techniques which involve understanding of cause
9 and effect and which are used in the care, treatment, and
10 rehabilitation of mentally ill, emotionally disturbed, or
11 intellectually disabled persons and who has one or more of the
12 following:

13 (a) Direct responsibility for administering or implementing
14 specific therapeutic procedures, techniques, treatments, or
15 medications with the aim of enabling recipients or patients to make
16 optimal use of their therapeutic regime, their social and personal
17 resources, and their residential care.

COUNCIL AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: Senate Bill 1381: Mental Retardation: Change of term to intellectual disability

BILL SUMMARY: Sponsored by The Arc and United Cerebral Palsy in California, existing law refers to mental retardation or a mentally retarded person in provisions relating to, among other things, educational and social services, commitment to state facilities, and criminal punishment. SB 1381 would revise these provisions to refer instead to "intellectual disability" or "a person with an intellectual disability" and these changes will occur during routine revisions to laws and documents over the next several years; therefore, the state is not expected to incur any additional costs

BACKGROUND: It is estimated that seven to eight million Americans or one in ten families in the United States, experience intellectual disabilities. In a survey, conducted by the Special Olympics Global Collaborating Center, it found that 92% of young Americans (ages 8-18) report having heard the "R-Word" used, and 36% have heard the term used toward someone with intellectual disabilities. The R-word, "retard," is slang for the term mental retardation. Mental retardation was what doctors, psychologists, and other professionals used to describe people with significant intellectual impairment. Today the r-word has become a common word used by society as an insult for someone or something stupid.

ANALYSIS/DISCUSSION: The author stated that "The R-word used intentionally or unintentionally demeans and hurts people with intellectual disabilities. It is a term used in bullying and sometime hate crimes."

SB 1381 is a follow up to the Federal legislation S.2781 (Rosa's Law) that was signed into law on October 5, 2010. Rosa's Law, which takes its name and inspiration from the 9-year-old Rosa Marcellino, removes the terms "mental retardation" and "mentally retarded" from federal health, education and labor policy and replaces them with people first language "individual with an intellectual disability" and "intellectual disability." Two other states New York and Maryland have also made this significant change to their laws. Thirty-three California organizations and associations including, Autism Speaks, California Disability Services Association, Disability Rights Education Defense Fund, and Developmental Disabilities Area Board 5 have expressed support for this bill.

AB 2370 authored by Assemblyman Alan Mansoor is the Assembly version of this bill. However, S.B. 1381 is more extensive covering more sections in various state codes.

COUNCIL STRATEGIC PLAN OBJECTIVE: Goal #14: Public policy in California promotes the independence, productivity, inclusion and self determination of individuals with developmental disabilities and their families.

PRIOR COUNCIL ACTIVITY: None, although the council is committed to not labeling individuals with disabilities.

LPPC RECOMMENDATION: Support SB 1381.

ATTACHMENT: Legislative Digest of SB 1381(bill is very large)

PREPARED: Karim Alipourfard, May 1, 2012

AMENDED IN SENATE APRIL 10, 2012

SENATE BILL

No. 1381

Introduced by Senator *Senators Pavley, Anderson, and Rubio*
(Coauthors: Senators De León, DeSaulnier, and Padilla)
(Coauthors: Assembly Members Ammiano, Blumenfield, Hill, and
Huffman)

February 24, 2012

An act to amend Sections 4502 and 17206.1 of the Business and Professions Code, to amend Section 1761 of the Civil Code, to amend Sections 8769, 16191, 16195, 16196, 16200, 41306, 41401, and 51765 of the Education Code, to amend Sections 854.2, 6514, 12428, 12926, 14670.1, 14670.2, 14670.3, 14670.5, 14672.1, 14672.92, 16813, 16814, and 16816 of the Government Code, to amend Sections 1275.5, 1337.1, 1337.3, 13113, 51312, 110403, 123935, 125000, 127260, and 129395 of the Health and Safety Code, to amend Sections 10118, 10124, and 10203.4 of the Insurance Code, to amend Sections 1001.20, 1346, 1370.1, 1376, and 2962 of the Penal Code, to amend Section 1420 of the Probate Code, to amend Section 25276 of the Vehicle Code, and to amend Sections 4417, 4426, 4512, 4801, 5002, 5008, 5325, 5585.25, 6250, 6500, 6502, 6504, 6504.5, 6505, 6506, 6507, 6508, 6509, 6511, 6512, 6513, 6551, 6715, 6717, 6718, 6740, 6741, 7275, 7351, and 11014 of, and to amend the headings of Article 2 (commencing with Section 6500) of Chapter 2 of, Article 4 (commencing with Section 6715) of Chapter 3 of, and Article 4 (commencing with Section 6740) of Chapter 4 of, Part 2 of Division 6 of, the Welfare and Institutions Code, relating to intellectual disability.

LEGISLATIVE COUNSEL'S DIGEST

SB 1381, as amended, Pavley. Mental retardation: change of term to intellectual disability.

Existing law, law refers to mental retardation or a mentally retarded person in provisions relating to, among other things, educational and social services, commitment to state facilities, and criminal punishment.

This bill would revise these provisions to refer instead to intellectual disability or a person with an intellectual disability. This bill would ~~express the intent of the Legislature to not make~~ *provide that nothing in these provisions shall be construed as making* a substantive change in law or a change to services or the eligibility for services in revising this terminology. *This bill would make related and technical changes.*

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 increase
2 respect for people with disabilities by eliminating the use of the
3 outdated, offensive, and misleading terms “mental retardation”
4 and “mentally retarded.”

5 (b) Nothing in this act shall be construed as making a substantive
6 change in law or a change to services being provided or eligibility
7 standards in effect at the time of enactment.

8 (c) *As used in a state regulation or state publication or other*
9 *writing, the terms “mental retardation” and “mentally retarded*
10 *person” have the same meaning as the terms “intellectual*
11 *disability” and “person with intellectual disability,” unless the*
12 *context or an explicit provision of federal or state law clearly*
13 *requires a different meaning.*

14 (d) *It is the intent of the Legislature that state agencies revise*
15 *state regulations, and state publications and other writings change*
16 *the terminology as required by this act when there is another*
17 *reason to revise the regulation, publication, or other writing, thus*
18 *eliminating any additional state cost.*

19 SEC. 2. Section 4502 of the Business and Professions Code is
20 amended to read:

21 4502. As used in this chapter, “psychiatric technician” means
22 any person who, for compensation or personal profit, implements

COUNCIL AGENDA ITEM DETAIL SHEET

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

BILL SUMMARY: Sponsored by the State Council on Developmental Disabilities, 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 ways 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 maintains 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's 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.

Assembly Bill 2338 passed the Assembly Human Services Committee and the Assembly Appropriations Committee on April 10 and 25, 2012 respectively and, at the time of this update, is currently in the Third Reading file on the Assembly Floor. On April 10, 2012, the Disability Services Association issued a letter opposing Assembly Bill 2338 unless it was amended to place the priority of employment on the State rather

than focused on individuals with developmental disabilities. Subsequently, the authors' staff and Council staff met with the lobbyists for DSA to discuss their position and requests. Following that discussion, the authors' and Council staff developed concepts tying an employment first policy to the **existing** intent of the Lanterman Act to make services and supports available to persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age, to support the integration of persons with developmental disabilities into the mainstream life of the community, and to bring about more independent, productive, and normal lives for the persons served. The authors' staff developed the attached proposed amendments which connected existing law to a slightly revised policy that reads, **"it is the policy of the state that opportunities for integrated, competitive employment shall be given the highest priority for working age individuals with developmental disabilities, regardless of the severity of their disabilities. The policy shall be known as the Employment First Policy."** Preliminary response from DSA was "hopeful" that this addressed their opposition; however no formal communication has been forthcoming. The authors' intent is to amend the bill to reflect this language after it passes off the Assembly Floor and goes to the Senate committees for hearings. The Arc, on April 19, 2012 issued very similar concerns as DSA, although expressed them as a support if amended position (same position essentially), while the Association of Regional Center Agencies (ARCA) issued a support if amended position requesting some minor changes and requiring public education also adhere to the policy. The latter is in direct response to the recently enacted budget trailer bill language (Welfare and Institutions Code, section 4648.55) that states, in part:

"A regional center shall not purchase day program, vocational education, work services, independent living program, or mobility training and related transportation services for a consumer who is 18 to 22 years of age, inclusive, if that consumer is eligible for special education and related education services and has not received a diploma or certificate of completion, unless the individual program plan (IPP) planning team determines that the consumer's needs cannot be met in the educational system or grants an exemption pursuant to subdivision (d)"....

The authors' staff has been attempting to meet with ARCA to discuss this issue, however have previously indicated they would not address that issue in this bill.

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. The Council both supports and is the sponsor of AB 2338.

RECOMMENDATION(S): Update Only

ATTACHMENT: AB 2338, proposed amendments, and DSA, The Arc, and ARCA correspondence.

PREPARED: Carol J. Risley May 3, 2012

~~4869. (a) (1) 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. In furtherance of the intent of this division to make services and supports available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age, to support the integration of persons with developmental disabilities into the mainstream life of the community, and to bring about more independent, productive, and normal lives for the persons served, it is the policy of the state that opportunities for integrated, competitive employment shall be given the highest priority for working age individuals with developmental disabilities, regardless of the severity of their disabilities. This policy shall be known as the Employment First Policy.~~

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

~~(3) (2) Implementation of the policy shall be consistent with, and shall not infringe upon, the rights established pursuant to this division, including the right of people with developmental disabilities to make informed choices with respect to services and supports through the individual program planning process.~~

~~(4) (3) Integrated competitive employment is intended to be the first option considered by planning teams for working age individuals, but individuals may choose goals other than integrated competitive employment.~~

~~(5) (4) This chapter shall not be construed to expand the existing entitlement to services for persons with developmental services described in this division.~~

(b) Regional centers shall ensure that consumers, beginning at 16 years of age, and, where appropriate, their parents, legal guardians, or conservators, are provided with information, in a language that the consumer and, as appropriate, the consumer's representative understand, 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.

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



April 10, 2012

The Honorable Jim Beall, Chair
Assembly Human Services Committee
State Capitol, Room 5016
Sacramento, CA 95814

428 J Street, Suite 550
Sacramento, CA 95814
Phone: 916-441-5844
Fax: 916-441-2804
www.cal-dsa.org

RE: OPPOSE unless AMENDED AB 2338 (Chesbro and Beall)

Dear Assembly Member Beall:

The members of the California Disability Services Association (CDSA) support the lives of thousands of people with developmental disabilities throughout California in a wide variety of programs, including employment services. We respectfully **OPPOSE UNLESS AMENDED AB 2338 (Chesbro and Beall)**.

CDSA shares the vision of pursuing full employment for people with intellectual and developmental disabilities at wages that are at or above the minimum. We will work with all stakeholders to find pathways to this vision that provide integrated, effective, practical solutions to the many barriers that continue to limit employment opportunities for people with developmental disabilities.

But we are also strongly committed to the central principles of the Lanterman Developmental Services Act, California's landmark civil rights law that empowers people with disabilities; their family and their Inter-Disciplinary Team, not the State, to decide their own "priority outcomes".

AB 2338 addresses several of the deficiencies we identified in its predecessor bill, AB 254 (Beall) from the 2011 session. We applaud the authors of this bill for making stronger the language protecting the rights of people with disabilities to have access to all services necessary to support their lives. We also appreciate stronger language making clear that the decision of the type, scope, duration and intensity of services should continue to be made by the Interdisciplinary Team as part of the development of a consumer's Individual Program Plan.

However, one very important issue remains problematic in AB 2338, and that is the issue of the State, not the individual, determining what the priority outcome should be for ALL people with developmental disabilities.

The Lanterman Act does contain other priority statements. For example Section 4685(c)(1) addresses a priority to maintain minor children in their family home:

(1) The department and regional centers shall give a very high priority to the development and expansion of services and supports designed to assist families that are caring for their children at home, when that is the preferred objective in the individual program plan. This assistance may include, but is not limited to specialized medical and dental care, special training for parents, infant stimulation programs, respite for parents, homemaker services, camping, day care, short-term out-of-home care, child care, counseling, mental health services, behavior modification programs, special adaptive equipment such as wheelchairs, hospital beds, communication devices, and other necessary appliances and supplies, and advocacy to assist persons in securing income maintenance, educational services, and other benefits to which they are entitled.

This is the type or priority appropriate for inclusion in the Lanterman Act – one that makes it a priority for the State to invest the resources and develop the services and supports necessary for a consumer to pursue and achieve the goals and outcomes they have set for themselves.

If AB 2338 was amended to reword its “employment first policy” to reflect this type of preferences, CDSA would be please to remove its oppositon.

It should be a priority of the State of California to remove barriers and provide resources for necessary supports so that all individuals with developmental disabilities of working age have opportunities for integrated, competitive employment consistent with their rights under the Lanterman Act. In plain Language – Opportunity is for all.

AB 2338 would be greatly strengthened by making the critical link between the very limited resources the state has made available to encourage job development, placement and retention and achieving the goal of improving employment outcomes for people with disabilities.

For these reasons CDSA **OPPOSES UNLESS AMENDED AB 2338 (Chesbro and Beall)**. We urge your “NO” vote when the measure comes before you. If you have any questions regarding our positions, please contact Dwight Hansen, Hansen & Associates, at (916) 798-0550.

Sincerely,



Christopher J. Rice
Executive Director

C: Members, Assembly Human Services Committee
Eric Gelber, Committee Consultant



April 19, 2012

The Honorable Wesley Chesbro
State Capitol, Room 2141
Sacramento, CA 95814

Re: AB 2338 (Chesbro) -- Support if Amended

Dear Assembly Member Chesbro:

On behalf of The Arc and United Cerebral Palsy in California, an advocacy collaboration of people with intellectual and developmental disabilities and their families, friends and service providers, we thank you for your efforts to improve employment of people with developmental disabilities in California. In early January of this year we requested two amendments to the Employment First proposed legislation authored by Assembly Member Beall, AB 254, which were as follows:

1. Amend language and insert the IPP connection following the Employment First statement similar to the IPP reference in the examples of other priorities such as WIC 4689, 4689.1 (a), and 4685 – see examples below.
2. Change the language in Section 1, WIC 4646.5 (a)(4) by removing “Regional Center” and replacing it with “Planning Team.” The idea was that the wording made it look/feel that the regional center is the IPP decision maker when in fact it is an equal participant in the IPP team.

The purpose for our requests was to protect the consumer’s autonomy and authority in their IPP. We see that in AB 2338 our second request was accommodated, and while there have been efforts to address our first amendment, we do not believe it has been addressed fully. As written, we still believe the IPP is vulnerable, but the following amendment will resolve our concern, and will protect the individual program plan rights in the context of the employment first policy (based on Section 4689).

AB 2338 language:

4869. (a) (1) 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.

Our proposed change:

4869. (a) (1) It is the policy of the state that integrated, competitive employment is the a priority outcome for working age individuals with developmental disabilities, regardless of the degree of disability, when that is the preferred objective in the individual program plan. This policy shall be known as the Employment First Policy.

If this suggested language can be accommodated, we are confident that IPP protections will be in place and that we will be able to fully commit to supporting AB 2338 without qualification with this simple request.

Thank you for introducing this important bill and for considering our requested amendment.

Sincerely,



Tony Anderson
The Arc and United Cerebral Palsy in California
1225 8th Street, Suite 350
Sacramento, CA 95814
(916) 552-6619

cc:

Honorable Jim Beall, Jr.
Eric Gelber, Chief Consultant, Assembly Human Services Committee
Carol Risley, Executive Director, SCDD

Examples of priority language with IPP protection (emphasis added):

4685. (a) Consistent with state and federal law, the Legislature finds and declares that children with developmental disabilities most often have greater opportunities for educational and social growth when they live with their families. The Legislature further finds and declares that the cost of providing necessary services and supports which enable a child with developmental disabilities to live at home is typically

equal to or lower than the cost of providing out-of-home placement. The Legislature places **a** high priority on providing opportunities for children with developmental disabilities to live with their families, **when living at home is the preferred objective in the child's individual program plan.**

4689.1. (a) The Legislature declares that it places **a** high priority on providing opportunities for adults with developmental disabilities to live with families approved by family home agencies and to receive services and supports in those settings **as determined by the individual program plan.**

4689. Consistent with state and federal law, the Legislature places **a** high priority on providing opportunities for adults with developmental disabilities, regardless of the degree of disability, to live in homes that they own or lease with support available as often and for as long as it is needed, **when that is the preferred objective in the individual program plan.** In order to provide opportunities for adults to live in their own homes, the following procedures shall be adopted:

ARCA



COPY

April 5, 2012

Honorable Wesley Chesbro
P.O. Box 942849
Room 2141
Sacramento, CA 94249-0001

**RE: Assembly Bill 2338 (Chesbro) – Developmental services: Employment First Policy
ARCA position: SUPPORT IF AMENDED**

Dear Assembly Member Chesbro:

The Association of Regional Center Agencies (ARCA) represents the network of regional centers that advocate on behalf of and coordinate services for California's approximately 250,000 people with developmental disabilities. The purpose of this letter is to express our support if amended position to Assembly Bill 2338 (Chesbro).

This bill would require regional centers to provide to clients beginning at age 16 years information during individual program plan meetings about the Employment First Policy and associated service options to transition from school to work. ARCA supports the tenants of an Employment First policy but recommends amendments to the bill (enclosed) which would: 1) make uniform the age of applicability of this bill for clients ages 16 and older; 2) make clear that regional centers will provide information to clients and families about the Employment First Policy in the course of regularly scheduled individual program plan meetings; 3) make reference to the existing guarantee to transition planning under the Individuals with Disabilities Education Act.

Welfare and Institutions Code Section 4648.55 prohibits regional centers from purchasing vocational education or work services for regional center clients who continue to be eligible for services through public education, generally through age 22. The State Council on Developmental Disabilities noted in its Employment First report of August 2011 that "the likelihood of individuals with developmental disabilities obtaining employment is greater if they move directly from school to work..." Information from the Department of Developmental Services indicates that 67% of clients engaged in non-work day programs shortly after exiting school remained in those same types of programs four years later. These factors support the need for public education to also adhere to an Employment First Policy in the preparation of transition plans for special education students if there is to be serious progress made towards the ultimate goal of greater levels of integrated employment for individuals with developmental disabilities. ARCA would urge the California Legislature to consider a separate bill that would impose this requirement upon educational agencies.

If you have any additional questions or concerns regarding our position, please do not hesitate to contact Amy Westling in our office at awestling@arcanet.org or (916)446-7961 extension 18.

Sincerely,


Eileen Richey
Executive Director

Cc: Assembly Committee on Human Services
State Council on Developmental Disabilities
Eric Gelber

Amendments Mock-up for 2011-2012 AB 2338 (Chesbro)

*******Amendments are in BOLD*******

Mock-up based on Version Number 99 – Introduced 2/24/12

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4646.5 of the Welfare and Institutions Code is amended to read:

4646.5. (a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

(1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. For children with developmental disabilities, this process should include a review of the strengths, preferences, and needs of the child and the family unit as a whole. Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, authorized representative, if applicable, providers of services and supports, and other agencies. The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals.

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

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

~~—(4)~~

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

~~—(5)~~

(6) When agreed to by the consumer, the parents, legally appointed guardian, or authorized representative of a minor consumer, or the legally appointed conservator of an adult consumer or the authorized representative, including those appointed pursuant to subdivision (d) of Section 4548, subdivision (b) of Section 4701.6, and subdivision (e) of Section 4705, a review of the general health status of the adult or child including a medical, dental, and mental health needs shall be conducted. This review shall include a discussion of current

medications, any observed side effects, and the date of *the* last review of the medication. Service providers shall cooperate with the planning team to provide any information necessary to complete the health status review. If any concerns are noted during the review, referrals shall be made to regional center clinicians or to the consumer's physician, as appropriate. Documentation of health status and referrals shall be made in the consumer's record by the service coordinator.

—(6)

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

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

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

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

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

—(7)

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

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

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

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

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

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

4/5/12

Page 2 of 4

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

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

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

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

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

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

(2) Identifying strategies, best practices, and incentives for increasing integrated employment and gainful employment opportunities for people with developmental disabilities, including, but not limited to, ways to improve the transition planning process for students 14 16 years of age or older, and to develop partnerships with, and increase participation by, public and private employers and job developers.

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

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

(d) For purposes of this chapter, ~~"integrated employment" shall have the same definition as "integrated work" as defined in subdivision (e) of Section 4851.~~ the following definitions shall apply:

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

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(2) "Integrated employment" means "integrated work" as defined in subdivision (o) of Section 4851.

(3) "Microenterprises" means small businesses owned by individuals with developmental disabilities who have control and responsibility for decisionmaking and overseeing of the business, with accompanying business licenses, taxpayer identification numbers other than social security numbers, and separate business bank accounts. Microenterprises may be considered integrated competitive employment.

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

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

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

4869. (a) (1) 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.

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

(3) Implementation of the policy shall be consistent with, and shall not infringe upon, the rights established pursuant to this division **and the Individuals with Disabilities Education Act**, including the right of people with developmental disabilities to make informed choices with respect to services and supports through the individual program planning process.

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

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

(b) Regional centers shall ensure that ~~consumers,~~ **planning team meetings for consumers** beginning at 16 years of age, ~~and, where appropriate, their parents, legal guardians, or conservators, are provided with information, in a language that the consumer and, as appropriate, the consumer's representative understand,~~ **include 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.

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

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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 (e) 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 (e) 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

Draft
Executive Committee Meeting Minutes
April 10, 2012

Attending Members

Jennifer Allen
Lisa Cooley
Olivia Raynor
Ray Ceragioli

Members Absent

Leroy Shipp

Others Attending

Carol Risley
Melissa Corral
Michael Danti
Robin Maitino

1. **Call to Order**

Lisa Cooley called the meeting to order at 10:15 a.m. and established a quorum present.

2. **Welcome and Introductions**

Members and staff introduced themselves.

3. **Approval of December 13, 2011 Minutes**

It was moved/seconded (Raynor/Allen) and carried to approve the December 13, 2012, Executive Committee meeting minutes.

4. **Public Comments**

There were no public comments.

5. **Financial Update**

Michael Danti presented the financial statement for the period of July 1 through February 29, 2012, noting that our spending level is on target. All area boards are on target and within their allocations. Michael stated that the personal services column is a little high due to an increase in workers' compensation.

Oliva Raynor requested that Michael provide projections at future Committee meetings.

6. Committee Updates

a. **Legislative and Public Policy**

Assembly Bill (AB) 2338 - Was brought to the March Council meeting however due to a lack of quorum, this item was referred to Executive Committee for action. It was moved/seconded (Raynor/Allen) and carried to support AB 2338.

AB 171 - Was brought to the March Council meeting however due to a lack of quorum, this item was referred to Executive Committee for action. It was moved/seconded (Allen/Ceragioli) and carried to support AB 171 with amendments.

AB 1244 - Was brought to the March Council meeting however due to a lack of quorum, this item was referred to Executive Committee for action. It was moved/seconded (Ceragioli/Allen) and carried to support AB 1244 with amendments.

AB 1553 - Was brought to the March Council meeting however due to a lack of quorum, this item was referred to Executive Committee for action. It was moved/seconded (Allen/Ceragioli) and carried to support AB 1553.

Assembly Bill 1554 - Was brought to the March Council meeting however due to a lack of quorum, this item was referred to Executive Committee for action. It was moved/seconded (Ceragioli/Allen) and carried to support AB 1554 if amended.

AB 1525 - Was brought to the March Council meeting however due to a lack of quorum, this item was referred to Executive Committee for action. It was moved/seconded (Cooley/Raynor) and carried to support AB 1525 with training component added consistent with the existing standards of training in this area.

2012-13 Governor's Budget - Was brought to the March Council meeting however due to a lack of quorum, this item was referred to Executive Committee for action. It was moved/seconded (Raynor/Ceragioli) and carried to adopt the recommended positions on the 2012-13 Governor's Budget (attached).

7. Sponsorship Request

The sponsorship request from College Bound was brought to the March Council meeting however due to a lack of quorum, this item was referred to Executive Committee for action. College Bound is requesting SCDD funds be used to assist in paying stipends for the Director and other staff who provide supervision and support throughout the week. It was moved/seconded (Cooley/Allen) and carried to approve this sponsorship request.

8. 2013 Grant Cycle Proposal

Each federal fiscal year the Council administers grants to community-based organizations to fund new and innovative program development projects. All projects are designed to implement the California State Strategic Plan on Developmental Disabilities (Plan) goals and objectives and improve and enhance services for Californians with developmental disabilities and their families. Program Development Grants (PDG) provides funding for new approaches to serving Californians with developmental disabilities that are part of an overall strategy for systemic change. Available grant funds included in the Council budget are approximately \$1 million annually. However, they are subject to federal appropriations to the Council.

The area board executive directors recommend that \$20,000 of the 2013 grant cycle be managed locally by each board; limit local projects to no more than two projects per area; and boards be encouraged to collaborate on projects. It was moved/seconded (Allen/Raynor) and carried to approve the recommendation of the area board executive directors with the added stipulation that area boards would use a uniform evaluation tool.

9. Adjournment

The meeting was adjourned at 12:15 p.m.



State Council on Developmental Disabilities

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STATE OF CALIFORNIA

Edmund G. Brown Jr.
Governor

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Positions on 2012-13 Governor's Budget April 10, 2012

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.

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

"The Council advocates, promotes & implements policies and practices that achieve self-determination, independence, productivity & inclusion in all aspects of community life for Californians with developmental disabilities and their families."

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 (DDS)

Principles

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 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.

Budget solutions must be as far away as possible from direct services.

Community Services Program

- A total budget of \$4.063 billion representing an increase of \$79.2 million over 2011-12.

This includes increased funding for regional center operations and purchase of services to reflect increased caseload and expenditure data; decreased funding in regional center operations for the ICF-DD State Plan Amendment Administration Fees and day treatment and transportation costs for ICF-DD-H residents; a decrease to reflect updates expenditures in other department's budgets for Adult Day Health Centers and reductions in Medi-Cal caps and co-payments; an increase to reflect the sunset of the 4.25% payment reduction on June 30, 2012; an increase for the Financial Management Services for Participant-Directed Services ; a decrease to reflect a technical adjustment to annualize the cost containment proposals specified in Assembly Bill 104, Chapter 37, and Statutes of 2011; an increase to reflect a fund shift from California First Five Commission to the general fund (Proposition 10); and a decrease to reflect a trigger reduction of \$200 million general fund to be achieved.

The Council opposes the \$200 million trigger reduction and will revisit this item after DDS issues its proposed plan to address the \$200 million trigger reduction.

Developmental Centers

- Estimated average number of residents of 1,533 reflecting a decrease of 226 (12.8%). A total budget of \$559.1 million reflecting a decrease of \$18 million.

The Council requests a moratorium on admissions to developmental centers and the provision of flexibility and funding to provide community services and supports for those deflected from developmental center placement.

DEPARTMENT OF SOCIAL SERVICES (CDSS)

In-Home Supportive Services (IHSS)

- Elimination of "domestic and related services" (housework, shopping, and meal preparation) for approximately 254,000 IHSS with some exceptions this would affect recipients whose need for any domestic or related service is "met in common" with other household members, including children under age 18 who live with a parent.

The Council opposes elimination of domestic and related services in the IHSS program.

- An across-the-board 20 percent reduction in hours of service for the IHSS Program on April 1, 2012. The "trigger cuts" in the 2011-12 budget agreement imposed this reduction on January 1, 2012. A court injunction has thus far prevented the state from reducing hours.

The Council opposes a 20 percent across-the-board reduction in IHSS hours of service.

- All individuals receiving both Medi-Cal and Medicare benefits (dual eligibles) will be required to enroll in managed care health plans for their Medi-Cal benefits. The IHSS program will operate as it does today during 2012-13; all authorized IHSS benefits will be included in managed care plans. No IHSS savings are estimated to result from this proposal in 2012-13.

The Council opposes expansion from 4 to 10 counties and mandatory enrollment of beneficiaries into managed care. Current law authorizes integrated care pilots in 4 counties for the purpose of testing the assumptions regarding improved services and reduces costs for IHSS. The expansion lacks detail and is on a very aggressive timeline without adequate responses to the myriad of concerns raised by IHSS recipients and advocates.

DEPARTMENT OF HEALTH CARE SERVICES (DHCS)

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.

Medi-Cal

- Shifts 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. This proposal would also broaden the scope of managed care services to include In-Home Supportive Services, other home and community-based services, and nursing home care funded by Medi-Cal. These changes would be phased in over a three-year period beginning on January 1, 2013.

At this time, the Council opposes the mandatory enrollment of Medicare/Medi-Cal (dual eligibles) into managed care, in part because of the lack of specific details regarding how the proposal will be implemented. If implemented, the Council request duals are allowed to "opt-in" rather than be forced into managed care allowing maximum choice.

- Reduces eligibility for the Medical Therapy Program (MTP). Currently, the program does not require families to meet an income test. Under the proposal, families would be eligible for the MTP only if their income is less than \$40,000 per year or if they also receive services through the California Children's Services (CCS) Program and their CCS expenses exceed 20 percent of their income.

The Council opposes changes to the eligibility requirements for the Medical Therapy program because the outcome will reduce services to children with disabilities.

- Requires Medi-Cal enrollees to select their health plan during an annual open enrollment period and remain in that plan for a full year. Currently, Medi-Cal enrollees may, but normally do not, change their plans monthly.

The Council opposes prohibiting Medi-Cal enrollees from selecting their health plan yearly because it reduces current flexibility.

DEPARTMENT OF MENTAL HEALTH

Caregivers Resource Centers

- Elimination of all funding (\$2.9 million) for the Caregivers Resource Centers that provide services and supports to individuals with brain injuries.

The Council opposes elimination of the Caregiver Resource Centers because this is a vital support system for persons providing care to individuals with traumatic brain injuries.

DEPARTMENT OF REHABILITATION (DOR)

Vocational Rehabilitation

- A total budget of \$400.5 million, an increase of \$6 million over 2011-12.

The Council supports the Department of Rehabilitation budget.

Independent Living Services

- A total budget of \$20.6 million, a decrease of \$86,000 over 2011-12.

The Council supports the budget for independent living services.

CALIFORNIA DEPARTMENT OF EDUCATION (CDE)

General Education Mandates

- Proposed elimination of mandates for Agency Fee Arrangements, Caregiver Affidavits, Financial and Compliance Audits, Habitual Truants, Law Enforcement Agency Notifications, Mandate Reimbursement Process, Missing Children Reports, Notification of Truancy, Notification to Teachers: Pupil Discipline Records, Notification to Teachers: Pupil Suspension or Expulsion I and II, Behavioral Intervention Plans, Physical Performance Tests, Pupil Suspensions, Expulsions, Expulsion Appeals, and Threats Against Peace Officers.

The Council opposes the elimination of the mandates for behavioral intervention plans, pupil suspensions, expulsions and seclusion appeals, and notification of truancy in education.

Special Education

- Reduces 2011-12 funding for special education programs by \$24.3 million to reflect increased property tax revenue allocated to school districts due to the phase out of redevelopment agencies. Increases special education funding by \$12.3 million to reflect enrollment growth.

The Council supports proposed funding for special education.

CALIFORNIA COMMUNITY COLLEGES (CCC)

- Consolidate funding for nearly all categorical programs and allow community colleges to use the funds for any purpose.

The Council opposed the consolidation of the Disabled Students Program (DSP) with other categorical programs at community colleges. This is a vital service to support access to community colleges by individuals with disabilities.