



**LEGISLATION AND PUBLIC POLICY
COMMITTEE (LPPC)
MEETING NOTICE/AGENDA**

Posted at www.scdd.ca.gov

DATE: May 13, 2013

TIME: 10:00 a.m. – 3:00 p.m.

LOCATION: State Council on Developmental Disabilities
1507 21st Street, Suite 210
Sacramento, CA 95811
916/322-8481

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

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1. CALL TO ORDER	R. Ceragioli	
2. ESTABLISHMENT OF QUORUM	R. Ceragioli	
3. WELCOME AND INTRODUCTIONS	R. Ceragioli	
4. APPROVAL OF APRIL 4, 2013 MINUTES	R. Ceragioli	3
5. PUBLIC COMMENTS		

*This item is for members of the public only to provide comments and/or present information to the Committee on matters **not** on the agenda. Each person will be afforded up to three minutes to speak. Written requests, if any, will be*

considered first. The Committee will provide a public comment period, not to exceed a total of seven minutes, for public comment prior to action on each agenda item.

6. LEGISLATIVE ISSUES

A. State Budget Update

M. Polit

B. State Legislation

M. Polit

i. Update on Sponsored Bills

AB 1041 (Chesbro) Employment First Policy

12

SB 163 (Hueso) RC financial responsibility

20

SB 577 (Pavley) Employment Exploration and Incentives

22

ii. AB 620 (Buchanan), Safety Plan

33

iii. SB 579 (Berryhill), Quality Oversight

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iv. Update on Bills with Council Position

C. SCDD Legislative Platform Review

M. Polit

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7. FEDERAL BUDGET/LEGISLATIVE REPORT

M. Polit

A. Fair Labor Standards Act

C. Lapin

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B. Federal Budget Update

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C. TEAM Act

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8. MEETING SCHEDULE

R. Ceragioli

9. ADJOURNMENT

R. Ceragioli

DRAFT
Legislative & Public Policy Committee (LPPC) Minutes
April 4, 2013

Members Present

Ray Ceragioli, Chair
Jennifer Allen
Tho Vinh Banh
Connie Lapin
April Lopez
David Forderer

Members Absent

David Mulvaney
Barbara Wheeler
Lisa Davidson
Dan Boomer

Others Present

Karim Alipourfard
Mark Polit
Bob Phillips
Roberta Newton
Darin Lounds

1. CALL TO ORDER

Ray Ceragioli, Chairperson, called the meeting to order at 10:37 AM.

2. ESTABLISHMENT OF A QUORUM

A quorum was established.

3. INTRODUCTIONS AND ANNOUNCEMENTS

Members introduced themselves and announcements were made.

4. APPROVAL OF MARCH 12, 2013 MINUTES

It was moved, seconded (Lopez/Allen), and carried unanimously to approve the LPPC minutes, with the following changes: Add attendees Roberta Newton and Mary Agnes Nolan. as written. Indicate that Lapin and Lopez moved and seconded for support of SB 126 and Lopez and Banh moved and seconded for support of SB 555. Correct bill number of SB 555 from SB 155.

5. PUBLIC COMMENTS

Connie Lapin discussed that April is Autism Awareness Month. However, the Autism Self-Advocacy Network has asked that people call it Autism

Acceptance Month. This is in response to the emphasis on cure in the autism community. The self-advocates are saying they don't need to be changed, they need to be accepted.

6. LEGISLATIVE ISSUES

A. State Legislative Issues

i. **Equity and Diversity Legislation** was discussed at length. It was discussed that the state's goals for equity should not be achieved by decreasing services to people who have adequate service, so that everyone is inadequately served. Instead equity should be achieved by increasing access to services for those who are underserved. The IPP process should be administered fairly and equitably for all people. The committee further discussed the importance of taking advantage of this opportunity to address long standing inequities in services.

AB 1232 (Perez) would require the Department to consider outcomes based measures on cultural and linguistic competency of services when choosing a quality assessment instrument. Lapin moved Forderer seconded to support AB 1232. Motion adopted unanimously

SB 319 (Perez) would enhance regional center data collection, and their publication, on disparities in service delivery between regional center ethnic populations. Lapin moved and Forderer seconded to support SB 319, and to recommend amendments to emphasize the "fair and equitable access to services, pursuant to the IPP process." Motion adopted 5 yes, 0 no, 1 abstain.

SB 321 (Perez) would direct the Department to address issues of linguist and cultural competency of services and inequitable distribution of services in the regional centers' performance contracts. Lapin moved and Forderer seconded to support SB 321 and to recommend an amendment, if necessary, to require that regional center performance contracts be posted on the Department's website. The motion was adopted 5 yes, 0 no, 1 abstain.

SB 555 (Correa) addresses the linguistic and cultural competency of the IPP process and of services addressed by the IPP. The LPPC previously voted to recommend Council support. Tho Vinh Banh reviewed recent amendments to the bill. Lopez moved and Allen seconded to continue support of SB 555, as amended. Motion adopted unanimously.

ii. Accessible housing legislation SB 1 (Steinberg) and SB 391 (DeSaulnier) was explained by Darin Lounds, director of the East Bay Housing Consortium. It was discussed that both bills are critical for funding affordable housing for many low income populations, including people with developmental disabilities. However, these bills also present an opportunity to increase the availability of affordable AND accessible housing units. Forderer moved and Lapin seconded to support SB 1 and SB 391, and to work with the DD housing coalition to have these bills amended to include provisions for accessible housing. The motion was adopted 5 yes, 0 no, 1 abstain.

iii. Community Imperative Declaration was discussed at length. Lapin clarified that the Lanterman Coalition wishes to have members re-assert their support of the Community Imperative, to re-affirm their common values with respect to the right to community living. Chairman Ceragioli discussing the benefits of developmental centers and the continued need for some people, and the benefits of Fairview for his son. He emphasized that endorsement of the Declaration would mean that nobody should be served in developmental centers. Newton stated that the Declaration is consistent with the Lanterman Act. Banh emphasized that the Community Imperative is a statement of the fundamental right of all people with developmental disabilities to community living. Banh moved and Lapin seconded to endorse the Community Imperative Declaration. Motion was adopted 4 yes, 1 no, 1 abstain.

iv. Developmental Center Closure Plan - The Lanterman coalition is asking its members if they can support requiring the Department to create a plan for the closure of all developmental centers, with the exception of the forensic unit at Porterville, by a certain date. Chairman Ceragioli emphasized that more legislation is not needed to close DCs because statute already sets requirements for closure process, the IPP used in transition, and other factors. Also, statute has been recently amended with the moratorium on DC placements and evaluation of DC residents for community placement. The combination of new law and the increasing per person cost as DCs downsize will lead to the eventual closure of the facilities. It was discussed that there are benefits to an orderly plan for closure, since all agreed that closure of developmental centers are inevitable, except for the forensic unit at Porterville. The committee discussed that it is not enough to discuss closure, there needs to be development of appropriate community resources for people leaving developmental centers and that a deadline for closure was not appropriate

given the uncertainty and delays in developing community resources for people with complex needs. Lapin moved and Allen seconded to support the concept of the Department developing a plan, with stakeholder input, for the gradual and steady closure of all developmental centers in as timely a manner as possible, while at the same time developing an array of quality community services. The plan should include working with local communities so they will be welcoming to former developmental center residents and not hostile. The motion was adopted 4 yes, 1 no, 1 abstain.

v. Update on Bills LPPC Acted On. This agenda item was not discussed.

vi. SB 577 (Pavley) Employment. Polit reported that the Council has been asked to co-sponsor this legislation that is still being developed. The Committee expressed concerns that the Employment Preparation service include some quality control element and specify who is qualified to provide the services (such as CARF certified agencies). There was also concern that 75 hours a quarter was not adequate for the service, and that people requiring day programs would not be able to participate. Forderer emphasized that supporting people to find work is essential. The Committee agreed that if we co-sponsor, that the Council be in a position to help develop the legislation. Forderer moved and Allen seconded to co-sponsor SB 577. Motion adopted unanimously.

vii. Other Legislation This agenda item was not discussed.

B. State Budget Update

i. Pending Hearings. This agenda item was not discussed.

ii. IHSS - Settlement of Oster Lawsuit. This agenda item was not discussed.

C. SCDD Legislative Platform Review. This agenda item was not discussed.

7. FEDERAL BUDGET/LEGISLATIVE REPORT

A. Fair Labor Standards Act. This agenda item was not discussed.

B. Federal Budget Update. Ceragioli moved and Lopez seconded to oppose applying a Chained CPI to social security benefits. Motion adopted

unanimously. The committee briefly discussed proposals for per capita caps to Medicaid. Ceragioli moved and Forderer seconded to oppose any cuts to federal medical programs. The motion was adopted unanimously.

8. MEETING SCHEDULE

Due to potential conflicts with Council calendar, the next meeting will be not be held on May 16. The next meeting will be held on Monday, May 13, from 10:00 AM to 3:00 PM. Future meetings will start at 10AM to give the committee more time. The June meeting is tentatively scheduled for June 13.

9. ADJOURNMENT

The meeting was adjourned at 3:07 PM.

AB 1041

Date of Hearing: May 1, 2013

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Mike Gatto, Chair

AB 1041 (Chesbro) - As Introduced: February 22, 2013

Policy Committee: Human
Services Vote: 7 - 0

Urgency: No State Mandated Local Program:
No Reimbursable:

SUMMARY

This bill requires Department of Developmental Services (DDS) Regional Centers (RCs), to use an employment-first policy defined in the bill for Individual Program Planning (IPP) for consumers 16 years and older. Specifically, this bill:

- 1) States it is the policy of the state that integrated, competitive employment is the priority outcome for working-age individuals with developmental disabilities.
- 2) Requires RCs consider the employment-first policy when developing individual program plans for transition-age youth and working-age adults.
- 3) Requires RCs to ensure that, beginning at age 16, consumers and their parents or legal guardians be provided with the employment-first policy, options for integrated employment, and services and supports that enable consumers to transition from school to work.

FISCAL EFFECT

Unknown, potentially significant costs, to the extent this bill creates pressure to broaden the entitlement contained in the Lanterman Developmental Disabilities Services Act (Lanterman Act) to include an entitlement that all working-age consumers receive a prevailing wage job. This could cause significant increases in supportive and supplemental employment programs and

job training programs, particularly during periods of high unemployment. These costs could be partially offset by shifting consumers from other day programs to employment-related programs

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

COMMENTS

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

2)California's Developmental Services System annually assists approximately 260,000 individuals with developmental disabilities and their families through a statewide system of 21 regional centers. Of the \$4.9 billion (\$2.8 billion GF) proposed for the 2013-14 budget year, approximately \$4 billion is for services provided through the regional centers. The system employs 90,000 workers. Almost 99% of consumers receive community-based services and live with their parents or other relatives, in their own homes or apartments, or in group homes designed to meet their medical and behavioral needs.

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

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

3)Related Legislation .

a) AB 2338 (Chesbro), 2012, was virtually identical to this

bill. That bill was held on the Senate Appropriations Committee's Suspense File.

- b) AB 254 (Beall), 2011, was substantially similar to this bill but raised cost issues and was held on this committee's Suspense File. AB 1041 addresses the cost issues by removing the authorization for increased data collection, changing the age of the consumer from 14 to 16, and clarifying that this legislation is not intended to expand the current entitlement contained in the Lanterman Act.
- c) AB 287 (Beall), Statutes of 2009, established the Employment First Committee as a standing committee of the State Council on Developmental Disabilities to identify strategies and best practices for significantly increasing the numbers of people with developmental disabilities in competitive integrated employment and the number who earn wages at or above minimum wage.
- d) AB 2424 (Beall), 2008, would have established an employment-first policy. Unlike AB 1041, AB 2424 made significant changes to the IPP process and imposed responsibilities on regional centers and DDS related to the development of materials, the provision of information, and the conduct of IPP meetings. AB 2424 also addressed non-employment-related integrated activities. AB 2424 was held by the Senate Appropriations Committee.

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

bill. That bill was held on the Senate Appropriations Committee's Suspense File.

- b) AB 254 (Beall), 2011, was substantially similar to this bill but raised cost issues and was held on this committee's Suspense File. AB 1041 addresses the cost issues by removing the authorization for increased data collection, changing the age of the consumer from 14 to 16, and clarifying that this legislation is not intended to expand the current entitlement contained in the Lanterman Act.
- c) AB 287 (Beall), Statutes of 2009, established the Employment First Committee as a standing committee of the State Council on Developmental Disabilities to identify strategies and best practices for significantly increasing the numbers of people with developmental disabilities in competitive integrated employment and the number who earn wages at or above minimum wage.
- d) AB 2424 (Beall), 2008, would have established an employment-first policy. Unlike AB 1041, AB 2424 made significant changes to the IPP process and imposed responsibilities on regional centers and DDS related to the development of materials, the provision of information, and the conduct of IPP meetings. AB 2424 also addressed non-employment-related integrated activities. AB 2424 was held by the Senate Appropriations Committee.

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

ASSEMBLY BILL

No. 1041

**Introduced by Assembly Member Chesbro
(Principal coauthor: Assembly Member Garcia)
(Principal coauthor: Senator Beall)
(Coauthor: Assembly Member Ammiano)**

February 22, 2013

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 1041, 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

1 monitoring of service delivery. These goals and objectives should
2 maximize opportunities for the consumer to develop relationships,
3 be part of community life in the areas of community participation,
4 housing, work, school, and leisure, increase control over his or her
5 life, acquire increasingly positive roles in community life, and
6 develop competencies to help accomplish these goals.

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

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

14 ~~(4)~~

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

26 ~~(5)~~

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

- 1 appropriate. Documentation of health status and referrals shall be
2 made in the consumer's record by the service coordinator.
- 3 ~~(6)~~
- 4 (7) (A) The development of a transportation access plan for a
5 consumer when all of the following conditions are met:
- 6 (i) The regional center is purchasing private, specialized
7 transportation services or services from a residential, day, or other
8 provider, excluding vouchered service providers, to transport the
9 consumer to and from day or work services.
- 10 (ii) The planning team has determined that a consumer's
11 community integration and participation could be safe and
12 enhanced through the use of public transportation services.
- 13 (iii) The planning team has determined that generic
14 transportation services are available and accessible.
- 15 (B) To maximize independence and community integration and
16 participation, the transportation access plan shall identify the
17 services and supports necessary to assist the consumer in accessing
18 public transportation and shall comply with Section 4648.35. These
19 services and supports may include, but are not limited to, mobility
20 training services and the use of transportation aides. Regional
21 centers are encouraged to coordinate with local public
22 transportation agencies.
- 23 ~~(7)~~
- 24 (8) A schedule of regular periodic review and reevaluation to
25 ascertain that planned services have been provided, that objectives
26 have been fulfilled within the times specified, and that consumers
27 and families are satisfied with the individual program plan and its
28 implementation.
- 29 (b) For all active cases, individual program plans shall be
30 reviewed and modified by the planning team, through the process
31 described in Section 4646, as necessary, in response to the person's
32 achievement or changing needs, and no less often than once every
33 three years. If the consumer or, where appropriate, the consumer's
34 parents, legal guardian, authorized representative, or conservator
35 requests an individual program plan review, the individual program
36 shall be reviewed within 30 days after the request is submitted.
- 37 (c) (1) The department, with the participation of representatives
38 of a statewide consumer organization, the Association of Regional
39 Center Agencies, an organized labor organization representing
40 service coordination staff, and the Organization of Area Boards

1 shall prepare training material and a standard format and
2 instructions for the preparation of individual program plans, which
3 embodies *embody* an approach centered on the person and family.

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

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

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

12 4868. (a) The State Council on Developmental Disabilities
13 shall form a standing Employment First Committee consisting of
14 the following members:

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

18 (2) A member of the consumer advisory committee of the state
19 council.

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

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

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

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

1 (3) Identifying existing sources of employment data and
2 recommending goals for, and approaches to measuring progress
3 in, increasing integrated employment and gainful employment of
4 people with developmental disabilities.

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

30 (d) *For purposes of this chapter, the following definitions shall*
31 *apply:*

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

38 (d) ~~For purposes of this chapter, “integrated~~

1 (2) *“Integrated employment” shall have the same definition as*
2 *means “integrated work” as defined in subdivision (o) of Section*
3 *4851.*

4 (3) *“Microenterprises” means small businesses owned by*
5 *individuals with developmental disabilities who have control and*
6 *responsibility for decisionmaking and overseeing the business,*
7 *with accompanying business licenses, taxpayer identification*
8 *numbers other than social security numbers, and separate business*
9 *bank accounts. Microenterprises may be considered integrated*
10 *competitive employment.*

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

15 (e) The committee, by July 1, 2011, and annually thereafter,
16 shall provide a report to the appropriate policy committees of the
17 Legislature and to the Governor describing its work and
18 recommendations. The report due by July 1, 2011, shall include
19 the proposed ~~Employment First Policy~~ *policy* described in
20 paragraph (4) of subdivision (c).

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

23 4869. (a) (1) In furtherance of the intent of this division to
24 make services and supports available to enable persons with
25 developmental disabilities to approximate the pattern of everyday
26 living available to people without disabilities of the same age, to
27 support the integration of persons with developmental disabilities
28 into the mainstream life of the community, and to bring about more
29 independent, productive, and normal lives for the persons served,
30 it is the policy of the state that opportunities for integrated,
31 competitive employment shall be given the highest priority for
32 working age individuals with development disabilities, regardless
33 of the severity of their disabilities. This policy shall be known as
34 the Employment First Policy.

35 (2) Implementation of the policy shall be consistent with, and
36 shall not infringe upon, the rights established pursuant to this
37 division, including the right of people with developmental
38 disabilities to make informed choices with respect to services and
39 supports through the individual program planning process.

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

5 (4) This chapter shall not be construed to expand the existing
6 entitlement to services for persons with developmental disabilities
7 described in this division.

8 (5) This chapter shall not alleviate schools of their responsibility
9 to provide transition services to individuals with developmental
10 disabilities.

11 (b) Regional centers shall ensure that consumers, beginning at
12 16 years of age, and, where appropriate, their parents, legal
13 guardians, or conservators, are provided with information, in a
14 language that the consumer and, as appropriate, the consumer's
15 representative understand, about the Employment First Policy,
16 about options for integrated competitive employment, and about
17 services and supports, including postsecondary education, available
18 to enable the consumer to transition from school to work, and to
19 achieve the outcomes of obtaining and maintaining integrated
20 competitive employment.

21 (c) The department may request information from regional
22 centers on current and planned activities related to the Employment
23 First Policy.

O

AMENDED IN SENATE APRIL 25, 2013

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 163

Introduced by Senator Hueso

February 1, 2013

An act to add Section 4659.1 to the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

SB 163, as amended, Hueso. Developmental services: health insurance payments.

Under existing law, the Lanterman Developmental Disabilities Services Act, the State Department of Developmental Services is authorized to contract with regional centers to provide services and supports to individuals with developmental disabilities, including, but not limited to, autism. The services and supports to be provided to a regional center consumer are contained in an individual program plan (IPP) or individualized family services plan (IFSP) developed in accordance with prescribed requirements.

This bill would require a regional center to pay any applicable copayment, coinsurance, ~~and~~ *or* deductible imposed by a health insurance policy or health care service plan for a service or support required by a consumer's IPP or IFSP, as specified. This bill would prohibit a regional center from imposing on the consumer or his or her family a share of cost for, or income requirements relating to, those payments, and from seeking reimbursement for those payments. This bill would require ~~a regional center~~ *the department* to establish appropriate application and documentation forms to implement those provisions.

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 4659.1 is added to the Welfare and
- 2 Institutions Code, to read:
- 3 4659.1. (a) If a service or support provided pursuant to a
- 4 consumer’s individual program plan under this division or
- 5 individualized family service plan pursuant to the California Early
- 6 Intervention Services Act (Title 14 (commencing with Section
- 7 95000) of the Government Code) is paid for, in whole or in part,
- 8 by the consumer’s or his or her parents’ private health insurance
- 9 policy or health care service plan, the regional center shall pay any
- 10 applicable copayment, coinsurance, or deductible associated with
- 11 the service or support for which the consumer and his or her family
- 12 are responsible.
- 13 (b) The regional center shall not impose on the consumer or his
- 14 or her family a share of cost for, or income requirements relating
- 15 to, payments made pursuant to subdivision (a), and shall not seek
- 16 reimbursement for any payments made pursuant to subdivision
- 17 (a).
- 18 (c) The regional center may pay the family or provide direct
- 19 reimbursement to the provider, or to the health insurer or health
- 20 care service plan, for the payments required under subdivision (a).
- 21 (d) A consumer and his or her family shall provide appropriate
- 22 documentation to affirm that the payments required under
- 23 subdivision (a) are for services that have been established under
- 24 the consumer’s individual program plan or individualized family
- 25 service plan.
- 26 (e) ~~The regional center~~ *department* shall establish appropriate
- 27 application and documentation forms to implement this section.

O

AMENDED IN SENATE APRIL 15, 2013

AMENDED IN SENATE APRIL 9, 2013

SENATE BILL

No. 577

Introduced by Senator Pavley

February 22, 2013

An act to amend Sections 4850, 4851, 4854, and 4860 of, to add Section 4868.5 to, and to add and repeal Section 4870 of, the Welfare and Institutions Code, relating to ~~autism~~ *developmental disabilities*.

LEGISLATIVE COUNSEL'S DIGEST

SB 577, as amended, Pavley. ~~Autism—services: and other developmental disabilities:~~ pilot program: employment.

The Lanterman Developmental Disabilities Services Act authorizes the State Department of Developmental Services to contract with regional centers to provide services and support to individuals with developmental disabilities, including autism. Existing law governs the habilitation services provided for adult consumers of regional ~~services centers~~, including work activity programs, as described, and establishes an hourly rate for supported employment services provided to consumers receiving individualized services.

This bill would require ~~the State Department of Developmental Services to establish a pilot program for young adults with autism to help them find pathways to financial independence through work. The bill would require the pilot program to develop and implement a new model for providing employment services to autistic individuals and to create financial incentives for employment service providers, as specified, among other requirements. The bill would require a job exploration and discovery plan, as specified, to be developed if job exploration and discovery services are determined to be a necessary~~

step to achieve a supported employment outcome. The bill would establish an hourly rate for job exploration and discovery services of \$40 per hour for a maximum of 75 hours per calendar quarter for all services identified and provided in the plan.

This bill would require the State Department of Developmental Services to establish a pilot program for young adults with autism and other developmental disabilities to help them find pathways to financial independence through work. The bill would require the pilot program to develop and implement a new model for providing employment services to these individuals and to create financial incentives for employment service providers, as specified, among other requirements.

The bill would also establish, ~~only until January 1, 2019~~ July 1, 2018, a pilot program operative in specified regional ~~catchment areas~~ centers, pursuant to which the State Department of Developmental Services would be authorized to allocate moneys for the support of programs provided by the participating regional ~~catchment areas~~ centers to promote the employment of ~~developmentally disabled~~ persons with autism and developmental disabilities. The bill would require the State Department of Developmental Services and the Department of Finance to establish, on or before July 1, 2014, the Employment Growth Fund for these purposes, as specified. The fund would consist of moneys appropriated by the Legislature from cost savings resulting from the reduced amount of support payments made to ~~developmentally disabled~~ persons with autism and developmental disabilities who earn wages from gainful employment attained as a result of their participation in the pilot ~~project~~ program, as specified. The bill would impose specified duties on the State Department of Developmental Services relating to the pilot program, including preparing an annual report and designing and implementing an evaluation of the pilot program, as specified.

The bill would also set forth related legislative findings and declarations.

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:

1 (a) *Individuals with developmental disabilities have to struggle*
2 *to find gainful employment. Unemployment amongst the*
3 *developmentally disabled population is approximately 80 percent.*

4 (b) *Within the developmentally disabled community, autism is*
5 *the fastest growing population, making up approximately 50*
6 *percent of the annual new caseload of regional centers in some*
7 *parts of the state.*

8 ~~(a)~~

9 (c) One in three adults with autism do not have paid work
10 experience or a college or technical education seven years after
11 leaving the K-12 school system.

12 ~~(b)~~

13 (d) In order to increase the self-sufficiency of young adults with
14 autism *and other developmental disabilities*, including increased
15 earning capacity and reduced government benefit support, it is
16 important that the state implement a program to provide
17 individualized skills assessment, social cue training, and specific
18 support to ensure their academic and employment success.

19 ~~(e)~~

20 (e) The Governor and the Legislature must address the growing
21 need for new models of assessment, career training, and expanding
22 employment opportunities and support options for young adults
23 with autism *and other developmental disabilities* between 18 and
24 30 years of age. If this population is left without purposefully
25 designed pathways into employment, these young adults will
26 remain at high risk of public dependency throughout the course
27 of their lives.

28 SEC. 2. Section 4850 of the Welfare and Institutions Code is
29 amended to read:

30 4850. (a) The Legislature reaffirms its intent that habilitation
31 services for adults with developmental disabilities should be
32 planned and provided as a part of a continuum and that habilitation
33 services should be available to enable persons with developmental
34 disabilities to approximate the pattern of everyday living available
35 to nondisabled people of the same age.

36 (b) The Legislature further intends that habilitation services
37 shall be provided to adults with developmental disabilities as
38 specified in this chapter in order to guarantee the rights stated in
39 Section 4502.

1 (c) The Legislature further intends that in order to increase
2 effectiveness and opportunity to gain meaningful employment
3 opportunities, habilitation services shall also provide job
4 exploration and discovery services to enhance and promote jobs
5 skills, develop social skills necessary for successful employment,
6 and provide targeted outreach to employers for individuals with
7 developmental disabilities.

8 SEC. 3. Section 4851 of the Welfare and Institutions Code is
9 amended to read:

10 4851. The definitions contained in this chapter shall govern
11 the construction of this chapter, with respect to habilitation services
12 provided through the regional center, and unless the context
13 requires otherwise, the following terms shall have the following
14 meanings:

15 (a) "Habilitation services" means community-based services
16 purchased or provided for adults with developmental disabilities,
17 including services provided under the Work Activity Program and
18 the Supported Employment Program, to prepare and maintain them
19 at their highest level of vocational functioning, or to prepare them
20 for referral to vocational rehabilitation services.

21 (b) "Individual program plan" means the overall plan developed
22 by a regional center pursuant to Section 4646.

23 (c) "Individual habilitation service plan" means the service plan
24 developed by the habilitation service vendor to meet employment
25 goals in the individual program plan.

26 (d) "Department" means the State Department of Developmental
27 Services.

28 (e) "Work activity program" includes, but is not limited to,
29 sheltered workshops or work activity centers, or community-based
30 work activity programs certified pursuant to subdivision (f) or
31 accredited by CARE, the Rehabilitation Accreditation Commission.

32 (f) "Certification" means certification procedures developed by
33 the Department of Rehabilitation.

34 (g) "Work activity program day" means the period of time
35 during which a Work Activity Program provides services to
36 consumers.

37 (h) "Full day of service" means, for purposes of billing, a day
38 in which the consumer attends a minimum of the declared and
39 approved work activity program day, less 30 minutes, excluding
40 the lunch period.

- 1 (i) "Half day of service" means, for purposes of billing, any day
2 in which the consumer's attendance does not meet the criteria for
3 billing for a full day of service as defined in subdivision (g), and
4 the consumer attends the work activity program not less than two
5 hours, excluding the lunch period.
- 6 (j) "Supported employment program" means a program that
7 meets the requirements of subdivisions (n) to (s), inclusive.
- 8 (k) "Consumer" means any adult who receives services
9 purchased under this chapter.
- 10 (l) "Accreditation" means a determination of compliance with
11 the set of standards appropriate to the delivery of services by a
12 work activity program or supported employment program,
13 developed by CARF, the Rehabilitation Accreditation Commission,
14 and applied by the commission or the department.
- 15 (m) "CARF" means CARF the Rehabilitation Accreditation
16 Commission.
- 17 (n) "Supported employment" means paid work that is integrated
18 in the community for individuals with developmental disabilities.
- 19 (o) "Integrated work" means the engagement of an employee
20 with a disability in work in a setting typically found in the
21 community in which individuals interact with individuals without
22 disabilities other than those who are providing services to those
23 individuals, to the same extent that individuals without disabilities
24 in comparable positions interact with other persons.
- 25 (p) "Supported employment placement" means the employment
26 of an individual with a developmental disability by an employer
27 in the community, directly or through contract with a supported
28 employment program. This includes provision of ongoing support
29 services necessary for the individual to retain employment.
- 30 (q) "Allowable supported employment services" means the
31 services approved in the individual program plan and specified in
32 the individual habilitation service plan for the purpose of achieving
33 supported employment as an outcome, and may include any of the
34 following:
- 35 (1) Job development, to the extent authorized by the regional
36 center.
 - 37 (2) Program staff time for conducting job analysis of supported
38 employment opportunities for a specific consumer.
 - 39 (3) Program staff time for the direct supervision or training of
40 a consumer or consumers while they engage in integrated work

1 unless other arrangements for consumer supervision, including,
2 but not limited to, employer supervision reimbursed by the
3 supported employment program, are approved by the regional
4 center.

5 (4) Community-based training in adaptive functional and social
6 skills necessary to ensure job adjustment and retention.

7 (5) Counseling with a consumer's significant other to ensure
8 support of a consumer in job adjustment.

9 (6) Advocacy or intervention on behalf of a consumer to resolve
10 problems affecting the consumer's work adjustment or retention.

11 (7) Ongoing support services needed to ensure the consumer's
12 retention of the job.

13 (r) "Group services" means job coaching in a group supported
14 employment placement at a job coach-to-consumer ratio of not
15 less than one-to-three nor more than one-to-eight where services
16 to a minimum of three consumers are funded by the regional center
17 or the Department of Rehabilitation. For consumers receiving
18 group services, ongoing support services shall be limited to job
19 coaching and shall be provided at the worksite.

20 (s) "Individualized services" means job coaching and other
21 supported employment services for regional center-funded
22 consumers in a supported employment placement at a job
23 coach-to-consumer ratio of one-to-one, and that decrease over time
24 until stabilization is achieved. Individualized services may be
25 provided on or off the jobsite.

26 (t) "Job exploration and discovery" means (1) services provided
27 to enhance employment readiness, (2) social skill development
28 services necessary to obtain and maintain employment and to
29 secure and support participation in internship and volunteer
30 opportunities, (3) services to access and participate in
31 postsecondary education or career technical education, (4) services
32 to develop resume and interview skills, and (5) services to conduct
33 targeted employer outreach to secure employment.

34 SEC. 4. Section 4854 of the Welfare and Institutions Code is
35 amended to read:

36 4854. (a) In developing the individual habilitation service plan
37 pursuant to Section 4853, the habilitation service provider shall
38 develop specific and measurable objectives to determine whether
39 the consumer demonstrates ability to reach or maintain individual
40 employment goals in all of the following areas:

- 1 (1) Participation in paid work for a specified period of time.
- 2 (2) Obtaining or sustaining a specified productivity rate.
- 3 (3) Obtaining or sustaining a specified attendance level.
- 4 (4) Demonstration of appropriate behavior for a work setting.
- 5 (b) If job exploration and discovery services are determined to
- 6 be a necessary step to achieve a supported employment outcome,
- 7 a job exploration and discovery plan shall be developed.

8 SEC. 5. Section 4860 of the Welfare and Institutions Code is
9 amended to read:

10 4860. (a) (1) The hourly rate for supported employment
11 services provided to consumers receiving individualized services
12 shall be thirty dollars and eighty-two cents (\$30.82).

13 (2) Job coach hours spent in travel to consumer worksites may
14 be reimbursable for individualized services only when the job
15 coach travels from the vendor's headquarters to the consumer's
16 worksite or from one consumer's worksite to another, and only
17 when the travel is one way.

18 (b) The hourly rate for group services shall be thirty dollars and
19 eighty-two cents (\$30.82), regardless of the number of consumers
20 served in the group. Consumers in a group shall be scheduled to
21 start and end work at the same time, unless an exception that takes
22 into consideration the consumer's compensated work schedule is
23 approved in advance by the regional center. The department, in
24 consultation with stakeholders, shall adopt regulations to define
25 the appropriate grounds for granting these exceptions. When the
26 number of consumers in a supported employment placement group
27 drops to fewer than the minimum required in subdivision (r) of
28 Section 4851, the regional center may terminate funding for the
29 group services in that group, unless, within 90 days, the program
30 provider adds one or more regional centers, or Department of
31 Rehabilitation-funded supported employment consumers to the
32 group.

33 (c) Job coaching hours for group services shall be allocated on
34 a prorated basis between a regional center and the Department of
35 Rehabilitation when regional center and Department of
36 Rehabilitation consumers are served in the same group.

37 (d) When Section 4855 applies, fees shall be authorized for the
38 following:

39 (1) A three-hundred-sixty-dollar (\$360) fee shall be paid to the
40 program provider upon intake of a consumer into a supported

1 employment program. No fee shall be paid if that consumer
2 completed a supported employment intake process with that same
3 supported employment program within the previous 12 months.

4 (2) A seven-hundred-twenty-dollar (\$720) fee shall be paid
5 upon placement of a consumer in an integrated job, except that no
6 fee shall be paid if that consumer is placed with another consumer
7 or consumers assigned to the same job coach during the same hours
8 of employment.

9 (3) A seven-hundred-twenty-dollar (\$720) fee shall be paid after
10 a 90-day retention of a consumer in a job, except that no fee shall
11 be paid if that consumer has been placed with another consumer
12 or consumers, assigned to the same job coach during the same
13 hours of employment.

14 (e) The hourly rate for job exploration and discovery services
15 shall be forty dollars (\$40) per hour for a maximum of 75 hours
16 per calendar quarter for all services identified and provided in the
17 job exploration and discovery plan as developed pursuant to
18 subdivision (b) of Section 4854.

19 (f) Notwithstanding paragraph (4) of subdivision (a) of Section
20 4648, the regional center shall pay the supported employment
21 program rates established by this section.

22 SEC. 6. Section 4868.5 is added to the Welfare and Institutions
23 Code, to read:

24 4868.5. (a) The State Department of Developmental Services
25 shall establish a pilot program for young adults with autism *and*
26 *other developmental disabilities* to help them find pathways to
27 financial independence through work. The program shall be
28 developed and implemented to assist *those* individuals ~~with autism~~
29 to obtain integrated employment outcomes that result in sufficient
30 wages and benefits in order to decrease, over time, their
31 dependency on public financial support.

32 (b) The pilot program described in subdivision (a) shall do all
33 of the following:

34 (1) Develop and implement a new model for providing
35 employment services to autistic individuals *and individuals with*
36 *other developmental disabilities* or modify an existing model for
37 providing those services.

38 (2) Identify existing support services that may be modified or
39 combined with supplemental services to provide skills assessment,
40 training, and transition services.

1 (3) Utilize available federal and state incentive programs.
2 (4) Create financial incentives for employment service providers
3 who assist the individuals served by the pilot program to become
4 successfully employed in jobs that pay wages that equal or exceed
5 the Social Security Administration's substantial gainful activity
6 level or result in the individual obtaining employer-based health
7 benefits.

8 (5) Develop and implement a protocol for collecting and
9 evaluating data regarding the outcomes of autistic individuals *and*
10 *individuals with other developmental disabilities* who participate
11 in the pilot program.

12 SEC. 7. Section 4870 is added to the Welfare and Institutions
13 Code, to read:

14 4870. (a) There is hereby established a pilot program in the
15 following regional ~~catchment areas:~~ *centers:* Golden Gate Regional
16 Center, East Bay Regional Center, Alta California Regional Center,
17 Tri-Counties Regional Center, *Orange County Regional Center,*
18 and San Diego Regional Center. ~~The~~ *If additional regional centers*
19 *express interest in participating in the pilot program pursuant to*
20 *this section, the department may approve up to two additional*
21 *regional centers.*

22 (b) The pilot program shall include all of the following:

23 (1) The State Department of Developmental Services and the
24 Department of Finance shall establish, on or before July 1, 2014,
25 the Employment Growth Fund for purposes of the pilot project.
26 The fund shall consist of moneys appropriated by the Legislature
27 for purposes of this section from cost savings resulting from the
28 reduced amount of support payments made to ~~developmentally~~
29 ~~disabled~~ *persons with autism and other developmental disabilities*
30 *who earn wages from gainful employment attained as a result of*
31 *their participation in the pilot-project program, as follows:*

32 (A) The sum of two hundred dollars (\$200) shall be allocated
33 to the fund *from funds payable to the State Department of Health*
34 *Care Services pursuant to the Medi-Cal program to the extent*
35 *authorized by federal law for each Medi-Cal eligible consumer of*
36 *regional center services for each month that he or she is enrolled*
37 *in an employer-paid health benefit plan.*

38 (B) The sum of one thousand dollars (\$1,000) shall be allocated
39 to the fund *from the Department of Rehabilitation, for each*
40 *consumer of regional center services who earns a monthly wage*

1 that exceeds the substantial gainful activity level, as established
 2 by the federal Social Security Administration, for at least nine
 3 consecutive months *if the Department of Rehabilitation has*
 4 *received cost reimbursement in that amount from the federal*
 5 *government pursuant to the federal Ticket to Work program.* This
 6 sum shall be allocated on a one-time basis for each consumer who
 7 meets that criteria.

8 (C) The total amount allocated pursuant to paragraphs (A) and
 9 (B) shall be deposited into the fund on a quarterly basis.

10 (2) Each participating regional ~~catchment area~~ center shall
 11 submit the following information to the State Department of
 12 Developmental Services:

13 (A) Information regarding each consumer who receives
 14 Medi-Cal benefits and is subsequently enrolled in an employer-paid
 15 health benefit plan.

16 (B) Information regarding each consumer who earns a monthly
 17 wage that exceeds the substantial gainful activity level, as
 18 established by the federal Social Security Administration, for at
 19 least nine consecutive months.

20 (3) On and after July 1, 2015 the State Department of
 21 Developmental Services ~~may~~ shall allocate funds from the
 22 Employment Growth Fund ~~for the support of programs provided~~
 23 ~~by the participating regional catchment areas to promote the~~
 24 ~~habilitation of developmentally disabled persons to supported~~
 25 ~~employment providers who assist consumers to attain either of the~~
 26 ~~thresholds described in subparagraph (A) or (B) of paragraph (1).~~

27 (4) The State Department of Developmental Services shall do
 28 all of the following:

29 (A) ~~Biannually~~ Annually determine the average cost of providing
 30 ~~habilitative adult developmental center~~ services to
 31 ~~developmentally disabled persons who receive services from with~~
 32 ~~developmental disabilities in the participating regional catchment~~
 33 ~~areas centers participating in the pilot program~~ and compare that
 34 average cost to the ~~statewide average~~ actual cost of providing
 35 those supported employment services to consumers in the pilot
 36 program. The department, once it has determined the difference
 37 between those costs, shall allocate to the Employment Growth
 38 Fund 50 percent of the savings if the average cost of adult
 39 developmental center services is higher than the actual costs of
 40 the supported employment services provided to any consumer who

1 *meets either threshold described in subparagraph (A) or (B) of*
2 *paragraph (1).*

3 (B) Prepare an annual report regarding the number of
4 ~~developmentally disabled persons with developmental disabilities~~
5 ~~who receive habilitative services from the participating regional~~
6 ~~catchment areas, and estimating the cost savings to the state~~
7 ~~resulting as a result of the program, and submit the report to the~~
8 ~~Legislature centers as a result of the pilot program and estimated~~
9 ~~total cost savings to the state across departments as a result of the~~
10 ~~program.~~

11 (C) Design and implement an evaluation of the pilot program.
12 If the pilot ~~project~~ *program* results in a ~~10%~~ *10 percent* or greater
13 average annual increase in the number of individuals who receive
14 habilitative services through the pilot ~~project~~ *program* being placed
15 in supported employment, the department shall submit a
16 recommendation to the Legislature that the program be expanded
17 statewide.

18 ~~(b)~~

19 (c) This section shall become inoperative on July 1, 2018, and,
20 as of January 1, 2019, is repealed, unless a later enacted statute,
21 that becomes operative on or before January 1, 2019, deletes or
22 extends the dates on which it becomes inoperative and is repealed.

AMENDED IN ASSEMBLY APRIL 15, 2013

AMENDED IN ASSEMBLY APRIL 2, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 620

Introduced by Assembly Member Buchanan

February 20, 2013

An act to add Sections 1279.8, 1507.15, and 1584.5 to the Health and Safety Code, relating to health and care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 620, as amended, Buchanan. Health and care facilities: missing patients and participants.

Existing law provides for the licensure and regulation of the health facilities, as defined. Existing law requires certain types of health facilities, such as acute care hospitals and skilled nursing facilities, to develop, implement, and comply with a patient safety plan for the purpose of improving the health and safety of patients and reducing preventable patient safety events, as specified. A person who violates the provisions governing health facilities is guilty of a misdemeanor, as specified.

The Community Care Facilities Act provides for the licensure and regulation of community care facilities, as defined, including facilities that provide adult day programs. A person who violates the act is guilty of a misdemeanor.

Existing law, the California Adult Day Health Care Act, provides for the licensure and regulation of adult day health care centers, as defined. A person who negligently, repeatedly, or willfully violates the act is guilty of a misdemeanor.

This bill would require specified health facilities, including various kinds of intermediate care facilities, congregate living health facilities, and nursing facilities, community care facilities offering adult day ~~programs; programs,~~ and adult day health care centers to develop, implement, comply with, and review annually a safety plan for the purpose of addressing issues that arise when a patient or participant is missing from the facility. The bill would require the plan to include a requirement that an administrator of the facility, or his or her designee, inform designated relatives or caretakers, or both, who are authorized to receive information regarding that patient or participant, ~~and local law enforcement~~ when a patient or participant is missing from the facility *and to include when local law enforcement should be notified.* Because negligent, repeated, or willful violations of these provisions would be misdemeanors, the bill would impose a state-mandated local program.

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

This bill would provide that 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 1279.8 is added to the Health and Safety
2 Code, to read:
3 1279.8. Every health facility, as defined in subdivision (d), (e),
4 (g), (h), (i), (k), or (m) of Section 1250, shall develop, implement,
5 comply with, and review annually a patient safety plan for the
6 purpose of addressing issues that arise when a patient is missing
7 from the facility. The plan shall include a requirement that an
8 administrator of the facility, or his or her designee, inform
9 designated relatives or caretakers, or both, who are authorized to
10 receive information regarding that patient, ~~and local law~~
11 ~~enforcement~~ when a patient is missing from the facility. *The plan*
12 *shall include when an administrator of the facility, or his or her*
13 *designee, should notify local law enforcement when a patient is*
14 *missing from the facility.*

1 SEC. 2. Section 1507.15 is added to the Health and Safety
2 Code, to read:

3 1507.15. Every community care facility that provides an adult
4 day program shall develop, implement, comply with, and review
5 annually; a participant safety plan for the purpose of addressing
6 issues that arise when an adult day program participant is missing
7 from the facility. The plan shall include a requirement that an
8 administrator of the facility, or his or her designee, inform
9 designated relatives or caretakers, or both, who are authorized to
10 receive information regarding that participant, ~~and local law~~
11 ~~enforcement~~ when an adult day program participant is missing
12 from the facility. *The plan shall include when an administrator of*
13 *the facility, or his or her designee, should notify local law*
14 *enforcement when an adult day program participant is missing*
15 *from the facility.*

16 SEC. 3. Section 1584.5 is added to the Health and Safety Code,
17 to read:

18 1584.5. Every adult day health care center shall develop,
19 implement, comply with, and review annually a participant safety
20 plan for the purpose of addressing issues that arise when an adult
21 day health care participant is missing from the facility. The plan
22 shall include a requirement that an administrator of the facility, or
23 his or her designee, inform designated relatives or caretakers, or
24 both, who are authorized to receive information regarding that
25 participant, ~~and local law enforcement~~ when an adult day health
26 care participant is missing from the facility. *The plan shall include*
27 *when an administrator of the facility, or his or her designee, should*
28 *notify local law enforcement when an adult day health care*
29 *participant is missing from the facility.*

30 SEC. 4. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

O



SB 579 (Berryhill)

Developmental Disabilities Services System Oversight Efficiency and Quality Enhancement Act

Background:

The Lanterman Act provides for quality state-funded services and supports for individuals with developmental disabilities (clients) in California. Evaluation of the services and supports that clients receive from both Regional Centers and service providers is a critical component of this service system. Those services are designed to assist those individuals and their families to be integrated, independent members of their communities.

Currently, three state entities are charged with monitoring and maintaining those services: the Department of Developmental Services (and the 21 Regional Centers); the Department of Social Services Community Care Licensing; and the Department of Public Health Licensing.

Issue:

This duplication wastes state dollars and resources by having multiple people and agencies looking at the same criteria, sometimes from contradictory review values. Each agency applies different and often contradictory standards. Service providers have their costs and staff hours increased by this duplication. And clients' services are hindered, as the development of innovative, cost-effective services and best practices is impeded by outdated licensing categories and regulations. It is not effective at ensuring, monitoring, or improving quality of services.

What This Bill Does:

SB 579 creates a five-year Oversight Efficiency and Quality Enhancement Model pilot project that will place authority for service quality at DDS and three pilot Regional Centers – the agencies with expertise in serving people with developmental disabilities. It updates standards used in service provider reviews to address individual outcomes such as community inclusion, empowerment, and choice, as well as health and safety.

To strengthen and refine the project, local Advisory Committees and statewide Stakeholder Organizations – including consumers, family members, service providers, and advocates – will provide input and feedback in its design, implementation, and evaluation. There is also a data collection component to gather reliable, valid, accessible data focused on the quality enhancements desired over time.

This bill is consistent with efforts to move licensing responsibilities closer to the responsible state agency providing the funding. Its unitary authority approach has been successfully adopted in statute for certain services to persons with developmental disabilities (e.g., supported living services).

Support

Association of Regional Center Agencies (sponsor)
 The Arc and United Cerebral Palsy; Cal-TASH; Lifehouse.

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AMENDED IN SENATE APRIL 9, 2013

SENATE BILL

No. 579

Introduced by Senator Berryhill
(Coauthor: Senator Emmerson)

February 22, 2013

An act to ~~amend Section 12306.1 of~~ add Section 4751 to the Welfare and Institutions Code, relating to ~~public social~~ developmental services.

LEGISLATIVE COUNSEL'S DIGEST

SB 579, as amended, Berryhill. ~~In-home supportive services. Developmental services: Oversight Efficiency and Quality Enhancement Model.~~

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

This bill would, commencing January 1, 2014, and to the extent that funds are made available, establish a 4½ year Oversight Efficiency and Quality Enhancement Model pilot project in specified regional center catchment areas to implement a unified oversight and quality enhancement process, as specified, shifting the oversight of the service providers from the Community Care Licensing Division of the State Department of Social Services and the Licensing and Certification Division of the State Department of Public Health to the department and the pilot regional centers.

This bill would require the Legislative Analyst's Office to conduct a study identifying all of the financial and human resources expended in

relation to current quality assurance activities for the licensed programs identified in the pilot project and to determine the amount of current quality assurance costs that are covered by federal dollars and what could be federally funded if the system and waiver were changed. The bill, by October 1, 2016, would also require the department to contract with an independent agency or organization to evaluate the pilot project and prepare a written report of its findings.

~~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 requires, except as provided, a county to use county-only funds to fund both the county share and the state share when any increase in IHSS provider wages or benefits is negotiated or agreed to by a public authority or nonprofit consortium, as specified.~~

~~This bill would make a technical, nonsubstantive change to that provision:~~

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

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

- 1 SECTION 1. Section 4751 is added to the Welfare and
- 2 Institutions Code, to read:
- 3 4751. (a) The Legislature finds and declares all of the
- 4 following:
- 5 (1) Evaluation of the services that people with developmental
- 6 disabilities receive from both service providers and regional
- 7 centers is a critical component of the service system.
- 8 (2) The current system of having three state entities, the State
- 9 Department of Developmental Services with the regional centers,
- 10 the Community Care Licensing Division of the State Department
- 11 of Social Services, and the Licensing and Certification Division
- 12 of the State Department of Public Health, all charged with
- 13 monitoring and maintaining quality services and supports for
- 14 people with developmental disabilities, is duplicative and wasteful
- 15 of limited state dollars and resources and fails to obtain optimal
- 16 results.
- 17 (3) The efficiency and efficacy of the oversight and quality
- 18 review processes can be significantly enhanced by unifying the

1 *current duplicative quality review system, thus conserving limited*
2 *state fiscal resources and reducing the wasteful use of state staff*
3 *and service providers' time while simultaneously improving the*
4 *lives of people with developmental disabilities in California.*

5 *(b) Notwithstanding any other law, commencing January 1,*
6 *2014, a four-and one-half year Oversight Efficiency and Quality*
7 *Enhancement Model pilot project shall be established to shift the*
8 *authority and resources to the State Department of Developmental*
9 *Services, in conjunction with the pilot regional centers, to*
10 *implement a unified oversight and quality enhancement process.*
11 *This process shall ensure the welfare, community participation,*
12 *health, and safety of all those with developmental disabilities who*
13 *are served in programs currently licensed by the Community Care*
14 *Licensing Division of the State Department of Social Services and*
15 *the Licensing and Certification Division of the State Department*
16 *of Public Health. The project shall also enhance accountability*
17 *and quality review processes for the services directly provided by*
18 *regional centers. At the conclusion of the pilot project, it is the*
19 *intent of the Legislature that if, based upon the analysis and*
20 *recommendations of an independent evaluation, as well as*
21 *experience in each of the pilot regional centers, the pilot project*
22 *has sufficiently met the goals and standards of the Oversight*
23 *Efficiency and Quality Enhancement Model set forth in subdivision*
24 *(f), the creation of an Oversight Efficiency and Quality*
25 *Enhancement Model shall be extended statewide.*

26 *(c) The pilot project shall be conducted in the catchment areas*
27 *of the Golden Gate Regional Center, the Tri-Counties Regional*
28 *Center, and the San Diego Regional Center. On or before February*
29 *1, 2014, the State Department of Developmental Services may*
30 *select two additional regional centers to participate in the pilot*
31 *project on a voluntary basis. Additional regional centers shall be*
32 *selected according to criteria developed by the department in*
33 *consultation with the Association of Regional Center Agencies. In*
34 *selecting additional pilot regional centers, the department shall*
35 *promote diversity among participating regional centers in terms*
36 *of size and geographical location. An agreement shall be*
37 *negotiated between each pilot regional center and the department*
38 *regarding the scope of activities, project milestones, and resources*
39 *available to each pilot regional center.*

1 (d) By February 1, 2014, each pilot regional center shall
2 establish a local Quality Enhancement Advisory Committee,
3 including consumers, family members, service providers, and
4 advocates, to provide input and feedback in the design,
5 implementation, and evaluation of the Oversight Efficiency and
6 Quality Enhancement Model. The local advisory committee shall
7 review pilot project data, including, but not limited to, baselines
8 and outcomes of quality reviews of providers' services and the
9 individuals served by these providers and baselines and outcomes
10 of the quality reviews of the services the regional center directly
11 provides.

12 (e) From January 1, 2014, to April 1, 2014, inclusive, the
13 department, working with representatives from the pilot regional
14 centers, shall, consistent with the parameters set forth in this
15 section, develop the structure for transfer of responsibilities from
16 the Community Care Licensing Division of the State Department
17 of Social Services and the Licensing and Certification Division of
18 the State Department of Public Health, including the systems and
19 procedures for certification and decertification, quality reviews,
20 oversight, and complaint investigation of all programs currently
21 licensed by those agencies that serve people with developmental
22 disabilities in the pilot regional center catchment areas. The
23 Community Care Licensing Division of the State Department of
24 Social Services and the Licensing and Certification Division of
25 the State Department of Public Health shall provide staff to consult
26 with the State Department of Developmental Services and regional
27 centers during this process.

28 (f) The Oversight Efficiency and Quality Enhancement Model
29 shall focus on the impact of services on consumers' lives, support
30 the continuous investigation and enhancement of the quality and
31 impact of services, and be informed by reliable data on service
32 effectiveness and consumer outcomes. The model shall do all of
33 the following:

34 (1) Be lean, simple, efficient, and understood by the people it
35 serves.

36 (2) Avoid unnecessary redundancies of process, permissions,
37 oversight, and enforcement.

38 (3) Base reviews on quality standards that, in accordance with
39 Lanterman Developmental Disabilities Services Act principles,
40 address individual outcomes, including, but not limited to, health,

1 safety, independence, choice, empowerment, inclusion, and
2 participation in community life.

3 (4) Recognize that service outcomes and effectiveness, the
4 impact of services on consumers' lives, and satisfaction data will
5 be key to ensuring quality.

6 (5) Shift the focus of quality efforts to a service enhancement
7 model that encourages and recognizes service provider and
8 regional center improvements.

9 (6) Include multiple options for proactive consumer protections,
10 including screening for qualified providers, an emphasis on an
11 evolving improvement system of coaching and mentoring service
12 providers toward quality, and an immediate response capacity to
13 address people in imminent danger.

14 (7) Report aggregate service and individual outcomes to
15 highlight excellence, innovation, and satisfaction in the services
16 provided and in the lives of individuals with developmental
17 disabilities.

18 (8) Enhance transparency, accountability, quality standards,
19 and measurement processes for the services directly provided by
20 regional centers.

21 (9) Provide consumers, families, service providers, and regional
22 center staff the opportunity to participate in system evaluation.

23 (10) Ensure that the results of oversight, quality enhancement,
24 and assurance review activities are available to people with
25 developmental disabilities and their families in plain language so
26 they can be informed consumers of the services that they receive.

27 (g) On or before July 1, 2014, the department and pilot regional
28 centers, in consultation with stakeholder organizations, shall do
29 all of the following:

30 (1) Establish model certification requirements that shall be
31 applied in certifying new service providers and service provider
32 performance standards that shall be used in conducting ongoing
33 quality reviews and enhancement activities. Certification
34 requirements and performance standards shall be consistent and
35 shall include standards for health, safety, and welfare, as well as
36 quality of life outcomes, including, but not limited to, community
37 inclusion and participation, choice, friendship, and empowerment.
38 The principles set forth in subdivision (f), current regulatory and
39 statutory requirements, as well as nationally accepted quality of
40 life standards shall be considered in developing the model

1 certification requirements and performance standards. The model
2 performance standards shall replace current standards from Titles
3 17 and 22 of the California Code of Regulations for the specific
4 services subject to the pilot project in the pilot regional center
5 areas. The model certification requirements and performance
6 standards shall support the development, maintenance, and
7 continuous improvement of innovative, cost-effective services.

8 (2) Establish pilot regional center performance standards for
9 use during the pilot project, including, but not limited to, quality
10 expectations for customer service, resource development,
11 conducting quality assurance of service providers, accounting,
12 and intake, outreach, and service coordination, including
13 individual program plan development and implementation. The
14 regional center performance standards shall work in concert with
15 the service provider performance standards and be aligned with
16 the values of the Lanterman Developmental Disabilities Services
17 Act and the principles set forth in subdivision (f). The standards
18 shall address how the regional center's services have resulted in
19 consumer or family empowerment and in more independent,
20 productive, and normal lives for the persons served.

21 (3) Develop a uniform data collection system that provides
22 reliable, valid, and actionable data from multiple stakeholder
23 perspectives and is consistently deployed at each pilot regional
24 center. The data system shall include information on service
25 provider and pilot regional center performance, as well as the
26 quality-of-life outcomes and individual program plan goals of the
27 individuals served in the project. The data system shall be flexible,
28 have the capacity to allow field-based data entry and analysis,
29 and to document, measure, and analyze the implementation of the
30 model. To the extent possible, data currently being collected by
31 regional centers or the department shall be utilized in the data
32 system.

33 (4) Consider the experience and outcomes from the Agnews
34 Developmental Center, Bay Area Quality Management System
35 and from current quality reviews of unlicensed Lanterman
36 Developmental Disabilities Services Act support models, including
37 family home agencies and supported living, in developing the
38 structure, standards, and data collection methodologies for the
39 model.

1 (h) From January 1, 2014, to June 30, 2014, inclusive, pilot
2 regional centers shall collect baseline data on existing service
3 quality and quality assurance processes in programs and services
4 for people with developmental disabilities that have been covered
5 by licensing requirements through the Community Care Licensing
6 Division of the State Department of Social Services or the Licensing
7 and Certification Division of the State Department of Public
8 Health. Baseline data shall meet all of the following requirements:

9 (1) Be collected by an independent third party surveying a
10 statistically significant sample of regional center employees,
11 service provider staff, and individuals and families providing or
12 receiving those services.

13 (2) Address all of the following:

14 (A) The satisfaction of regional center employees, service
15 provider staff, individuals, and families with the current quality
16 assurance system.

17 (B) The impact of services on consumers' lives, including, but
18 not limited to, the areas of health, safety, community participation,
19 friendship, empowerment, and choice.

20 (C) The effectiveness and efficiency of existing quality assurance
21 processes, including training and related service provider support,
22 as well as the quality and efficacy of regional center-service
23 provider relationships.

24 (3) Be made available to the pilot project's independent
25 evaluator for comparison with pilot project data as described in
26 subdivision (k).

27 (i) The Legislative Analyst's Office shall conduct a study
28 identifying all of the financial and human resources expended by
29 the Community Care Licensing Division of the State Department
30 of Social Services, the Licensing and Certification Division of the
31 State Department of Public Health, the State Department of
32 Developmental Services, regional centers, and service providers
33 in relation to current quality assurance activities for the licensed
34 programs identified in the pilot project. The study shall also
35 determine the amount of current quality assurance costs that are
36 covered by federal funds, primarily through the home-and
37 community-based service waiver program, and what could be
38 federally funded if the system and waiver were changed. Based on
39 this study, the Legislative Analyst's Office shall make
40 recommendations on amounts of, and the best possible means for,

1 reallocation of funding to augment current quality review and
2 monitoring staff at the State Department of Developmental Services
3 and regional centers and provide the resources necessary to
4 implement the Oversight Efficiency and Quality Enhancement
5 Model.

6 (j) Full implementation of the pilot project and transfer of
7 responsibilities will begin on July 1, 2014. Commencing on that
8 date and for the remainder of the pilot project period, quality
9 review and oversight functions in the pilot regional center areas
10 shall be accomplished as follows:

11 (1) The State Department of Developmental Services shall
12 certify, rather than license, new programs and services for people
13 with developmental disabilities that would previously have been
14 subject to licensing requirements through the Community Care
15 Licensing Division of the State Department of Social Services or
16 the Licensing and Certification Division of the State Department
17 of Public Health. A service provider seeking to start a new program
18 or service shall first be selected by the regional center through a
19 request for proposal process and then obtain certification. The
20 certification process shall include submission of a program design
21 that reflects the model standards and certification requirements
22 developed pursuant to paragraph (1) of subdivision (g). The
23 potential service provider shall complete an initial application for
24 certification with the local pilot regional center. The application
25 shall then be submitted to the department for issuance of a
26 certificate.

27 (2) The State Department of Developmental Services shall deem
28 certified all programs in the pilot regional center areas that are
29 licensed prior to July 1, 2014, either by the Community Care
30 Licensing Division of the State Department of Social Services or
31 the Licensing and Certification Division of the State Department
32 of Public Health and these programs shall no longer be monitored
33 by those licensing agencies. All of these programs shall be deemed
34 certified by the State Department of Developmental Services
35 without the certification process requirements developed pursuant
36 to paragraph (1) of subdivision (g), and shall be subject to quality
37 monitoring and decertification processes as if they had been issued
38 a certificate.

39 (3) All certified programs shall have an annual quality review
40 conducted by pilot regional center staff. Additionally, a

1 comprehensive quality enhancement and performance evaluation
2 shall be scheduled, as needed, depending on the findings of the
3 annual quality reviews. Quality reviews and monitoring visits shall
4 be effective and efficient and be based upon the performance
5 standards developed pursuant to paragraph (1) of subdivision (g).

6 (4) Training is central to the Oversight Efficiency and Quality
7 Enhancement Model, and all certified service providers shall
8 submit a training plan to all pilot regional centers for which they
9 provide services. The training program shall be subject to the
10 approval of the pilot regional center. Training shall emphasize
11 continuous improvement and be proactive and responsive to the
12 findings of quality reviews. Service providers shall be utilized as
13 training resources for their own programs as well as to assist other
14 providers and self-assessment tools shall be developed.

15 (5) Complaints regarding service provider performance shall
16 be addressed by the State Department of Developmental Services
17 and pilot regional centers, as determined during the development
18 of the structure of the pilot project pursuant to subdivision (e).
19 The pilot regional center shall initiate investigations of serious
20 complaints within 24 hours of receipt, or sooner if imminent danger
21 is alleged. A "serious complaint" is one which, upon investigation,
22 has identified a condition of "immediate danger," as defined in
23 paragraph (18) of subdivision (a) of Section 56002 of Title 17 of
24 the California Code of Regulations. In cases of immediate danger
25 to a consumer, the pilot regional center shall plan for relocation
26 of the consumer. The complainant, if known, shall be advised of
27 the outcome of the investigation and of any corrective actions
28 required of the service provider.

29 (6) The department and pilot regional centers shall have the
30 right and responsibility to decertify a provider based upon a
31 substantiated serious complaint; a serious, life threatening,
32 preventable occurrence at the program; or a documented,
33 established pattern of substandard performance that continues
34 after notice and opportunity for corrective action.

35 (7) The department and pilot regional centers shall conduct a
36 transparent annual quality service review for the continuous
37 investigation and improvement of the quality of the services a pilot
38 regional center directly provides, based on the regional center
39 performance standards developed pursuant to paragraph (2) of
40 subdivision (g). The department shall monitor pilot regional center

1 service quality and outcomes, hold pilot regional centers
2 accountable for their performance, and use a service enhancement
3 approach to encourage and recognize regional center
4 improvements. Regional center annual quality service reviews
5 shall include, but not be limited to, all of the following:

6 (A) The existing performance contract with department pursuant
7 to Section 4629.

8 (B) An annual survey by an independent third party of a
9 statistically significant sample of consumers and families that
10 addresses both service provider and pilot regional center services
11 and includes, but is not limited to, improvements in consumer life
12 outcomes, the delivery and outcomes of services specified in the
13 individual program plan, and consumer satisfaction with service
14 coordination, including individual program plan development and
15 implementation and satisfaction with the consumer's service
16 provider. Each pilot regional center shall select an independent
17 third-party entity, with advice from others outside the regional
18 center, to complete the annual survey described in this
19 subparagraph.

20 (C) An annual survey by an independent third party of a
21 statistically significant sample of service providers that addresses
22 their satisfaction with the pilot regional center's customer service
23 to the provider and support of the provider's service quality
24 performance. Data shall include, but not be limited to, provider
25 evaluation of regional center quality assurance, training, and
26 resource development processes, including the effectiveness,
27 efficiency, and timeliness of those functions. The independent
28 third-party entity selected to complete the annual survey described
29 in this subparagraph will be the same entity as the one selected to
30 complete the annual survey described in subparagraph (B).

31 (D) Additional components, as determined by the pilot regional
32 centers and the department.

33 (8) The Community Care Licensing Division of the State
34 Department of Social Services and the Licensing and Certification
35 Division of the State Department of Public Health shall continue
36 to be responsible for criminal background checks, as required by
37 law, for service provider staff.

38 (9) The State Department of Developmental Services and the
39 pilot regional centers shall implement, test, and verify the

1 Oversight Efficiency and Quality Enhancement Model data
2 collection system described in paragraph (3) of subdivision (g).

3 (10) The department and pilot regional centers shall share with
4 local advisory committees and statewide stakeholder organizations
5 the aggregate service provider quality review information and
6 analysis and regional center annual quality service reviews,
7 including the information described in paragraph (7). Pilot
8 regional centers shall make available for review by consumers,
9 families, advocates, and other interested persons the annual quality
10 reviews and quality enhancement and performance evaluation
11 reviews of service providers described in paragraph (3). These
12 reviews shall not contain personally identifiable consumer
13 information.

14 (k) (1) On or before October 1, 2016, the State Department of
15 Developmental Services shall contract with an independent agency
16 or organization to evaluate the pilot project and prepare a written
17 report of its findings. The scope of services for the contractor shall
18 be prepared by the department, in consultation with the State
19 Department of Social Services, the State Department of Public
20 Health, the Association of Regional Center Agencies, and
21 stakeholder organizations, including representatives of service
22 provider organizations. The evaluation shall, at a minimum,
23 address all of the following:

24 (A) A description of the structure and process of implementation
25 of the Oversight Efficiency and Quality Enhancement Model.

26 (B) The number and characteristics of the service providers
27 and programs subject to the pilot project, and the number of
28 consumers served under the pilot project.

29 (C) The overall impact of the model on consumers, including,
30 but not limited to, the extent to which consumers' quality of life
31 outcomes improve, especially in the areas of health, safety,
32 community inclusion and participation, friendship, empowerment,
33 choice, and satisfaction.

34 (D) The overall impact of the model on service providers,
35 including, but not limited to, changes in the quality of services
36 provided, their ability to support people with developmental
37 disabilities, the cost of quality assurance-related activities,
38 including use of all resources, and the effectiveness and efficiency
39 of the model on their internal operations, business model, and
40 relationships with the regional centers.

1 (E) The overall impact of the model on pilot regional centers,
2 including, but not limited to, changes in the quality of services
3 directly provided by pilot regional centers, effectiveness and
4 efficiency of pilot regional centers' quality oversight, and
5 enhancement efforts with service providers, their ability to support
6 people with developmental disabilities, the cost of quality
7 assurance-related activities, and the effectiveness and efficiency
8 of the model on their internal operations, business model, and
9 relationships between the service providers, pilot regional centers,
10 and the department.

11 (F) The overall impact of the model on the State Department of
12 Developmental Services, including, but not limited to, the
13 department's role in monitoring pilot regional center service
14 quality and outcomes, in holding pilot regional centers accountable
15 for their performance, in ensuring that pilot regional centers are
16 aligned with Lanterman Developmental Disabilities Services Act
17 values, and in supporting evaluation enhancement of the quality
18 of services directly provided by pilot regional centers. The
19 department shall also consider the cost of quality assurance-related
20 activities, and the effectiveness and efficiency of the model on the
21 department's internal operations and relationships with pilot
22 regional centers.

23 (G) The overall impressions, including, but not limited to, pilot
24 project strengths, weaknesses, and recommendations for
25 improvement of the model by employees of the department, pilot
26 regional center participants, service provider organizations and
27 their staff, state licensing and monitoring personnel, and consumers
28 and families, including, but not limited to, improvements and
29 innovations demonstrated, problems encountered, regulatory,
30 statutory, and programmatic barriers identified, and corrective
31 responses employed.

32 (H) The satisfaction with the model by department employees,
33 pilot regional center participants, provider organizations and their
34 staff, state licensing and monitoring personnel, consumers, and
35 families.

36 (I) Identification of the model's strongest performance standard
37 areas, those most in need of improvement, and those with the
38 greatest quality improvement for both service providers and pilot
39 regional centers, as documented during the pilot project period.

1 (J) Aggregate and comparison data regarding service provider
2 certification attainment and losses of certification.

3 (K) The types, amounts, qualifications, and sufficiency of staffing
4 at the department and pilot regional centers to effectively
5 implement the model.

6 (L) The costs and cost-effectiveness of the model as compared
7 with the multiagency, statewide quality systems involved in services
8 to people with developmental disabilities, as measured and
9 described by the Legislative Analyst's Office study of the current
10 system, as described in subdivision (i).

11 (M) An analysis and summary findings of all pilot project
12 consumers' special incident reports and unusual occurrences
13 reported during the evaluation period, in comparison to special
14 incident reports under the current quality assurance systems.

15 (N) Recommendations for statewide application and expansion
16 of the Oversight Efficiency and Quality Enhancement Model.

17 (2) The evaluation by the independent agency or organization
18 shall include, at a minimum, the following approaches and
19 methodologies in the investigation of the evaluation parameters
20 pursuant to paragraph (1).

21 (A) Interviews, surveys, focus groups, and other assessments of
22 the pilot project participant groups, specifically, State Department
23 of Developmental Services employees, state licensing and
24 monitoring personnel, pilot regional center participants, service
25 provider organizations and their staff, and consumers and families,
26 by the independent evaluator or another independent third-party
27 agency or organization.

28 (B) Analysis of the Oversight Efficiency and Quality
29 Enhancement Model data system information.

30 (C) A comparison of consumers' quality of life outcomes under
31 the model to baseline consumer outcome data collected at the start
32 of the pilot pursuant to subdivision (h). This data shall be made
33 available both as an aggregate of all pilot regional centers, as
34 well as by individual pilot regional center.

35 (D) A comparison, both historically and between regional
36 centers, of data collected pursuant to Section 4571 regarding
37 consumer and family satisfaction, provision of services, and
38 individual consumer outcomes, between and among those served
39 in the pilot project and those served using traditional quality
40 assurance systems.

1 (E) A review of selected service provider annual quality reviews
2 and a comprehensive quality enhancement and performance
3 evaluation review from each pilot regional center.

4 (F) A review of the pilot regional centers' annual quality service
5 reviews and a comparison of that data to the baseline data
6 collected pursuant to subdivision (h). This data shall be made
7 available both as an aggregate of all pilot regional centers, as
8 well as by individual pilot regional center.

9 (G) A comparison of the impact of the model on regional center
10 accountability and quality of services compared to the impact of
11 the current performance contract processes under Section 4629
12 at both pilot and nonpilot regional centers.

13 (3) The written report by the independent agency or organization
14 shall be submitted to the State Department of Developmental
15 Services. The department shall circulate the report to the
16 Community Care Licensing Division of the State Department of
17 Social Services, the Licensing and Certification Division of the
18 State Department of Public Health, and the Association of Regional
19 Center Agencies. The department shall also submit the report to
20 the appropriate fiscal and policy committees of the Legislature by
21 July 1, 2017, and make it readily available to the public.

22 (l) The department may administer the pilot project through the
23 issuance of written directives that shall have the same force and
24 effect as regulations. Any directive affecting Article 1 (commencing
25 with Section 700) of Chapter 7 of Title 11 of the California Code
26 of Regulations shall be approved by the Department of Justice.
27 The directives shall be exempt from the rulemaking provisions of
28 the Administrative Procedure Act (Chapter 3.5 (commencing with
29 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
30 Code).

31 (m) The department may adopt emergency regulations to
32 implement this section. The adoption, amendment, repeal, or
33 re adoption of a regulation authorized by this section is deemed to
34 be necessary for the immediate preservation of the public peace,
35 health and safety, or general welfare, for purposes of Sections
36 11346.1 and 11349.6 of the Government Code, and the State
37 Department of Developmental Services is hereby exempted from
38 the requirement that it describe specific facts showing the need
39 for immediate action. A certificate of compliance for these
40 implementing regulations shall be filed within 24 months following

AGENDA ITEM 6.C

DETAIL SHEET

BILL NUMBER/ISSUE: Council Legislative and Policy Platform Review

SUMMARY: Review the 2011-2012 Legislative and Policy Platform for possible changes and adoption for 2013-2014.

BACKGROUND: N/A

ANALYSIS/DISCUSSION: N/A

COUNCIL STATE PLAN GOAL: Public policy in California promotes the independence, productivity, inclusion and self-determination of individuals with developmental disabilities and their families

PRIOR COUNCIL ACTIVITY: Adopted Legislative and Policy Platform for 2011-12

RECOMMENDATION(S): N/A

ATTACHMENT(S): 2011-2012 SCDD Legislative and Policy Platform

PREPARED: Mark Polit, March 22, 2013

1 *the adoption of the first emergency regulations filed pursuant to*
2 *this section.*

3 *(n) The department may waive regulations that pose a barrier*
4 *to implementation and operation of this pilot project. The waiver*
5 *of regulations by the department pursuant to this section shall*
6 *apply to only those counties participating in the pilot project and*
7 *only for the duration of the pilot project.*

8 *(o) All aggregate and system-level reports generated pursuant*
9 *to this section shall be made publicly available, but shall not*
10 *contain the personal identifying information of any consumer or*
11 *other individual.*

12 *(p) This section shall only be implemented to the extent that*
13 *funds are made available through an appropriation in the annual*
14 *Budget Act.*

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**All matter omitted in this version of the bill
appears in the bill as introduced in the
Senate, February 22, 2013. (JR11)**

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DETAIL SHEET AGENDA ITEM 7.A

ISSUE: Fair Labor Standards Act Companionship Exemption

SUMMARY: The US Department of Labor has issued a notice of proposed rulemaking that would narrow the definition of the “Companionship Exemption.” This would lead to the application of federal minimum wage and overtime rules to in home health and attendant services. Many disability advocates are concerned that minimum wage and overtime requirements would seriously disrupt the provision of services that keep people in the home and out of institutions. Many Civil rights, labor, and poverty advocates believe the proposed rule change would provide greater economic protections and dignity to a workforce that is largely women, people of color and immigrants.

BACKGROUND: In 1974, Congress sought to extend the minimum wage and overtime protections of the Fair Labor Standards Act to domestic workers. This was an attempt to elevate the economic status of a low wage workforce that was (and still is) largely female, people of color and immigrant. The law sought to mitigate the endemic poverty and reliance on government programs in these communities that resulted from economic exploitation.

The law recognized that many friends, relatives, and neighbors of people with disabilities and seniors served a companionship function involving little skilled work. Not wishing to interfere with these informal relationships and arrangements, the law specifically exempted domestic workers who served as companions. The Nixon Administration issued regulations that interpreted this “companionship exemption” very broadly, essentially exempting the whole home health and home care industry from the FLSA, these included workers who provided skilled supports and relied on these jobs for their livelihood. Organized labor, civil rights and poverty groups objected to this interpretation and there have been attempts during both the Clinton and Obama administrations to amend the regulations closer to what they view as the clear intent of Congress.

In the meantime, the practice and prevalence of in home attendant support has grown dramatically. In many states, these workers receive sub-minimum wage and no overtime. In California, these workers are protected by minimum wage, but have no overtime protections. The growth of home care and home health services has reduced the need for institutionalization, kept families together, and

provided dignity and opportunity for people with disabilities and seniors by making it possible to stay in their own homes and communities with families and friends. Over half of home care workers nationally are family members, with their wages making it possible for them to stay at home and care for their loved one.

The US Department of Labor issued proposed regulations over a year ago that would narrow the companionship exemption, thus making minimum wage and overtime protections applicable to services such as IHSS and Supported Living, as well as private pay attendant support.

ANALYSIS/DISCUSSION: IHSS, supported living and other in home services has grown and is funded in California under the current companionship exemption to overtime pay. Thus rate structures, fees, and staffing schedules are built around the assumption of no overtime pay. Should IHSS and supported living come under federal overtime protections, many fear significant disruption in staffing support and family caregiving arrangements.

In supported living, for example, federal overtime requirements would mean that agencies would have to pay overtime when a worker's hours exceeded 40 hours per week (note that state overtime laws would NOT be applied as a result of changes in federal regulation). Many workers could still work more than 40 hours on regular time due to exceptions in federal regulation – for example, if agencies (under state law) paid direct support workers for overnight shifts, federal law would not require overtime pay for the hours that workers are asleep. Thus disruptions in supported living staffing would occur, where agencies may avoid paying overtime by reducing hours worked by an individual or shift hours to include sleep hours.

It is very uncertain how this will affect IHSS. Details that will emerge in the final regulations may have a significant impact. The way the state and the counties implement federal regulation will also have an impact. Of special concern is for family caregivers who use income from IHSS to stay at home. Will counties prevent a mother, for example, from working more than 40 hours per week? Would a husband or a grown child be able to recognize the remaining hours as their income, circumventing a prohibition on overtime and keeping the income in the family? Would the mother be able to claim some of those hours are sleep hours, thus circumventing an overtime prohibition and retaining all the income? OR would overtime be allowed and rates adjusted allowing family members to earn significantly more – especially over time? There are so many questions and very few answers, largely because the regulations are not final and state and

local governments response is unknown, and may vary across political jurisdictions.

Public funding of services tends to adjust to the presence of minimum wage and overtime requirements. Yet, in times of fiscal restraint, those adjustments may take time. And in other parts of the country, many fear that conservative politicians may use increased minimum wage and overtime requirements as an excuse to reduce or eliminate in-home supports.

One year after the deadline for filing comments to the proposed rule, the complexity of the issues raised around the companionship exemption has apparently led to a delay in promulgation of the rule and continued talks with stakeholders.

COUNCIL STRATEGIC PLAN Goal: Public policy in California promotes the independence, productivity, inclusion, and self-determination, of individuals with developmental disabilities and their families.

PRIOR COUNCIL ACTIVITY: N/A

RECOMMENDATION(S): WATCH -- This is very very complicated. This issue has potentially profound implications for people with disabilities, seniors, the workers who support them and their local communities. In some ways the rights and aspirations of people with disabilities are pitted against the rights and aspirations of a workforce which is largely women, people of color and immigrants. In other ways, these interests are aligned, since better pay makes it easier to find and retain qualified direct support workers; and better pay will make it easier for family caregivers to remain at home.

ATTACHMENT(S): (1) Letter from National Council on Disability on Companionship Exemption. (2) Letter from labor, civil rights and poverty groups, (3) Letter from TASH, (4) Letter from the National Resource Center for Participant Directed Services.

PREPARED: Mark Polit, March 21, 2013

March 19, 2012

The Honorable Tim Walberg
Chairman, Workforce Protections Subcommittee
House Education and the Workforce Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Lynn Woolsey
Ranking Member, Workforce Protections Subcommittee
House Education and the Workforce Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Walberg and Ranking Member Woolsey:

The undersigned organizations support the Department of Labor (DOL) for revising the rules (RIN 1235-AA05) on the “companionship exemption” under the Fair Labor Standards Act (FLSA), which currently denies the direct care workforce basic federal wage-and-hour protections.

This workforce provides daily supports and services to older Americans and individuals with disabilities who need assistance with personal care and activities of daily living. The work that home care workers and personal care attendants do is vitally important to the health, independence, and dignity of consumers who rely on paid services in their homes. Unfortunately, because of the current DOL regulations, over 1.7 million home care workers are not ensured minimum wage or overtime pay. As a result, wages for this workforce are depressed, earning them low compensation, often for long hours of work. The current federal minimum wage is \$7.25 per hour but one quarter of personal care aides earn less than \$6.59 per hour and one quarter of home health aides earn less than \$7.21 per hour. Nationwide, one out of every 12 low-wage workers is a direct care worker, and typical of a low-wage workforce, these home care workers are more likely to be uninsured, and nearly half receive public benefits such as Medicaid or food stamps.

During this economic recovery, we need to implement federal regulatory policies that fight poverty and promote access to quality care and the growth of quality jobs. The current DOL regulations broadly exempt this whole workforce. Such a sweeping policy is unsound, unfair, and undermines the economic recovery and our nation’s goals for quality long-term care. Extending basic minimum wage and overtime protections to most home care workers will improve the stability of our home care workforce and encourage growth in jobs that cannot be outsourced. Reducing turnover in this workforce will improve access to and quality of these much-needed services.

The work done by these home care workers and personal care attendants affirms the values of dignity and respect we have for our aging citizens and individuals with disabilities. It is time that we value this workforce, too. Now is not the time to delay regulations that would provide them with a small measure of respect – the protection of federal wage-and-hour rules.

We oppose efforts to delay issuing the final rule and we support increasing resources to expand in-home supports and services. Our nation faces many challenges to allow consumers and home care workers to live with dignity, respect and independence but the solution to providing these needed services is not to deny paid caregivers federal minimum wage and overtime protections.

9to5, National Association of Working Women
Advocacy for Patients with Chronic Illness, Inc.
AFL-CIO
AFSCME
Alliance for a Just Society
Alliance for Retired American
American Association of University Women (AAUW)
American Civil Liberties Union
American Federation of Government Employees (AFGE)
American Federation of Teachers (AFT)
American Rights at Work
American Society on Aging
Asian Law Caucus, Member of Asian American Center for Advancing Justice
Asian Pacific American Legal Center, a member of the Asian American Center for Advancing Justice
Association of University Centers on Disabilities (AUCD)
Campaign for Community Change
Caring Across Generations
Center for Law and Social Policy (CLASP)
Chicago Jobs Council
Coalition of Labor Union Women
Coalition on Human Needs
Communications Workers of America (CWA)
Community Action Partnership
Cooperative Care
D.C. Employment Justice Center
Demos
Direct Care Alliance
Direct Care Workers of Color, Inc.
Disciples Justice Action Network
Equality State Policy Center
Excluded Workers Congress
Families USA
Food Chain Workers Alliance
Friends Committee on National Legislation
Gray Panthers
Health Care for America Now
Indiana Care Givers Association
Institute for Policy Studies
Interfaith Worker Justice
International Brotherhood of Teamsters
International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW
Jobs With Justice
Lawyers' Committee for Civil Rights Under Law
League of United Latin American Citizens

Legal Aid of Marin
 Legal Momentum
 MataHari: Eye of the Day
 MomsRising
 National Academy of Elder Law Attorneys, Inc. (NAELA)
 National Alliance for Direct Support Professionals
 National Consumer Voice for Quality Long-Term Care
 National Council of Jewish Women
 National Council of La Raza (NCLR)
 National Council of Negro Women (NCNW)
 National Council of Women's Organizations
 National Domestic Workers Alliance
 National Employment Law Project (NELP)
 National Employment Lawyers Association (NELA)
 National Gay and Lesbian Task Force Action
 National Hispanic Council on Aging
 National Partnership for Women & Families
 National Women's Law Center
 National Women's Health Network
 National Workrights Institute
 NCB Capital Impact
 NETWORK, A National Catholic Social Justice Lobby
 OWL-The Voice of Midlife and Older Women
 Paraprofessional Healthcare Institute (PHI)
 Partnership for Working Families
 Provincial Council of the Clerics of St. Viator (Viatorians)
 Raising Women's Voices for the Health Care We Need
 Sargent Shriver National Center on Poverty Law
 Service Employees International Union (SEIU)
 Sugar Law Center for Economic and Social Justice
 The Brazilian Immigrant Center
 The Iowa Statewide Independent Living Council (SILC)
 The Leadership Conference on Civil and Human Rights
 United Steelworkers (USW)
 Universal Health Care Action Network (UHCAN)
 USAction
 Virginia Poverty Law Center
 Voices for America's Children
 Voices for Progress
 Washington Community Action Network
 Wider Opportunities for Women
 Women Employed
 Working America

Letter to OMB about the Companionship Exemption

March 19, 2013

Brenda Aguilar
Office of Information and Regulatory Affairs
Office of Management and Budget
New Executive Office Building, Room 10235
725 13th Street, N.W.
Washington, DC 20503

RE: OMB Review of Department of Labor's Proposed Changes to the Application of the Fair Labor Standards Act to Domestic Service, RIN 1235-AA05

Dear Ms. Aguilar:

Thank you for meeting with the National Council on Disability (NCD) and members of the disability and aging communities on March 15, 2013, to discuss the Department of Labor's (DOL) proposed changes to the Companionship Exemption to overtime compensation under the Fair Labor Standards Act. The complexity of this issue is reflected in the extensive time that DOL, your office, and others have spent crafting and reviewing the proposed rule and the many opinions expressed to guarantee that consistent and fair standards of pay are ensured for the growing industry of companion and service provider caregivers. There is a clear concern expressed by consumers that the proposed rule will create changes that have a significantly adverse impact on the community of Americans with disabilities and seniors that rely on such services. Therefore, NCD urges OMB to require DOL to engage in further research and negotiation in order to fairly balance the complex needs of both the service providers and the disability and aging communities.

Our nation has a longstanding commitment to ensuring that individuals are afforded the opportunity live in the community with the appropriate supports, while addressing the growing costs associated with long-term service and supports. NCD acknowledged the many complex issues in its report, "The State of 21st Century Long-Term Services and Supports: Financing and Systems Reform for Americans with Disabilities":

NCD believes that America needs a coherent and comprehensive framework for its LTSS policies, programs, and funding based on five interrelated assumptions. First, that people who are elderly and people with disabilities both desire and deserve choices when seeking assistance with daily living that maintains their self-determination and maximum dignity and independence. Second, the current financing mechanisms (public and private) will become unsustainable in the near future without significant reform. The system must be affordable to all Americans regardless of income levels and must consider opportunities to leverage public and private support in new ways without impoverishing beneficiaries. Third, there is an opportunity with the

changing demographic picture of the United States to explore the possibilities of a universal approach to the design and financing of supports that is responsive to individuals under the age of 65, as well as Americans over 65 who may or may not have disabilities, without sacrificing individual choice and flexibility. Fourth, formal and informal caregiving must be sustained, including examination of family needs and workforce recruitment and retention challenges. Fifth, the approach to quality must examine consumer direction and control of resources in addition to traditional external quality assurance mechanisms.[i]

Consumer Concerns

NCD was alerted to the possible problematic impact of the proposed changes in July 2012, after stakeholders in the disability and aging communities came to NCD with their concerns. In August 2012, NCD met with DOL officials to discuss the concerns of the disability and aging communities. Subsequently, in October 2012, NCD requested that DOL engage in further dialogue with stakeholders, preferably through negotiated rulemaking, before proceeding further with the rulemaking process.

NCD held a roundtable discussion on January 30, 2013 which included more than thirty-five representatives from diverse perspectives on DOL's proposed changes. The disability and aging communities identified a number of concerns, including:

- affordability for people with disabilities and elders, particularly those who private pay, and the unintended impact of increased institutionalization;
- impact on publicly-funded programs and their inability to pay overtime;
- unique and informal nature of workers, many of whom are family or friends;
- unintended consequence of Medicaid agencies needing to limit the availability of home and community based services in order to comply with the proposed changes;
- DOL's 20 percent threshold and the need to delineate between professional providers and informal caregivers;
- proposed administrative requirements that will likely be difficult for people with disabilities and seniors to execute and administer;
- detrimental impact on the need for continuity of care;
- negative effects on live-in caregivers;
- negative impact on workers who will likely see a reduction in wages and may need to obtain additional jobs;
- increased risk of institutionalization as recognized in the DOL NPRM;
- increasing the cost of home and community based services without increasing the Medicaid rates or raising the Medicaid caps for available funding, resulting in a reduction of personal assistance, which could force people with significant disabilities to go without services or be forced into an institution;
- Medicaid programs that differ widely from state to state; the significant differences between the homecare system and consumer-directed programs; and
- potential negative impact on individualized supports currently available to adults with intellectual or developmental disabilities living within the community.

20 Percent Threshold

To follow up on our discussion regarding the proposed 20 percent threshold, NCD provides the following concerns regarding its potential detrimental impact if adopted. In most state Medicaid programs, caregivers are not typically career attendants; rather, they are usually family members and friends who are willing to help the individual who is in need of care. The disability and aging communities are concerned that the new definition of companionship services, especially the types of services that would be considered “incidental” and therefore limited to 20 percent of the caregiver’s time, would reduce the availability of family and friend caregivers, increase the strain on state home care systems, and threaten the consumer’s choice of provider. While we recognize DOL’s view that tasks more aligned with “homemaking duties” are not intended to be the primary functions of a companion, such services are, nevertheless, central to the provision of “fellowship and protection.” In fact, many of the services described by DOL as “incidental,” or even entirely excluded from companionship support, are the very ones a family member or informal caregiver might need to provide. That is, family and friends who function as paid caregivers routinely perform tasks such as dressing, grooming, toileting, feeding, doing the laundry, bathing, wound care, injections, blood pressure testing, and turning and repositioning. Additionally, contrary to DOL’s assertion, many of these personal care or health related services do not require “specialized training.” Many of the proposed “incidental services” are integral to the delivery of effective companionship services. DOL’s proposal to categorize and limit allowable services according to type of task is too restrictive and insufficiently captures the distinction between professional and nonprofessional caregivers. Therefore, NCD recommends that DOL work closely with Centers for Medicare & Medicaid Services (CMS), state agencies, providers, consumers and other stakeholders to further define the types of arrangements that may involve companions and non-professional caregivers, to ensure that the final rules do not jeopardize these valuable practices.

Concern has also been raised that the administrative burden related to the implementation and oversight of these provisions may prove to be excessive and ineffective. Consumers have said that as written, the rule would impose burdensome record-keeping requirements on the individual receiving services, the caregiver providing services, and the state funding and overseeing the quality of these services. Such an approach would be nearly impossible to administer, and quality assurance concerns could deter states from funding service arrangements that comport with the revised standards. NCD shares the concern that the rule’s administrative reporting requirements and thresholds for companions and live-in caregivers may be impractical to execute and administer. Accordingly, NCD recommends that DOL revise its approach for establishing a 20 percent threshold for “incidental services” in such a way that will reduce the administrative burden and more accurately reflect a holistic approach to addressing the needs of the disability and aging communities.

Further Engagement with the Disability and Aging Communities

NCD urges OMB and DOL engage in further discussion with stakeholders within the disability and aging communities before proceeding with the final steps of the proposed rulemaking process. NCD recommends the use of a negotiated rulemaking process to create further opportunities for direct dialogue with the disability and aging communities through the remainder of the drafting process, or proposing alternate means for continued engagement by the disability and the care providing communities to reach a balanced and equitable rule that respects

and reflects the needs and entitlements of both communities. The serious concerns that have been voiced indicate that further dialogue between DOL, care providers, and the disability and aging communities over the impact of these proposed rules will help reduce or eliminate confusion or misconstruction, and the availability and deep commitment and interest of these communities suggests that further engagement will benefit everyone.

There is clear precedent for negotiated rulemaking, or further consideration and input from stakeholders and experts at this time. Federal agencies regularly utilize negotiated rulemaking process. The NCD is available to assist in identification of experts and stakeholders who could help formulate guidance and elements of the proposed rule in concerted negotiation with care servers and other providers. We are readily available to support the DOL in continuing its engagement with the disability and aging communities to eliminate confusion about the potential impact of the rule, and possibly expand this analysis prior to taking final action on the proposed rule.

The disability and aging communities have specific information that which should become a formative part of the final rule. Consolidated sources of data on state consumer-directed programs have been published and are available, and can be accessed through contact with the National Council on Independent Living, ADAPT, and the Center for Personal Assistance Services. The government directed research and expert comment on this issue is also available from the Department of Health and Human Services and NCD. We would be delighted to assist in transmittal and consideration of the materials.

Conclusion

More work is necessary for the formulation and implementation of a solution that respects and fairly compensates personal care providers, while ensuring that supports and services for Americans with disabilities continue with efficiency, ease of access, and compassionate respect for personal dignity. NCD will continue to facilitate opportunities for further dialogue on the impact of these proposed rules and how they could be constructed to minimize the negative impact on people with disabilities and consumer directed personal assistance services. NCD encourages further consideration of research, consultation with experts, and facilitated discussion among all interested parties in order to ensure a clear, balanced and responsive solution to the issues justly addressed by the rule-making inquiry.

Thank you for your ongoing attention to this issue. Please do not hesitate to contact NCD through Joan Durocher, its General Counsel & Director of Policy, at (202) 272-2117 or jdurocher@ncd.gov if we may be of any further assistance.

Respectfully,

Jeff Rosen
Chairperson



Equity, Opportunity, and Inclusion for People with Disabilities since 1975

March 21, 2012

Mary Ziegler
Director, Division of Regulations, Legislation, and Interpretation
U.S. Department of Labor, Wage and Hour Division
200 Constitution Avenue NW
Room S-3502, FP Building
Washington, DC 20210

RE: Notice of Proposed Rule Making on Regulatory Information Number (RIN) 1235-AA05

Dear Ms. Ziegler:

TASH is writing in response to the proposed changes concerning the Companionship rules administered by the U.S. Department of Labor (DOL) under the Fair Labor Standards Act (FLSA), which were posted for public comment on December 29, 2011 and to further clarify our concerns in relation to companionship services under the Fair Labor Standards Act.

First, we wish to acknowledge DOL's efforts to update the companionship exemption to reflect current times and ensure that direct support professionals (DSPs) providing critically important services in the homes of the elderly and persons with disabilities are paid appropriately and are not taken advantage of through an exaggerated use of the existing companion exemption. We also recognize that the proposed changes also come in response to the dramatic growth of the private home health and in-home care industries over the last thirty-six years since the rules were first promulgated, which have resulted in large profits in these sectors that have not been appropriately reflected in improved wages and protections of professionals providing these services.

TASH does have some concerns, however, that the proposed changes do not fully take into consideration the unique role of professionals who provide highly personalized supports to individuals with significant disabilities thus enabling them to live independently in their own homes. The level of individual support services for people with disabilities throughout the United States has also grown dramatically in the last ten years and will continue to expand as Medicaid waiver programs continue to focus on individualized services and supports, at the same time there are proposed reductions in funding for community programs supported by the Medicaid waiver. As such, it is important that the final rule clearly outline in more specific details those areas of the rule that may negatively impact the continued facilitation of these personalized supports for persons with disabilities.

For example, live-in roommates are often a major component of the support system of an individual with significant disabilities who live independently in their own home. Live-in roommates are available in the rare case of an emergency or for infrequent support needs, which the individual with a disability may occasionally require. Live-in roommates receive free or reduced rent and utilities in exchange for being a quality, dependable long term roommate who on occasion may provide a small amount of support to the individual at night. Initially, TASH was concerned that the proposed rule as originally crafted would require persons with disabilities and their intermediaries to pay live-in roommates for hours the roommate is sleeping in order to be compliant with the new rule. However, after raising these concerns with DOL, we were very appreciative of the agency for making changes to the draft rule to clarify that live-in roommates can be

exempted from the companionship rule during sleep time. As such, the rule now clearly reflects that wages do not need to be paid to these live-in roommates during sleep hours. Allowing live-in roommates as a category to be exempt from the new rule making assures that individuals are not forced to live in far more costly congregate settings. Requiring live-in roommates to be paid for sleep time would have greatly jeopardized successful agreements between individuals with significant disabilities and their live-in roommates, and unintentionally result in an unnecessary burden for all interested parties.

There are three additional areas that require further work in order to ensure that the final rule is written in such a way as to protect the individual relationships between individuals with significant disabilities and DSPs who provide personalized supports to these individuals to enable them to live independently in their own home:

20 percent Limitation on Incidental Duties

We feel the 20 percent limitation in relation to incidental duties may not necessarily be in synch with the present day supports required by people with disabilities. Given the diverse needs of individuals with significant disabilities who live in their own home, it is imperative that the limitation allows some flexibility with respect to the provision of supports for individuals with significant disabilities who are receiving personalized supports in their own home. Additionally, the rule provides no direction to states on how this component of the rule should be implemented or enforced. Such vagueness could create a myriad of challenges for state agencies tasked with creating a process for determining whether or not the 20 percent limitation is being followed, and would likely be quite costly to enforce.

Clarifying Definition of Third Party Employment

We ask that DOL clarify the definition of third-party employment including the functions a third-party employer might perform on behalf of an individual with a disability. This is critically important in situations where a third-party employer may be responsible for assisting an individual in the identification, hiring, and administrative management of DSPs. These third-party employers manage a variety of extremely individualized arrangements between the client with the disability and a DSP, but often are not directly involved in the daily interactions of these professionals and their clients. The proposed rule, as currently crafted, contains several requirements of third-party employers, some that may not necessarily be appropriate in the provision of personalized supports supporting the independent living of individuals with significant disabilities in their own homes. As such, it is very important that the final rule clearly define third-party employment and confirm those functions or services that can be performed by a third-party employer on behalf of an individual with a disability.

Medicaid Reimbursement

There is a strong concern among many disability advocates that the proposed rule changes may unintentionally cause a reduction in available consumer-directed supports and lead to greater institutionalization of persons with significant disabilities. Unfortunately, the proposed rule was not crafted with any additional federal guidance to ensure that public reimbursement rates (for example, Medicaid) that fund the majority of personalized supports to persons with significant disabilities increase to absorb the additional costs that will ensue with updating federal labor laws. Without this additional guidance to state Medicaid agencies, the additional cost burden will fall on the individual consumers with significant disabilities, who do not have the ability to pay for these services in the first place. This could have serious consequences for the provision of long term supports and services for people with significant disabilities. Thus, TASH believes that Medicaid Reimbursement rates must be increased in relation to the support needs of the individual with disabilities. We specifically ask that CMS review rates where individuals are affected by the new rule changes in relation to minimum wage and overtime requirements.

Conclusion

TASH appreciates the efforts of the U.S. Department of Labor to ensure that direct support professionals are paid adequately for their work. We believe the recommendations we have provided will strengthen the proposed rule by ensuring a more holistic policy that takes into consideration the unique relationships between individuals with significant disabilities receiving personalized supports and their DSPs. Additionally, we hope the Administration understands that a more comprehensive approach to this issue that ensure that Medicaid reimbursement rates are also updated to reflect the proposed changes to federal labor law. DOL, and the Administration as a whole, must ensure that the final rule does not result in any harm to individuals with significant disabilities that would lead to greater segregation, institutionalization, or poor quality care.

Thank you for considering our organization's feedback.

Sincerely,



Barb Trader
Executive Director
TASH



Application of the Fair Labor Standards Act to Domestic Service
Comments provided by the National Resource Center for Participant-Directed
Services

Mary Ziegler, Director
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
Room S-3502
200 Constitution Avenue NW
Washington, DC 20210

RE: RIN 1235-AA05

Dear Ms. Ziegler:

The National Resource Center for Participant-Directed Services (NRCPS) would like to thank the Department of Labor (DoL) for the opportunity to comment on the Application of the Fair Labor Standards Act to Domestic Service (RIN 1235-AA05). The proposed changes to the companionship exemption will impact many participant-directed programs, where a large number of individuals receiving long-term services and supports (LTSS) employ their own domestic employees to remain as independent as possible in the community. We applaud the Department of Labor's effort in proposing these rules and are in support of the general direction and many of the changes put forth given that they continue to support people to maintain as much control as possible over their own services and supports and remain in their communities. Specifically, we support narrowing the requirements for a worker to qualify as a companion, as we believe that the exemption from minimum wage and overtime should be used sparingly, only for workers truly providing companionship services and not personal care. We encourage the Department of Labor to clarify certain components of the rules (as described below) and to provide reasonable notice before the proposed rules become law, as participants, states, and program providers will need time to adjust their programs to come into compliance.

The mission of the NRCPS is to "infuse participant-directed options into all home and community-based services by providing national leadership, technical assistance, education, and research, leading to improvement in the lives of individuals of all ages with disabilities." Participant-directed services, also known as consumer-directed or self-directed services, are home and community-based LTSS that help people of all ages across all types of disabilities maintain their independence and determine for themselves what mix of personal assistance supports and services work best for them. The NRCPS offers three membership tracks for different stakeholder groups involved with participant direction, including a track for participant direction program participants

(known as the National Participant Network), an FMS membership track for Financial Management Services (FMS) providers supporting participant direction programs, and a program membership track for state agencies administering publicly-funded participant direction programs. The National Participant Network (NPN) is a growing network that currently includes delegates from 31 states and 200 members who participate in self-direction programs across the country. The NPN holds monthly teleconferences and conducts extensive committee work to share best practices and to inform local and national participant direction policy. Our FMS membership, which currently includes 11 providers, and our program membership, which currently includes 11 states, have access to membership tools, resources, and policy forums to inform the effective development and expansion of participant direction.

Our comments are the result of extensive feedback from our three membership groups, additional stakeholders, and NRCPDS staff with more than a decade of experience conducting research and providing technical assistance in participant direction. The NRCPDS' commenting process included formal information sharing and feedback processes with all three membership groups and was overseen by our Public Policy Advisory Committee (which includes representation from our program membership and the National Participant Network). We have provided our comments in three parts for your convenience: key themes, philosophical comments, and comments by section.

Thank you once again for the opportunity to comment on the Application of the Fair Labor Standards Act to Domestic Service proposed rule. Please do not hesitate to contact us with questions.

Sincerely,

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William A.B. Ditto
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Commenting Key Themes

Participant direction is a proven method for providing effective home and community-based long-term services and supports (LTSS). Participant-directed services, also known as consumer-directed or self-directed services, are home and community-based services that help people of all ages across all types of disabilities maintain their independence and determine for themselves what mix of personal assistance supports and services work best for them. There are currently 398 publicly funded participant-directed programs serving approximately 810,000 people across all 50 states and Washington, DC.¹ In addition to the listed funding sources in the notice of proposed rulemaking (NPRM), the Administration on Aging administers Community Living Programs in 28 states² and the Veteran's Health Administration oversees 65 Veteran-Directed Home- and Community-Based Services programs.³ The NRCPS created a National Inventory of data on publicly funded participant-directed programs in all 50 states and Washington, DC and can share that information with the Department of Labor as the rules and associated policies are further refined.

Research has also shown that individuals utilizing participant-directed services and directly hired workers had significantly reduced unmet personal care needs, were 90% more likely to be very satisfied with how they lead their lives, and experienced either equivalent or improved health outcomes when compared to randomly assigned peers receiving care from traditional home care agencies.⁴ The NRCPS is concerned that Jane Gross's description of participant-directed employment as a "grey market" or "over-the-back-fence network of women [who are] usually untrained, unscreened, and unsupervised, but more affordable without an agency's fee, less constrained by regulations and hired through personal recommendation"⁵ (page 68) is inaccurate. Our research indicates that 50-55 percent of directly-hired workers receive formal training. Directly hired workers have also been at least as likely to say that they felt well-informed about the individual's conditions and service needs as agency workers, and reported "modestly to substantially better outcomes for measures of satisfaction, worry, and physical and financial strain."⁶ Workers are not unscreened, either; Sciegaj & Selkow (2011) found that criminal background checks are required for workers in 85% of participant-directed programs nationally.

Restricting the application of the companionship exemption will lead to increased personal care costs, resulting in a reduction of the overall amount of long-term services and supports that an individual receives unless there is a commensurate increase in the individual's budget. In participant-directed programs where individuals control their own budgets, costs will increase for individuals with workers who no longer qualify for the companionship exemption. This

¹ Sciegaj, M., and Selkow, I. 2011. "Growth and Prevalence of Participant Directed Services: Findings from a National Survey of Publicly-Funded Participant-Directed Services Programs." Presentation at the Boston College, National Resource Center for Participant-Directed Services, 2011 Financial Management Services Conference, Baltimore, MD. <http://web.bc.edu/libtools/details.php?entryid=340>

² Administration on Aging. *Community Living Programs*. Retrieved from http://www.aoa.gov/Press_Room/Products_Materials/pdf/Community_Living_Programs.pdf

³ Sciegaj & Selkow, 2011

⁴ Carlson, B.L., Foster, L., Dale, S.B., & Brown, R. 2007. "Effects of Cash and Counseling on Personal Care and Well-Being." *Health Services Research*, 42, 467-487.

⁵ Gross, J., New Options (and Risks) in Home Care for Elderly. New York Times available at <http://nytimes.com/2007/03/01/us/01aides.html>. March 1, 2007.

⁶ Foster, L., Dale, S.B., & Brown, R. 2007. "How Caregivers and Workers Fared in Cash and Counseling." *Health Services Research*, 42, 523-527.

will force the individual to either receive fewer hours of personal care or reallocate funds from elsewhere in the budget, reducing the overall amount of services received. In programs where individuals do not control their own budgets, it is reasonable to assume that program administrators will also be forced to reduce the individual's allotted hours of personal care in order to prevent increases in costs. The potential impact of the proposed rules on cost and access to personal care services should be well understood and appropriately addressed to allow for adequate strategies to ensure any changes in labor laws do not negatively impact service delivery in both participant-directed and agency-provided long-term services and supports.

All stakeholders in participant-directed programs will need a reasonable time period to come into compliance with the updated regulations in order to prevent lapses in service, which could lead to negative health outcomes. Currently, some participant direction program service descriptions are developed to maintain compliance with existing companionship exemption rules. If the proposed rules are finalized, state and program administrators must update service codes and definitions and support individuals to adjust their service usage to maintain compliance with the new rules. FMS providers must institute new operations oversight rules and establish new monitoring systems. Some individuals will be forced to hire more workers or re-allocate their service funds to accommodate an increase in worker wages (therefore taking funds that are currently being used for other services and supports), and without sufficient time to do so will face gaps in coverage. Gaps in service can lead to negative health outcomes for individuals, or increased institutionalization. We recommend notifying the public of the proposed rules becoming law at least 12 months before enforcing compliance, allowing states and program participants to identify solutions that minimize a negative impact on existing service delivery.

Financial Management Services are almost always used in publicly-funded participant direction programs. Page 69 of the NPRM suggests that Medicaid has only two models of participant directed services: Public Authority and No Intermediary. This chart obfuscates a key component in participant direction programs including those with and without a Public Authority operating for collective bargaining purposes. While most participant direction programs do not utilize the public authority model and almost none operate without an intermediary, the vast majority of participant direction programs require individuals who employ workers to use a "Financial Management Services" provider. The Centers for Medicare and Medicaid Services (CMS) define Financial Management Services (FMS) as "*A service/function that assists the family or participant to: (a) manage and direct the distribution of funds contained in the participant-directed budget; (b) facilitate the employment of staff by the family or participant by performing as the participant's agent such employer responsibilities as processing payroll, withholding and filing federal, state, and local taxes, and making tax payments to appropriate tax authorities; and (c) perform fiscal accounting and make expenditure reports to the participant and/or family and state authorities.*"⁷

An FMS provider supports employment-related tax and insurance compliance for participants who directly hire their own workers and serve as their employers. FMS also support program fiscal accountability. FMS have been used to reduce the employer-related task burden for participants, allowing them to focus on managing other aspects of their long-term services and supports. Research has shown that by using an FMS provider, employees are paid in compliance with state

⁷ Centers for Medicaid & Medicare Services (2008). *Application for a §1915(c) Home and Community-Based Waiver [Version 3.5] Instructions, Technical Guide and Review Criteria*. Appendix C: Participant Services, Attachment: Core Services Definitions, Section D, Services in Support of Participant Direction, #2 Financial Management Services, p.176.

and federal tax, wage and hour laws.⁸ Participants prefer using the services of an FMS provider over being responsible for payroll themselves because using an FMS provider allows participants to be in compliance with applicable regulations, while the participants and their families can focus on managing their services, supports and care.⁹

It is unclear which party would be liable if the companionship exemption were violated in a participant-directed program. If an individual hires a worker to perform companion duties but has them perform tasks that do not qualify for the exemption, it is unclear which stakeholder—the individual, the FMS provider that issues payment, the public program that funds and makes the service available, or some other entity—is liable if the worker sues for minimum wage and overtime pay.

It is unclear which party holds the burden to prove the application of the companionship exemption. The regulations do not indicate whether the default assumption is that a worker qualifies for the companionship exemption and must prove otherwise or that a worker does not qualify and the employer must prove that they do. This distinction is important in the event an employer misclassifies his worker and a claim is brought against the employer.

⁸ Murphy, M., Selkow, I., & Mahoney, K.J. 2010. *Financial Management Services in Participant Direction Programs*. Retrieved from SCAN Foundation website: http://www.thescanfoundation.org/sites/scan.lmp03.lucidus.net/files/TSF_CLASS_TA_No_10_Financial_Management_Services_FINAL.pdf

⁹ *Ibid*,

Philosophical Comments from our National Participant Network

The National Participant Network (NPN) is a growing network that currently includes delegates from 31 states and 200 members who participate in participant direction programs across the country. The NPN holds monthly teleconferences and conducts extensive committee work to share best practices and to inform local and national participant direction policy. Members of the NPN were generally supportive of the proposed changes to the companionship exemption as a “move in the right direction”, but expressed the following philosophical concerns on the nature of the companionship exemption in general.

The continued existence of a companionship exemption (although narrower) could delegitimize an effort in place to professionalize careers in fellowship and protection. While the NPN supports the narrowing of the exemption as described in the first paragraph of these comments, the NPN desires the elimination of the exemption completely. By declaring that some workers are not entitled to the same wage and hour regulations as others, the exemption implicitly suggests that such careers are of a lower standing. Companionship is a critical service to many elders and people with disabilities, and in order to attract and retain responsible and high-quality employees to provide this service, wages must reflect the value of their support. The NPN believes that if a worker is compensated monetarily for performing a job, then they have a right to minimum wage.

Disallowing the companionship exemption for third party employers but not for directly hired workers creates an unjustified difference in treatment. The provision of minimum wage and overtime regulations for third party workers represents an inconsistent approach based solely upon who is directly hiring the worker. The NPN believes that wages should be determined based upon the value of the tasks performed. The idea that the same tasks are valued differently based solely upon the identity of the employer seems unjustifiable.

NRCPPDS' Comments by Section

§552.6(a)

The NRCPPDS and its members seek clarification on the scope of “companionship services” which are defined as “the provision of fellowship *and* protection for a person who, because of advanced age or physical or mental infirmity, is unable to care for themselves.” The use of the word “and” suggests that it is insufficient to provide either fellowship or protection alone, in absence of the other. We also seek further advisement on whether “protection” is intended to be preventive in nature; for example, it is unclear whether a worker periodically rotating a bed-bound individual to prevent bed sores would qualify as a companion. We suggest that if a worker must perform a non-medical service in the course of protection, such as rotating a bed-bound individual to prevent bed sores, that the worker still qualify as a companion, despite that duty not being incidental.

§552.6(b)

The NRCPPDS supports the inclusion of the intimate personal care services listed in this section, and recommends the addition of mobility-oriented duties such as arm-holding during walking or supporting an individual with transfers.

§552.6(c)

While the exclusion of household work that benefits other members of the household under the exemption is reasonable, the NRCPPDS and its members feel that some housework that incidentally benefits other members of the household may be required in the provision of protection. For example, it is possible that a worker will need to mop up a spill or clear a path in a room for a person to pass through safely.

§552.6(d)

The proposed rules suggest that a worker who is performing companionship services but has a particular certification, credential or license (e.g. a certified nursing assistant) is not eligible for the companionship exemption (page 24). We believe that the focus of the rule should be on the duties that the worker is hired to perform rather than his/her certifications or skills. If an individual with a particular certification chooses to provide companionship services and provides fellowship and protection in accordance with the minimal provision of incidental services and exclusion of medical care and household services, we suggest that a worker with such a certification qualify for the companionship exemption.

We also seek clarification regarding the exclusion of medical care that is “typically provided by personnel with specialized training” (page 22). Often in participant direction programs, particular training, such as First Aid or CPR, may be required by the program administration agency for all workers providing service in the program, regardless of duties performed. Within such programs, a worker providing companionship services may be required to complete, for example, First Aid training prior to providing service to a participant. It is unclear whether or not a program requirement for such training precludes the worker from qualifying for the companionship exemption or whether any training required for all workers in a publicly-funded program (regardless of specific duties performed) would qualify as specialized training as described in the NPRM. We suggest that if training requirements are limited and generally non-medical in nature, program requirements for training should not disqualify a worker from qualifying for the companionship exemption.

§552.109

The NRCPS seeks clarification on the availability of the companionship exemption in cases of joint employment of a worker by a third party employer and the individual receiving services. The Agency with Choice model of FMS in participant direction is based upon such a joint employment relationship wherein the agency joint employer handles all payroll, insurance and certain human resource duties such as filing and depositing taxes. The individual receiving services, the other joint employer, selects, trains, supervises and schedules the worker while the agency includes the individuals' selected workers as the agency's own employees on all tax and insurance paperwork. We understand the proposed regulations to stipulate that a third party employer would not qualify to use the exemption while the individual would. Given that the agency is responsible for the worker's payroll as approved by the individual receiving the services, it is unclear whether the agency is considered a third party employer. We seek clarity as to whether the exemption is available to the individual managing the worker.

We also seek clarification on the availability of non-family representatives in participant direction programs to utilize the exemption. In participant direction programs, occasionally the individual receiving services is not in a position to directly manage the employee(s) providing service. In these cases, the individual may designate a "representative" who will serve as the employer of the individual's workers and will train, schedule, and manage the workers. Most of the time, a representative is a family or household member of the individual. Occasionally, an individual will appoint a friend as his or her representative. In these cases, the individual will continue to receive services, but the friend will schedule, train, and supervise the workers. The friend will be listed on all paperwork as the employer. We do not believe that this constitutes the use of a third party employer because the representative is an extension of the person receiving services; the friend is merely operating in the individual's stead as the employer. The representative is not an employer making that companion available to other individuals. Classifying non-family representatives as third party employers would prevent those individuals with the weakest support systems from using the companionship exemption, thereby making it more difficult for those with the weakest support systems to get the companionship they need. We seek clarity as to whether an individual appointing a non-family, non-household member as his/her representative, who will operate as the employer, would preclude that individual's workers from meeting the requirements of the companionship exemption.

Conclusion

The NRCPDS and its members support the general direction of the proposed rules given that they continue to support people to maintain as much control as possible over their own services and supports and remain in their communities. Members of the NPN argue that while these rules are effective, they should be taken even further to allow all participant-directed workers access to the same labor rights as their agency worker counterparts. However, it is important to recognize the short-term budgetary impact upon programs, funders, and individuals receiving support resulting from the reclassification of workers that are no longer eligible for the exemption. This reclassification could lead to a decrease in worker hours or individual budgets. Therefore, the NRCPDS believes that any increases in wages and benefits resulting from the proposed rules should be linked to an increase in funding for LTSS.



National Association of Councils on Developmental Disabilities

Washington Update

April 29, 2013

In this issue:

- ✓ **Impact of President's Budget on DD Programs, Health, Education and Employment**
- ✓ **Impact of Chained CPR on Future Social Security Benefits**
- ✓ **Affordable Care Act Implementation: Disagreement on High Risk Pools and Prevention Fund Impacts Tavenner CMS Nomination**
- ✓ **Increased Maryland Rates for Health Insurance Exchange Spark Questions to HHH Secretary Sebelius.**
- ✓ **Senate Finance Committee Chairman Max Baucus Announces Retirement**
- ✓ **Bureau of Labor Statistics Issues Report on Employment of People with Disabilities. Finds 18.2% of Working Age People with Disabilities Employed in May 2012**
- ✓ **Senate Passes Bi-Partisan Mental Health Act**
- ✓ **Disability Policy Seminar a Success. Keep the Momentum Going Strong**

Impact of President's Budget on DD Programs, Health, Education & Employment

As previously reported, it is good news that the President's FY 2014 Budget provides for essentially even funding at FY 2012 levels (but before sequester cuts) for the DD Councils and our DD Act counterparts, University Centers for Excellence in Developmental Disabilities and DD Protection and Advocacy, as well as for AIDD's Projects of National Significance.

Our sister organization, the Association of University Centers on Disabilities, has put together an [excellent chart and description](#) that highlight the President's Budget proposals that particularly impact people with developmental disabilities, including some in HHS, the Department of Education and the Department of Labor. Please note that the amounts shown in the chart (and the President's Budget) do not reflect the approximately 5.2% cut due to sequestration.

Impact of Chained CPR on Future Social Security Benefits

The President's Budget calls for using the Chained -CPI (Consumer Price Index) to calculate cost of living increases for Social Security retirement and disability benefits, although not for Supplemental Security Income.

According to a [report](#) by the Center for Budget and Policy Priorities, the impact of this proposal on Social Security retirement benefits would vary by a person's age and benefit level and would

differ for *current* and *future* beneficiaries. Overall, most future beneficiaries would experience a benefit reduction averaging about 2 percent over the course of their retirement

Affordable Care Act Implementation: Disagreement on High Risk Pools and Prevention Fund Impacts Tavenner CMS Nomination

After bi-partisan support and fairly smooth sailing in her confirmation hearing, Marilyn Tavenner's nomination to be Administrator of CMS was approved by voice vote of the Senate Finance Committee. If confirmed by the full Senate, Tavenner will be the first confirmed CMS Administrator since 2006.

However, after the hearing Senator Tom Harkin (D-IA), Chairman of the Senate Health, Education, Labor & Pensions Committee, put a hold on the nomination because the Obama Budget plans to use the Prevention Fund for other ACA programs including implementation of health care exchanges.

In the House, the Energy and Commerce Committee passed a bill on a party-line vote of 27 – 20 that would have diverted Prevention Funds to increase funding by \$4 billion for the ACA's high risk pools, which have stopped accepting new enrollees due to lack of funding. While some conservative groups criticized the measure, high-risk pools have been a cornerstone of Republican "repeal and replace" bills. Bill text, amendments and background materials may be found [here](#). The bill has not come to a vote on the House Floor.

Increased Maryland Rates for Health Insurance Exchange Spark Questions to HHS Secretary Sebelius.

Last week, House Republicans questioned testifying Administration officials about rate increases caused by the ACA after proposed rates for exchange plans in Maryland were released. The proposed rate for CareFirst Blue Cross Blue Shield reflected a 25% increase.

Secretary Sebelius responded by telling Members the rates were proposed and, as a former insurance commissioner, she felt the final rate would be lower. She also said other plans' rate increases were not as high and the ACA is creating more competition in the market with two new companies entering the market in Maryland.

Secretary Kathleen Sebelius also testified on April 24 before the Senate Labor HHS Appropriations Subcommittee and April 25 before the House Labor HHS Subcommittee. House testimony and a link to a webcast of the hearing can be found [here](#). The Senate hearing webcast can be found [here](#) and the testimony can be found [here](#). Many of the questions from Members focused on the topics covered above, including the rate increases and use of the prevention fund.

Senate Finance Committee Chairman Max Baucus Announces Retirement

On April 23, Senate Finance Committee Chairman Max Baucus (D-MT) announced he would not seek re-election in 2014 but will retire at the end of his sixth term in the Senate. In a [statement](#), Baucus said **“I will continue to work on simplifying and improving the tax code, tackling the nation’s debt, pushing important job-creating trade agreements through the Senate, and implementing and expanding affordable health care for more Americans.”**

The Senate Finance Committee has jurisdiction over Social Security, Medicare and Medicaid, and Senator Baucus has been a leader in supporting all three. He also had a major leadership role in enactment of the ACA. Nevertheless, at a hearing on April 17 he questioned HHS Secretary Sebelius about the Administration’s readiness to roll out the health insurance exchanges and consumer education efforts.

By seniority, Senator Ron Wyden (D-OR) would be next in line to lead the Finance Committee (Sen. Rockefeller (D-WV) would be next in line, but he is also retiring). However, Wyden would need to give up his chairmanship at the Energy and Natural Resources Committee in order to take over the Finance slot. If he declines to do so, which is currently considered unlikely, Senator Charles Schumer (D-NY) would be the next up.

New Report on Employment of People with Disabilities Finds 18.2% of People with Disabilities Employed in May 2012, Well Below Employment Rate of 64.3% of General Population

On April 24, the Bureau of Labor Statistics (BLS) released a [news report](#) entitled “Persons with a Disability: Barriers to Employment, Types of Assistance, and Other Labor-Related Issues.”

The report is based on a supplement to the May 2012 Current Population (CPS), a monthly survey of 60,000 households that obtains information on national employment and unemployment for the non-institutionalized civilian population ages 16 to 64.

It found that about “18.2 % of persons with a disability were employed in May 2012, well below the employment-population ration of 64.3% for persons with no disability.” The report explains that “in part, this reflects the older age profile of persons with a disability” but also noted that “the employment-population ratio was much lower among persons with a disability for all age groups.”

In answer to a question about barriers to employment, 80.5% of respondents identified their disability as a barrier to employment. Other barriers included lack of education or training (14.1%), lack of transportation (11.7%); and the need for special features at the job (10.3%).

It is important to note that the people who participated in the survey identified members of their household age 15 and older who were disabled if they answered affirmatively to any of seven questions relating to: deafness or hard of hearing; blind ness or serious difficulty seeing

even with glasses; serious difficulty walking or climbing stairs; because of a physical, mental, or emotional condition, serious difficulty concentrating, remembering, or making decisions or doing errands alone such as visiting a doctor's office or shopping.

Senate Passes Bi-Partisan Mental Health Act

Senators Tom Harkin (D-IA) and Lamar Alexander (R-TN), the Chair and Ranking Member of the Senate Health, Education, Labor & Pensions (HELP) Committee, have proven that bi-partisanship is not dead in this 113th Congress.

They co-sponsored the Mental Health Awareness and Improvement Act (S.689), which cleared the Senate 95-2 on April 18. The bill is a mental health package that reauthorizes and improves programs administered by both the Departments of Education and Health and Human Services related to awareness, prevention, and early identification of mental health conditions.

Title I of the legislation focuses on school settings, by promoting school-wide prevention through the development of positive behavioral supports, and encourages school-based mental health partnerships, while Title II of the bill focuses on suicide prevention, helping children recover from traumatic events, mental health awareness for teachers and other individuals, and assessing barriers to integrating behavioral health and primary care. This bipartisan legislation makes targeted improvements designed to improve federal efforts to assist state and local communities in addressing the mental health needs of its citizens.

In addition to Chairman Harkin and Ranking Member Alexander, original cosponsors of the legislation include HELP Committee Senators Franken (D-MN), Enzi (R-WY), Bennet (D-CO), Murkowski (R-AK), Baldwin (D-WI), Roberts (R-KS), Hagan (D-NC) and Isakson (R-GA).

Disability Policy Seminar & NACDD Public Policy Briefing Successes. Keep the Momentum Going Strong

This year's Disability Policy Seminar was a grand success. Over 700 people participated in two days of learning the latest on federal legislation and policy impacting people with disabilities.

NACDD President Claire Mantonya and Public Policy Chair Debra Dowd each moderated a session. SABE President Bryon Murray of Utah and SABE Vice-President Cathy Enfield of Missouri introduced Senators Barrasso (R-WY) and Sherrod Brown (D-OH) at the Coffee Kick-off on Wednesday morning.

At NACDD's own Public Policy Briefing on Sunday afternoon, April 14, Ed Long and Peggy Hathaway gave an update on the current political climate and appropriations for the DD Councils.

The star of the briefing was Pat Nobbie, who is now a Kennedy Public Policy Fellow in the office of Senator John D. Rockefeller (D-WV) and for many years handled public policy for the Georgia Council on DD. She shared her thoughts about Views from Both Sides of the Table and generated a lively discussion on building successful relationships with your own Congressional delegation.

The stars of the conference were all of you who did a great job of meeting with your own Senators and Representatives. We hope you are all finding ways to grow those relationships.

One way to do so is offer to help out when their constituents contact the Member's office and need help navigating special education, health or other service systems. When the Member's staff contact your office, respond immediately. The Members are likely to remember that you helped them help their constituents.

If NACDD can be of assistance, please feel free to contact Peggy Hathaway, phathaway@nacdd.org



Transition toward Excellence Achievement & Mobility:

An Overview of the TEAM Legislation

NACDD Public Policy Committee

April 11, 2013

What is the CPSPD?



- *The Collaboration to Promote Self-Determination (CPSPD), a coalition of national disability organizations, seeks to:*
 - *Modernize federal programs for adults with significant disabilities in ways that optimize self-sufficiency and economic security*
 - *Eliminate barriers to working and saving while ensuring the preservation of vital, public, long-term supports.*



CPSD Partner Organizations (2013)

- Executive Committee
 - Autistic Self-Advocacy Network (ASAN)
 - National Down Syndrome Congress (NDSC)
 - National Down Syndrome Society (NDSS)
 - National Fragile X Foundation (NFXF)
 - TASH
- Associate Members
 - American Network of Community Options and Resources (ANCOR)
 - Association of Persons for Supported Employment (APSE)
 - Autism Society of America (ASA)
 - Association of University Centers on Disability (AUCD)
 - Council of Parents Attorneys and Advocates (COPAA)
 - Institute for Educational Leadership (IEL)
 - Muscular Dystrophy Association (MDA)
 - National Association of State Directors on Developmental Disabilities Services (NASDDDS)
 - National Disability Institute* (NDI)
 - National Disability Rights Network (NDRN)
 - Physician-Parent Caregivers
 - Service Employees International Union (SEIU)
 - United Cerebral Palsy (UCP)

• NDI provides financial support, as well as an office, administrative and intellectual support
• Over 150+ Senior Advisors from 44 states



Poverty By The Numbers

SUBPOPULATION	2009 Poverty Rate	2010 Poverty Rate
Children	20.7%	22.0%
African-American	25.8%	27.4%
Hispanic	25.3%	26.6%
Disability	25.0%	27.9%
Total U.S. Population	14.3%	15.1%

U.S. Census Bureau (13 September 2011)

46.2 million Americans were living in poverty in 2010

Persons with disabilities experienced the highest rates of poverty of any other subcategory of Americans for the tenth year in a row

AND unacceptably high unemployment rates (between 500-600k individuals are in sheltered workshops or day programs)

SSI/SSDI annual payments will reach over \$1 trillion by 2020

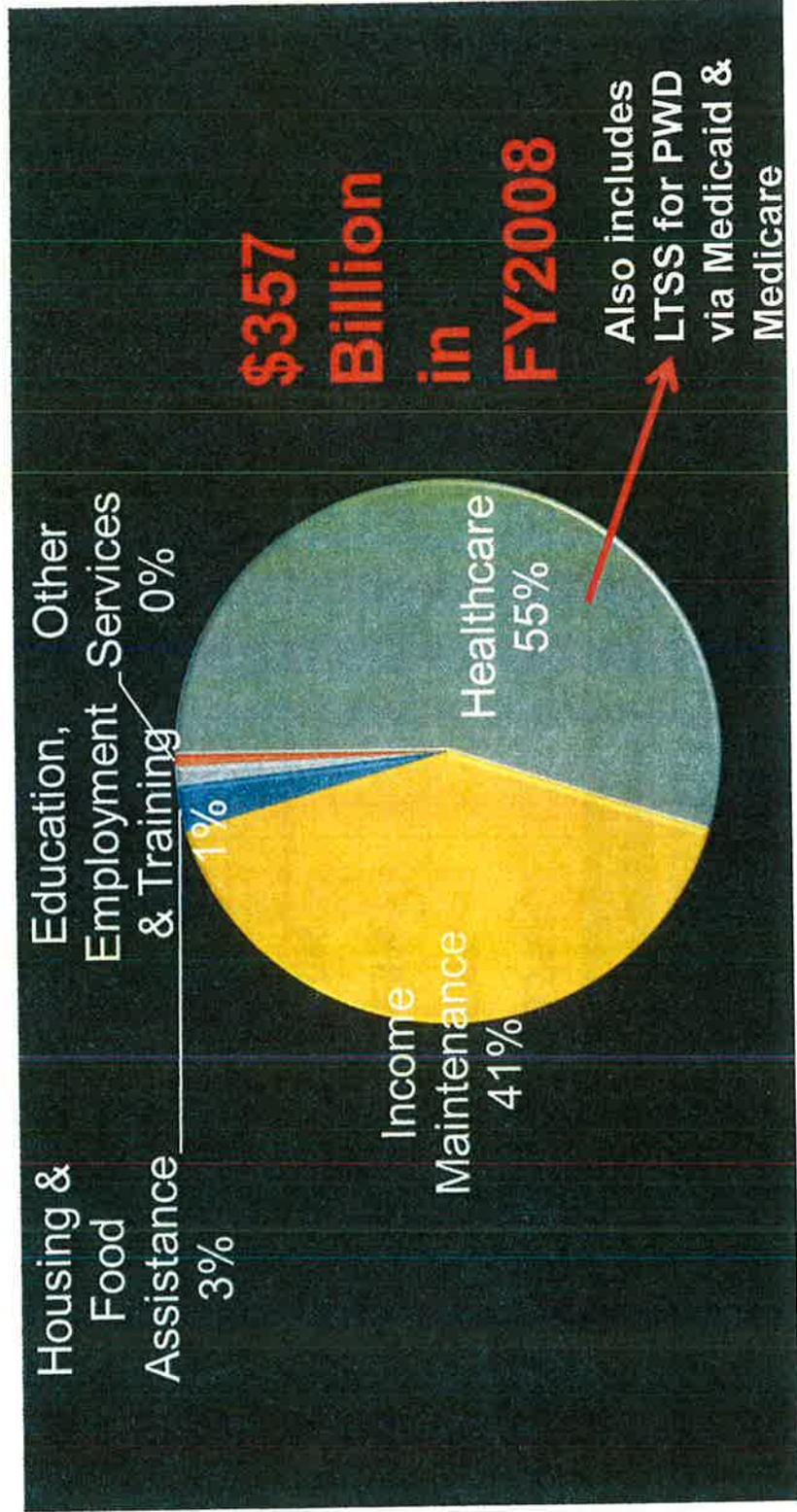
Of persons with disabilities on SSI (many are persons with I/DD), only 0.2 of one per cent leave the rolls voluntarily

Poverty and Disability:

Money is not Always the problem....Sometimes the problem is an Issue of Priority

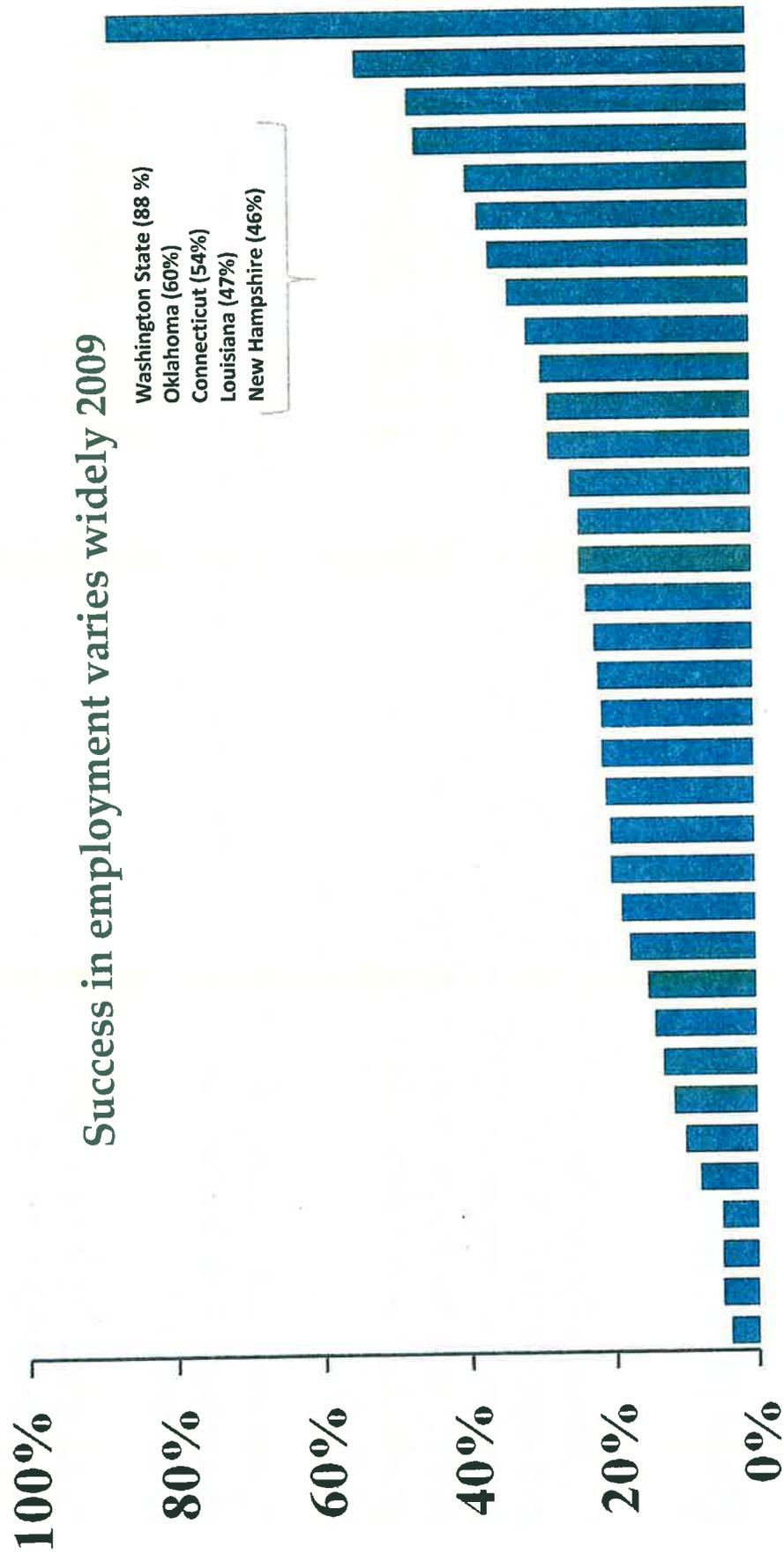


Figure 1. Percentage of Estimated Federal and State Expenditures for Working-Age People with Disabilities by Major Expenditure Category, Fiscal Year 2008¹¹



¹¹ Adapted from Livermore, Stapleton and O'Toole (2011, Health Affairs)

We Have Proof that People Can Work When Services Focus on Employment



2009 – UMASS Boston ICI ID/DD Agency Survey

Overcoming the Poverty Trap



“...the time has come to create incentives for modest amounts of income for individuals with disabilities without jeopardizing their essential benefits. A better fix between Supplemental Security Income (SSI), Social Security Disability Income (SSDI) and Medicaid must be developed that will encourage earnings and gradually reduce dependence on benefits only when income becomes significant enough.”

“...society must change the terms and rationale for obtaining necessary supports to those based on freedom and equality rather than paternalism and professional domination.”

“...support for long-term care will falter without a better grounding in public policy law, and ethics that is more widely shared by the larger society... reforms would place authority for controlling individuals budgets needed for support with the individual, family, and close allies.

*Tom Nerney, 2002
Center for Self-Determination*



From the Cyclical Dependency Model....



EDUCATION

- Segregated from class or school
- Often placed on non-diploma track at an early age. Little or no access to general curriculum



TRANSITION

- Low expectations
- Weakened school accountability
- Lack of access to transition activities
- Lack of long term supports



EMPLOYMENT

- Individual typically placed into expensive segregated options
- Disincentives to work
- Subminimum wages often paid



HOUSING

- Often option are institutions, and congregate provider operated group home facilities that regiment people's lives
- Long waiting list for residential services



FINANCIAL PLANNING

- Asset limitation of \$2K (has not been revised since 1985)
- Benefits riddled with complexities

This Model results in Chronic Impoverishment, Cyclical Dependency, and Loss of Human Dignity throughout Lifespan.



To the Self-Sufficiency Model



EDUCATION

- Inclusion in home school
- Support to earn diploma
- Access to the general curriculum
- High expectations and school accountability



TRANSITION

- Transition planning begins at 14
- Work experience required as part of transition
- PSE
- Cross agency/blended and braided funding for ongoing employment supports



EMPLOYMENT

- Presumed eligibility for supports via VR, on-stops and local/state programs
- Outcome is integrated employment in general workforce



HOUSING

- Focus is on getting person into own home in integrated setting
- On-going, self-directed personalized supports to optimize independence



FINANCIAL PLANNING

- Consumers control public resources
- Increase asset limits to \$10K



This Model represents Optimal Self-Sufficiency, Independent Living, Economic Empowerment and Full Community Participation

BECAUSE personal freedom and economic self-sufficiency are cost effective



SERVICE AREA	CYCLICAL DEPENDENCY	SELF-SUFFICIENCY MODEL
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Education	Segregated: \$25-45K/student/year	Full Inclusion: \$12-26K/student/year
Employment	Average annual costs of SW/individual: \$19,388 SW is less cost-efficient to <u>taxpayers: 0.83</u> SW is less cost-efficient to <u>workers: 0.24</u>	Ave annual costs of SE/individual: \$6,619 SE is more cost-efficient to <u>taxpayers: 1.21</u> SE is more cost-efficient to <u>workers: 4.20</u>

Data Sources:

Education: Weiner, 1985; Carlberg & Kavale, 1980; Baker, Wang & Walberg 1995; Piuma, 1989; Blackorby & Wagner, 2001.
Employment: Cimera, R. (2007, 2008, 2009, 2010)



CPSD Policy Solutions

Multi-system reform is necessary to remove the barriers that keep people with I/DD from engaging in meaningful work, saving, living independently.

Start with an **Employment First** presumption in multiple laws.

Employment First is a service-delivery strategy supporting the primary or preferred employment outcome of integrated employment at minimum wage

- State responsibility to provide services that align reimbursement practices and policies
- Incentives and funds for services that lead to integrated employment
- Greater Medicaid reimbursements for agencies that place individuals in competitive or supported employment.

CPSD Legislative Solutions
Four Bills, One Singular Reform Focus



- *Achieving a Better Life Experience (ABLE) Act*
- *Transition toward Excellence Achievement & Mobility (TEAM) Act*
 - *TEAM – Employment (H.R. 509)*
 - *TEAM – Education (H.R. 510)*
 - *TEAM – Empowerment(H.R. 511)*



TEAM Legislation: *Purpose*

- Establishes a coordinated, comprehensive approach to the investment of public resources
- Expands and improves the opportunities for youth with significant disabilities who are transitioning into adulthood
- Ensures meaningful postsecondary educational opportunities and employment in integrated settings at a competitive wage
- Enables long-term career development and growth, and inclusion in the community setting through independent living and social engagement



TEAM-Education: IDEA Reform (H.R. 510)

- Clarifies introduction of transition services from age 14 on into IEP
- Invites State I/DD State Services Authority to participate in IEP process at age 14
- Requires transition services in conjunction with each of the 5 Guideposts to Success
- Prohibits sheltered workshop placement as an outcome in an IEP
- Allows Part B Funds to be used to contract out the provision of transition services by an LEA
- Funds through state grants to fund the creation of transition coordinators.



TEAM-Empowerment : I/DD Services (H.R. 5111)

- Mandates the creation of a transition services unit within each State I/DD Services Authority
- Requires state I/DD Authority to manage and complete a young adult's Individual Transition Plan (thus taking the place of the IEP) through age 26
- Allows I/DD beneficiaries to select a transition broker to help navigate the various adult service programs.



TEAM-Employment: *VR Systems-Change Grants (H.R. 509)*

- Provides grants to states for strategies leading to integrated employment at livable wages and/or participation in PSE programs
- Requires that state VR Department partner with I/DD Authorities, State Education Agency (SEA), Workforce Investment Board, and State Medicaid Agency to receive grant
- Grant proposal will emphasize:
 - Self-direction through individual budgeting
 - Blending and braiding of public resources
 - Outcomes aimed at full integration (education, employment and community living)
- Senate WIA Reauthorization draft included similar systems-change initiative.



TEAM Political Strategy: *Legislative Momentum*

- Congressman Gregg Harper (R-MS) introduced legislation in 2011 and will reintroduce in February, 2013
- Congressional briefing planned for 2013.
- Ongoing work to solidify champions (bipartisan) for companion bill in the Senate.
- Developing and implementing a public awareness campaign to promote TEAM.
- Ongoing work to increase number of national organizations (25 to date) that support the legislation.

Conclusion

The ABLE Act and the TEAM package of legislation represent critical steps in redefining the social contract that currently exists between persons with disabilities and the American society. A social contract based on the competencies, autonomy and value of persons with disabilities.



THANK YOU

For more information:

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Collaboration to Promote Self-Determination

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