



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

Posted at www.scdd.ca.gov

DATE: November 12, 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

Teleconference Site:

**Area Board 7
2580 North First Street, Suite 240
San Jose, CA 95131**

Pursuant to Government Code Sections 11123.1 and 11125(f), individuals with disabilities who require accessible alternative formats of the agenda and related meeting materials and/or auxiliary aids/services to participate in the meeting, should contact Michael Brett at 916/322-8481 or michael.brett@scdd.ca.gov by 5 pm on November 7, 2013.

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|----------------------------|----------|
| 1. CALL TO ORDER | J. Lewis |
| 2. ESTABLISHMENT OF QUORUM | J. Lewis |

3. WELCOME AND INTRODUCTIONS	J. Lewis	
4. APPROVAL OF 10/17/13 MINUTES	J. Lewis	3
5. PUBLIC COMMENTS		
<i>This item is for members of the public to comment and/or present information to the Council. Each person will be afforded up to three minutes to speak. Written requests, if any, will be considered first. The Council will also provide a public comment period, not to exceed a total of seven minutes, for public comment prior to action on each agenda item.</i>		
6. POLICY FOCUS FOR 2014	M. Polit	
A. Priorities for Restoring Budget Cuts		6
B. Policy Focus and Ideas for Legislation		
C. Legislative Platform		114
7. ACTIVE LEGISLATION		
A. AB 1089 (Calderon), Foster RC Transfers	M. Polit	
B. SB 663 (Lara), Victims of Sexual Assault	K. MacDonald	120
C. SB 579 (Berryhill)	M. Polit	153
D. Report on other legislation	M. Polit	
8. NEXT MEETING AND 2014 CALENDAR	J. Lewis	
9. ADJOURNMENT	J. Lewis	

DRAFT
Legislative & Public Policy Committee (LPPC) Minutes
October 17, 2013

Members Present

Ray Ceragioli, Chair
Jennifer Allen
Tho Vinh Banh
Dan Boomer
Lisa Davidson
David Forderer
Connie Lapin
Janelle Lewis
April Lopez

Members Absent

Brian Gutierrez
David Mulvaney

Others Present

Mark Polit
Bob Phillips
Karim Alipourfard
Michael Brett

1. CALL TO ORDER

Chairperson Ceragioli called the meeting to order at 10:08 AM.

2. ESTABLISHMENT OF A QUORUM

A quorum was established.

3. INTRODUCTIONS AND ANNOUNCEMENTS

Members introduced themselves and announcements were made. Chairman Ceragioli announced that he is stepping down as Chair, as his term on the Council will be expiring in 2014. He spoke about the success of legislation this year, especially AB 1041, SB 468, and SB 555, and how much it means to people with developmental disabilities and their families.

4. APPROVAL OF AUGUST 22, 2013 MINUTES

Connie Lapin moved and Jennifer Allen seconded to approve the August 22, 2013 minutes. Motion passed 7-0-1.

5. PUBLIC COMMENTS

Many members of the committee thanked Chairman Ceragioli for his leadership, mentorship, and his friendship during his time as Chair of the committee. Under his leadership, the committee has functioned harmoniously and productively.

6. LEGISLATIVE ISSUES

A. Summary of State Legislation Outcomes. Mark Polit updated the committee on the status of Council supported and Council sponsored legislation.

B. Legislative Platform and Existing Policies

Discussion of this agenda item was deferred to the next meeting.

7. PROPOSAL FOR A SERVICE DOG WEEK

No action was taken by the committee.

8. FORMATION OF AN EDUCATION POLICY WORK-GROUP

Connie Lapin moved and Daniel Boomer seconded to form an educational policy sub-committee. The motion was adopted 9-0-0.

9. NEXT STEPS – POLICY FOCUS OF THE COUNCIL

Tony Anderson, Executive Director of the Arc of California, and Chris Arroyo, Interim Executive Director of Area Board 10, presented on the last several years of budget reductions. The committee discussed creating priorities for restoration of budget cuts. The committee wanted to hear from Area Boards on their ideas, based on their local experience. Therefore, staff will query the Area Board directors for that purpose. The LPPC will meet again November 12 to have a more extended discussion.

To help assess priorities, the committee asked for a 45 minute presentation from Tho Vinh Banh on regional center data on equity in service delivery. Janelle Lewis moved and April Lopez seconded. The motion carried 9-0-0.

Tony Anderson distributed a draft letter from the Lanterman Coalition asking the Council to sign on. Mark Polit explained that three new developments have a significant impact on labor costs for DD providers: (1) Increase in minimum wage to \$10/hr., (2) revised rule under the Fair Labor Standards Act on the Companionship Exemption to overtime, and (3) employer requirements to purchase health insurance under the Affordable Care Act. Polit emphasized

that the committee did not need to approve the exact language of the letter, just agree to the policy idea that rates should be adjusted to help compensate for these additional labor costs. Exact wording would be left to staff. David Forderer moved and Daniel Boomer seconded to sign on the letter. The motion passed 7-1-1.

10. NEXT MEETING AND 2014 CALENDAR

The next meetings were scheduled for November 12, 2013 and January 14, 2014.

11. ADJOURNMENT

Chairman Ceragioli adjourned the meeting at 3:12 PM.

AGENDA ITEM 6A

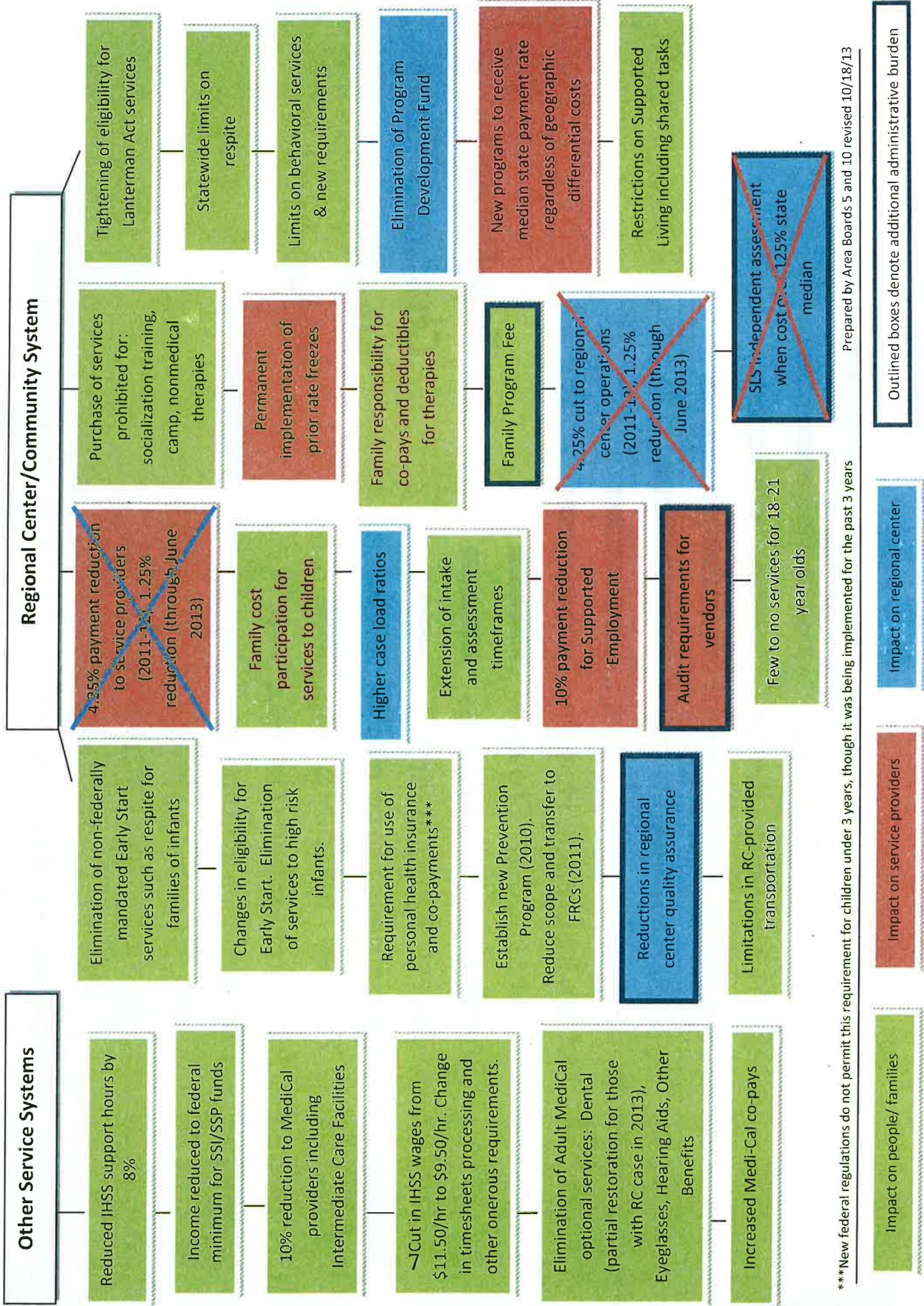
PRIORITY FOR RESTORATION OF BUDGET CUTS

At the October 17 LPPC meeting, the committee decided to seek input from Area Boards before recommending any priorities for restoration of budget cuts. Staff has sent that request to the Area Board directors who will seek local input. This information will be presented at LPPC on November 12.

ATTACHED:

- (1) The “shredding” sheet which summarizes budget reductions all on one page
- (2) The Lanterman Coalition survey results. This survey was presented by Tony Anderson at the October 17 meeting. It was a survey of organizations belonging to the Lanterman Coalition.
- (3) DDS documents included for reference materials: DDS summary of the 2009 budget reductions; DDS memos to regional centers on the requirements of budget trailer bill language in 2011, 2012, and 2013.

Shredding Services and Supports to People with Developmental Disabilities Cumulative Impact of Budget Cuts through 2013





Median rate – Allocation...



RCs & the prevention program...



Minimum Wage Increase



Annual family program fee



RC and Providers - 15%...



9

Unified budget



Healthcare Increases ACA



"Last year caseload..."



Annual services notification



Health benefit cards –



Top Priority Requiring Lor Range

(WANTERMAN)
COMMITMENT
POLICE

0 5 10 15 20 25

**DEPARTMENT OF DEVELOPMENTAL SERVICES
SUMMARY OF BUDGET REDUCTIONS
JULY 2009**

INTRODUCTION

The State of California is experiencing an unprecedented budget shortfall largely due to the severe national economic crisis. Every area of state government is impacted by this fiscal crisis, including the Department of Developmental Services (DDS or Department).

In February, the Governor and Legislature reached agreement on a budget solution to address a \$42 billion budget deficit and restore California's fiscal balance. Unfortunately, since that time the global recession has deepened and the State now faces an additional deficit exceeding \$26 billion.

The Department has undertaken numerous efforts to control costs throughout our entire system, including staffing reductions in the DDS headquarters and state-operated developmental centers, contract suspensions, furloughs of state employees with a corresponding 14.2 percent decrease in salary, and development of proposals to reduce regional center operations and purchase of services. Throughout this difficult process, the Department has remained committed to preserving the entitlement to services and supports and the continued implementation of the individualized planning process mandated in the Lanterman Developmental Disabilities Services Act (Lanterman Act) and Early Intervention Services Act (Early Start).

The Department recognizes that the State's worsening fiscal situation and the specific savings proposals pending legislative actions have created uncertainty and concern. This briefing paper was prepared to provide an accurate and complete overview of the Department's efforts to manage our limited resources.

OVERVIEW

DDS is responsible under the Lanterman Act for ensuring that more than 240,000 people with developmental disabilities receive the services and supports needed to live independent and productive lives. These disabilities include mental retardation, cerebral palsy, epilepsy, autism and related conditions. Services are delivered directly through four state-operated developmental centers and two community facilities, and under contract with a statewide network of 21 nonprofit regional centers.

In the 2008-09 Fiscal Year (July 1, 2008 to June 30, 2009), \$4.7 billion was allocated to DDS to provide these services. Due to caseload increases and higher service needs, the 2009-10 budget was projected to grow by over \$345 million. The Department's budget has two sources of revenue: state dollars, called General Fund, and monies from the federal government. The State receives a small federal grant for the Early

Start Program serving infants and toddlers from birth to three years of age and matching funds for services provided to approximately 154,000 consumers enrolled in the federal Medicaid Program (Medi-Cal). The Department operates a large (both in terms of enrollment numbers and breadth of covered services) federally approved Home and Community-based Services Waiver (Waiver) for regional center consumers who are Medi-Cal beneficiaries. Through this Waiver the federal government participates in the funding of community services to eligible consumers. The number of regional center consumers enrolled on the Waiver has grown to 80,862 and the Department estimates approximately 3,700 new regional center consumers will be added to the Waiver this fiscal year. The Department is currently unable to receive federal matching funds for community services delivered to consumers who are on Medi-Cal but not eligible for the Waiver. To be eligible, a consumer cannot reside in a licensed health care facility and must meet the level-of-care criteria for Waiver enrollment.

In January 2009, the Governor's Budget proposed a 3 percent payment reduction for regional centers and service providers and called for the Department to work with stakeholders to achieve a \$334 million General Fund savings. The Legislature adopted the 3 percent proposal, reduced the Department's budget by \$100 million (General Fund) and required the Department to work with stakeholders and submit a plan explaining how the savings would be achieved. In order to make sure the savings would occur, the Legislature adopted language to require an additional provider payment reduction of 7.1 percent if a savings plan for the \$100 million was not adopted by the Legislature prior to September 1, 2009.

In February, the Department implemented a stakeholder process to meet the legislative requirements. Three stakeholder public forums were held in Sacramento, Oakland, and Los Angeles. A workgroup was established to discuss potential budget proposals with representatives from statewide stakeholder groups (list of participants enclosed) impacted by the reductions. Legislative staff was invited to participate in all the meetings. In addition, the California Disability Community Action Network hosted a telephone town hall meeting for DDS to allow an additional opportunity for input from the community. All stakeholders were encouraged to submit ideas and comments in writing to the Department. The Department distributed public hearing meeting information to hundreds of stakeholder contacts, posted information on the department internet site, and made efforts to ensure that the meetings and materials met the public's accessibility and language needs.

In total, approximately 1,400 stakeholders attended the three public forums, including those stakeholders who attended by conference call. The Department received approximately 1,350 written recommendations outlining budget suggestions and several phone calls from stakeholders. Department staff consolidated all recommendations received, as well as those outlined in the DDS Cost Containment report submitted to the Legislature in December 2007, and presented this information to the workgroup in its deliberation of proposals that would achieve the targeted \$100 million reduction.

The workgroup met for 25 hours to review and prioritize the proposals. While not every member supported each proposal, the final package represents recommendations informed by the workgroup to achieve the targeted savings while maintaining the entitlement and ensuring program and service integrity.

Unfortunately, the economy worsened and additional budget reductions were contained in the Governor's May Budget Proposal (May Revise). After release of the May Revise, the Department reconvened the stakeholder workgroup to review and prioritize an additional \$234 million in reductions. Unlike the prior \$100 million budget reduction, savings for the new \$234 million could come from the entire developmental services system, including developmental centers. The workgroup divided into subcommittees to address and refine proposals by program area, and subsequently reconvened as a full workgroup to consider and prioritize each proposal. While members do not support the \$234 million budget cut, the final package reflects the input of the workgroup to achieve the targeted savings while maintaining the entitlement, protecting the individual planning process.

Following completion of the budget proposals by DDS, the Assembly and Senate Budget Committees considered the proposals during public hearings. Subsequently, the Joint Legislative Conference Committee on the budget adopted the Department's recommendations and associated trailer bill language. These changes are pending final legislative approval and enactment as part of the overall state budget negotiations.

PROPOSALS TO ACHIEVE TARGETED SAVINGS

The Department developed and submitted to the Legislature two sets of savings proposals. The first set of proposals was submitted in April 2009 to achieve a General Fund savings target of \$100 million. The second set of proposals was submitted in June 2009 to achieve an additional General Fund savings of \$234 million. The following summary consolidates all of the proposals into a comprehensive list totaling \$334 million in General Fund savings. The amount noted for each proposal represents the associated General Fund savings in Fiscal Year 2009-10.

These proposals do not change the Individualized Family Services Plan/Individual Program Plan processes, nor do they change existing appeal rights and processes.

A. Expanded Federal Funding (New funds anticipated \$78.8 million)

The Department will work with the California Department of Health Care Services, the federal Centers for Medicare and Medicaid Services and stakeholders to maximize federal funding received by California, as follows:

1. An amendment, called a 1915(i), to California's Medicaid plan will be pursued to allow receipt of federal funding for services to consumers who are on Medi-Cal but not eligible for the Waiver.
2. Services, such as day care, will be added to the existing Waiver.

3. The Department will pursue becoming an Organized Health Care Delivery System to ensure California receives federal funds already assumed in the budget of \$44 million and achieve an additional \$4.6 million in savings.
4. Regional centers will not newly vendor any licensed community care facilities (CCF) with a capacity of 16 or more beds which do not qualify for federal Medicaid funds because of their institutional setting. Effective July 1, 2012, regional centers will not be able to purchase services from existing facilities, as described above, unless the facility has a written agreement and plan to qualify for Medicaid funding through downsizing or becoming more 'homelike' by June 30, 2013.

B. Developmental Centers (\$27.2 million)

In addition to the employee furloughs and staff reductions noted above, the Department will implement the following proposals associated with the state operated Developmental Centers (4 facilities) and Community Facilities (2 facilities):

1. The Department will close the Sierra Vista Community Facility. Residents will relocate to living options based upon their needs and choices as identified in their Individual Program Plans.
2. Several capital outlay projects (facility repairs) will be delayed to achieve one-time savings in the 2009-10.
3. Up to 30 existing residents in the secure treatment program at Porterville Developmental Center will enter a specialized transition treatment area where their services will be eligible for federal matching funds.

C. General Standards (\$45.9 million)

This proposal establishes the following standards to be used by regional centers in authorizing services:

1. Regional centers shall not purchase experimental treatments, therapeutic services or devices that have not been clinically determined or scientifically proven to be effective or safe or for which risks and complications are unknown.
2. The Lanterman Act currently requires regional centers to use generic services when available. If a consumer or family chooses not to access available generic services (e.g. IHSS, Medi-Cal, public school, California Children's Service), regional centers will not be able to pay for the service.
3. The Lanterman Act currently requires regional centers to use generic services when available. Medical and dental services covered by generic resources, such as Medi-Cal, health plan(s) or private insurance, will not be purchased by the regional centers for consumers enrolled in these insurance plans without proof of denial from the insurance provider. This proposal applies to consumers three

years of age or older. Services can be provided pending approval, initiation or denial of the service.

4. Services identified in the Individualized Family Services Plan/Individual Program Plan that can be provided by more than one vendor and still meet the consumer's needs will be compared and regional centers will purchase the services from the least costly service provider that can meet the consumer's needs. In determining the least costly provider, the cost of transportation and the availability of federal financial participation will be considered. The consumer will not be required to use the least costly provider if it will result in the consumer moving to more restrictive or less integrated services or supports.
5. Regional centers will provide information to the consumer or his or her authorized representative about the type and costs of services provided each year to the consumer.

D. Transportation Reform (\$16.9 million)

Regional centers ensure the transportation needs of consumers identified in their Individualized Family Services Plan/Individual Program Plan are met. The centers may obtain these services from various public and private transportation providers when the transportation needs cannot be met by family members. This proposal will require regional centers to pursue lower cost transportation services that can meet the consumers' individual needs, as follows:

1. If a consumer can use public transportation, they will be assisted to do so, rather than purchase special transportation.
2. While still meeting the consumer's need, the least expensive transportation option will be used.
3. Regional centers will buy services close to consumers' homes to save on transportation costs, when such services meet the individual's needs.
4. If feasible, families will provide transportation for children as opposed to it being purchased by regional centers.

E. Uniform Holiday Schedule (\$16.3 million)

Most day programs, look-alike day programs and work activity programs recognize 10 holidays, but these holidays may differ between programs. This proposal standardizes the holiday schedule for these programs and increases the total number to 14 days. Programs will have the same 14 holidays off each year. The statute authorizes the Department to adjust the proposed list of holidays with sufficient notice. In addition to the savings from the decreased number of program days, savings from the reduced transportation costs will be realized.

F. New Service for Seniors at Reduced Rates (\$1.0 million)

Most day programs, look alike day programs and work activity programs do not have programs specifically for aging consumers who might want a different program model designed to meet their needs. This proposal requires all of these types of programs to offer a senior component to their current program design. About 5% of consumers over 50 years of age are expected to choose this new service option.

G. Custom Endeavors Option (\$12.7 million)

Employment for persons with developmental disabilities remains a high priority for the Department. This proposal expands options for consumers to gain employment, work experience through volunteerism, and/or start their own business. Day programs, look alike day programs and work activity programs will offer this new service model as a component of their current program design. This option will be provided to consumers consistent with their Individual Program Plan.

H. In-Home Supportive Services (IHSS) (\$1.3 million)

Under the Lanterman Act, regional centers are required to use available generic resources such as IHSS. This proposal requires supported living providers to help consumers get IHSS within five days of moving into supported living. While the consumer is waiting for IHSS services, the supported living provider will be paid the IHSS rate for IHSS type services provided to the consumer. This does not change the Individual Program Plan or services to the consumers.

I. Supported Living Services (\$6.9 million)

Consumers who live in the community can receive services necessary to remain in their own home. These services are available from a Supported Living Services (SLS) provider. This proposal provides specific direction on the provision of these services, as follows:

1. Regional centers will work with SLS providers on rates of payment that are cost effective, include reasonable administrative costs, and can be no higher than the rate on July 1, 2008.
2. Unless needed to implement a consumer's Individual Program Plan in limited and unique circumstances, regional centers will not be allowed to pay a consumer's rent.
3. As long as it meets the consumer's needs, regional centers will attempt to have consumers who share a home use the same SLS provider.

J. Utilization of Neighborhood Preschools (\$8.9 million)

Some toddlers served by the regional centers currently attend segregated infant development programs. This proposal supports a different service delivery model whereby families, through the Individualized Family Services Plan/Individual Program Plan, will be able to have their toddler attend local preschools with the regional center also providing necessary supports.

K. Group Training for Parents on Behavior Intervention Techniques (\$6.4 million)

At the time of development, review or modification of the Individualized Family Services Plan/Individual Program Plan, the regional centers will be required to consider providing group training to parents in lieu of providing some or all of the in-home parent training component of the behavior intervention services. Similar programs have been found to be successful and cost effective because parents who attend group training on behavioral interventions can better support their children.

L. Behavioral Services (\$19.3 million)

This proposal establishes the following specific standards to be used by regional centers in purchasing behavioral services:

1. Consistent with the need established in the consumer's Individualized Family Services Plan/Individual Program Plan, regional centers can purchase Applied Behavior Analysis or Intensive Behavior Intervention services if the service provider uses evidence-based practices and the services promote positive social behaviors and help address issues with learning and social interactions.
2. In order to purchase Applied Behavior Analysis or Intensive Behavior Intervention services, parents of children receiving services must participate, as described, in the established intervention plan.
3. Applied Behavior Analysis or Intensive Behavior Intervention services may not be used for purposes of providing respite, day care, or school services, or solely as emergency crisis services. These services, when identified in the Individualized Family Services Plan/Individual Program Plan, are available through other appropriate providers.
4. Once a consumer's treatment goals, as identified in their Individualized Family Services Plan/Individual Program Plan, have been achieved, regional centers will discontinue purchasing a particular Applied Behavior Analysis or Intensive Behavior Intervention service. The planning team must review progress regularly and change the service if it is not effective.
5. Regional centers will evaluate the Applied Behavior Analysis or Intensive Behavior Intervention hours for each consumer at least every six months.

M. Early Start – Eligibility Criteria (\$15.5 million)¹

The Early Start program in California provides services to infants and toddlers under the age of 3 who are 'developmentally delayed' or have an 'established risk' or are 'at high risk' of a developmental delay. For toddlers who are 'developmentally delayed', this proposal would limit eligibility for entry to the Early Start program after 24 months of age to only those toddlers who have a 50% or greater delay in one domain, or, 33% or greater in two domains. The current threshold is 33% in one domain regardless of age. The age of the infant/toddler at the time of the initial referral will be the age for consideration of eligibility.

Under the \$100 million cut, eligibility for toddlers aged 24 months or greater who were 'at risk' of a developmental delay was eliminated. Elimination of eligibility for Early Start services for 'at risk' infants and toddlers was proposed under the \$234 million cut. However, a new prevention program was authorized to provide specific services to infants and toddlers affected by this change, as described in the next proposal.

N. Early Start Program Proposals (\$19.5 million)

This set of proposals limits services and eligibility for the Early Start program and establishes an alternative program that may be available for consumers no longer eligible for the Early Start program, as follows:

1. Beginning October 1, 2009, and with the exception of durable medical equipment, regional centers will not purchase services that are not required under the federal Early Start grant program. These services include: child care, diapers, dentistry, interpreters, translators, genetic counseling, music therapy, and respite services not related to the developmental delay.
2. The Department will establish a Prevention Program to be available at each regional center for infants and toddlers who do not meet the federal Early Start Program or Lanterman Act eligibility requirements. The prevention program will at a minimum include intake and assessment, case management, and referral to appropriate generic resources. During their participation in the prevention program, if an infant or toddler becomes eligible for the federal Early Start program or Lanterman Act services, regional centers will be able to serve them in those programs.
3. Beginning October 1, 2009, current or prospective infants and toddlers who are 'at risk' for developing a developmental disability will not be eligible for Early Start services. However, services for these infants and toddlers may be available through the new prevention program as described above.

¹ Savings includes \$13.4 million in purchase of service and \$2.1 million in Regional Center Operations

O. Early Start – Use Private Insurance (\$6.5 million)

As is currently required of families with children over 3 years of age, this proposal would require parents of children under 3 to ask their private insurance or health care service plan to pay for medical services covered by the insurance or plan. Intake and assessment will remain free.

P. Expansion of In-Home Respite Agency Worker Duties (\$3.0 million)

This proposal would allow respite workers to assist consumers with colostomies/ileostomies, catheters, and gastrostomies, consistent with the abilities of trained day program staff. These duties are currently performed in the home by licensed professionals at significantly greater cost. The respite worker must be trained by a licensed professional and will receive an increase in compensation of \$.50/hour for the time performing these duties.

Q. Parental Fee Program (\$900,000)

Parents of children under the age of 18 living in any out-of-home care arrangement (e.g. community care facility, developmental center, etc.) pay a monthly fee that varies by family size and income. These fees have not been updated since 1989, except for an increase in the maximum fee amount in 2003. This proposal updates the fee using the most current United States Department of Agriculture data on the cost of raising children. Parents with income below the current Federal poverty level will not be assessed a fee. The fee increase for maximum fee would increase from \$662 to \$1,875 per month for the highest income families. (For example, a family of four making \$146,000 will be assessed the maximum fee.) The children currently in an out-of-home care arrangement will be phased-in over three years, with one-third of the increase each year. Parents whose children move to an out-of-home care arrangement after July 1, 2009 will pay the full updated fee amount.

R. Individual Choice Budget (no savings until implemented)

The Department, in consultation with stakeholders, will develop a new service delivery model that provides consumers and families with an "Individual Choice Budget." This new service delivery model will provide individuals with resources to obtain quality services and supports within a defined budget, while providing choice and flexibility that, in total, saves money in purchase of service expenditures. At such time as this model is implemented and is deemed by the Department to be achieving specific levels of savings, some or all of the cost savings strategies in the following sections (respite service standards and temporarily suspended services) will sunset. The Department will continue to meet with stakeholders to further develop and refine this proposal.

S. Respite Program- Temporary Service Standards (\$4.8 million)

This proposal establishes specific standards to be used by regional centers in authorizing respite services:

1. Regional centers may purchase respite services when the needs of a consumer are greater than that of an individual of the same age without developmental

disabilities. Regional centers can grant exemptions to this rule under certain circumstances.

2. Consistent with the need for respite services established in the Individualized Family Services Plan/Individual Program Plan, no more than 21 days of out-of-home respite services in a fiscal year, or 90 hours of in-home respite services in a three-month period, may be purchased by a regional center. Regional centers can grant exemptions to this rule under certain circumstances.
3. Day care services cannot be used in-lieu of respite services.

These standards will be lifted upon certification of the Director of DDS that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of sun setting the standards.

T. Temporarily Suspend Services (\$27.4 million)

The following services will be temporarily suspended pending development of the Individual Choice Model, as described above, that achieves a level of savings sufficient to offset the costs associated with providing these services. Although these remain important services, the current fiscal situation warrants this action until the alternative Individual Choice Budget savings proposal is implemented.

1. Social/recreation activities, except those vendored as community-based day programs.
2. Camping services and the associated travel.
3. Educational services for minor, school-aged children.
4. Non-medical therapies (specialized recreation, art, dance, music, etc.)

Exemptions may be granted by the regional center director in limited and unique circumstances.

This suspension of services will be lifted upon certification of the Director of DDS that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the suspended services.

U. Quality Assurance Consolidation (\$2.0 million)

Funding for two separate quality assurance studies will be combined and reduced to fund an improved unified quality assurance system that will be implemented by January 1, 2010. The existing studies include the 'Movers Study' which evaluates consumer satisfaction for individuals who have moved from a developmental center into a community based setting, and the Life Quality Assessment (LQA) which surveys consumers in the community regarding their quality of life.

V. Suspend Wellness and Physician Training Program (\$1.3 million)

The Wellness and physician training program funding will be suspended. Wellness funds were used by regional centers for development and implementation of new clinical services and training for consumers, families, and providers. Physician training included contracts with University of California medical schools for various trainings provided to health care professionals on developmental disabilities.

W. Eliminate Triennial Quality Assurance Review (\$1.0 million)

Regional centers are currently funded to perform quality assurance evaluations of community care facilities at least once every three years. The funding for these triennial evaluations will be eliminated. However, regional center will maintain other quality assurance activities, including quarterly consumer visits (two must be at the consumers' place of residence), and annual facility monitoring visits. In addition, the California Department of Social Services conducts annual licensing visits of these facilities.

X. Reduction in One Time Regional Center Funding (\$3.5 million)

Annually, the Department provides limited funds to regional centers with specific costs associated with required office expansions or relocation needed to better serve consumers. This proposal further limits the availability of this funding.

Y. Additional Regional Center Operations Budget Savings (\$7.0 million)

In addition to the 3 percent cut and the reduction in Operations funding associated with items M, W, and X above, the Regional Centers operations budget will be further reduced by \$7.0 million.

DEPARTMENT OF DEVELOPMENTAL SERVICES

1600 NINTH STREET, Room 320, MS 3-9
SACRAMENTO, CA 95814
TDD 654-2054 (For the Hearing Impaired)
(916) 654-1958



June 16, 2011

TO: REGIONAL CENTER DIRECTORS AND BOARD PRESIDENTS

SUBJECT: MARCH 2011 TRAILER BILL LANGUAGE AFFECTING REGIONAL CENTERS

The purpose of this correspondence is to transmit a summary of the recently enacted Trailer Bill, SB 74 (Chapter 9, Statutes of 2011) that directly affects regional centers or the developmental services system. Trailer Bill Language (TBL) contains an urgency clause, and was therefore effective immediately upon passage, March 24, 2011. Regional centers should continue to educate their communities regarding these legislative changes. While this correspondence provides a high level summary of the TBL, a complete and thorough review of TBL (see www.leginfo.ca.gov) is imperative for regional centers' statutory compliance. While the effective date of the language in SB 74 is March 24, 2011, additional clarifying information regarding implementation is included in several areas below.

Regional Center Board Composition

TBL Section 2: Section 4622.5 was added to the Code, requiring by August 15 of each year, the governing board of each regional center to submit to the Department of Developmental Services (Department) detailed documentation, as determined by the Department, demonstrating that the composition of the board is in compliance with Section 4622.

Implementation: The Department will soon provide regional centers with a format for the reporting of all required information by August 15, 2011.

Regional Center Board Contracting Policy

TBL Section 3: Section 4625.5 was added to the Code, requiring the governing board of each regional center to adopt and maintain a written policy requiring the board to review and approve any regional center contract of two hundred fifty thousand dollars (\$250,000) or more, before entering into the contract. No regional center contract of two hundred fifty thousand dollars (\$250,000) or more is valid unless approved by the governing board of the regional center in compliance with its written policy. Contracts do not include vendor approval letters issued by regional centers pursuant to Title 17, California Code of Regulations (Title 17), section 54322.

"Building Partnerships, Supporting Choices"

Implementation: This statutory requirement for governing board review is applicable to contracts of \$250,000, or more, entered into as of the effective date of the TBL, i.e., March 24, 2011. The law is applicable to all Operations and Purchase of Service contracts for, or over \$250,000, whether multi-year or not.

Conflict of Interest

TBL Section 4: Section 4626 was amended requiring the Department to give a very high priority to ensuring that regional center board members and employees act in the course of their duties solely in the best interest of regional center consumers and their families without regard to the interests of any other organization with which they are associated or persons to whom they are related. Board members, employees, and others acting on the regional center's behalf, as defined in Title 17, must be free from conflicts of interest that could adversely influence their judgment, objectivity, or loyalty to the regional center, its consumers, or its mission. A person with a developmental disability who receives employment services through a regional center provider shall not be precluded from serving on the governing board of a regional center based solely upon receipt of these employment services.

The Department must ensure that no regional center employee or board member has a conflict of interest with an entity that receives regional center funding, including, but not limited to, a nonprofit housing organization and an organization qualified under Section 501(c)(3) of the Internal Revenue Code, that actively functions in a supporting relationship to the regional center.

The Department is required to develop and publish a standard conflict-of-interest reporting statement. The conflict-of-interest statement must be completed by each regional center governing board member and each regional center employee specified in Title 17 including, at a minimum, the executive director, and every administrator, program director, service coordinator, and employee who has decision-making or policymaking authority or authority to obligate the regional center's resources.

Every new regional center governing board member and regional center executive director must complete and file the conflict-of-interest statement described above with his or her respective governing board within 30 days of being selected, appointed, or elected. Every new regional center employee referenced above and every current regional center employee referenced above accepting a new position within the regional center must complete and file the conflict-of-interest statement with his or her respective regional center within 30 days of assuming the position. Every regional center board member and employee referenced above must complete and file the conflict-of-interest statement by August 1 of each year.

Every regional center board member and employee referenced above must complete and file a subsequent conflict-of-interest statement upon any change in status that creates a potential or present conflict of interest. A change in status includes, but is not limited to, a change in financial interests, legal commitment, regional center or board position or duties, or both, or outside position or duties, or both, whether compensated or not. The governing board must submit a copy of the completed conflict-of-interest statements of the governing board members and the regional center executive director to the Department within 10 days of receipt of the statements.

A person who knowingly provides false information on a conflict-of-interest statement will be subject to a civil penalty in an amount up to fifty thousand dollars (\$50,000), in addition to any civil remedies available to the Department. An action for a civil penalty may be brought by the Department or any public prosecutor in the name of the people of the State of California.

The director of the regional center must review the conflict-of-interest statement of each regional center employee referenced above within 10 days of receipt of the statement. If a potential or present conflict of interest is identified for a regional center employee that cannot be eliminated, the regional center must, within 30 days of receipt of the statement, submit to the Department a copy of the conflict-of-interest statement and a plan that proposes mitigation measures, including timeframes and actions the regional center or the employee, or both, will take to mitigate the conflict of interest.

The Department and the regional center governing board must review the conflict-of-interest statement of the regional center executive director and each regional center board member to ensure that no conflicts of interest exist. If a present or potential conflict of interest is identified for a regional center director or a board member that cannot be eliminated, the regional center governing board must, within 30 days of receipt of the statement, submit to the Department and the State Council on Developmental Disabilities a copy of the conflict-of-interest statement and a plan that proposes mitigation measures, including timeframes and actions the regional center governing board or the individual, or both, will take to mitigate the conflict of interest.

TBL Section 5: Section 4626.5 was added to the Code requiring each regional center to submit a conflict-of-interest policy to the Department by July 1, 2011, and post the policy on its Internet Website by August 1, 2011. The policy must contain the elements in this paragraph and be consistent with applicable law; define conflicts of interest; identify positions within the regional center required to complete and file a conflict-of-interest statement; facilitate disclosure of information to identify conflicts of interest; require candidates for nomination, election, or appointment to a regional center board, and applicants for regional center director to disclose any potential or present conflicts of

interest prior to being appointed, elected, or confirmed for hire by the regional center or the governing board; and require the regional center and its governing board to regularly and consistently monitor and enforce compliance with its conflict-of-interest policy.

Implementation: Regional centers should assure they are taking action to comply with TBL and timeframes specified. Training for both employees and Board members is recommended. The Department is developing the required standard conflict-of-interest reporting statement, and it will soon be published.

TBL Section 6: Section 4627 was amended requiring the Department to monitor and ensure the regional centers' compliance with the laws governing conflict-of-interest. It also specifies that failure to disclose information required by these laws and related regulations may be considered grounds for removal from the board or for termination of employment. The Department is required to adopt emergency regulations by May 1, 2011, regarding conflict-of-interest reporting requirements.

Implementation: Emergency regulations are under development and will be promulgated shortly. The Department will monitor compliance through its fiscal audits and ongoing monitoring of regional centers.

Accountability and Transparency

TBL Section 7: Section 4629.5 was added to the Code, specifying that the Department's contract with a regional center must require the regional center to adopt, maintain, and post on its Internet Website a board-approved policy regarding transparency and access to public information. The transparency and public information policy must provide for timely public access to information, including, but not limited to, information regarding requests for proposals and contract awards, service provider rates, documentation related to establishment of negotiated rates, audits, and IRS Form 990. The transparency and public information policy must be in compliance with applicable law relating to the confidentiality of consumer service information and records, including, but not limited to, Section 4514.

To promote transparency, each regional center must include on its Internet Website, as expeditiously as possible, at least all of the following:

- Regional center annual independent audits.
- Biannual fiscal audits conducted by the Department.
- Regional center annual reports pursuant to Section 4639.5.
- Contract awards, including the organization or entity awarded the contract, and the amount and purpose of the award.
- Purchase of service policies.

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- The names, types of service, and contact information of all vendors, except consumers or family members of consumers.
- Board meeting agendas and approved minutes of open meetings of the board and all committees of the board.
- Bylaws of the regional center governing board.
- The annual performance contract and year-end performance contract entered into with the Department.
- The biannual Home and Community-Based Services Waiver program review conducted by the Department and the State Department of Health Care Services.
- The board-approved transparency and public information policy.
- The board-approved conflict-of-interest policy.
- Reports required pursuant to Section 4639.5.

The Department is required to establish and maintain a transparency portal on its Internet Website that allows consumers, families, advocates, and others to access provider and regional center information. Posted information on the Department's Internet Website transparency portal must include, but need not be limited to, all of the following:

- A link to each regional center's Internet Website information referenced above.
- Biannual fiscal audits conducted by the Department.
- Vendor audits.
- Biannual Home and Community-Based Services Waiver program reviews conducted by the Department and the State Department of Health Care Services.
- Biannual targeted case management program and federal nursing home reform program reviews conducted by the Department.
- Early Start Program reviews conducted by the Department.
- Annual performance contract and year-end performance contract reports.

*Implementation: If not already posted, regional centers must take immediate action to post the above information on the regional center's Internet home page. This requirement applies to the most current documents in each category and future applicable documents. Also, the Department has been asked if only vendors who have been providing services within the last two years should be included on the regional center's Internet Website. To reiterate, the law requires the names, types of service, and contact information of **all** (emphasis added) vendors, except consumers or family members of consumers.*

Fiscal Accountability

TBL Section 8: Section 4629.7 was added to the Code requiring that all regional center contracts or agreements with service providers in which rates are determined through

negotiations between the regional center and the service provider expressly require that not more than 15 percent of regional center funds be spent on administrative costs. Direct service expenditures are those costs immediately associated with the services to consumers being offered by the provider. Administrative costs include, but are not limited to, any of the following:

- Salaries, wages, and employee benefits for managerial personnel whose primary purpose is the administrative management of the entity, including, but not limited to, directors and chief executive officers.
- Salaries, wages, and benefits of employees who perform administrative functions, including, but not limited to, payroll management, personnel functions, accounting, budgeting, and facility management.
- Facility and occupancy costs, directly associated with administrative functions.
- Maintenance and repair.
- Data processing and computer support services.
- Contract and procurement activities, except those provided by a direct service employee.
- Training directly associated with administrative functions.
- Travel directly associated with administrative functions.
- Licenses directly associated with administrative functions.
- Taxes.
- Interest.
- Property insurance.
- Personal liability insurance directly associated with administrative functions.
- Depreciation.
- General expenses, including, but not limited to, communication costs and supplies directly associated with administrative functions.

Implementation: All contracts or agreements with vendors with a negotiated rate must be amended to expressly require that not more than 15 percent of regional center funds be spent on administrative costs. This law is applicable to all negotiated rates and providers of such services, not just prospectively. Should it be determined that the negotiated rate is comprised of more than 15 percent administrative costs, adjustments must be made to comport with law.

With regard to the question of classifying profit, profit is revenue above cost and the statute only applies to cost. Typically, profit translates into a cost (i.e., wage/salary increase, bonus, etc.).

Section 4629.7 requires that all contracts between the Department and the regional centers require that not more than 15 percent of all funds appropriated through the

regional center's operations budget be spent on administrative costs. "Direct services" includes, but is not limited to, service coordination, assessment and diagnosis, monitoring of consumer services, quality assurance, and clinical services.

Administrative costs include, but are not limited to, any of the following:

- Salaries, wages, and employee benefits for managerial personnel whose primary purpose is the administrative management of the regional center, including, but not limited to, directors and chief executive officers.
- Salaries, wages, and benefits of employees who perform administrative functions, including, but not limited to, payroll management, personnel functions, accounting, budgeting, auditing, and facility management.
- Facility and occupancy costs, directly associated with administrative functions.
- Maintenance and repair.
- Data processing and computer support services.
- Contract and procurement activities, except those performed by direct service employees.
- Training directly associated with administrative functions.
- Travel directly associated with administrative functions.
- Licenses directly associated with administrative functions.
- Taxes.
- Interest.
- Property insurance.
- Personal liability insurance directly associated with administrative functions.
- Depreciation.
- General expenses, including, but not limited to, communication costs and supplies directly associated with administrative functions.

Implementation: The requirement that regional centers expend no more than 15 percent of their operations allocation on administrative costs became effective March 24, 2011. The Department will monitor compliance through its fiscal audits of regional centers. The addition of the required language in the Department's contracts with regional centers is pending upcoming contract negotiations with the ARCA Contract Negotiations Committee.

TBL Section 9: Section 4639 was amended to specify that, beginning in Fiscal Year (FY) 2011-12, the independent fiscal audit conducted pursuant to this section of law can not be completed by the same accounting firm more than five times in every 10 years.

Implementation: For the FY 2011-12 audit, the regional center may not use an independent accounting firm that has been used five or more times in the previous ten years.

TBL Section 13: Section 4652.5 was added to the Code, requiring any entity receiving payments from one or more regional centers to contract with an independent accounting firm for an audit or review of its financial statements subject to all of the following:

- When the amount received from the regional center(s) during the entity's fiscal year is more than or equal to two hundred fifty thousand dollars (\$250,000) but less than five hundred thousand dollars (\$500,000), the entity must obtain an independent audit or independent review report of its financial statements for the period. Consistent with Subchapter 21 (commencing with Section 58800) of Title 17, this also applies to work activity program providers receiving less than two hundred fifty thousand dollars (\$250,000).
- When the amount received from the regional center(s) during the entity's fiscal year is equal to or more than five hundred thousand dollars (\$500,000), the entity must obtain an independent audit of its financial statements for the period. This does not apply to payments made using usual and customary rates, as defined by Title 17, for services provided by regional centers, nor to state and local governmental agencies, the University of California, or the California State University.

An entity subject to the above must provide copies of the independent audit or independent review report and accompanying management letters, to the vendoring regional center within 30 days after completion of the audit or review. Regional centers receiving the audit or review reports must review and require resolution by the entity for issues identified in the report that have an impact on regional center services. Regional centers must also take appropriate action, up to termination of vendorization, for lack of adequate resolution of issues. Regional centers must notify the Department of all qualified opinion reports or reports noting significant issues that directly or indirectly impact regional center services within 30 days after receipt. The notification must include a plan for resolution of issues.

An independent review of financial statements must be performed by an independent accounting firm and must cover, at a minimum:

- An inquiry as to the entity's accounting principles and practices and methods used in applying them.
- An inquiry as to the entity's procedures for recording, classifying, and summarizing transactions and accumulating information.
- Analytical procedures designed to identify relationships or items that appear to be unusual.
- An inquiry about budgetary actions taken at meetings of the board of directors or other comparable meetings.
- An inquiry about whether the financial statements have been properly prepared in conformity with generally accepted accounting principles and whether any

events subsequent to the date of the financial statements would have a material effect on the statements under review; and,

- Working papers prepared in connection with a review of financial statements describing the items covered as well as any unusual items, including their disposition.

An independent review report must cover, at a minimum:

- Certification that the review was performed in accordance with standards established by the American Institute of Certified Public Accountants.
- Certification that the statements are the representations of management.
- Certification that the review consisted of inquiries and analytical procedures that are lesser in scope than those of an audit; and,
- Certification that the accountant is not aware of any material modifications that need to be made to the statements for them to be in conformity with generally accepted accounting principles.

This new section also prohibits the Department from considering a request for adjustments to rates submitted in accordance with Title 17 by an entity receiving payments from one or more regional centers solely to fund either anticipated or unanticipated changes required to comply with the above requirements.

Implementation: The Department will be sending a letter to vendored entities/providers, based on a Uniform Fiscal System (UFS) data run, that are subject to this law. This letter will be posted on the Department's homepage and regional centers are encouraged to either post the letter on their Internet Websites, or link to it. Regional centers may have other communication avenues with service providers through which they will additionally want to disseminate this information.

Vendor (and regional center) compliance with these requirements will be monitored through audits. Revisions are being made to the Department's vendor audit protocols for the monitoring of compliance with this statute. Corresponding revisions to the DDS-ARCA Regional Center Vendor Audit Protocol, will be discussed for incorporation and regional center use in monitoring providers of residential services receiving funding from regional centers at the qualifying thresholds, or monitoring other vendors with the Department's approval pursuant to audit thresholds in regional centers' contract with the Department.

Lastly, to assist regional centers, the Department will send to regional centers an annual UFS data run identifying vendors/entities, subject to these statutory provisions. This run will be based on the prior State fiscal year expenditures in UFS although the statutory

requirements and dollar thresholds for a fiscal review or audit, are based on the "entity's fiscal year". Given the Department does not have information on each impacted vendor's established fiscal year, the run to be sent to regional centers is simply to be a tool for indentifying an impacted vendor when conducting audits.

Regional Center Staffing

TBL Section 10: Section 4640.6 was amended extending the date that specific consumer to service coordinator caseload ratios do not apply. The caseload ratio of 1:66 is lifted until June 30, 2012 for consumers who have not moved from the developmental centers to the community since April 14, 1993, who are three years of age and older, and who are not enrolled in the Home and Community-Based Services Waiver program for persons with developmental disabilities.

This section was also amended to extend until June 30, 2012, suspension of the requirement that regional centers must have, or contract for, all of the following areas:

- Criminal justice expertise to assist the regional center in providing services and support to consumers involved in the criminal justice system as a victim, defendant, inmate, or parolee.
- Special education expertise to assist the regional center in providing advocacy and support to families seeking appropriate educational services from a school district.
- Family support expertise to assist the regional center in maximizing the effectiveness of support and services provided to families.
- Housing expertise to assist the regional center in accessing affordable housing for consumers in independent or supportive living arrangements.
- Community integration expertise to assist consumers and families in accessing integrated services and supports and improved opportunities to participate in community life.
- Quality assurance expertise, to assist the regional center to provide the necessary coordination and cooperation with the area board in conducting quality-of-life assessments and coordinating the regional center quality assurance efforts.

Medicaid Integrity

TBL Section 11: Section 4648.12 was added to the Code, immediately following Section 4648.1, stating that under federal and state law, certain individuals and entities are ineligible to provide Medicaid services. An individual, partnership, group association, corporation, institution, or entity, and the officers, directors, owners, managing employees, or agents thereof, that has been convicted of any felony or misdemeanor involving fraud or abuse in any government program, or related to neglect or abuse of an elder or dependent adult or child, or in connection with the interference

with, or obstruction of, any investigation into health care related fraud or abuse, or that has been found liable for fraud or abuse in any civil proceeding, or that has entered into a settlement in lieu of conviction for fraud or abuse in any government program, within the previous 10 years, is ineligible to be a regional center vendor. The regional center can not deny vendorization to an otherwise qualified applicant whose felony or misdemeanor charges did not result in a conviction solely on the basis of the prior charges.

This new section requires that to ensure compliance with federal disclosure requirements and to preserve federal funding of consumer services, the Department must:

- Adopt emergency regulations to amend provider and vendor eligibility and disclosure criteria to meet federal participation requirements. The emergency regulations must address, at a minimum, disclosure requirements of current and prospective vendors, including information about entity ownership and control, contracting interests, and criminal convictions or civil proceedings involving fraud or abuse in any government program, or abuse or neglect of an elder, dependent adult, or child.
- Adopt emergency regulations to meet federal requirements applicable to vouchered services.
- Adopt nonemergency regulations to implement the terms of the above two sets of regulations within 18 months of the adoption of these emergency regulations.

Implementation: Emergency regulations are under development and will be promulgated shortly. Pursuant to the statutory language effective March 24, 2011, regional centers should not vendor any new applicants who are listed on either of the Internet Websites below:

Link to the State's Suspended and Ineligible Provider List - http://files.medi-cal.ca.gov/pubsdoco/manuals_menu.asp

Link to the Federal Office of Inspector General "exclusions database" - <http://exclusions.oig.hhs.gov/>

Statewide Collaboration for Administrative Actions

TBL Section 12: Section 4648.14 was added to the Code, immediately preceding Section 4648.2, requiring the State Department of Social Services and the State Department of Public Health to notify the Department of any administrative action initiated against a licensee serving consumers with developmental disabilities.

"Administrative action" includes, but is not limited to, all of the following:

- The issuance of a citation requiring corrective action for a health and safety violation.
- The temporary or other suspension or revocation of a license.
- The issuance of a temporary restraining order; and,
- The appointment of a temporary receiver pursuant to Section 1327 of the Health and Safety Code.

Third-Party Liability

TBL Section 14: Article 2.6 (commencing with Section 4659.10) was added to Chapter 5 of Division 4.5 of the Code.

The provisions in this Article granted regional centers and the Department authority, such as Department of Health Care Services' has under the Medi-Cal program, to pursue third party recovery of the reasonable value of the service provided by the regional center. Third party liability (and subsequently, recovery) includes not only health insurance and health care services plans but also third parties and carriers who may be liable for an injury or wrongful death of a consumer.

Implementation: Effective March 24, 2011, regional centers and the Department have the authority to pursue third party recovery as specified in statute. Additional information regarding this change in law and implementation will be sent out shortly to regional centers under separate cover.

Service Provider Relief

TBL Section 15: Section 4791 was amended extending the sunset date until June 30, 2012, the provision that regional centers may temporarily modify personnel requirements, functions, or qualifications, or staff training requirements for providers, except for licensed or certified residential providers, whose payments are reduced by 4.25 percent pursuant to the amendments to Section 10 of Chapter 13 of the Third Extraordinary Session of the Statutes of 2009, as amended by Section 164 of Chapter 717 of the Statutes of 2010.

A temporary modification, effective during any agreed upon period of time between July 1, 2010, and June 30, 2012, may only be approved when the regional center determines that the change will not do any of the following:

- Adversely affect the health and safety of a consumer receiving services or supports from the provider.
- Result in a consumer receiving services in a more restrictive environment.
- Negatively impact the availability of federal financial participation.

- Violate any state licensing or labor laws or other provisions of Title 17 of the California Code of Regulations not eligible for modification pursuant to this section.

A temporary modification must be described in a written services contract between the regional center purchasing the services and the provider, and a copy of the written services contract and any related documentation shall be retained by the provider and the regional center purchasing the services from the provider.

TBL also continued the suspension until June 30, 2012, the requirements described in Sections 56732 and 56800 of Title 17 requiring community-based day programs and in-home respite agencies to conduct annual reviews and to submit written reports to vendoring regional centers, user regional centers, and the Department. Also, from July 1, 2010, to June 30, 2012, a residential service provider, vendored by a regional center and whose payment is reduced by 4.25 percent pursuant to the amendments to Section 10 of Chapter 13 of the Third Extraordinary Session of the Statutes of 2009, as amended by Section 164 of Chapter 717 of the Statutes of 2010, is not required to complete quarterly and semiannual progress reports required in subdivisions (b) and (c) of Section 56026 of Title 17. During program review, the provider must inform the regional center case manager of the consumer's progress and any barrier to the implementation of the individual program plan for each consumer residing in the residence.

4.25 Percent Payment Reduction

TBL Section 16: Section 10 of Chapter 13 of the Third Extraordinary Session of the Statutes of 2009, as amended by Section 164 of Chapter 717 of the Statutes of 2010, was amended providing that to implement changes in the level of funding for regional center purchase of services, regional centers must reduce payments for services and supports provided pursuant to Title 14 (commencing with Section 95000) of the Government Code and Division 4.1 (commencing with Section 4400) and Division 4.5 (commencing with Section 4500) of the Code. From February 1, 2009, to June 30, 2010, regional centers were required to reduce all payments for these services and supports paid from purchase of services funds for services delivered on or after February 1, 2009, by 3 percent, and from July 1, 2010, to June 30, 2012, by 4.25 percent, unless the regional center demonstrates that a nonreduced payment is necessary to protect the health and safety of the individual for whom the services and supports are proposed to be purchased, and the Department has granted prior written approval.

Regional centers can not reduce payments for:

- Supported employment services with rates set by Section 4860.

- Services with "usual and customary" rates established pursuant to Section 57210 of Title 17 of the California Code of Regulations; and,
- Payments to offset reductions in Supplemental Security Income/State Supplementary Payment (SSI/SSP) benefits for consumers receiving supported and independent living services.

Best Practices

TBL Section 1: Section 4620.3 was added to the Code, requiring the Department, in collaboration with stakeholders, to develop best practices for the administrative management of regional centers and for regional centers to use when purchasing services for consumers and families.

The Purchase Of Service best practices may vary by service category and may do all of the following: establish criteria determining the type, scope, amount, duration, location, and intensity of services and supports purchased by regional centers for consumers and their families; modify payment rates; and reflect family and consumer responsibilities, pursuant to Sections 4646.4, 4659, 4677, 4782, 4783, and 4784, and Government Code Section 95004.

The Department must ensure that implementation of best practices that impact individual services and supports are made through the individual program planning or individualized family service planning processes, and that consumers and families are notified of any exceptions or exemptions to the best practices and their appeal rights established in Section 4701.

This section also required the Department to submit the proposed best practices to the fiscal and applicable policy committees of the Legislature by no later than May 15, 2011.

Implementation: The Department completed the development of the proposals to achieve the required general fund savings following a lengthy stakeholder input process. The TBL for implementation of these General Fund savings proposals were submitted to the Legislature. Enactment of these proposals will occur through adoption of the State Budget for FY 2011-12. A list of the proposals submitted to the Legislature is enclosed and the Department will send additional correspondence once the State Budget has been enacted.

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If you have any questions regarding this correspondence, please contact Brian Winfield, Manager, Regional Center Operations Section, at (916) 654-1569.

Sincerely,

Original Signed By

RITA WALKER
Deputy Director
Community Operations Division

Enclosure

cc: Robert Baldo, ARCA

FOR LEGISLATIVE REVIEW

**PROPOSALS TO ACHIEVE
\$174 MILLION
GENERAL FUND SAVINGS
PURSUANT TO
WELFARE & INSTITUTIONS CODE
SECTION 4620.3**



**DEPARTMENT OF
DEVELOPMENTAL SERVICES**

MAY 16, 2011

**DEPARTMENT OF DEVELOPMENTAL SERVICES
PROPOSALS TO ACHIEVE \$174 MILLION GENERAL FUND SAVINGS
MAY 16, 2011**

INTRODUCTION

The Department of Developmental Services (the Department) is currently responsible under the Lanterman Developmental Disabilities Services Act (Lanterman Act) for ensuring that nearly 245,000 persons with developmental disabilities receive the services and support they require to lead more independent and productive lives and to make choices and decisions about their lives.

California provides services and supports to individuals with developmental disabilities in two ways: the vast majority of people live in their families' homes or other community settings and receive state-funded services that are coordinated by one of 21 non-profit corporations known as regional centers. A small number of individuals live in four state-operated developmental centers and one state-operated community facility. The number of consumers with developmental disabilities in the community served by regional centers is expected to grow in Fiscal Year (FY) 2011-12 to nearly 250,000. The number of consumers living in state-operated residential facilities is expected to decrease by the end of FY 2011-12 to 1,691.

As a result of the on-going fiscal crisis in California over the last few years, the Department's budget, along with the budgets for many other state departments, has been reduced. To address prior fiscal pressures, service rates established by statute or by the Department have been frozen for many years and rates negotiated by the regional centers were limited in 2008 with the establishment of median rate caps for new providers. During the development of the FY 2009-10 and FY 2010-11 Governor's Budgets, the Department with input from a workgroup comprised of regional centers, service provider representatives, advocacy groups, consumers and family members, and legislative staff developed proposals to reduce or restrict General Fund (GF) growth in the Department's budget. In FY 2009-10, the Department developed proposals that resulted in approximately \$334 million in GF savings and an additional \$200 million in FY 2010-11. Savings proposals impacted both the developmental centers and regional centers, and included a variety of strategies such as restructuring, reducing or suspending various services; restricting eligibility for certain services; and maximizing other available funding sources, primarily federal funds. Most proposals achieved some or all of the savings, with changes to respite exceeding the savings anticipated. In addition to these proposals, payments for regional center operations and to providers of consumer services were reduced by 3 percent in FY 2009-10 and an additional 1.25 percent in FY 2010-11.

Due to continuing and significant pressure on the GF, the Department's budget for FY 2011-12 was decreased by \$576.9 million GF, in addition to other reductions achieved through statewide budget items (e.g. state workforce reductions). Most of the changes necessary to achieve the savings have been identified and adopted by the Legislature. The reductions made to the Department's budget, totaling \$402.9 million GF, will be achieved through continuation of the 4.25 percent payment reduction for regional center operations and purchase of services, additional federal and other alternative funding, administrative cost limits for regional centers and service providers, enhanced auditing, third-party collections and accountability measures, reduced funding for developmental centers, reduced funding for the Prevention Program serving infants and toddlers at risk of a developmental delay or disability, and additional regional center operations reductions.

In addition to reductions in community services, the developmental center budget has continued to decline through closure of state-operated facilities, living unit consolidations, delays in infrastructure repairs, and through cost saving personnel initiatives. In the FY 2011-12 budget, the developmental centers budget was decreased through additional residence consolidations; staffing reductions; delay in infrastructure repairs; additional federal funding; an unallocated reduction; and statewide budget items such as hiring freezes, furloughs, and wage reductions. The Department's headquarters budget has also decreased significantly over the last several years and for the FY 2011-12 budget is impacted by the statewide budget items referenced previously.

This left \$174 million in GF reductions to be achieved through proposals developed by the Department and submitted to the Legislature for consideration. These proposals must be adopted by the Legislature before they can be implemented.

Consistent with the Department's on-going efforts to better align its budget with actual expenditures, a review of the most current expenditure information has identified a savings of \$55.6 million GF available in FY 2011-12 that further reduces the amount necessary to be achieved through legislative proposals. This review of expenditure information also identified \$28.5 million of one-time savings in the current year that will bridge the costs associated with implementation delays of the various proposals being submitted to the Legislature for the budget year.

To achieve the \$174 million savings, the Department considered reductions in headquarters and regional center operations. The Department identified reductions of \$39.3 million associated with contracts administered by the Department, proposals for increased federal financial participation, and additional reductions in regional center operations funding. After accounting for these

proposed reductions, \$79.1 million remained to be achieved through other proposals. All of the proposals are presented later in this document.

Throughout the process, there were many ideas and concepts that were discussed that have significant benefits to our system, but either could not be achieved within the short timeframe or would not generate immediate savings in the budget year. For example, the workgroups discussed: the need to reform the rate-setting systems; the potential benefit to restructuring the service codes used for billing; the need for more direct service providers doing background checks, coupled with increased training and vendorization changes; the value of having a designated benefits coordinator at each regional center; the need for federal, state and local governments to improve coordination of programs and funding; and the benefits and efficiencies of using technological advancements. The Department is committed to pursuing these ideas in the future, as the State's fiscal situation stabilizes and focus can be shifted to long-term improvements in the delivery of services.

PROCESS FOR DEVELOPING PROPOSALS

As the Department bridges this fiscal crisis, we remain committed to maintaining the Lanterman Act entitlement to community-based services and the preservation of the individualized planning process mandated in the Lanterman and Early Intervention Services Acts. For the development of the savings proposals, also referred to in statute as best practices, the Department has undertaken a significant effort to ensure full input was received from consumers, family members, advocates, service providers, regional centers, and the community.

Initial input was received through a statewide survey that was made available through the Department's website, as well as e-mails and letters from over 9,000 interested individuals and organizations. Eight workgroups were subsequently established to provide advice to the Department on savings proposals in the topic areas of behavioral services; day/supported employment/work activity program services; Early Start Program services; health care and therapeutic services; independent and supported living services; residential services; respite services; and transportation services. Representation on each of the eight workgroups included consumers, family members, service providers, advocacy organizations and regional center representatives. The representatives were selected by six statewide organizations with broad interest in regional center services¹, the Association of Regional Center Agencies², statewide organizations who

¹ Statewide organizations with broad interest appointed a consumer/family member, a service provider and an organization representative. These organizations included Disability Rights California, State Council on Developmental Disabilities, People First of California, The ARC of California, State Employees International Union, and California Disability Community Action Network.

² ARCA appointed an organization representative, a regional center employee involved in direct service delivery and an Executive Director or Board Member of a regional center.

represent service providers in the specific topic areas³, and three organizations representing other aspects of our system⁴. Legislative staff also attended the workgroup meetings. The workgroup meetings began in March and continued through mid-April and included over 70 hours of discussion. The Department greatly appreciates the active participation of the workgroup members and their efforts to maintain the system while bridging these difficult budget times.

The savings proposals are intended to provide more uniformity and consistency in the administrative practices and services of the 21 regional centers, promote appropriateness of services, maximize efficiency of funding, and improve cost effectiveness. The Department considered the following in the development of the savings proposals: eligibility, duration, frequency, efficacy, community integration, service provider qualifications and performance, rates, parental and consumer responsibilities, and self-directed service options.

Changes in services based on the proposals will continue to be made through the individual program plan (IPP) or individualized family service plan (IFSP) processes. Consideration was given to the impacts of prior reductions in the specific service areas on consumers, families, and providers. For example, respite services were significantly impacted by the reductions made in 2009-10 to the extent there are no proposals directly associated with this service area.

PUBLIC FORUMS

Following completion of the efforts by the eight workgroups, the Department developed savings proposals based on the discussions in the topic area workgroups, survey results, and other input received from the community. The Department presented these proposals at three public forums held in Los Angeles on May 5, 2011; Sacramento on May 6, 2011; and Oakland on May 9, 2011. Additional input from the community was received and considered, especially regarding the impacts of the proposals. Accessibility by teleconference was provided at each of the forums for those individuals interested in providing input but who were unable to attend the meetings in person.

The public forums were attended by over 1,000 participants with another 170 individuals joining by teleconference. The Department heard testimony from nearly 300 stakeholders during the three forums and received over 150 written comments. Based upon the input received at the public forums and further program and fiscal analysis, revisions were made to the proposals that had previously been published on the DDS website and provided to the public. Following are the final proposals for your consideration and approval.

³ Topic specific organizations appointed a consumer/family member, a service provider and an organization representative.

⁴ These organizations appointed one representative and included the DDS Consumer Advisory Committee, University Centers of Excellence in Developmental Disabilities and an association representing individuals in Developmental Centers (CASHPCR)

PROPOSALS FOR ACHIEVING SAVINGS

1. INCREASING FEDERAL FUNDS FOR REGIONAL CENTER PURCHASED CONSUMER SERVICES.

Summary:

Federal financial participation in the funding of regional center consumer services is a critical component of the State's budget. Currently, federal funding comprises nearly \$1.7 billion of the funding for regional center services. Through this proposal additional federal financial participation in the delivery of regional center consumer services is achieved, with a corresponding decrease in needed State GF dollars.

The Department, through the regional center system, operates a federally approved 1915 (c) Home and Community-Based Services Waiver (Waiver) with a projected 91,933 enrollees in FY 2011-12. Federal reimbursements for the Waiver program in FY 2011-12 are \$1.032 billion (includes Waiver services, clinical teams at regional centers, and administrative costs) per the January 2011 budget. The Department submitted a 1915 (i) State Plan Amendment (SPA) to the federal government in December 2009, with an October 1, 2009 effective date. Through this SPA, the Department will receive federal financial participation in the funding of services received by active regional center consumers (an estimated 40,000) with Medi-Cal benefits who do not meet the level of care criteria for the Waiver. The January 2011 budget reflects an estimated \$160.8 million in federal reimbursement for regional center expenditures associated with the 40,000 consumers projected for coverage under this federal program. Federal funding is also received for the cost of day and transportation services provided to regional center consumers residing in intermediate care facilities. The January 2011 budget includes an estimated \$52.8 million in federal reimbursements associated with the cost of these services for the approximately 7,000 regional center consumers residing in these facilities. The Department also receives federal funding through the Money Follows the Person (MFP) Grant related to individuals moving from developmental centers. MFP funding is available to assist individuals in transitioning out of institutions, such as Lanterman Developmental Center, and provides 12 months of service funding upon relocation into a community setting, at an enhanced federal share. The May Revision budget updates federal funds to reflect implementation of the proposals included in this package.

Workgroup participants discussed possible new funding options through the federal 1915 (k) Community Living Options which becomes available to states in October 2011, as well as ways to expand receipt of federal funding through the Department's Home and Community-based Waiver, the 1915(i) SPA, and the federal MFP Grant in which the Department participates. This proposal assumes increased federal funding in all of these areas. Workgroup members also

recommended consumers and families provide a copy of their Medi-Cal, Medicare, and insurance cards at the time of the IPP to ensure federal and other resources are maximized. The Department's proposal includes this recommendation.

Savings:

FY 2011-12 savings

Total Funds (TF): \$0 (fund shift)
GF: \$20,932,000

FY 2012-13 savings

TF: \$0 (fund shift)
GF: \$22,515,000

This proposal assumes more federal funding in the Department's budget by adding Voucher – Nursing Services to the Waiver (\$.5 million GF); claiming federal money at an enhanced federal match for the first 12 months of services under the MFP Grant for consumers moving from intermediate care, nursing and sub-acute facilities to integrated community living arrangements (\$3.4 million GF annually, \$1.9 million GF in FY 2011-12); capturing an additional 6 percent of federal funding for 12 months under the 1915 (k) option for eligible consumer services if such services are added to the State Medicaid Plan (\$1.2 million GF); receiving federal matching funds for the purchase of infant development programs for Early Start consumers with Medi-Cal (\$13.2 million GF); and obtaining additional federal funding based on updated expenditures for the 1915 (i) SPA (\$4.1 million GF).

Implementation:

This proposal will be effective upon approval of the Legislature. The Department will include in its Waiver renewal request the addition of Voucher- Nursing Services for federal approval, effective October 1, 2011. Implementation of the proposals relative to the 1915 (k) option and obtaining federal financial participation for Early Start infant development programs will require approval of the federal government. Legislation will be needed to require the submittal of benefit cards.

Anticipated Impacts:

Additional federal funds will be applied for and received reducing the use of General Fund. To maximize federal financial participation (FFP) and other funding sources, consumers and families will be requested to provide health care benefit cards to the regional centers for possible third-party billing for consumer services.

2. DECREASING DEPARTMENT OF DEVELOPMENTAL SERVICES HEADQUARTERS CONTRACTS

Summary:

The Department contracts with a number of organizations to implement programs and projects that provide support, services, and technical assistance across all regional centers. The January 2011 budget included \$24.1 million (\$21.0 million GF) for system wide contracts. In addition to statewide reductions to the headquarters' budget, such as hiring freezes, furloughs, and wage reductions, the Department proposes to reduce six contracts and discontinue one non-mission critical projects, as follows:

Information Technology: The Department's contract with the state-operated data center for support of data systems and data processing will be reduced from \$4,517,000 to \$3,972,000, consistent with a similar reduction made in the current year due to operational efficiencies. This proposal and will save \$545,000 GF.

Clients' Rights Advocacy: The Department's contract with Disability Rights California to provide consultation, representation, training, investigation, and compliance with clients' rights will be held at the current year funding level of \$5.295 million for a savings of \$250,000 (\$200,000 GF).

Quality Assessment: The Department contracts with independent organizations to conduct surveys and analyses of consumers and family members about satisfaction with services and personal outcomes. This project will be reduced to \$3.235 million which does not reduce the contracts below their current year funding. In FY 2009-10, the Department achieved GF savings of \$2.287 million by consolidating Life Quality Assessment and Movers Study into one improved quality assurance project. This proposal will save \$530,000 (\$424,000 GF).

Direct Support Professional Training (DSPT): The Department contracts with the California Department of Education to administer the DSPT training and testing through the Regional Occupational Programs. This contract will be reduced from \$3.582 million to \$3.442 million. This reduction will not affect the Department's ability to schedule DSPT trainings at Lanterman Developmental Center for staff that choose to work in the community. This proposal will save \$140,000 (\$85,000 GF).

Office of Administrative Hearings: The Department contracts with the Office of Administrative Hearings to conduct fair hearings required by the Lanterman Act and mediation and fair hearing services required by the California Early Intervention Services Act. The current year level of funding, \$3.15 million, will be maintained without affecting the rights of consumers and families to the fair hearing and mediation processes. This proposal will save \$250,000 (\$200,000 GF).

Special Incident Reporting/Risk Management: To maintain and increase federal Home and Community-Based Services Waiver funding, the Department contracts with an independent entity to conduct data analysis, training, site reviews, and provides data, training, and analytical services that mitigate and reduce special incidents. The Department will prioritize the work of this contractor such that federal concerns are addressed while achieving savings. This contract will be reduced from \$940,000 to \$840,000 and achieve savings of \$100,000 GF.

Self-Directed Services - Training and Development: The Department will reprioritize existing resources to develop and conduct the anticipated training associated with the Self-Directed Services Waiver, if and when it is approved by the federal government. The Waiver was submitted in 2008. This proposal will save \$200,000 GF.

Savings:

FY 2011-12 savings

TF: \$2,015,000
GF: \$1,754,000

FY 2012-13 savings

TF: \$2,015,000
GF: \$1,754,000

Implementation:

These proposals will be effective upon approval of the Legislature. No statutory changes are required.

Anticipated Impacts:

The savings will be achieved through the reduction of six statewide contracts and discontinuation of one non-mission critical project that will have no direct impact on consumers, families or service providers.

3. REDUCTIONS AND EFFICIENCY IN REGIONAL CENTER OPERATIONS FUNDING

Summary:

The Department contracts with 21 private, nonprofit regional centers to provide, among other activities specified in law, intake and assessment and life long voluntary case management services to eligible individuals pursuant to the Lanterman Act. Regional centers were created in statute to provide fixed points of contact in the community for persons with developmental disabilities and their

families so they may have access to the services and supports best suited to them throughout their lifetime. In FY 2011-12, the regional centers are expected to serve over 250,000 consumers. The law requires that 85 percent of a regional center's operations funding is used for the provision of direct services.

Regional centers play a critical role in the Department's ability to receive and maintain federal funding for the delivery of consumer services. Currently, over \$1.7 billion in federal funding is included in the budget for regional center services. It is through the regional center system that the Department meets the federal requirements for the approved Home and Community-Based Services Waiver program. Regional centers are responsible for ensuring that eligible consumers who want to participate on the Waiver are enrolled, service providers meet the qualifications for providing Waiver services, individual program plans are developed and monitored, consumer health and welfare is addressed, and financial accountability is assured. Regional centers also play a similar role in meeting the federal requirements for the Department's receipt of federal funding in the day and transportation services of approximately 7,000 consumers residing in intermediate care facilities, and the 1915 (i) SPA under review by the Centers for Medicare and Medicaid Services.

The workgroup participants called for reductions to regional center operations as a component of the Department's reduction proposals. There was discussion regarding the implementation of efficiencies that would reduce regional center funding and staffing needs. This proposal achieves reductions through the implementation of provider electronic billing; the elimination of regional center staff positions⁵; funding for one-time costs associated with office relocations or modifications; and funding allocated to regional centers for accelerated enrollment of new Waiver participants (since under the 1915 (i) SPA the Department will receive federal funding for services to virtually all of the remaining Medi-Cal beneficiaries served by the regional centers who reside in non-institutional settings as defined by the federal government, and are not otherwise covered by another federal program). In addition, the proposal assumes an unallocated reduction to the operations budget.

Reductions to regional center operations of \$13.7 million were a component of proposals to achieve the \$334 reduction in FY 2009-10. Funding was eliminated for triennial quality assurance reviews, one-time funding was reduced for office relocations and modifications, and funding was reduced based on eligibility changes in the Early Start Program and the subsequent implementation of the Prevention Program. In addition, the FY 2011-12 budget for regional center operations was reduced by actions already taken by the Legislature totaling \$27.7 million (\$27.4 million GF) including continuation of the 4.25 percent

⁵ Regional center staff-related reductions include elimination of the positions associated with implementation of the Self-Directed Services Waiver for which federal approval has been pending since 2008; savings associated with the Department's overestimated need for community placement plan resources; and rollback of prior year staffing increases.

payment reduction, administrative cost limits, auditing requirements, conflict of interest requirements, staffing reductions, and increased federal funding.

Savings:

FY 2011-12 savings

TF: \$14,565,000

GF: \$14,132,000

FY 2012-13 savings

TF: \$15,881,000

GF: \$15,015,000

The savings will be achieved through staff reductions, efficiencies and an unallocated reduction in operations, as follows:

- Self Directed Services Waiver Reduced Staffing (\$0.9 million GF)
- Community Placement Plan Reduced Staffing (\$0.3 million GF) – described later in this document under the Community Placement Plan proposal.
- Roll Back of Prior Year Staffing Increase (\$1.9 million GF)
- Reduced Accelerated Waiver Enrollment Funding (\$1.8 million GF)
- Administrative Efficiency - Electronic Billing Process to All Providers (\$2.6 million TF, \$1.8 million GF; FY 2011-12 savings due to implementation lags are \$1.3 million TF, \$0.9 million GF)
- Eliminate Costs for Office Relocations and Modifications (\$3.0 million GF)
- Unallocated Reduction (\$5.4 million GF)

Implementation:

This proposal will be effective upon approval of the Legislature. Legislation will be needed to implement the electronic billing administrative efficiencies.

Anticipated Impacts:

The accumulated impact of reductions in regional center operations can impact the responsiveness to consumers, families and service providers; could result in increased case manager caseloads; and could impact the regional centers' ability to meet federal requirements for receipt of federal funding.

4. COMMUNITY PLACEMENT PLAN FUNDING

Summary:

As described in Welfare and Institutions Code section 4418.25, the Department has a statutory responsibility to ensure that individuals with developmental disabilities live in the least restrictive setting, appropriate to their needs. The law

establishes a Community Placement Plan (CPP) process designed to assist regional centers in providing the necessary services and supports for individuals to move from developmental centers. It also provides the resources necessary to stabilize the community living arrangements of individuals who are at risk of placements in a developmental center (deflection).

Under the CPP process, each regional center develops and submits an annual CPP to the Department based on the needed resources, services, and supports for consumers moving from a developmental center, as well as the resources needed to prevent developmental center admission. The Department requests CPP funding through the budget process. CPP has to be implemented in accordance with the plan approved by the Department.

CPP has resulted in more people moving from, and reduced admissions to, the developmental centers. In the past five years, regional centers have facilitated the placement of 1,168 consumers and have reduced admissions. For example, in FY 2005-06, sixty-six (66) consumers were admitted to developmental centers with thirty-four (34) consumers admitted in FY 2009-10.

The Department closed Agnews Developmental Center in FY 2008-09 and the state-operated community facility, Sierra Vista, in FY 2009-10. The Department is in the process of closing Lanterman Developmental Center.

As part of the planning process, regional centers must forecast the dates consumers will move into the community as well as when resources will come on line. Often new vendors are needed and development of individualized resources, especially licensed residential arrangements, can take longer than anticipated. Consequently, the Department and each regional center are continuously harmonizing the amount of funds needed to implement the CPP.

The Department has conducted an extensive analysis of the funds budgeted, allocated, and expended and has determined that CPP can be reduced by \$10 million (\$7.3 million GF) by funding CPP closer to the amount actually needed in the current and immediately prior FYs. Of this amount, \$315,000 is reflected in the proposal to reduce regional center operations funding. This will result in maintaining the level of placements, deflections, start-up activities, and the operational resources needed to design and implement the very individualized CPP. This reduction will not impact the Department and regional center efforts to facilitate consumers moving from a developmental center or prevent admissions to a developmental center.

There were no changes to the CPP in the FY 2009-10 budget reduction process. CPP was not the subject of workgroup discussion.

Savings:

FY 2011-12 savings⁶

TF: \$9,685,000

GF: \$6,966,000

FY 2012-13 savings⁶

TF: \$9,685,000

GF: \$6,966,000

Implementation:

This proposal will be effective upon approval of the Legislature.

Anticipated Impacts:

CPP funds will be reduced to reflect actual annual expenditures based on review and analysis of the past two years of regional center needs to ensure continued placements of individuals residing in developmental centers into the community or the deflection from placement into institutions. This reduction will not impact the Department and regional center efforts to facilitate consumers moving from a developmental center or prevent admissions to a developmental center.

5. RATE EQUITY AND NEGOTIATED RATE CONTROL

Summary:

The rate setting methodologies for services funded by regional centers are specified in law. These methodologies include: negotiations resulting in a rate that does not exceed the regional center's median rate for that service, or the statewide median, whichever is lower, and the provider's usual and customary rate (U&C), which means the rate they charge the members of the general public to whom they are providing services. A 4.25 percent payment reduction to regional center funded services went into effect July 1, 2010 (a 3 percent reduction was previously in effect commencing February 2009), but did not apply to service providers with a U&C rate. The intent of the U&C exemption was for businesses that serve the general public without specialty in services for persons with developmental disabilities. This proposal clarifies that the exemption to the 4.25 percent payment reductions does not apply to providers specializing in services to persons with developmental disabilities. This proposal also calls for the Department to update the calculation of the regional center and statewide median rates, established as part of the 2008-09 budget reductions, applicable to new vendors providing services for which rates are set through negotiation. The

⁶ The remaining \$315,000 GF is reflected in the proposal, Reductions and Efficiency in Regional Center Operations Funding.

proposal only impacts providers who were not previously impacted by the 4.25 percent payment reduction and new providers of negotiated rate services.

This proposal is consistent with workgroup discussions regarding the U&C modification and suggestions that any rate changes be focused on new or higher rate providers.

Savings:

FY 2011-12 savings

TF: \$6,008,000

GF: \$3,432,000

FY 2012-13 savings

TF: \$14,312,000

GF: \$ 9,568,000

Savings Detail:

4.25 Percent Payment Reduction for Usual and Customary Rates

- Annual Savings: \$1.0 million (\$0.8 million GF)
- FY 2011-12 Savings: The annual savings is achievable in FY 2011-12 for savings of \$1.0 million (\$0.8 million GF)

Median Rates

- Annual Savings: \$13.3 million (\$7.0 million GF)
- FY 2011-12 Savings: \$5.0 million (\$2.6 million GF)

Implementation:

This proposal will be effective upon approval of the Legislature. The 4.25 percent payment reduction can be implemented immediately and the Department will update the median rates used by regional centers for new providers of applicable services effective October 1, 2011.

Anticipated Impacts:

The proposal only impacts providers who were not previously impacted by the 4.25 percent payment reduction and new providers of negotiated rate services.

6. ANNUAL FAMILY PROGRAM FEE

Summary:

There are currently two family participation programs in the Department. The first is a Parental Fee for families with children ages 0 through 17 who have been placed out of the family home. The second is the Family Cost Participation Program (FCPP) for families of children ages 0 through 17 who receive day care, respite, and camping services. In response to State budget pressures, both programs were recently changed to increase parental participation.

This proposal establishes an annual family program fee in the amount of \$150 or \$200, depending on family income, that will be assessed for families of consumers receiving services from the regional centers who meet the following criteria:

- The child is under age 18.
- The child lives at home with their parent(s).
- The child is not eligible for Medi-Cal.
- The family's income is at or above 400 percent of the Federal Poverty Level (FPL) based upon family size.
- The child or family receives services beyond eligibility determination, needs assessment, and case management. Families of consumers who only receive respite, day care, and/or camping services are also excluded under the Annual Family Program Fee if assessed separately in the Family Cost Participation Program (FCPP).

The authorizing legislation would include an exemption process for families with special circumstances. Families with two or more children receiving regional center services would be charged only one fee.

Savings:

FY 2011-12 savings

TF: \$3,600,000
GF: \$3,600,000

FY 2012-13 savings

TF: \$7,200,000
GF: \$7,200,000

Implementation:

This proposal will be effective upon approval of the Legislature. The annual family program fee will be assessed by regional centers at the time of the development of the IPP/IFSP, but no later than June 30, 2012, and annually

thereafter. Legislation will be required for implementation and federal approval may be required for consumers in the Early Start Program.

Anticipated Impacts:

It is estimated that there will be over 42,000 families responsible for paying an Annual Family Program Fee. Families of consumers, ages 0 through 17, will be required to pay the fee when they receive services from a regional center, with the exception of eligibility determination, needs assessment, and case management services. If a family only receives respite, day care and camping services, they will not be subject to the fee, as they participate in the Family Cost Participation Program when receiving these services. An exemption process for families with special circumstances would be outlined in the authorizing legislation. Families with two or more children receiving regional center services would be charged only one fee.

7. MAINTAINING THE CONSUMER'S HOME OF CHOICE – MIXED PAYMENT RATES IN RESIDENTIAL FACILITIES WITH ALTERNATIVE RESIDENTIAL MODEL (ARM) RATES

Summary:

Rather than a consumer having to leave their preferred residential living arrangement because their service and support needs have changed, this proposal allows for regional center payment of a lower rate that meets the needs of the individual while leaving intact the higher level of services and support for the other individuals residing in that home and the facility's ARM service level designation.

Current regulations for ARM facilities (Title 17, Section 56902) allow regional centers to negotiate a level of payment for its consumers that is lower than the vendored rate established by the Department (ARM rate). However, the vendor must still provide the same level of service (i.e. staffing ratios and hours, and consultant services) for which they are vendored (i.e. the designated ARM service level for the facility). This proposal would allow, pursuant to the consumer's IPP, and a written agreement between the regional center and residential provider, a lower payment rate for a consumer whose needs have changed but wants to maintain their residency in the home, without impacting the facility's ARM service level designation.

This concept was discussed in the Residential Services Workgroup for potential cost savings.

The majority of consumers living in 24-hour residential care reside in ARM facilities. The FY 2011-12 budget includes \$871.1 million to fund residential services for over 21,000 consumers living in over 4,700 community care facilities.

In the FY 2009-10 adopted budget reduction proposals, residential services were impacted by the implementation of the Uniform Holiday Schedule for Day Programs. When programs impacted by the holiday schedule were closed, residential facilities had associated increased staffing costs.

Savings:

FY 2011-12 savings

TF: \$2,255,000

GF: \$1,364,000

FY 2012-13 savings

TF: \$4,176,000

TF: \$2,526,000

Implementation:

This proposal will be effective upon approval of the Legislature. For the consumer, a change in the level of residential services would be done through the IPP process, and subsequently through a contract between the regional center and residential service provider. If a consumer's needs subsequently increase, the services and the corresponding rate will be adjusted accordingly.

Anticipated Impacts:

Consumers will be able to stay in their home of choice. For the consumer, a change in the level of residential services would be done through the IPP process, and subsequently through a written agreement between the regional center and the residential provider. Although the rate for the service will decrease, the service provider staffing requirements would also be adjusted.

8. MAXIMIZE UTILIZATION OF GENERIC RESOURCES - EDUCATION SERVICES

Summary:

Publicly funded school services are available to regional center consumers to age 22. The Lanterman Act requires the use of generic services to meet the needs of the consumers, as applicable, and further states that regional centers shall pursue all possible sources of funding for consumers receiving regional center services, including school districts (Welfare and Institutions Code section 4659). The California Education Code addresses education and related services to pupils 18 to 22 years of age. The Education Code lists services provided by the school system, including orientation and mobility services, school transition services, specialized driver training instruction, specifically designed

vocational education and career development, and transportation. For consumers who remain eligible for services through the public school system, this proposal requires the regional centers to use the generic education resources in lieu of purchasing day program, work/employment, independent living, mobility training and associated transportation services on their behalf. Regional centers may encourage schools to use existing vendors to meet consumer needs.

Workgroup participants recommended greater reliance on the educational system for services, as appropriate. Participants expressed the need to maximize service provision through the mandated transition plan for individuals with special education needs.

The budget reductions in FY 2009-10 required regional centers to use generic educational services for minor school aged children, with exceptions in statute.

Savings:

FY 2011-12 savings

TF: \$13,696,000
GF: \$10,236,000

FY 2012-13 savings

TF: \$18,188,000
GF: \$13,593,000

Implementation:

This proposal will be effective upon approval of the Legislature. The IPPs of consumers 18 to 22 years of age receiving regional center funded day, independent living, and/or associated transportation services potentially impacted by the implementation of this proposal will need to be reviewed to determine eligibility for the generic educational services. The estimate assumes the use of generic education resources will be addressed through the IPP for consumers currently receiving the identified services through the regional center. All changes to existing plans will be done through the IPP process.

Anticipated Impacts:

Consumers, ages 18 to 22, based upon the services identified in their IPP, will receive generic education services through the public education system, rather than the regional centers.

9. SUPPORTED LIVING SERVICES: MAXIMIZING RESOURCES

Summary:

Supported Living Services (SLS) is a community living option that supports adult consumers who choose to live in homes they control through ownership, lease, or rental agreement. In supported living, a consumer pays for living expenses (e.g. rent, utilities, food, and entertainment) out of Social Security Income, work earnings or other personal resources. The regional center pays the vendor to provide the SLS. The consumer may also receive other kinds of publicly-funded services like Medi-Cal, mental health services, vocational services, and In-Home Supportive Services (IHSS).

It is estimated that for FY 2011-12, 9,803 consumers will receive SLS at a total cost of approximately \$383 million. In the past five years, the number of consumers using SLS has increased by 33 percent and expenditures have grown by 83 percent.

During workgroup meetings, participants discussed ways to maximize regional center funded services while maintaining the individualized nature of SLS. Consumers who share a household with other adults may also share common tasks. Savings for SLS could be accomplished through identifying the shared tasks that can be provided at the same time, provided each person's needs are met. Identifying, during IPP meetings, shared tasks, such as meal preparation and clean up, menu planning, laundry, shopping, general household tasks, and errands, would enable the SLS provider to provide efficiencies in SLS services.

A second area of discussion among participants was how the amount and type of SLS service is determined. Currently, most providers conduct this assessment as an important component of getting to know the consumer they will be supporting. The workgroup discussed the value of conducting an independent assessment when service needs are significant, while preserving the need for the provider to have a comprehensive understanding of the type and amount of services needed.

To maximize resources in SLS, this proposal would require regional centers to assess during IPP meetings whether there are tasks that can be shared by consumers who live with roommates. Secondly, an independent needs assessment will be required for all consumers who have SLS costs that exceed 125 percent of the annual statewide average cost of providing supported living service. The assessment would be completed by an entity other than the SLS agency providing service and be used during IPP meetings to determine the services provided are necessary and sufficient and that the most cost effective methods of service are utilized.

As part of FY 2009-10 reductions, SLS achieved savings of \$22.9 million in Total Funds and \$15.1 million in GF. Savings were associated with SLS vendors helping consumers get IHSS within five days of moving into supported living; regional centers reviewing SLS rates and only supplementing consumer's rent in extraordinary circumstances; and having consumers using SLS who share a home use the same SLS provider if possible.

Savings:

FY 2011-12 savings

TF: \$9,948,000
GF: \$5,461,000

FY 2012-13 savings

TF: \$19,896,000
GF: \$10,924,000

Savings Detail:

SLS – Independent Assessments

- Annual Savings: \$12.2 million (\$6.7 million GF)
- FY 2011-12 Savings: The savings will be phased-in throughout the first year; therefore, 50 percent of the annual savings is assumed in FY 2011-12 for \$6.1 million (\$3.4 million GF).

SLS – Shared Tasks

- Annual Savings: \$7.7 million (\$4.2 million GF)
- FY 2011-12 Savings: The savings will be phased-in throughout the first year; therefore, 50 percent of the annual savings is assumed in FY 2011-12 for \$3.8 million (\$2.1 million GF).

Implementation:

This proposal will be effective upon approval of the necessary statutory changes by the Legislature. Changes to an individual's SLS will be made through the IPP process.

Anticipated Impacts:

Consumers will receive SLS services as identified in their IPP. In some instances and where appropriate, some SLS services may be shared with

roommates. The independent assessment will be utilized by the IPP team when determining the appropriate level of services based on the consumer's needs.

10. INDIVIDUAL CHOICE DAY SERVICES

Summary:

Over the past several years there has been extensive community discussion regarding best practices for delivery of day services. Consumers, family members, regional center staff, and vendors have publicly testified that the current array of day services options is insufficient to meet changing consumer needs. Young consumers want the opportunity to attend college and to develop the job skills necessary to get stable employment. Other adults want the opportunity to contribute to their community through volunteerism or simply have the flexibility to tailor when, where, and how often they attend a day program. A number of consumers want the opportunity to direct their day services.

Twenty-five percent of the regional center purchase of service budget is spent on Day Program and Habilitation Services (i.e., work services.) The Department estimates expenditures of nearly \$930 million in FY 2011-12 for these programs.

To achieve savings in FY 2009-10, the Department proposed three strategies that impacted day program services: expansion of the Uniform Holiday Schedule, an option for reduced programming for Seniors, and Custom Endeavor Option (CEO) to allow for more individualized services. The proposed GF savings were Uniform Holiday Schedule \$16.3 million; Senior Option \$1 million; and CEO \$12.7 million. However, only the Uniform Holiday Schedule change achieved savings. Virtually no savings were achieved for the Senior or CEO Options.

During recent workgroup meetings, the Senior and CEO Options, and the barriers associated with implementing them, were discussed. The workgroup members conveyed to the Department that savings were difficult to achieve due to regulatory restrictions on staffing ratios, not being able to backfill if a consumer chose a different option, and the difficulty of implementing the options within the current rate structure. Workgroup participants advised the Department to review individualized day program service options and address the barriers surrounding fixed staffing ratios and operating costs when proposing any individual choice options. The Residential Services workgroup raised concerns about the practice of some day programs ending the program day very early and returning consumers to their residence after a few hours, thereby shifting costs.

The Department considered the input from the workgroups and community concerning the importance of consumers having alternative choices to traditional day programs in its development of the FY 2011-12 proposals. Two of the proposals presented by the Department address the community's eagerness for

greater consumer choice in day services. These proposals also deal with the barriers expressed by providers in implementing the FY 2009-10 proposals.

Tailored Day Program Service Option (TDS): TDS is designed to meet the needs of consumers who choose a program focused on their individualized needs and interests to develop or maintain employment and/or volunteer activities; maximize consumer direction of the service; permit pursuit of post secondary education; and increase the consumer's ability to lead an integrated and inclusive life. In this option, a consumer can choose to attend fewer program days, choose the hours of participation, or change the location. Through the IPP process, the consumer, vendor, and regional center can create a program tailored to the consumer's needs. Once the type and amount of service desired by the consumer is determined, the regional center and vendor can negotiate the appropriate hourly or daily rate. Staffing may be adjusted but must meet all health and safety requirements for the consumer and meet the consumer's tailored needs. Consumers currently engaged in Senior and CEO options will remain in those options, but regional centers will no longer be able to refer to those options.

Vouchered Community-Based Training Service Option (VCTS): VCTS is designed for consumers and/or parents who choose to directly hire a support worker to develop functional skills to achieve community integration, pursue post secondary education, employment, or participation in volunteer activities. A Financial Management Services entity will be available to assist the consumer in payroll activities and up to 150 hours of services are available each quarter.

Modified Full and Half-Day Program Attendance Billing: The proposal modifies the current billing for day programs that bill a daily rate. A full day of service is defined as at least 75 percent of the declared and approved program day; a half day of service is any attendance less than a full day of service. Currently, regulations governing the provision of day programs are silent on what constitutes a full or half-day for billing purposes. This proposal would ensure the consumer is receiving the level of services purchased. This requirement will not apply to TDS or VCTS services.

Savings:

FY 2011-12 savings

TF: \$12,839,000
GF: \$ 9,629,000

FY 2012-13 savings

TF: \$16,477,000
GF: \$12,358,000

The individual choice day service and modified billing proposals combined are designed to achieve the expected but unachieved savings associated with the Senior and CEO Options enacted in the 2009-10 budget process.

Savings Detail:

Tailored Day Program Service Option

- Annual Savings: \$9.4 million (\$7.0 million GF)
- FY 2011-12 Savings: The savings in FY 2011-12 assumes nine months of savings to address delays in identifying and implementing the various consumer driven options. This results in FY 2011-12 savings of \$7.0 million (\$5.3 million GF)

Vouchered Community-Based Training Service Option

- Annual Savings: \$5.2 million (\$3.9 million GF)
- FY 2011-12 Savings: The savings in FY 2011-12 assumes nine months of savings to address delays in identifying and implementing the various consumer driven options. This results in FY 2011-12 savings of \$3.9 million (\$2.9 million GF)

Modified Full and Half-Day Program Attendance

- Annual Savings: \$1.9 million (\$1.4 million GF)
- FY 2011-12 Savings: The annual savings is achievable in FY 2011-12 for savings of \$1.9 million (\$1.4 million GF)

Implementation:

This proposal will be effective upon approval of the necessary statutory changes by the Legislature. Implementation of the TDS and VCTS options will be individualized and phased in through the IPP process. Federal approval will be needed to receive federal funding for the VCTS program.

Anticipated Impacts:

Based upon their IPP, some consumers will elect to receive TDS or VCTS services for opportunities to develop or maintain employment and/or volunteer activities; maximize direction of their service; pursue post secondary education; and increase their ability to lead an integrated and inclusive life. The proposal

regarding half-day billings will ensure service providers are paid for the services they provide, based on the consumer's actual attendance.

11. MAXIMIZING RESOURCES FOR BEHAVIORAL SERVICES

Summary:

Behavioral Services are services that provide instruction and environmental modifications to promote positive behaviors and reduce behaviors that interfere with learning and social interaction. Behavioral Services can include designing, implementing and evaluating teaching methods, consultation with specialists, and behavioral interventions. It can also include training for consumers and/or parents on the use of behavioral intervention techniques and home-based behavioral intervention programs that are implemented by parents for their children. Department regulations establish the qualifications for the various professionals delivering these services.

This proposal would require parents to verify receipt of Behavioral Services provided to their child. This proposal would also authorize the Department to promulgate emergency regulations to establish a new service to address the use of paraprofessionals in group practice behavioral intervention services and establish a rate.

Spending on Behavioral Services has increased steadily. Last year, nearly \$249 million was spent to provide services to over 20,000 consumers. This year, the Department anticipates spending over \$291 million on Behavioral Services.

During recent workgroup meetings, participants discussed whether having parents confirm the provision of Behavioral Services would reduce the unintended occurrence of incorrect billings. Behavioral Services provided to children are often frequent in occurrence, increasing the possibility of inaccurate billings.

Additionally, workgroup members felt that allowing qualified paraprofessionals to provide intervention services could result in cost savings. Participants considered that undergraduates studying in a field relevant to behavioral intervention and other individuals with experience working with people with developmental disabilities could, with sufficient supervision and training, provide some intervention services. Because these workers would be paraprofessionals operating with a group practice, the rate of pay could be lower while maintaining the quality and consistency of the service.

In FY 2009-10, the Department implemented statute calling for regional centers to purchase Behavioral Services consistent with evidence-based practices and addressing the role of parents in the treatment plan. The usefulness of an

intervention plan is now reviewed on a regular basis to ensure goals and objectives are met. These strategies were estimated to save \$21 million in GF (\$30 million in Total Funds). Savings were partially achieved.

Savings:

FY 2011-12 savings

TF: \$4,893,000

GF: \$3,852,000

FY 2012-13 savings

TF: \$4,893,000

GF: \$3,852,000

Savings Detail:

Parent Verification of Receipt of Services

- Annual Savings: \$2.7 million (\$2.0 million GF)
- FY 2011-12 Savings: The annual savings is achievable in FY 2011-12 for savings of \$2.7 million (\$2.0 million GF)

Establish Paraprofessional Service

- Annual Savings: \$2.5 million (\$1.9 million GF)
- FY 2011-12 Savings: The annual savings is achievable in FY 2011-12 for savings of \$2.5 million (\$1.9 million GF)

Implementation:

This proposal will be effective upon approval of the Legislature. Statutory changes will be required to implement the parental verification. Regulations will be developed to add the paraprofessional services.

Anticipated Impacts:

A new paraprofessional option will be available to provide behavioral services at a lower rate. Parents will be required to confirm the provision of behavioral services.

12. TRANSFER REDUCED SCOPE PREVENTION PROGRAM TO THE FAMILY RESOURCE CENTERS

Summary:

The Prevention Program was established on October 1, 2009, to provide services in the form of intake, assessment, case management, and referral to generic agencies for those infants and toddlers, 0 to 2 years of age, who are not eligible for Early Start services but who are at risk for developmental delay. The program was established subsequent to changing eligibility for the Early Start program to what is required for receipt of grant funding under the federal Individuals with Disabilities Education Act (IDEA), Part C. Prevention Program services are provided through the regional centers.

As of March 2011, there were 3,258 children in the Prevention Program. Regional centers are funded through a block grant, based on caseload. In FY 2010-11, \$18,150,000 of GF was allocated. The Prevention Program is currently budgeted at \$12 million for FY 2011-12.

This proposal would decrease the required functions of the Prevention Program to information, resource, outreach, and referral; transfer responsibility for these functions to Family Resource Centers (FRC); and reduce funding to \$4.5 million in FY 2011-12 and \$2 million in FY 2012-13. Since approximately 3,200 children remain in the Prevention Program, this proposal assumes \$2.5 million for regional centers to complete services to the existing caseload and \$2 million for FRCs to serve new referrals. Beginning July 1, 2012, the program would be completely transferred to the FRCs through a contract between the Department and the Family Resource Center Network of California, or a similar entity.

Regional centers will continue to provide intake, assessment, and evaluation for the Early Start Program. Infants and toddlers ineligible for the Early Start or Lanterman Act Programs would be referred, with parental consent, to the FRCs.

The workgroup participants discussed the under utilization of the Prevention Program and suggested review for cost and program effectiveness.

In FY 2009-10, budget savings of \$54.5 million were achieved through narrowing the criteria for eligibility for the Early Start Program to what is required for the federal IDEA, Part C funding. Additional legislation was passed to discontinue the provision of non-federally required services. Parents were also required to use private insurance, if available, for services.

Savings:

FY 2011-12 savings

TF: \$7,500,000

GF: \$7,500,000

FY 2012-13 savings

TF: \$10,000,000

GF: \$10,000,000

The savings assumes a transition period for individuals currently in the Prevention Program and referral of new infants and toddlers to FRCs.

Implementation:

This proposal will be effective upon approval of the necessary statutory changes by the Legislature.

Anticipated Impacts:

Infants and toddlers, 0 through 2 years of age, who are not eligible for Early Start services will be referred to Family Resource Centers for services. Infants and toddlers who would have been receiving services in the Prevention Program administered by the regional center, will not receive case management services.

13. ENHANCING COMMUNITY INTEGRATION AND PARTICIPATION – DEVELOPMENT OF TRANSPORTATION ACCESS PLANS

Summary:

Current law provides that regional centers will not fund private, specialized transportation services for an adult consumer who can safely access and utilize public transportation when that transportation modality is available and will purchase the least expensive transportation modality that meets a consumer's needs as set forth in the IPP/IFSP. To maximize consumer community integration and participation and to address barriers to the most integrated transportation services, a transportation access plan would be developed at the time of the IPP, for consumers for whom the regional center is purchasing specialized transportation services or vendored transportation services from the consumer's day, residential or other provider receiving regional center funding to transport the consumer to and from day programs, work and/or day activities. The plan would address the services needed to assist the consumer in developing skills to access the most inclusive transportation option that can meet the consumer's needs. The Transportation Workgroup recommended the requirement for the development of transportation access plans.

The FY 2009-10 reduction proposals resulted in annual savings of \$39.9 million in Total Funds and \$36.6 million in General Funds in the area of transportation. In addition to the statutory provision above regarding the funding of private, specialized transportation services, the law specifies that the regional centers may now only fund transportation for a minor child living in the family residence if the family provides sufficient written documentation to demonstrate that it is unable to provide transportation for the child.

Savings:

FY 2011-12 savings

TF: \$1,473,000
GF: \$1,075,000

FY 2012-13 savings

TF: \$2,945,000
GF: \$2,150,000

In addition to this proposal, transportation savings are also identified in the "Individual Choice Day Services" proposal and the "Maximize Utilization of Generic Resources - Education Services" proposal.

Implementation:

This proposal will be effective upon approval of the Legislature. Through the IPP process, transportation access plans will be developed for consumers as appropriate.

Anticipated Impacts:

Based upon their IPP, adult consumers currently receiving specialized or vendored transportation services will have a transportation plan for developing skills to access the most inclusive transportation option that meets the consumer's needs.

IMPLEMENTING LEGISLATION

Proposed legislation to implement these proposals is attached.

**Department of Developmental Services
Proposals to Achieve \$174 Million in General Fund Savings**

	2011-12		Annual	
	TF	GF	TF	GF
Reduced Expenditure Savings that Allow Reduction in Savings Required through Proposals	\$ 55,603,000	\$ 55,603,000	\$ 55,603,000	\$ 55,603,000
1. Increasing Federal Funding for Regional Center Purchased Consumer Services	\$ -	\$ 20,932,000	\$ -	\$ 22,515,000
• Add Voucher - Nursing Services to the HCBS Waiver	\$ -	\$ 528,000	\$ -	\$ 528,000
• Money Follows the Person for Residents of Institutional Settings	\$ -	\$ 1,881,000	\$ -	\$ 3,464,000
• Enhanced Funding from 1915(k) Medicaid State Plan	\$ -	\$ 1,200,000	\$ -	\$ 1,200,000
• Obtain Federal Funding for Infant Development Program	\$ -	\$ 13,223,000	\$ -	\$ 13,223,000
• 1915(i) New Expenditures	\$ -	\$ 4,100,000	\$ -	\$ 4,100,000
2. Decreasing Department of Developmental Services Headquarters Contracts	\$ 2,015,000	\$ 1,754,000	\$ 2,015,000	\$ 1,754,000
• Information Technology	\$ 545,000	\$ 545,000	\$ 545,000	\$ 545,000
• Clients' Rights Advocacy	\$ 250,000	\$ 200,000	\$ 250,000	\$ 200,000
• Quality Assessment	\$ 530,000	\$ 424,000	\$ 530,000	\$ 424,000
• Direct Support Professional Training	\$ 140,000	\$ 85,000	\$ 140,000	\$ 85,000
• Office of Administrative Hearings	\$ 250,000	\$ 200,000	\$ 250,000	\$ 200,000
• Risk Management	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000
• Self Directed Services Training	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000
3. Reduction and Efficiency in Regional Center Operations Funding	\$ 14,565,000	\$ 14,132,000	\$ 15,881,000	\$ 15,015,000
• Self Directed Services Waiver Reduced Staffing	\$ 861,000	\$ 861,000	\$ 861,000	\$ 861,000
• Community Placement Plan Reduced Staffing	\$ 315,000	\$ 315,000	\$ 315,000	\$ 315,000
• Roll Back of Prior Year Staffing Increase	\$ 1,902,000	\$ 1,902,000	\$ 1,902,000	\$ 1,902,000
• Reduced Accelerated Waiver Enrollment Funding	\$ 1,771,000	\$ 1,771,000	\$ 1,771,000	\$ 1,771,000
• Administrative Efficiency - Electronic Billing Process to All Providers	\$ 1,316,000	\$ 883,000	\$ 2,632,000	\$ 1,766,000
• Eliminate One-Time Costs for Office Relocations and Modifications	\$ 3,000,000	\$ 3,000,000	\$ 3,000,000	\$ 3,000,000
• Unallocated Reduction	\$ 5,400,000	\$ 5,400,000	\$ 5,400,000	\$ 5,400,000
Proposals Associated with Purchase of Consumer Services	\$ 71,897,000	\$ 53,115,000	\$ 107,772,000	\$ 79,137,000
4. Community Placement Plan Funding	\$ 9,685,000	\$ 6,966,000	\$ 9,685,000	\$ 6,966,000
5. Rate Equity and Negotiated Rate Control	\$ 6,008,000	\$ 3,432,000	\$ 14,312,000	\$ 9,568,000
6. Annual Family Program Fee	\$ 3,600,000	\$ 3,600,000	\$ 7,200,000	\$ 7,200,000
7. Maintaining the Consumer's Home of Choice - Mixed Payment Rates in Residential Facilities with Alternative Residential Model (ARM) Rates	\$ 2,255,000	\$ 1,364,000	\$ 4,176,000	\$ 2,526,000
8. Maximize Utilization of Generic Resources - Education Services	\$ 13,696,000	\$ 10,236,000	\$ 18,188,000	\$ 13,593,000
9. Supported Living Services: Maximize Resources	\$ 9,948,000	\$ 5,461,000	\$ 19,896,000	\$ 10,924,000
10. Individual Choice Day Services	\$ 12,839,000	\$ 9,629,000	\$ 16,477,000	\$ 12,358,000
11. Maximizing Resources for Behavioral Services	\$ 4,893,000	\$ 3,852,000	\$ 4,893,000	\$ 3,852,000
12. Transfer Reduced Scope Prevention Program to the Family Resource Centers	\$ 7,500,000	\$ 7,500,000	\$ 10,000,000	\$ 10,000,000
13. Enhancing Community Integration and Participation - Development of Transportation Access Plans	\$ 1,473,000	\$ 1,075,000	\$ 2,945,000	\$ 2,150,000
Total Reductions	\$ 144,080,000	\$ 145,536,000	\$ 181,271,000	\$ 174,024,000

DEPARTMENT OF DEVELOPMENTAL SERVICES

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August 4, 2011

TO: REGIONAL CENTER DIRECTORS AND BOARD PRESIDENTS

SUBJECT: JUNE 2011 TRAILER BILL LANGUAGE AFFECTING REGIONAL CENTERS

The purpose of this correspondence is to transmit a summary of the recently enacted Trailer Bill (AB 104, Chapter 37, Statutes of 2011) that directly affects regional centers or the developmental services system. This trailer bill language (TBL) became effective July 1, 2011. Regional centers should continue to educate their communities regarding these legislative changes. While this correspondence provides a high level summary of the TBL, a complete and thorough review of TBL (see www.leginfo.ca.gov) is imperative for regional centers' statutory compliance. Clarifying information regarding implementation of TBL is included in several areas below.

Health Benefit Cards

TBL Sections 1, 8 and 9: Section 95020 of the Government Code (Gov. Code) and sections 4643 and 4646.4 of Welfare & Institutions Code¹ were amended, requiring that at the time of intake and assessment for Early Start or Lanterman Act services, and at the time of subsequent development, scheduled reviews, or modification of a consumer's Individualized Family Service Plan (IFSP) or Individual Program Plan (IPP), the consumer, or where appropriate, parents, legal guardian, or conservator must provide copies of any health benefit cards under which the consumer is eligible to receive health benefits, including, but not limited to, private health insurance, a health care service plan, Medi-Cal, Medicare, and TRICARE. If the individual, or, where appropriate, the parents, legal guardians, or conservators, have no such benefits, the regional center may not use that fact to negatively impact the services that the individual may or may not receive from the regional center.

Vendor Electronic Billing (e-billing)

TBL Sections 2 and 7: Section 95020.5 was added to the Gov. Code and section 4641.5 was added, requiring that effective July 1, 2011, regional centers begin transitioning providers and vendors of services purchased through a regional center to electronic billing. "Electronic billing" is defined as the Regional Center e-Billing System web application provided by the Department of Developmental Services (Department).

¹ All citations are to the Welfare and Institutions Code unless otherwise stated.

"Building Partnerships, Supporting Choices"

All providers, vendors and contracted providers of services provided or purchased through a regional center must submit all billings electronically for services provided on or after July 1, 2012, with the exception of the following:

- A provider or vendor whose services are paid for by vouchers, as that term is defined in section 4512 (j).
- A provider or vendor who demonstrates that submitting billings electronically for services presents a substantial financial hardship for the provider.

Implementation: Regional centers are encouraged to develop and share with their community a timeline for, and immediately begin, transitioning vendors to e-billing over the course of the fiscal year.

Transfer Reduced Scope Prevention Program to the Family Resource Centers

TBL Sections 5 and 6: Section 4435 was amended stating that babies identified as being at-risk who were in the prevention program as of June 30, 2011, are to continue in the prevention program until the child reaches 36 months of age, the regional center has determined the child is eligible for Early Start services, the regional center has determined the child is eligible for Lanterman Act services, or June 30, 2012, whichever date is earlier. Effective July 1, 2011, a regional center may not refer any at-risk babies to the prevention program described in section 4435.

Section 4435.1 was added, stating that effective July 1, 2011, the Department shall establish a program for at-risk babies. "At risk babies" means children under 36 months of age who are not eligible for the Early Start or Lanterman Act programs, and whose genetic, medical, developmental, or environmental history is predictive of a substantially greater risk for developmental disability than that for the general population, the presence of which is diagnosed by qualified clinicians. Effective July 1, 2011, when a regional center intake and assessment determination is that a baby is an at-risk baby, the regional center will, with parental consent, refer the baby and family to the family resource center described below, for outreach, information, and referral services.

Effective July 1, 2011, the Department is required to contract with an organization representing one or more family resource centers which receive federal funds to provide outreach, information, and referral services to generic agencies for children under 36 months of age who are not eligible for the Early Start or Lanterman Act programs. The organization with which the Department contracts is to be an organization that supports families of young children with intellectual or developmental disabilities, and those at risk of intellectual or developmental disabilities by ensuring the continuance, expansion, promotion, and quality of local family support services, including coordination, outreach, and referral. The contract must ensure the expeditious delivery of outreach, information, and referral services to at-risk babies, and require the organization to

establish a process with the applicable regional center or centers for referral of the at-risk baby to the regional center when the family resource center suspects that the child may be eligible for Early Start or Lanterman Act services.

Implementation: The Department has contracted with the Family Resource Center Network of California and Support for Families of Children with Disabilities (contractors) to carry out the requirements of section 4435.1. The program is known as the Prevention Resource and Referral Services. The contractors will deliver services through subcontracts with the local Family Resource Centers (FRC). Local FRCs are required to negotiate a Memorandum of Understanding (MOU) with their regional center by September 1, 2011. The MOU will specify the procedures by which the local FRCs shall accept referrals from the regional center and refer children to the regional center who may be exhibiting developmental concerns that necessitate evaluation by the regional center for Early Start or Lanterman Act services. Other MOU components shall include activities to ensure coordination between the FRCs and the regional centers. Regional centers will receive current year's prevention program funds based on their percent to total share of the June, 2011 Prevention Program (Status Code P) caseload. The Department previously notified regional centers not to allocate two percent of their current year Prevention Program funds to the FRCs.

Enhancing Community Integration and Participation—Development of Transportation Access Plans

TBL Section 10: Section 4646.5 was amended to require that the planning process for the IPP also include the development of a transportation access plan for a consumer when all of the following conditions are met:

- The regional center is purchasing private, specialized transportation services or services from a residential, day, or other provider, excluding vouchered service providers, to transport the consumer to and from day or work services;
- The planning team has determined that a consumer's community integration and participation could be safe and enhanced through the use of public transportation services; and,
- The planning team has determined that generic transportation services are available and accessible.

To maximize independence and community integration and participation, the transportation access plan must identify the services and supports necessary to assist the consumer in accessing public transportation and comply with section 4648.35. These services and supports may include, but are not limited to, mobility training services and the use of transportation aides. Regional centers are encouraged to coordinate with local public transportation agencies.

Implementation: Where applicable, at the time of development, review, or modification of the IPP, regional centers must develop the required transportation access plan. The Department will review the regional centers' implementation of this provision through the Department's IPP monitoring protocol, as part of the Home and Community Based Services Waiver monitoring or other Department monitoring activities.

Maximize Utilization of Generic Resources—Education Services

TBL Section 13: Section 4648.55 was added, prohibiting a regional center from purchasing day program, vocational education, work services, independent living program, or mobility training and related transportation services for a consumer who is 18 to 22 years of age, if the consumer is eligible for special education and related education services and has not received a diploma or certificate of completion, unless the planning team determines that the consumer's needs cannot be met in the educational system or grants an exemption pursuant to section 4648(d). The exemption language in section 4648(d) states: "An exemption to the provisions of this section may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a). An exemption shall be granted through the IPP process and shall be based on a determination that the generic service is not appropriate to meet the consumer's need. The consumer shall be informed of the exemption and the process for obtaining an exemption."

If the planning team determines that generic services can meet the consumer's day, vocational education, work services, independent living, or mobility training and related transportation needs, the regional center is to assist the consumer in accessing those services. To ensure that consumers receive appropriate educational services and an effective transition from services provided by educational agencies to services provided by regional centers, the regional center service coordinator, at the request of the consumer or, where appropriate, the consumer's parent, legal guardian, or conservator, may attend the individualized education program planning team meeting.

For consumers who are 18 to 22 years of age, who have left the public school system, and who are receiving regional center purchased services identified above on or before July 1, 2011, a determination is to be made through the IPP as to whether the return to the educational system can be achieved while meeting the consumer's needs. If the planning team determines that the consumer's needs cannot be met in the educational system, the regional center may continue to purchase the services identified above. If the planning team determines that generic services can meet the consumer's day, vocational education, work services, independent living, or mobility training and related transportation needs, the regional center must assist the consumer in accessing those services.

For consumers who are 18 to 22 years of age, who have left school prior to July 1, 2011, but who are not receiving any of the regional center purchased services identified above the regional center is to use generic education services to meet the consumer's day, vocational education, work services, independent living, or mobility training and related transportation needs if those needs are subsequently identified in the IPP unless the consumer is eligible for an exemption, based on the criteria below. If the planning team determines that generic services can meet the consumer's day, vocational education, work services, independent living, or mobility training and related transportation needs, the regional center is to assist the consumer in accessing those services.

Implementation: The statutory provisions apply to all consumers 18-22 years of age, who are eligible for special education and related education services and have not received a diploma or certificate of completion, even if the regional center is currently purchasing day program, vocational education, work services, independent living program, or mobility training and related transportation services. For consumers 18 to 22 years of age, at the time of development, review, or modification of the IPP, each planning team must determine if generic educational services continue to or can meet a consumer's needs, or if extraordinary circumstances exist, and decide whether or not an exemption on that basis may be granted. Also, when the planning team determines, through the IPP process, that the generic (education) services are not appropriate to meet the consumer's needs, an exemption should be granted.

The Department will review the regional centers' implementation of this provision through the Department's IPP monitoring protocol, as part of the Home and Community Based Services Waiver monitoring or other Department monitoring activities.

Maintaining the Consumer's Home of Choice—Mixed Payment Rates in Residential Facilities with Alternative Residential Model Rates

TBL Section 14: Section 4681.7 was added, stating that effective July 1, 2011, in order to maintain a consumer's preferred living arrangement and adjust the residential services and supports in accordance with changing service needs identified in the IPP, a regional center may enter into a signed written agreement with a residential service provider for a consumer's supervision, training, and support needs to be provided at a lower level of payment than the facility's designated Alternative Residential Model (ARM) service level. The regional center signed written agreement with the provider must ensure all of the following:

- Services provided to other facility residents comply with the applicable service requirements for the facility's approved service level pursuant to section 4681.1 and Title 17 of the California Code of Regulations;
- Protection of the health and safety of each facility resident;

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August 4, 2011

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- Identification of the revised services and supports to be provided to the consumer within the ARM rate structure as part of the establishment or revision of an IPP; and,
- Identification of the rate.

If the service needs of a consumer referred to above change such that the consumer requires a higher level of supervision, training, and support, the regional center must adjust the consumer's service level and rate to meet the consumer's changing needs.

A regional center is authorized to enter into a signed written agreement with a residential service provider for a consumer's needed services at a lower level of payment and staffing without adjusting the facility's approved service level. A signed written agreement for a lower level of payment and staffing may only be entered into when a regional center, a consumer, and the facility agree that the facility can safely provide the service and supports needed by the consumer, as identified in the IPP, at the lower level of payment with the payment options within the ARM rate structure and with associated ARM service level requirements.

Implementation: Compliance with this section of TBL will be monitored through the Department's fiscal audits of regional centers and vendors, as appropriate.

Maximizing Resources for Behavioral Services

TBL Section 15: Section 4686.3 was added, requiring the Department to adopt emergency regulations to address the use of paraprofessionals in group practice provider behavioral intervention services and establish a rate. The regulations must establish a rate and the educational or experiential qualifications and professional supervision requirements necessary for the paraprofessional to provide behavioral intervention services.

Implementation: Department staff is currently working on the needed regulations to implement the statutory provisions.

TBL Section 16: Section 4686.31 was added requiring any vendor who provides services as specified below to submit verification to the regional center for services provided to consumers who are under 18 years of age and residing in the family home. The Department must develop and post a standard form for vendors to complete and provide to the family for signature. The form must include, but not be limited to, the name and title of the vendor, the vendor identification number, the name of the consumer, the unique client identifier, the location of the service, the date and start and end times of the service, and a description of the service provided. The form must also

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include instructions for the parents or legally appointed guardians to contact the regional center service coordinator immediately if they are unable to sign the form.

The vendor must provide the parents or legally appointed guardians of a minor consumer with the Department form to sign. The form must be signed and dated by the parents or legally appointed guardians of a minor consumer and be submitted to the vendor providing services within 30 days of the month in which the services were provided. The vendor must submit the completed forms to the regional center together with the vendor's invoices for the services provided. If the parents or legally appointed guardians of a minor consumer do not submit a form to the vendor, the vendor must notify the regional center.

This requirement only applies to the following types of services: Behavior Analyst, Associate Behavior Analyst, Behavior Management Assistant, Behavior Technician (Paraprofessional), Behavior Management Consultant, Counseling Services, Tutor, Crisis Team-Evaluation and Behavioral Intervention, Tutor Services-Group, Client/Parent Support Behavior Intervention Training, and Parent-Coordinated Home Based Behavior Intervention Program for Autistic Children.

The failure of the parents or legally appointed guardians of a minor consumer to submit a verification of services to the vendor shall not be a basis for terminating or changing behavioral services to the minor consumer. Any changes to behavioral services shall be made by the consumer's planning team pursuant to section 4512.

Implementation: The Department notified regional centers of these new requirements in an email dated July 11, 2011. The required form is available on the Department's homepage at: <http://www.dds.ca.gov/Forms/docs/DS5862.pdf> in English, Spanish, Tagalog, Russian, Chinese, and Vietnamese. In a case where the vendor notifies the regional center the parent(s) or legally appointed guardian will not sign the form, the regional center should follow-up with the parent/legally appointed guardian to determine if services were delivered prior to making payment.

Also, as noted previously, release of the emergency regulations implementing the new classification of behavior technician (paraprofessional) is pending.

Individual Choice Day Services

TBL Sections 17 and 18: Sections 4688.1 and 4688.2 were amended prohibiting regional centers, effective July 1, 2011, from referring any additional consumers to alternative senior programs and alternative customized programs respectively.

Implementation: While new service referrals are prohibited, consumers receiving services from these two program types, prior to July 1, may continue to do so.

TBL Section 19: Section 4688.21 was added, indicating that the Legislature places a high priority on opportunities for adults with developmental disabilities to choose and customize day services to meet their individualized needs; have opportunities to further the development or maintenance of employment and volunteer activities; direct their services; pursue postsecondary education; and increase their ability to lead integrated and inclusive lives. To further these goals, a consumer may choose a tailored day service or vouchered community-based training service, in lieu of any other regional center vended day program, look-alike day program, supported employment program, or work activity program.

Tailored Day Service

A tailored day service must do both of the following:

- Include an individualized service design, as determined through the IPP and approved by the regional center, that maximizes the consumer's individualized choices and needs. This service design may include, but may not be limited to, fewer days or hours than in the program's approved day program, look-alike day program, supported employment program, or work activity program design; and flexibility in the duration and intensity of services to meet the consumer's individualized needs; and,
- Encourage opportunities to further the development or maintenance of employment, volunteer activities, or pursuit of postsecondary education; maximize consumer direction of the service; and increase the consumer's ability to lead an integrated and inclusive life.

The type and amount of tailored day service must be determined through the IPP process, and the IPP must contain, but not be limited to:

- A detailed description of the consumer's individualized choices and needs and how these choices and needs will be met; and,
- The type and amount of services and staffing needed to meet the consumer's individualized choices and needs, and unique health and safety and other needs.

The staffing requirements set forth in section 55756 of Title 17 of the California Code of Regulations and section 4851 (r) do not apply to a tailored day service. For currently vended programs wishing to offer a tailored day service option, the regional center shall vendor a tailored day service option upon negotiating a rate and maximum units of service design that includes, but is not limited to:

- A daily or hourly rate and maximum units of service design that does not exceed the equivalent cost of four days per week of the vendor's current rate, if the vendor has a daily day program rate; and,
- A rate and maximum units of service design that does not exceed the equivalent cost of four-fifths of the hours of the vendor's current rate, if the vendor has an hourly rate.

The regional center must ensure that the vendor is capable of complying with, and will comply with, the consumer's IPP, individual choice, and health and safety needs.

For new programs wishing to offer a tailored day service option, the regional center shall vendor a tailored day service option upon negotiating a rate and maximum units of service design. The rate paid to the new vendor shall not exceed four-fifths of the temporary payment rate or the median rate, whichever is applicable.

Effective July 1, 2011, and prior to the time of development, review, or modification of a consumer's IPP, regional centers must provide information about tailored day service to eligible adult consumers. A consumer may request information about tailored day services from the regional center at any time and may request an IPP meeting to secure those services.

Implementation: Entities/persons not currently vendored as day program, look-alike day program, supported employment program or a work activity program seeking vendorization to provide tailored day services, must be vendored under an existing, appropriate service code for day program, look-alike day program, supported employment program or a work activity program. When purchasing tailored day services from a day program, look-alike day program, supported employment program, or work activity program, the regional center shall sub code the expenditure accordingly:

- *TDS – Tailored Day Service “Big Claim” Program Code 00*
- *TDSC – Tailored Day Service CPP Program Code 01 (This sub code should be used by the regional center during the fiscal year in which a consumer moves from a developmental center to the community.)*

Voucher – Community-based Training Service

A vouchered community-based training service is defined as a consumer-directed service that assists the consumer in the development of skills required for community integrated employment or participation in volunteer activities, or both, and the assistance necessary for the consumer to secure employment or volunteer positions or pursue secondary education. Implementation of vouchered community-based training service is contingent upon the approval of the federal Centers for Medicare and Medicaid Services (CMS). Vouchered community-based training service must be

provided in natural environments in the community, separate from the consumer's residence. A consumer, parent, or conservator vendored as a vouchered community-based training service must utilize the services of a financial management services (FMS) entity, and the regional center must provide information about available FMS and assist the consumer in selecting a FMS vendor to act as co-employer. A parent or conservator is prohibited from being the direct support worker employed by the vouchered community-based training service vendor.

If the direct support worker is required to transport the consumer, the vouchered community-based training service vendor must verify that the direct support worker can transport the consumer safely and has a valid California driver's license and proof of insurance. The rate for vouchered community-based training service shall not exceed thirteen dollars and forty-seven cents (\$13.47) per hour. The rate includes employer-related taxes and all transportation needed to implement the service, except a consumer vendored as a vouchered community-based training service may also be eligible for a regional center-funded bus pass, if appropriate and needed. The rate does not include the cost of the FMS.

Vouchered community-based training services are limited to a maximum of 150 hours per quarter. The services to be provided and the service hours must be documented in the consumer's IPP. A direct support worker of vouchered community-based training service must be an adult who possesses the skill, training, and experience necessary to provide services in accordance with the IPP. Effective July 1, 2011, and prior to the time of development, review, or modification of a consumer's IPP, regional centers must provide information about vouchered community-based training service to eligible adult consumers. A consumer may request information about vouchered community-based training services from the regional center at any time and may request an IPP meeting to secure those services. The type and amount of vouchered community-based training service must be determined through the IPP process. And the IPP must contain, but not be limited to:

- A detailed description of the consumer's individualized choices and needs and how these choices and needs will be met; and,
- The type and amount of services and staffing needed to meet the consumer's individualized choices and unique health and safety and other needs.

Implementation: This vouchered option is in lieu of any other regional center vendored day program, look-alike day program, supported employment program, or work activity program. As specified in statute the implementation of vouchered community-based training service is contingent upon the approval of CMS. As such, the Department's submitted Home and Community-Based Services Waiver renewal application includes this service option with a requested effective date of October 1, 2011. Additionally, as

the statute requires use of a FMS, implementing regulations defining and establishing the use of and rates for such services will be released shortly. When implemented upon receipt of CMS approval, the vouchered community-based day training service will also be available to consumers who are not Waiver beneficiaries.

TBL Section 21: Section 4690.6 was added, requiring activity centers, adult development centers, behavior management programs, and other look-alike day programs with a daily rate to bill regional centers for services provided to consumers in terms of half days of service and full days of service. "Full day of service" means a day in which the consumer's attendance is at least 65 percent of the declared and approved program day. "Half day of service" means any day in which the consumer's attendance does not meet the criteria for billing for a full day of service. A regional center may change the length of the declared and approved program day for a specific consumer to meet the needs of that consumer, upon the recommendation of the planning team. The regional center must set forth in the IPP the length of the consumer's program day and the reasons for the change in the length of the declared and approved program day. The definitions above do not apply to vendors of tailored day program service.

Implementation: Regional centers should ensure providers are aware of this provision and maintain appropriate documentation regarding individual consumer attendance. Such documentation should be reviewed during regional center and Department vendor audits. The Department will not be establishing half-day rates; the statute does not change the rate. The statute requires the vendor to bill for one-half of their current rate when a consumer attends the program for 65% or less of the program day.

Supported Living Services: Maximizing Resources

TBL Section 20: Section 4689 was amended stating that for consumers receiving supported living services (SLS) who share a household with one or more adults receiving SLS, efficiencies in the provision of service may be achieved if some tasks can be shared, meaning the tasks can be provided at the same time while still ensuring that each person's individual needs are met. These tasks may only be shared to the extent they are permitted under the Labor Code and related regulations, including, but not limited to, Industrial Welfare Commission Minimum Wage Order No. 15. The planning team, at the time of development, review, or modification of a consumer's IPP, for housemates currently in a supported living arrangement or planning to move together into a supported living arrangement, or for consumers who live with a housemate not receiving SLS who is responsible for the task, shall consider, with input from the service provider, whether any tasks, such as meal preparation and cleanup, menu planning, laundry, shopping, general household tasks, or errands can appropriately be shared. If tasks can be appropriately shared, the regional center shall purchase the prorated share of the activity. Upon a determination of a reduction in

services the regional center must inform the consumer of the reason for the determination, and provide a written notice of fair hearing rights pursuant to section 4701.

To ensure that consumers in supported living arrangements receive the appropriate amount and type of supports, an independent assessment is required for consumers currently receiving, or initially entering, supported living who have SLS costs, or have an initial recommendation for service costs, that exceed 125 percent of the annual statewide average cost of SLS, as published by the Department commencing June 30, 2011. Commencing July 1, 2011, regional centers must identify consumers currently receiving SLS, whose annual SLS costs exceed 125 percent of the annual statewide average cost of SLS. The regional center must also identify consumers who have an initial recommendation for SLS costs that exceed 125 percent of the annual statewide average cost of SLS. For these consumers the regional center must arrange for an independent assessment to be completed prior to the next scheduled IPP for consumers currently in a supported living arrangement and within 30 days of identification of consumers with an initial recommendation for services. The independent assessment must be completed by an impartial entity or individual other than the SLS agency providing, or planning to provide, the service and shall be used during IPP meetings to assist the team to determine whether the services provided or recommended are necessary and sufficient and that the most cost-effective methods of service are utilized. Decisions about supported living shall be made by the IPP team.

The independent assessment process must adhere to all of the following:

- SLS providers must conduct comprehensive assessments for the purpose of getting to know the consumer they will be supporting and developing a support plan congruent with the choices and needs of the individual and consistent with the principles of supported living set forth in the Lanterman Act and Title 17. The independent assessment is not intended to take the place of or repeat the service provider's comprehensive assessment. The purpose of the independent assessment is to provide an additional look at whether the SLS being provided, or being proposed for a person initially entering supported living, are necessary, sufficient, or cost-effective to meet the person's choices and needs, as determined by the comprehensive assessment and the planning team. The independent needs assessment may include, but is not limited to, use of natural and generic support, technology that provides support otherwise necessary through direct staffing hours, shared housing, support alternatives, learning methods, lifting and transferring, bathroom, grooming, meals, communication, transportation, mobility, emergency procedures, medication management, household responsibilities, personal needs, interpersonal relationships, and behavioral, medical, and overnight supports.

- A consumer shall not be excluded from SLS based on an independent assessment.
- The entity or individual conducting independent assessments shall not be an employee of a regional center or the consumer's service provider. Current supported living providers may conduct independent assessments for consumers being supported, or about to be supported, by other providers. However, a provider who conducts an independent assessment may not provide direct services to a consumer it has assessed for a period of one year. Each regional center must publicly identify the entities and individuals it will use to conduct independent assessments. Regional centers must ensure there are sufficient independent assessors so that assessments can be provided when required without undue delay.
- Initial entry into supported living may not be delayed for more than 30 days following the determination to request an independent assessment due to the need for an independent assessment. If the independent assessment cannot be conducted within that time period, the individual may move into supported living with the amount of supports recommended by the service provider's comprehensive assessment and an additional IPP to consider the results of the independent assessment must be conducted when that assessment becomes available, if necessary. For individuals currently in a supported living arrangement, supports must continue at the same level while the independent assessment is being conducted.
- Independent assessors shall meet all of the following qualifications:
 - Have a demonstrated understanding of the foundation of supported living as a service that assists an individual to live in his or her own home with supports as needed to be part of their community and of the principles and operational requirements of supported living set forth in the Lanterman Act and Title 17;
 - Have a demonstrated understanding of the IPP process and the legal rights of people with developmental disabilities in California; and,
 - Have experience with the provision of SLS in California.
- The Department must establish a rate of payment for an independent assessment.
- The planning team must consider the independent assessment along with the provider's assessment, if available, and any other relevant information in determining whether there should be any adjustment to the amount or type of supports currently being received by individuals in supported living arrangements or recommended for individuals initially entering supported living arrangements. Any decisions to reduce supports shall not be applied retroactively.

- A consumer shall be reassessed every three years in conjunction with the consumer's IPP review to determine whether all services are necessary and sufficient and to ensure that the most cost-effective methods of service are being utilized.
- Individuals who are moving to a supported living arrangement or have moved to a supported living arrangement from a developmental center or state-operated community facility are not required to have an additional assessment during the first 12 months following placement.
- Upon a determination of a reduction in service, the regional center must inform the consumer of the reason for the determination, and provide a written notice of fair hearing rights pursuant to section 4701.
- Nothing precludes the completion of an independent assessment for other purposes.

Implementation: The purpose of the independent assessment is to provide an additional look at whether the SLS being provided to, or proposed for, the consumer are necessary, sufficient, or cost-effective to meet the consumer's choices and needs. Commencing July 1, 2011, regional centers must identify consumers currently receiving SLS, whose annual SLS costs exceed 125 percent of the annual statewide average cost of SLS. The regional center must also identify consumers who have an initial recommendation for SLS costs that exceed 125 percent of the annual statewide average cost of SLS. For these consumers the regional center must arrange for an independent assessment to be completed prior to the next scheduled IPP for consumers currently in a supported living arrangement and within 30 days of identification of consumers with an initial recommendation for services. As required by law, the Department has published on its homepage the annual statewide average cost of SLS, and 125 percent of the annual statewide average cost of SLS. Commencing July 1, 2011, the annual average cost of SLS is \$44,196 and 125 percent of the average annual cost of SLS is \$55,245.

Regional centers shall use only one of the following service codes when purchasing an independent assessment: 1) Supported Living Services, Service Code 896, if the assessor is a current SLS vendor, or 2) Independent Living Specialist, Service Code Independent Living Specialist - Service Code 635. Use of any other service code (Ex. 056) previously used for independent assessments must be discontinued.

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When purchasing the independent assessment under either of these service codes, the purchase should additionally be sub coded as:

- *INAS – Independent Assessment “Big Claim” Program Code 00*

The rate for an independent assessment under both service code 896 and 635 can not exceed \$50.00 an hour nor \$1,000 in total.

Annual Family Program Fee

TBL Section 22: Section 4785 was added, stating that effective July 1, 2011, regional centers must assess an annual family program fee, as described below, from parents whose adjusted gross family income is at or above 400 percent of the federal poverty level based upon family size and who have a child to whom all of the following apply:

- The child has a developmental disability or is eligible for Early Start services;
- The child is less than 18 years of age;
- The child lives with his or her parent;
- The child or family receives services beyond eligibility determination, needs assessment, and service coordination; and,
- The child does not receive services through the Medi-Cal program.

An annual family program fee shall not be assessed or collected if the child receives only respite, day care, or camping services from the regional center, and a cost for participation is assessed to the parents under the Family Cost Participation Program. The annual family program fee shall be initially assessed by a regional center at the time of the development, scheduled review, or modification of the IPP or IFSP, but no later than June 30, 2012, and annually thereafter. Application of the annual family program fee to children zero through two years of age, is contingent upon necessary approval by the United States Department of Education.

The annual family program fee for parents described above shall be two hundred dollars (\$200) per family, regardless of the number of children in the family with developmental disabilities or who are eligible for services under Early Start. Parents who demonstrate to the regional center that their adjusted gross family income is less than 800 percent of the federal poverty level shall be required to pay an annual family program fee of one hundred fifty dollars (\$150) per family, regardless of the number of children in the family with developmental disabilities or who are eligible for Early Start.

At the time of intake or at the time of development, scheduled review, or modification of a consumer's IPP or IFSP, but no later than June 30, 2012, the regional center must provide to parents described above a form and an envelope for the mailing of the annual family program fee to the Department. The form, which must include the name

of the children in the family currently being served by a regional center and their unique client identifiers, must be sent, with the family's annual program fee, to the Department. The Department will notify each regional center at least quarterly of the annual family program fees collected.

The regional center must, within 30 days after notification from the Department, provide a written notification to the parents from whom the Department has not received the annual family program fees. Regional centers must notify the Department if a family receiving notification has failed to pay its annual family program fees based on the subsequent notice. For these families, the Department will pursue collection pursuant to the Accounts Receivable Management Act (Chapter 4.3 (commencing with section 16580) of Part 2 of Division 4 of Title 2 of the Gov. Code).

A regional center may grant an exemption to the assessment of an annual family program fee if the parents demonstrate any of the following:

- That the exemption is necessary to maintain the child in the family home;
- The existence of an extraordinary event that impacts the parents' ability to pay the fee or the parents' ability to meet the care and supervision needs of the child; or,
- The existence of a catastrophic loss that temporarily limits the ability of the parents to pay and creates a direct economic impact on the family. Catastrophic loss may include, but is not limited to, natural disasters, accidents involving, or major injuries to, an immediate family member, and extraordinary medical expenses.

Services may not be delayed or denied for a consumer or child based upon the lack of payment of the annual family program fee. "Parents" means the parents, whether natural, adoptive, or both, of a child with developmental disabilities under 18 years of age. Parents described above are jointly and severally responsible for the annual family program fee, unless a court order directs otherwise.

"Total adjusted gross family income" means income acquired, earned, or received by parents as payment for labor or services, support, gift, or inheritance, or parents' return on investments. It also includes the community property interest of a parent in the gross adjusted income of a stepparent. The total adjusted gross family income shall be determined by adding the gross income of both parents, regardless of whether they are divorced or legally separated, unless a court order directs otherwise, or unless the custodial parent certifies in writing that income information from the noncustodial parent cannot be obtained from the noncustodial parent and in this circumstance only the income of the custodial parent shall be used to determine the annual family program fee.

This new law sunsets on June 30, 2013, and as of January 1, 2014, is repealed, unless a later enacted statute, that becomes operative on or before June 30, 2013, deletes or extends the dates on which it becomes inoperative and is repealed.

Implementation: The Department will be sending out implementation information under separate cover. The Department will provide regional centers with the standard forms to be provided to families, and related instructions; information on the federal poverty level applicable for 2011; and, the interim process for exchange of information between regional centers and the Department.

4.25 Percent Payment Reduction

TBL Section 24: Section 10 of Chapter 13 of the Third Extraordinary Session of the Statutes of 2009, as amended by Section 16 of Chapter 9 of the Statutes of 2011, was amended providing that to implement changes in the level of funding for regional center purchase of services, regional centers must reduce payments for services and supports provided pursuant to Title 14 (commencing with section 95000) of the Gov. Code and Division 4.1 (commencing with section 4400) and Division 4.5 (commencing with section 4500). From February 1, 2009, to June 30, 2010, regional centers were required to reduce all payments for these services and supports paid from purchase of services funds for services delivered on or after February 1, 2009, by 3 percent, and from July 1, 2010, to June 30, 2012, by 4.25 percent, unless the regional center demonstrates that a nonreduced payment is necessary to protect the health and safety of the individual for whom the services and supports are proposed to be purchased, and the Department has granted prior written approval.

Regional centers shall not reduce payments for:

- Supported employment services with rates set by section 4860;
- Services with "usual and customary" rates established pursuant to Title 17 section 57210, except as provided below; and,
- Payments to offset reductions in Supplemental Security Income/State Supplementary Payment (SSI/SSP) benefits for consumers receiving supported and independent living services.

The exemption provided for above for services with a usual and customary rate shall not apply to payments for any of the following services:

- Crisis and behavioral services provided by a nationally certified or state-licensed professional, consistent with the professional's scope of practice, as set forth in the Business and Professions Code.
- Services of group practices providing behavioral intervention.
- Parent-coordinator home-based behavioral intervention for children with autism.
- Individual or family training.

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- Registered nurse services.
- Therapy services, including physical, speech, occupational, recreational, and music therapy.
- Audiology services.
- Independent living specialist services.
- Translator and interpreter services.
- Mobility training, socialization training, or community integration training services.
- Community activities support, program support; or parenting support services.
- Personal assistance services.
- Tutoring services.
- Creative arts services.
- Early start specialized therapeutic services.

Implementation: If the regional center has accepted a usual and customary rate as the rate of payment for any of the providers of services reflected in the list directly above, the regional center, effective July 1, 2011, must apply the 4.25 percent payment reduction.

TBL Section 23: Section 7502.5 was amended specifying that the total number of developmental center residents in the secure treatment facility at Porterville Developmental Center (PDC), including those residents receiving services in the PDC transition treatment program, shall not exceed 230. The Department shall not admit any persons into the secure treatment facility at PDC until the population of the secure treatment facility is less than 230 persons. To maximize federal financial participation, the Department shall not admit any more than 104 people who are ineligible to participate in programs certified for federal financial participation into the secure treatment facility at PDC.

If you have any questions regarding this correspondence, please contact Brian Winfield, at (916) 654-1569.

Sincerely,

ORIGINAL SIGNED BY BRIAN WINFIELD FOR

RITA WALKER
Deputy Director
Community Operations Division

cc: Robert Baldo, ARCA
Mark Hutchinson, DDS

DEPARTMENT OF DEVELOPMENTAL SERVICES

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(916) 654-1958



DATE: July 10, 2012

TO: REGIONAL CENTER DIRECTORS AND BOARD PRESIDENTS

SUBJECT: JUNE 2012 TRAILER BILL LANGUAGE AFFECTING REGIONAL CENTERS

The purpose of this correspondence is to transmit a summary of the recently enacted Trailer Bill, AB 1472 (Chapter 25, Statutes of 2012), that directly affects regional centers or the developmental services system. Trailer Bill Language (TBL) contains an urgency clause, and was therefore effective immediately upon enactment, June 27, 2012. TBL includes a number of changes related to the regional center and provider payment reduction, Supported Living Services (SLS) assessments and Early Start services. The bulk of the policy changes focus on reducing the reliance on developmental centers, locked mental health facilities ineligible for federal financial participation and out-of-state placements. The overarching goal of these reforms is to provide services in the least restrictive California environment while achieving General Fund savings.

While this correspondence provides a high level summary of the TBL, a complete and thorough review of TBL (see www.leginfo.ca.gov) is imperative for regional centers' statutory compliance. Clarifying information regarding implementation of TBL is included in several areas below. Regional centers should continue to educate their communities regarding these legislative changes.

Early Intervention Services

TBL Section 1: Section 95004 of the Government Code, as amended by Section 1 of Chapter 9 of the Fourth Extraordinary Session of the Statutes of 2009, was amended to require that the use of private health insurance or a health care service plan to pay for early intervention services under Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec.1431 et seq.) shall not:

- Count towards or result in a loss of benefits due to the annual or lifetime health insurance or health care service plan coverage caps for the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy or health care service plan contract.
- Negatively affect the availability of health coverage for the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy or health care service plan contract, or result in a

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discontinuance of the health insurance policy or the health care service plan contract or coverage under the health insurance policy or health care service plan contract for these individuals.

- Be the basis for increasing the health insurance or health care service plan premium of the infant or toddler with a disability, the parent, or the child's family members covered under that health insurance policy or health care service plan contract.
- California receives a federal grant under the Individuals with Disabilities Education Act (IDEA) to fund the Early Start Program serving infants and toddlers ages 0 -3 with developmental disabilities or delays. The Department provides early intervention services statewide to approximately 29,000 children annually, through its contracts with 21 non-profit regional centers. The Department of Education serves approximately 3,000 children who have vision, hearing, or severe orthopedic impairments.

New federal grant regulations do not allow states to require families to use their private insurance unless the state enacts protections prohibiting insurance cancellations, loss of benefits or rate increases directly associated with the Early Start services.

Implementation: The amendments to this section impact health insurance and health care service plans and do not require any action by the regional center for implementation.

Utilization of Delayed Egress Devices and Secured Perimeters in ICF/DD, ICF/DD-H, Adult Residential Facilities and Group Homes

TBL Sections 2, 3 and 4: Section 1267.75 was added to the Health and Safety Code, permitting a licensee of an intermediate care facility/developmentally disabled (ICF/DD) or an intermediate care facility/developmentally disabled habilitative (ICF/DD-H) to install and utilize delayed egress devices of the time delay type in combination with secured perimeters. For purposes of this section, "delayed egress device" means a device that precludes the use of exits for a predetermined period of time. These devices shall not delay any resident's departure from the facility for longer than 30 seconds. "Secured perimeters" means fences that meet the requirements prescribed by this section.

Section 1531.1 of the Health and Safety Code was amended to specify that for adult residential facilities operating in accordance with Section 1531.15 (summarized below), the capacity may exceed six residents.

Section 1531.15 was added to the Health and Safety Code, permitting a licensee of an adult residential facility or group home currently utilizing delayed egress devices to

install and utilize secured perimeters. A person that is a foster child under the jurisdiction of the juvenile court, pursuant to Welfare and Institutions Code Sections 300, 301 or 602, may not be admitted to or reside in a residential facility or group home utilizing secured perimeters.

Regional center consumers age 14 or older may be admitted to or reside in these facilities if an interdisciplinary team, through the individual program plan (IPP) process, has determined that the person lacks hazard awareness or impulse control and, for his or her safety and security, requires the level of supervision afforded by a facility equipped with delayed egress devices of the time delay type in combination with secured perimeters. The interdisciplinary team must have also determined that, but for this placement, the person would be at risk of admission to, or would have no option but to remain in, a more restrictive placement. A child who is at least 10 years of age and less than 14 years of age may be placed in these facilities if:

- A comprehensive assessment is conducted;
- An IPP meeting is convened to determine the services and supports needed for the child to receive services in a less restrictive, unlocked residential setting in California;
- The regional center requests assistance from the Department of Developmental Services' (Department) statewide specialized resource service to identify options to serve the child in a less restrictive, unlocked residential setting in California;
- The regional center requests placement of the child in this type of facility on the basis that the placement is necessary to prevent out-of-state placement or placement in a more restrictive, locked residential setting; and,
- The Department approves the request.

Facilities utilizing delayed egress devices and secured perimeters must not house more than 15 residents and must be eligible for and serving clients eligible for federal Medicaid funding. The IPP team shall determine the continued appropriateness of these placements at least annually.

These sections shall become operative only upon the filing of emergency regulations by the Department. These regulations shall be developed with stakeholders, including the Department of Public Health, Department of Social Services, consumer advocates, and regional centers. The regulations shall establish program standards for homes eligible for federal financial participation that include delayed egress devices of the time delay type in combination with secured perimeters. The regulations will also establish requirements and timelines for the completion and updating of a comprehensive assessment of the consumer's needs, including the identification through the IPP process of the services and supports needed to transition the consumer to a less restrictive living arrangement, and a timeline for identifying or

developing those services and supports. The regulations shall establish a statewide limit on the total number of beds in homes with delayed egress devices of the time delay type in combination with secured perimeters. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Implementation: The Department will work with regional centers and other interested parties regarding input for promulgating regulations for implementation of these new statutory provisions. Regional centers may not use delayed egress homes with secured perimeters until the emergency regulations are effective and the Department has confirmed federal financial participation.

Statewide Specialized Resource Service (SSRS), Prioritization of Community Placement Plan (CPP) Funds and Completion of Assessments for Developmental Center Residents

TBL Section 5: Section 4418.25 of the Welfare and Institutions Code¹ was amended, requiring the Department to establish a SSRS that does all of the following:

- Tracks the availability of specialty residential beds and services.
- Tracks the availability of specialty clinical services.
- Coordinates the need for specialty services and supports in conjunction with regional centers.
- Identifies, subject to federal reimbursement, developmental center services and supports that can be made available to consumers residing in the community, when no other community resource has been identified.

By September 1, 2012, regional centers shall provide the Department with information about all specialty resources developed with the use of CPP funds and shall make these resources available to other regional centers. When allocating funding for CPP, priority shall be given to the development of needed statewide specialty services and supports, including regional community crisis homes. Following issuance of emergency regulations, if approved by the director of the Department, funding may be allocated to adult residential facilities, group homes, ICF/DD and DD-H facilities that meet the criteria for utilization of delayed egress devices and secured perimeters, pursuant to Sections 1267.75 and 1531.15 of the Health and Safety Code. The Department shall not provide CPP funds to develop programs that are ineligible for federal financial participation unless approved by the director.

Regional centers shall complete a comprehensive assessment of any consumer residing in a developmental center on July 1, 2012, who is not committed pursuant to

¹ All citations are to the Welfare and Institutions Code unless otherwise stated.

Section 1370.1 of the Penal Code and has not had such an assessment in the prior two years. The assessment shall include input from the regional center, the consumer, and, when appropriate, the consumer's family, legal guardian, conservator, or authorized representative, and shall identify the types of community-based services and supports available to the consumer. Regional centers shall specify in the annual CPP how they will complete the required assessments and the timeframe for completing the assessment for each consumer. Initial assessments pursuant to this paragraph for individuals residing in a developmental center on July 1, 2012, shall be completed by December 31, 2015, unless a regional center demonstrates to the Department that an extension of time is necessary and the Department grants such an extension. The assessment completed in the prior two years, or the assessment completed pursuant to the requirements of this section shall be provided to the IPP team in order to assist the planning team in determining the least restrictive environment for the consumer. These assessments shall be updated annually as part of the IPP process for as long as the consumer resides in the developmental center.

Commencing May 1, 2013, and then on April 1, 2014, and on April 1 annually thereafter, the Department shall provide to the fiscal and appropriate policy committees of the Legislature information on efforts to serve consumers with challenging service needs, including, but not limited to, all of the following:

- For each regional center, the number of consumers admitted to each developmental center, including the legal basis for the admissions.
- For each regional center, the number of consumers described in paragraph (2) of subdivision (a) of Section 7505 who were admitted to Fairview Developmental Center by court order pursuant to Article 2(commencing with Section 6500) of Chapter 2 of Part 2 of Division 6, and the number and lengths of stay of consumers, including those who have transitioned back to a community living arrangement.
- Outcome data related to the assessment process set forth in Section 4418.7, including the number of consumers who received assessments pursuant to Section 4418.7 and the outcomes of the assessments. Each regional center, commencing March 1, 2013, and then on February 1, 2014, and on February 1 annually thereafter, shall provide the Department with information on alternative community services and supports provided to those consumers who were able to remain in the community following the assessments, and the unmet service needs that resulted in any consumers being admitted to Fairview Developmental Center.
- Progress in the development of needed statewide specialty services and supports, including regional community crisis options, as provided in paragraph (3) of subdivision (b). Each regional center shall provide the Department with a

report containing the information described in this paragraph commencing March 1, 2013, and then on February 1, 2014, and on February 1 annually thereafter.

- Progress in reducing reliance on mental health facilities ineligible for federal Medicaid funding, and out-of-state placements.
- Information on the utilization of facilities serving consumers with challenging service needs that utilize delayed egress devices and secured perimeters, pursuant to Section 1267.75 or 1531.15 of the Health and Safety Code, including the number of admissions, reasons for admissions, and lengths of stay of consumers, including those who have transitioned to less restrictive living arrangements.
- If applicable, any recommendations regarding additional rate exceptions or modifications beyond those allowed for under existing law that the Department identifies as necessary to meet the needs of consumers with challenging service needs.

Each regional center, commencing March 1, 2013, and then on February 1, 2014, and on February 1 annually thereafter, shall provide to the Department the specified information above regarding facilities utilizing delayed egress devices and secured perimeters, pursuant to Sections 1267.75 and 1531.15 of the Health and Safety Code.

Implementation: The overall purpose of these changes is to reduce reliance on developmental centers, maximize use of existing resources, prioritize use of limited CPP funding for needed specialty resources and ensure completion of assessments for developmental center residents. The Fiscal Year (FY) 2012-13 CPP guidelines, which the Department will issue shortly, will address regional centers' use of CPP funds for the development of specialized resources and completion of developmental center resident assessments. The Department will also issue guidance regarding regional centers providing the Department, by September 1, 2012, information on their specialized services and supports developed with CPP funding and regional centers' access to statewide specialized services via the Department by October 1, 2012.

Purchase of Out-of-state Services

TBL Section 8: Section 4519 was amended, requiring that prior to submitting a request for out-of-state services, the regional center shall conduct a comprehensive assessment and convene an IPP meeting to determine the services and supports needed for the consumer to receive services in California and shall request assistance from the Department's SSRS in identifying options to serve the consumer in California. The request shall include details regarding all options considered and an explanation of why these options cannot meet the consumer's needs.

The Department shall authorize for no more than six months the purchase of out-of-state services. Any extension beyond six months shall be based on a new and complete comprehensive assessment of the consumer's needs, review of available options, and determination that the consumer's needs cannot be met in California. An extension shall not exceed six months.

Pre-existing statute requires regional centers to prepare a report for inclusion in the client's IPP, summarizing the regional center's efforts to locate, develop, or adapt an appropriate program for the client within the state. This section was amended to require that this report be **reviewed and updated every three months**.

Each comprehensive assessment and report shall include identification of the services and supports needed and the timeline for identifying or developing those services needed to transition the consumer back to California. Each regional center shall submit to the Department by December 31, 2012, a transition plan for all consumers residing out-of-state as of June 30, 2012, for whom the regional center is purchasing services.

Implementation: These provisions became effective July 1, 2012, and apply to consumers currently residing out-of-state. Regional centers should begin completing comprehensive assessments and developing transition plans for consumers residing out-of-state. Any request for a new out-of-state placement or to extend an existing placement requires adherence to the new statutory requirements.

Admissions to Developmental Centers Due to an Acute Crisis

TBL Section 6: Section 4418.7 was amended, providing the process for admitting consumers to a developmental center due to an acute crisis. If the regional resource development project (RRDP), in consultation with the regional center, the consumer, and the consumer's parents, legal guardian, or conservator, when appropriate, determines that admittance to a developmental center is necessary due to an acute crisis, the regional center shall immediately pursue the obtainment of a court order for short-term admission and crisis stabilization.

For purposes of this section, "acute crisis" means a situation in which the consumer meets the criteria of Section 6500 and, as a result of the consumer's behavior, all of the following are met:

- There is imminent risk for substantial harm to self or others.
- The service and support needs of the consumer cannot be met in the community, including with supplemental services as set forth in subparagraph (E) of paragraph (9) of subdivision (a) of Section 4648 and emergency and crisis intervention services as set forth in paragraph (10) of subdivision (a) of Section 4648.

- Due to serious and potentially life-threatening conditions, the consumer requires a more restrictive environment for crisis stabilization.

The RRDP, in consultation with the regional center, the consumer, and, when appropriate, the consumer's parents, legal guardian, conservator, or authorized representative, shall not make a determination that admittance to a state developmental center is necessary due to an acute crisis as defined in paragraph (1) of subdivision (d) unless the determination includes a regional center report detailing all considered community-based services and supports and an explanation of why those options could not meet the consumer's needs at the time of such a determination. For purposes of this determination, the regional center shall not be required to consider out-of-state placements or mental health facilities, including institutions for mental disease, as described in Part 5 (commencing with Section 5900) of Division 5, that are ineligible for federal Medicaid funding.

When an admission occurs due to an acute crisis, all of the following shall apply:

- As soon as possible following admission to a developmental center, a comprehensive assessment shall be completed by the regional center in coordination with the developmental center. The comprehensive assessment shall include the identification of the services and supports needed for crisis stabilization and the timeline for identifying or developing the services and supports needed to transition the consumer back to the community. The regional center shall immediately submit a copy of the comprehensive assessment to the committing court. Immediately following the assessment, and not later than 30 days following admission, the regional center and the developmental center shall jointly convene an IPP meeting to determine the services and supports needed for crisis stabilization and to develop a plan to transition the consumer into community living pursuant to Section 4418.3. The clients' rights advocate for the regional center shall be notified of the admission and the IPP meeting and may participate in the IPP meeting unless the consumer objects on his or her own behalf.
- If transition is not expected within 90 days of admission, an IPP meeting shall be held to discuss the status of transition and to determine if the consumer is still in need of crisis stabilization. If crisis services continue to be necessary, the regional center shall submit to the Department an updated transition plan and a request for an extension of stay at the developmental center of up to 90 days.
- A consumer admitted due to an acute crisis shall reside in the developmental center no longer than six months before being placed into a community living

arrangement pursuant to Section 4418.3, unless, prior to the end of the six months, all of the following have occurred:

- The regional center has conducted an additional comprehensive assessment based on information provided by the regional center, and the Department determines that the consumer continues to be in an acute crisis.
- The IPP team has developed a plan that identifies the specific services and supports necessary to transition the consumer into the community, and the plan includes a timeline to obtain or develop those services and supports.
- The committing court has reviewed and, if appropriate, extended the commitment.

The clients' rights advocate for the regional center shall be notified of the proposed extension pursuant to clause (iii) of subparagraph (A) and the IPP meeting to consider the extension, and may participate in the IPP meeting unless the consumer objects on his or her own behalf. In no event shall a consumer's placement at the developmental center, pursuant to this section, exceed one year unless both of the following occur:

- The regional center demonstrates significant progress toward implementing the plan specified in clause (ii) of subparagraph (A) identifying the specific services and supports necessary to transition the consumer into the community.
- Extraordinary circumstances exist beyond the regional center's control that have prevented the regional center from obtaining those services and supports within the timeline based on the plan.

If both of the circumstances described in the subclauses above exist, the regional center may request, and the committing court may grant, an additional extension of the commitment, not to exceed 30 days. Commencing July 1, 2012, Fairview Developmental Center shall be the only developmental center authorized to admit a consumer pursuant to a court order for an acute crisis as described in this section.

The Department shall notify the court in writing if the RRDP determines, based on the assessment conducted pursuant to subdivision (b) of this section, that the consumer referred to the RRDP by the court cannot be safely served in the developmental center.

The Department shall collect data on the outcomes of efforts to assist at-risk consumers to remain in the community. The Department shall make aggregate data on the implementation of the requirements of this section available, upon request.

Implementation: This section creates a new process to access short-term acute crisis services at Fairview Developmental Center for consumers who would likely otherwise require a more secure setting or out-of-state placement for crisis stabilization. Additionally, it places emphasis on the IPP planning team and the regional center's immediate development of services and supports to transition the consumer back to the community.

Clarifications for Court Ordered Admissions to Developmental Centers and Technical Conforming Amendments

TBL Sections 7, 18-30 and 32: Sections 4507, 6000, 6500, 6501, 6502, 6504, 6504.5, 6506, 6507, 6508, 6509, 6510.5, 6511 and 6512 were amended and Section 7505 was added, clarifying who and under what circumstances consumers can be committed to a developmental center under court order.

Section 7505 prohibits the Department from admitting anyone to a developmental center unless the person has been determined eligible for services under Division 4.5 (commencing with Section 4500) and the person is:

- Committed by a court to Porterville Developmental Center, secure treatment program, pursuant to Section 1370.1 of the Penal Code (to restore competency).
- Committed by a court to Fairview Developmental Center pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 due to an acute crisis, pursuant to Section 4418.7.
- Committed by a court to Porterville Developmental Center, secure treatment program, pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 as a result of involvement with the criminal justice system, and the court has determined the person is mentally incompetent to stand trial.
- A person described in Section 4508.
- A juvenile committed to Porterville Developmental Center, secure treatment program, pursuant to Section 709.

Under no circumstances shall the Department admit a person to a developmental center after July 1, 2012, as a result of a criminal conviction or where the person is competent to stand trial for the criminal offense and the admission is ordered in lieu of trial.

Section 4507 was amended to read that persons who constitute a danger to themselves or others may be judicially committed pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 if evidence of such danger is proven in court.

Section 6000 was amended, prohibiting the Department, commencing July 1, 2012, from admitting mentally disordered persons to a developmental center pursuant to rules and regulations established by the Department and the Department of Mental Health.

Section 6500 was amended to include the term "Developmental disability" and state that a person with a developmental disability shall not be committed to the Department pursuant to this article (Welfare and Institutions Code, Article 2 of Chapter 2 of Part 2 of Division 6) unless he or she is a person described in paragraph (2) or (3) of subdivision (a) of Section 7505 and is dangerous to self or others. This section was also amended to include that the clients' rights advocate for the regional center may attend any judicial proceedings conducted under the authority of this article to assist in protecting the individual's rights. Any order of commitment made pursuant to this article with respect to a person described in paragraph (3) of subdivision (a) of Section 7505 shall expire automatically one year after the order of commitment is made.

Any order of commitment made pursuant to this article with respect to a person described in paragraph (2) of subdivision (a) of Section 7505 (acute crisis) shall expire automatically six months after the earlier of the order of commitment pursuant to this section or the order of a placement in a developmental center pursuant to Section 6506, unless the regional center, prior to the expiration of the order of commitment, notifies the court in writing of the need for an extension. The required notice shall state facts demonstrating that the individual continues to be in acute crisis as defined in paragraph (1) of subdivision (d) of Section 4418.7 and the justification for the requested extension, and shall be accompanied by the comprehensive assessment and plan described in subdivision (e) of Section 4418.7. An order granting an extension shall not extend the total period of commitment beyond one year, including any placement in a developmental center pursuant to Section 6506. If, prior to expiration of one year, the regional center notifies the court in writing of facts demonstrating that, due to circumstances beyond the regional center's control, the placement cannot be made prior to expiration of the extension, and the court determines that good cause exists, the court may grant one further extension of up to 30 days. The court may also issue any orders the court deems appropriate to ensure that necessary steps are taken to ensure that the individual can be safely and appropriately transitioned to the community in a timely manner. The required notice shall state facts demonstrating that the regional center has made significant progress implementing the plan described in subdivision (e) of Section 4418.7 and that extraordinary circumstances exist beyond the regional center's control that have prevented the plan's implementation. Nothing in this paragraph precludes the individual or any person acting on his or her behalf from making a request for release pursuant to Section 4800, or counsel for the individual from filing a petition for habeas corpus pursuant to Section 4801. Notwithstanding subdivision (a) of Section 4801, for purposes of this paragraph, judicial review shall be in the superior court of the county that issued the order of commitment pursuant to this section.

Section 6501 was amended, requiring the Department to give priority to placing an individual at Porterville Developmental Center prior to placing the individual at any other secure treatment facility when the individual has been charged with a violent felony, as described in Section 667.5 of the Penal Code, and committed to the Department pursuant to Section 1370.1 of the Penal Code or Section 6500 for placement in a secure treatment facility, as described in subdivision (e) of Section 1370.1 of the Penal Code.

Sections 6502, 6504, 6504.5, 6506, 6507, 6508, 6509, 6511 and 6512 were amended, deleting references to "mental retardation" or "a mentally retarded person" and replacing with "developmental disability" and "a person with a developmental disability".

Section 6504.5 was also amended to require the regional center director or designee to submit to the court, in addition to his or her evaluation pursuant to this section, the results of the assessment conducted pursuant to Section 4418.7, if the person is an individual described in paragraph (2) of subdivision (a) of Section 7505.

Section 6509 was amended, stating that if the court finds that a person has a developmental disability, and that he or she is a person described in paragraph (2) or (3) of subdivision (a) of Section 7505 and is a danger to himself, herself, or to others, the court may make an order that the person be committed to the Department for suitable treatment and habilitation services. Suitable treatment and habilitation services is defined as the least restrictive residential placement necessary to achieve the purposes of treatment. Care and treatment of a person committed to the Department may include placement in Fairview Developmental Center if the person is an individual described in paragraph (2) of subdivision (a) of Section 7505, the secure treatment program at Porterville Developmental Center if the person is an individual described in paragraph (3) of subdivision (a) of Section 7505, any licensed community care facility, as defined in Section 1504, or any health facility, as defined in Section 1250, or any other appropriate placement permitted by law.

Section 6510.5 was added, stating that under no circumstances shall the court order placement of a person described in this article (Welfare and Institutions Code, Article 2 of Chapter 2 of Part 2 of Division 6) or a dangerous person committed pursuant to Section 1370.1 of the Penal Code to a developmental center if the Department has specifically notified the court in writing that the individual cannot be safely served in that developmental center.

Implementation: Effective July 1, 2012, there is a moratorium on developmental center admissions unless an individual is sent to restore competency, is incompetent to stand trial or is in an acute crisis. Developmental centers will no longer accept admissions of consumers competent to stand trial (either to serve sentences or in lieu of sentencing) or whom the Department cannot safely serve.

Porterville Developmental Center Secure Treatment Facility

TBL Section 31: Section 7502.5 was amended, prohibiting the Department from admitting any persons into the secure treatment facility at Porterville Developmental Center unless the population of the secure treatment facility is less than 230 persons, including 60 residents receiving services in the transition treatment program.

Implementation: This means no more than 170 consumers may reside behind the fence in the secure treatment area. Previously, the cap was 200 persons with 30 in transition.

Transition of Developmental Center Residents into Adult Residential Facilities for Persons with Special Health Needs (ARFPSHN)

TBL Sections 12, 13 and 14: Section 4684.53 was amended, allowing all regional centers, through approved CPPs, to utilize ARFPSHNs when transitioning developmental center residents to placements in the community. Prior statute limited the availability to regional centers connected to the closure of Agnews and Lanterman developmental centers.

Section 4684.65 was amended to state that ARFPSHNs shall only accept, for initial admission, consumers who meet **both** of the following requirements:

1. Reside in a developmental center at the time of the proposed placement.
2. Have an IPP that specifies special health care and intensive support needs that indicate the appropriateness of placement in an ARFPSHN.

If there is no resident residing in a developmental center from any regional center who meets requirement 2, above, a vacancy may be filled by a consumer of any regional center who does not reside in a developmental center if the consumer otherwise meets requirement 2, the regional center demonstrates that the placement is necessary to protect the consumer's health or safety, **and the Department has granted prior written authorization.**

Section 4684.74 was amended to state that the Department shall only approve the development of ARFPSHNs that are directly associated with the community placement of developmental center residents.

Implementation: The Department will issue correspondence to regional centers outlining the process for placing a non-developmental center resident into an ARFPSHN.

Large Residential Facilities and Institutions for Mental Disease

TBL Section 11: Section 4648 was amended, limiting regional centers from purchasing residential services from facilities licensed as mental health rehabilitation centers by the Department of Mental Health or a successor agency, with a licensed capacity of 16 or more beds, except in any of the following circumstances:

- The facility is eligible for Medicaid reimbursement.
- The facility has a Department-approved plan in place by June 30, 2013, to transition to a program structure eligible for federal Medicaid funding, and this transition will be completed by June 30, 2014. The Department may grant an extension for the date by which the transition will be completed if the facility demonstrates that it has made significant progress toward transition, and states with specificity the timeframe by which the transition will be completed and the specified steps that will be taken to accomplish the transition. A regional center may pay for the costs of care and treatment of a consumer residing in the facility on June 30, 2012, until June 30, 2013, inclusive, and, if the facility has a Department-approved plan in place by June 30, 2013, may continue to pay the costs under this subparagraph until June 30, 2014, or until the end of any period during which the Department has granted an extension.
- There is an emergency circumstance in which the regional center determines that it cannot locate alternate federally eligible services to meet the consumer's needs. Under such an emergency circumstance, an assessment shall be completed by the regional center as soon as possible and within 30 days of admission. An IPP meeting shall be convened immediately following the assessment to determine the services and supports needed for stabilization and to develop a plan to transition the consumer from the facility into the community. If transition is not expected within 90 days of admission, an IPP meeting shall be held to discuss the status of transition and to determine if the consumer is still in need of placement in the facility. Commencing October 1, 2012, this determination shall be made only after considering resource options identified by the SSRS. If it is determined that emergency services continue to be necessary, the regional center shall submit an updated transition plan that can cover a period of up to 90 days. In no event shall placements under these emergency circumstances exceed 180 days.

Effective July 1, 2012, a regional center **shall not** purchase new residential services from institutions for mental disease, as described in Part 5 (commencing with Section 5900) of Division 5, for which federal Medicaid funding is not available. The prohibition shall not apply to emergencies, as determined by the regional center, when a regional

center cannot locate alternate federally eligible services to meet the consumer's needs. As soon as possible within 30 days of admission due to an emergency, an assessment shall be completed by the regional center with an IPP meeting to be convened immediately following the assessment, to determine the services and supports needed for stabilization and to develop a plan to transition the consumer from the facility to the community. If transition is not expected within 90 days of admission, an emergency, program plan meeting shall be held to discuss the status of transition and to determine if the consumer is still in need of placement in the facility. If emergency services continue to be necessary, the regional center **shall submit an updated transition plan to the Department** for an extension of up to 90 days. **Placement shall not exceed 180 days.**

Regional centers shall complete a comprehensive assessment of any consumer residing in an institution for mental disease as of July 1, 2012, for which federal Medicaid funding is not available. The comprehensive assessment shall be completed prior to the consumer's next scheduled IPP meeting and shall include identification of the services and supports needed and the timeline for identifying or developing those services needed to transition the consumer back to the community. Effective October 1, 2012, the regional center shall also consider resource options identified by the SSRS. For each IPP meeting convened pursuant to this subparagraph, the clients' rights advocate for the regional center shall be notified of the meeting and may participate in the meeting unless the consumer objects on his or her own behalf.

This section was also amended to state that when feasible and recommended by the IPP team, for purposes of facilitating better and cost-effective services for consumers or family members, technology, including telecommunication technology, may be used in conjunction with other services and supports. Technology in lieu of a consumer's in-person appearances at judicial proceedings or administrative due process hearings may be used only if the consumer or, when appropriate, the consumer's parent, legal guardian, conservator, or authorized representative, gives informed consent. Technology may be used in lieu of, or in conjunction with, in-person training for providers, as appropriate.

Implementation: The Department will work with regional centers to identify which consumers and facilities are subject to the amendments of this section.

SLS Assessment

TBL Section 15: Section 4689 was amended, deleting statute that required regional centers to arrange for an independent assessment for consumers currently receiving, or initially entering, supported living who have SLS costs, or have an initial recommendation for service costs, that exceed 125 percent of the annual statewide

average cost of SLS. Instead, the IPP team shall complete a standardized assessment questionnaire at the time of development, review, or modification of a consumer's IPP. The questionnaire shall be used during the IPP meetings, in addition to the provider's assessment, to assist in determining whether the services provided or recommended are necessary and sufficient and that the most cost-effective methods of SLS are utilized. With input from stakeholders, including regional centers, the Department shall develop and post the questionnaire on its Internet Web site, and, by June 30, 2012, shall provide it to the regional centers.

Implementation: The Department, in collaboration with regional centers, Disability Rights California, and the California Supported Living Network developed a standardized assessment questionnaire that was e-mailed by the Department to regional centers and posted on the Department's Internet Web site, at <http://www.dds.ca.gov/sls>, on June 29, 2012. Statute requires regional centers to use this questionnaire when conducting assessments pursuant to this section.

Disparities Data Collection

TBL Section 9: Section 4519.5 was added, requiring the Department and the regional centers to annually collaborate to compile data relating to purchase of service authorization, utilization, and expenditure by each regional center with respect to all of the following:

- The age of consumer, categorized by the following:
 - Birth to age two, inclusive.
 - Three to 21, inclusive.
 - Twenty-two and older.
- Race or ethnicity of the consumer.
- Primary language spoken by the consumer, and other related details, as feasible.
- Disability detail, in accordance with the categories established by subdivision (a) of Section 4512, and, if applicable, a category specifying that the disability is unknown.

The data shall also include the number and percentage of individuals, categorized by age, race or ethnicity, and disability, who have been determined to be eligible for regional center services but are not receiving purchase of service funds.

By March 31, 2013, the Department and each regional center shall post the data described in this section on their respective Internet Web sites. Commencing on December 31, 2013, the Department and each regional center shall annually post this data by December 31. Within three months of compiling the data with the Department, and annually thereafter, each regional center shall meet with stakeholders in a public meeting regarding the data.

Implementation: The Department will work with regional centers to establish the specific data to be generated by regional center and statewide. Regional centers will be responsible for ensuring compliance with stakeholder meetings and posting the data on their individual Internet Web sites by the due dates noted above.

1.25 Percent Payment Reduction, Regional Center Staffing and Service Provider Relief

TBL Sections 10, 16 and 34: Section 10 of Chapter 13 of the Third Extraordinary Session of the Statutes of 2009, as amended by Section 24 of Chapter 37 of the Statutes of 2011, was amended providing that to implement changes in the level of funding for regional center purchase of services, regional centers must reduce payments for services and supports provided pursuant to Title 14 (commencing with Section 95000) of the Government Code and Division 4.1 (commencing with Section 4400) and Division 4.5 (commencing with Section 4500) of the Code. From February 1, 2009, to June 30, 2010, regional centers were required to reduce all payments for these services and supports paid from purchase of services funds for services delivered on or after February 1, 2009, by 3 percent, from July 1, 2010, to June 30, 2012, by 4.25 percent, and, commencing July 1, 2012, until June 30, 2013, by 1.25 percent unless the regional center demonstrates that a nonreduced payment is necessary to protect the health and safety of the individual for whom the services and supports are proposed to be purchased, and the Department has granted prior written approval.

Section 4791 was amended, extending from July 1, 2012, until June 30, 2013, the provision that regional centers may temporarily modify personnel requirements, functions, or qualifications, or staff training requirements for providers, except for licensed or certified residential providers, whose payments are reduced by 1.25 percent.

A temporary modification, effective during any agreed upon period of time from July 1, 2010, and June 30, 2013, may only be approved when the regional center determines that the change will not do any of the following:

- Adversely affect the health and safety of a consumer receiving services or supports from the provider.
- Result in a consumer receiving services in a more restrictive environment.
- Negatively impact the availability of federal financial participation.
- Violate any state licensing or labor laws or other provisions of Title 17 of the California Code of Regulations (Title 17) not eligible for modification pursuant to this section.

A temporary modification must be described in a written services contract between the regional center purchasing the services and the provider, and a copy of the written services contract and any related documentation shall be retained by the provider and the regional center purchasing the services from the provider.

Section 4791 was also amended to continue, until June 30, 2013, the suspension of the requirements described in Sections 56732 and 56800 of Title 17, and the provision that

a residential service provider, vendored by a regional center and whose payment is reduced by 1.25 percent pursuant to the amended section above, is not required to complete quarterly and semiannual progress reports required in subdivisions (b) and (c) of Section 56026 of Title 17.

Section 4640.6 was amended extending the date that specific consumer to service coordinator caseload ratios do not apply. The caseload ratio of 1:66 is lifted until June 30, 2013, for consumers who have not moved from the developmental centers to the community since April 14, 1993, who are three years of age and older, and who are not enrolled in the Home and Community-Based Services Waiver program for persons with developmental disabilities. This section was also amended to extend until June 30, 2013, suspension of the requirement that regional centers must have, or contract for, all of the following areas:

- Criminal justice expertise to assist the regional center in providing services and support to consumers involved in the criminal justice system as a victim, defendant, inmate, or parolee.
- Special education expertise to assist the regional center in providing advocacy and support to families seeking appropriate educational services from a school district.
- Family support expertise to assist the regional center in maximizing the effectiveness of support and services provided to families.
- Housing expertise to assist the regional center in accessing affordable housing for consumers in independent or supportive living arrangements.
- Community integration expertise to assist consumers and families in accessing integrated services and supports and improved opportunities to participate in community life.
- Quality assurance expertise, to assist the regional center to provide the necessary coordination and cooperation with the area board in conducting quality-of-life assessments and coordinating the regional center quality assurance efforts.

Implementation: The Department issued a letter on July 3, 2012, to regional centers informing them of the change to the payment reduction from 4.25 to 1.25 percent. In addition, on July 5, 2012, the Department issued a technical bulletin to regional centers about changes made to the Uniform Fiscal System to assist regional centers in processing rate reductions for both residential and non-residential vendors.

Developmental Services System Trigger

TBL Section 17: Section 4792.1 was added and shall only be operative if the condition set forth in subdivision (a) of Section 3.62 of the Budget Act of 2012 is satisfied. The Department would be required to identify up to fifty million dollars (\$50,000,000) in General Fund savings from within the overall developmental services system, including any savings or reductions within state administrative support, operation of the developmental centers, and operation of the regional centers, including administration and the purchase of services where applicable.

The reductions made pursuant to this section should be kept as far away as feasible from consumer's direct needs, services, and supports, including health, safety, and quality of life. A variety of strategies, including, but not limited to, all of the following, may be used to achieve this reduction:

- Savings attributable to caseload adjustments, changes in expenditure trends, unexpended contract funds, or other administrative savings or restructuring.
- Savings attributable to the establishment of best practices for the administrative management of regional centers and for regional centers to use when purchasing services for consumers and families. In order to achieve these savings, the Department shall review and submit to the Legislature best practices pursuant to subdivisions (b) to (g), inclusive, of Section 4620.3. The Department shall submit the proposed best practices to the fiscal and applicable policy committees of the Legislature. This submission shall include a description of the process that was followed to collaborate with system stakeholders, the anticipated impact of the best practices coupled with prior reductions on consumers, families, and providers, estimated cost savings associated with each practice, and draft statutory language necessary to implement the best practices. Consistent with subdivision (h) of Section 4620.3, implementation of the best practices shall take effect only upon subsequent legislative enactment.

The Department shall consider input from stakeholders, including consumers and family members, consumer-focused advocacy groups, service provider representatives, regional center representatives, developmental center representatives, other stakeholders, and staff of the Legislature, to develop General Fund savings proposals as necessary. If the condition set forth in subdivision (a) of Section 3.62 of the Budget Act of 2012 is satisfied, and the Department is directed to identify up to fifty million

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dollars (\$50,000,000) in General Fund savings from within the developmental services system, any savings or reductions identified shall be reported to the Joint Legislative Budget Committee within 10 days of the reduction as directed by subdivision (e) of Section 3.62 of the Budget Act of 2012.

If you have any questions regarding this correspondence, please contact Brian Winfield, at (916) 654-1569.

Sincerely,

Original Signed By

NANCY BARGMANN
Deputy Director
Community Services Division

cc: Eileen Richey, ARCA
Mark Hutchinson, DDS

DEPARTMENT OF DEVELOPMENTAL SERVICES

1600 NINTH STREET, Room 320, MS 3-9
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(916) 654-1958



DATE: July 12, 2013

TO: REGIONAL CENTER DIRECTORS AND BOARD PRESIDENTS

SUBJECT: JUNE 2013 TRAILER BILL LANGUAGE AFFECTING REGIONAL CENTERS

The purpose of this correspondence is to transmit a summary of the recently enacted Developmental Services Budget Trailer Bill, AB 89 (Chapter 25, Statutes of 2013), and other statutory changes that directly affect regional centers or the developmental services system. AB 89 contains an urgency clause, and was therefore effective immediately upon enactment, June 27, 2013. Changes effected by AB 89 include the following:

- Establishment of a closure date for Lanterman Developmental Center (LDC).
- Deletion of the time limitation on use of Department of Developmental Services (Department) employees under the Community State Staff Program.
- Further restrictions on the use of Institutions for Mental Disease (IMDs) and a requirement that regional centers complete a comprehensive assessment for any consumer residing in an IMD as of July 1, 2013.
- Specification of the conditions under which regional centers may fund IMD services for consumers under 21 years of age.
- Requirements that notification is provided to the Clients' Rights Advocate (CRA) of the appropriate regional center when:
 - A consumer is admitted to an IMD;
 - There is a request for extended stay of a consumer under 21 years of age in an IMD;
 - A consumer files a petition for writ of habeas corpus; or,
 - The comprehensive assessment results for a consumer residing in a developmental center will be discussed at an individual program planning (IPP) meeting.
- Authorization for the CRA of the appropriate regional center to participate in IPP meetings related to actions the CRA is notified of, as specified above, unless a consumer objects, and to attend any hearing related to a petition for writ of habeas corpus.
- When a consumer residing in a developmental center or IMD files a petition for writ of habeas corpus, a requirement that regional centers submit to specified entities a copy of the consumer's most recent comprehensive assessment within two days of the regional center receiving notice of the filing.

"Building Partnerships, Supporting Choices"

- Authorization for regional centers to pay copayments and coinsurance associated with health care service plans and health insurance policies, under specified conditions.
- Requirements that regional centers notify the Department of public meetings regarding disparities data 30 days prior to the date of the meeting; post a notice on its Internet Web site 30 days prior to the date of the meeting; and, send the notice to individual stakeholders and groups representing underserved communities in a timely manner.
- Elimination of the sunset date for the Annual Family Program Fee.

The following changes in law did not require Trailer Bill language (TBL), since each provision contained a sunset date.

- Restoration of the 1.25 percent regional center Operations and service provider payment reductions.
- Elimination of statutory provisions that:
 - Authorized regional centers to modify personnel requirements, functions, or qualifications, or staff training requirements for providers, except for licensed or certified residential providers, whose payments were reduced by 1.25 percent.
 - Relieved vendored residential service providers, whose payments were reduced by 1.25 percent, from requirements to complete quarterly and semiannual progress reports pursuant to Title 17, California Code of Regulations (Cal. Code Regs., tit. 17) section 56026(b) and (c).
 - Suspended requirements described in Cal. Code Regs., tit. 17 sections 56732 and 56800, that community-based day programs and in-home respite agencies conduct annual reviews and submit written reports to vendoring regional centers, user regional centers, and the Department.
- Reinstatement of statutory provisions requiring that:
 - Regional centers maintain specific service coordinator caseload ratios for consumers who have not moved from the developmental centers to the community since April 14, 1993, are three years of age and older, and are not enrolled in the Home and Community-Based Services (HCBS) Waiver program.
 - Contracts between the Department and regional centers require the regional center to have or contract for specialized expertise.

While this correspondence provides a high level summary of AB 89, a complete and thorough review of the bill is imperative for regional centers' statutory compliance.¹ Clarifying information regarding implementation of AB 89 is included in several areas below. Regional centers should continue to educate their communities regarding these legislative changes.

¹ Go to the June 11, 2013, amended version of the bill at <http://leginfo.legislature.ca.gov> to see the changes in statute made by AB 89.

LDC Closure

Section 13: AB 89 requires the Department to complete closure of LDC by the fall of 2014, and no later than December 31, 2014. The closure shall be completed pursuant to the plan developed in accordance with Section 4474.1 of the Welfare and Institutions Code².

Section 2: Section 4474.2 was amended to eliminate the time limitation (i.e., two years following the transfer of the last resident from LDC) on use of Department employees, working at LDC, to work in the community with former LDC residents while remaining state employees (also known as the "Community State Staff Program").

Comprehensive Assessments of Developmental Center Residents

Section 1: Section 4418.25 was amended, specifying that comprehensive assessments of developmental center residents conducted pursuant to this section shall *identify the types of community-based services and supports available to the consumer that would enable the consumer to move to a community setting*. Necessary services and supports not currently available in the community setting shall be considered for development pursuant to regional center community placement plans and associated funding.

Additionally, Section 4418.25 was amended, requiring regional centers to provide, to the extent appropriate, when updating a comprehensive assessment (i.e., annually, as part of the IPP process), relevant information from the statewide specialized resource service (SSRS) established pursuant to Section 4418.25(b). The CRA for the regional center shall be notified of each IPP meeting that includes discussion of the assessment results and may participate in the IPP meeting unless the consumer objects on his or her own behalf.

Utilization of IMDs

Section 5: Section 4648 was amended to specify that, effective July 1, 2012, regional centers shall not place a consumer in an IMD for which federal Medicaid funding is not available unless there is an emergency circumstance, as outlined in Section 4648(a)(9)(C)(ii). Effective July 1, 2013, the prohibition on placement in, and purchase of new residential services from, an IMD applies regardless of the availability of federal funding. Prior to any emergency IMD admission, regional centers shall consider, to the extent feasible, resource options identified by the SSRS. The CRA for the regional center shall be notified of each emergency admission and IPP meeting pursuant to Section 4648(a)(9)(C), and may participate in all IPP meetings unless the consumer objects on his or her own behalf.

² All citations are to the Welfare and Institutions Code unless otherwise stated.

Regional centers shall complete a comprehensive assessment for any consumer residing in an IMD as of July 1, 2013, prior to the individual's next scheduled IPP meeting.

Section 6: Section 4648.01 was added, authorizing a consumer who is under 21 years of age to be placed in an IMD for a period that exceeds 180 days if all of the following conditions are satisfied prior to the end of the 180-day period or, if the consumer was placed in the institution prior to July 1, 2013, if the conditions are satisfied within 30 days of the consumer's placement reaching 180 days or by July 31, 2013, whichever is later:

1. The regional center has conducted an updated comprehensive assessment and based on that assessment the IPP team determines that due to the nature and extent of the consumer's disability, he or she requires the services provided at the IMD and there is no less restrictive setting currently available for the consumer.
2. The IPP team has developed a plan that identifies the specific services and supports necessary to transition the consumer into the community, and the plan includes a timeline to obtain or develop those services and supports.

A consumer described in Section 4648.01 shall not be placed in an IMD for a period that exceeds one year unless the regional center demonstrates significant progress toward implementing the plan to transition the consumer into the community, and extraordinary circumstances that are beyond the regional center's control have prevented the regional center from obtaining necessary services and supports within the timeline established in the plan. In this case, the regional center may request, and the Department may approve, an additional extension of the placement for a period not to exceed 30 days. The CRA for the regional center shall be notified of any proposed extension and the IPP meeting to consider the extension, and may participate in the IPP meeting unless the consumer objects on his or her own behalf.

Section 4648.01 requires the Department and regional centers to work together to identify services and supports needed to serve individuals under 21 years of age with both developmental and mental health disabilities, facilitate the development of a community-based statewide network of crisis stabilization resources for children, and, if appropriate, target the use of community placement plan funds for these consumers. Section 4648.01 shall become inoperative on July 1, 2014, and as of January 1, 2015, is repealed, unless a later enacted statute that is enacted before January 1, 2015, deletes or extends the dates on which it comes inoperative and is repealed.

Implementation: The Department will work with the Association of Regional Center Agencies (ARCA) Community Placement Plan Committee and Difficult to Serve Task Force in fulfillment of this statutory requirement. When purchasing IMD and mental

health rehabilitation center services, regional centers are required to adhere to the timelines contained in AB 1472 (Chapter 25, Statutes of 2012). In correspondence dated March 1, 2013, the Department provided guidance to regional centers regarding the statutory timelines and requirements when purchasing services from facilities ineligible for federal financial participation, which may only occur under emergency circumstances.

Writ of Habeas Corpus

Section 9: Section 4801 was amended, requiring the clerk of the appropriate superior court to transmit to the CRA of the appropriate regional center, a copy of any petition for writ of habeas corpus filed on behalf of a consumer pursuant to Section 4800. The petition shall be transmitted at the time it is filed together with notification regarding the time and place of an evidentiary hearing in the matter. The CRA may attend any hearing pursuant to this section to assist in protecting the person's rights.

If the person seeking release, or for whom release is sought, resides in a developmental center or IMD, the regional center director or designee shall submit to the court, the person's attorney, and all parties required to be noticed pursuant to Section 4801(b), a copy of the most recent completed assessment required by Section 4418.25(c), 4418.7(e), or 4648(a)(9). The regional center shall submit copies of these assessments within two working days of receiving the notice required pursuant to Section 4801(b).

Section 10: Section 4806 was added, specifying that Sections 4800-4805 (Chapter 10 of Division 4.5) shall be construed in a manner that affords the adult requesting release all rights under Section 4502, including the right to treatment and habilitation services and supports in the least restrictive environment, and the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), including the right to receive services in the most integrated setting appropriate.

Copayments and Coinsurance Associated with Health Care Service Plans and Health Insurance Policies

Section 7: Section 4659.1 was added, authorizing regional centers to, when necessary to ensure that a consumer receives a service or support pursuant to his or her IPP or individualized family service plan (IFSP), pay any applicable copayment or coinsurance associated with the service or support for which a parent, guardian, or caregiver is responsible if all of the following conditions are met:

1. The service or support is paid for, in whole or in part, by the health care service plan or health insurance policy of the consumer's parent, guardian, or caregiver.
2. The consumer is covered by his or her parent's, guardian's, or caregiver's health care service plan or health insurance policy.
3. The family has an annual gross income that does not exceed 400 percent of the federal poverty level.

4. There is no other third party having liability for the cost of the service or support, as provided in Section 4659(a) and Article 2.6 (commencing with Section 4659.10).

For consumers 18 years of age or older, regional centers may, when necessary to ensure that a consumer receives a service or support pursuant to his or her IPP, pay any applicable copayment or coinsurance associated with the service or support for which a consumer is responsible if the following conditions are met:

1. The service or support is paid for, in whole or in part, by the consumer's health care service plan or health insurance policy.
2. The consumer has an annual gross income that does not exceed 400 percent of the federal poverty level.
3. There is no other third party having liability for the cost of the service or support, as provided in Section 4659(a) and Article 2.6 (commencing with Section 4659.10).

Regional centers may pay a copayment or coinsurance for a service or support provided pursuant to a consumer's IPP or IFSP if the family's or consumer's income exceeds 400 percent of the federal poverty level, the service or support is necessary to successfully maintain the child at home or the adult consumer in the least-restrictive setting, and the parents or consumer demonstrate one or more of the following:

1. The existence of an extraordinary event that impacts the ability of the parent, guardian, or caregiver to meet the care and supervision needs of the child or impacts the ability of the parent, guardian, or caregiver, or adult consumer with a health care service plan or health insurance policy, to pay the copayment or coinsurance.
2. The existence of catastrophic loss that temporarily limits the ability of the parent, guardian, or caregiver, or adult consumer with a health care service plan or health insurance policy, to pay and creates a direct economic impact on the family or adult consumer. For purposes of this paragraph, catastrophic loss may include, but is not limited to, natural disasters and accidents involving major injuries to an immediate family member.
3. Significant unreimbursed medical costs associated with the care of the consumer or another child who is also a regional center consumer.

The parent, guardian, or caregiver of a consumer or an adult consumer with a health care service plan or health insurance policy shall self-certify the family's gross annual income to the regional center by providing copies of W-2 Wage Earners Statements, payroll stubs, a copy of the prior year's state income tax return, or other documents and proof of other income. The parent, guardian, or caregiver of a consumer or an adult consumer with a health care service plan or health insurance policy is responsible for notifying the regional center when a change in income occurs that would result in a change in eligibility for coverage of the health care service plan or health insurance

policy copayments or coinsurance. Documentation submitted pursuant to this section shall be considered records obtained in the course of providing intake, assessment, and services and shall be confidential pursuant to Section 4514.

This section shall not be implemented in a manner that is inconsistent with the requirements of Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431 et seq.).

Note: Regional centers shall not pay health care service plan or health insurance policy deductibles.

Implementation: Regional centers must ensure that purchases for health insurance copayments or coinsurance are authorized only if the family (or adult consumer) either 1) has an annual gross income that does not exceed 400 percent of the federal poverty level or 2) demonstrates the existence of an extraordinary event, catastrophic loss or significant unreimbursed medical costs as defined. Compliance with this section of TBL will be monitored through the Department's fiscal audits of regional centers.

For consumers 18 years of age or older, if the consumer is either the health insurance policy holder or identified as eligible under a policy held by another, purchases for copayments or coinsurance may be authorized if the consumer meets either the income or other criteria.

Section 4: Section 4519.6 was added, requiring the Department and regional centers to annually collaborate to determine the most appropriate methods to collect and compile meaningful data in a uniform manner, as specified in Section 4519.5, related to the payment of copayments and coinsurance by each regional center.

Implementation: Based on an informal survey of regional centers conducted by ARCA and discussion with a number of regional center representatives, it was apparent that the use of service sub codes was the most appropriate method to identify purchases for copayment or coinsurance. However, a uniform method, which could be applied statewide, does not currently exist. Therefore, regional centers must use the following service sub codes for copayment or coinsurance.

Copayments: sub code must begin with 'ICP'

Coinsurance: sub code must begin with 'ICI'

Additionally, to ensure purchases are eligible for federal reimbursement, copayments and coinsurance purchases must be made using the service code appropriate for the type of service/provider. For example, a copayment for a service provided by a Behavior Analyst must be made using service code 612 and a sub code that begins with 'ICP'. Effective July 1, 2013, all copayment and coinsurance purchases must use these service/sub code combinations.

Disparities Data – Notification of Public Meetings

Section 3: Section 4519.5(e) was amended, requiring regional centers to inform the Department of public meetings regarding disparities data, scheduled pursuant to this section³, 30 days prior to the date of the meeting. Additionally, regional centers shall post a meeting notice on its Internet Web site 30 days prior to the meeting and send the notice to individual stakeholders and groups representing underserved communities in a timely manner. The Department is required to post notice of any regional center stakeholder meetings on its Internet Web site.

Implementation: Since regional centers are required to post meeting notices on their Internet Web sites 30 days prior to the meeting, regional centers may, at that time, provide the Department with a link to their Internet Web site posting in fulfillment of this requirement.

Annual Family Program Fee

Section 8: Section 4785 was amended, lifting the sunset date for the Annual Family Program Fee.

Implementation: In FY 2013-14, the Department will work with ARCA and regional centers to resolve issues associated with implementation of the Annual Family Program Fee.

Technical Changes Clarifying Court Ordered Commitments

Sections 11 and 12: Sections 6500 and 6509 were amended to clarify that a person with a developmental disability may be committed to the Department for residential placement (e.g., a licensed community care facility or health facility) other than in a developmental center or state-operated community facility if he or she is found to be a danger to himself, herself, or others. Any order of commitment for residential placement other than in a state developmental center or state-operated community facility [made pursuant to Section 6500(b)(1)] shall expire automatically one year after the order of commitment is made. Subsequent petitions for additional periods of commitment may be filed by any party enumerated in Section 6502. In the event subsequent petitions are filed, the procedures followed shall be the same as with the initial petition for commitment.

Developmental Centers Master Plan

Section 14: The California Health and Human Services Agency (Agency) shall, on or before November 15, 2013, submit to the appropriate policy and fiscal committees of the Legislature a master plan for the future of developmental centers. In the preparation of this plan, Agency shall consult with a cross-section of consumers, family members, regional centers, consumer advocates, community service providers, organized labor, the Department, and representatives of the Legislature.

³ Section 4519.5(e) requires regional centers to meet with stakeholders in a public meeting within three months of compiling the data with the Department. 110

Agency shall, on or before January 10, 2014, submit to the appropriate policy and fiscal committees of the Legislature a report regarding Agency's plans to address:

- The service needs of all developmental center residents;
- The fiscal and budget implications of the declining developmental center population and the aging infrastructure, staffing, and resource constraints;
- The availability of community resources to meet the specialized needs of residents now living in the developmental centers;
- A timeline for future closures; and,
- The statutory and regulatory changes that may be needed to ensure the delivery of cost-effective, integrated, quality services for this population.

Additional Statutory Changes

The following changes in law did not require TBL, since each provision contained a sunset date.

Restoration of the 1.25 Percent Operations & Purchase of Service Funding Reduction
The Governor's Fiscal Year (FY) 2013-14 Budget contains funding to restore the 1.25 percent regional center Operations and service provider payment reductions.

Caseload Ratios & Regional Center Expertise

Section 4640.6 contained provisions, which sunsetted on June 30, 2013. Section 4640.6(j), states, "From July 1, 2010, until June 30, 2013, the following shall not apply:

- The service coordinator-to-consumer ratio requirements of paragraph (1), and subparagraph (C) of paragraph (3), of subdivision (c)..."

Therefore, the following caseload ratio requirements resumed, effective July 1, 2013:

- An average service coordinator-to-consumer ratio of 1 to 62 for all consumers who have not moved from the developmental centers to the community since April 14, 1993. In no case shall a service coordinator for these consumers have an assigned caseload in excess of 79 consumers for more than 60 days.
- All consumers who have not moved from the developmental centers to the community since April 14, 1993, and who are not described in subparagraph (A), an average service coordinator-to-consumer ratio of 1 to 66. [The individuals described in subparagraph (A), are all consumers three years of age and younger and consumers enrolled in the HCBS Waiver program for persons with developmental disabilities.]

- ...The requirements of paragraphs (1) to (6), inclusive, of subdivision (g).” This reinstated statutory provision requires that contracts between the Department and regional centers shall require the regional center to have, or contract for, all of the following areas:
 - (1) Criminal justice expertise to assist the regional center in providing services and support to consumers involved in the criminal justice system as a victim, defendant, inmate, or parolee.
 - (2) Special education expertise to assist the regional center in providing advocacy and support to families seeking appropriate educational services from a school district.
 - (3) Family support expertise to assist the regional center in maximizing the effectiveness of support and services provided to families.
 - (4) Housing expertise to assist the regional center in accessing affordable housing for consumers in independent or supportive living arrangements.
 - (5) Community integration expertise to assist consumers and families in accessing integrated services and supports and improved opportunities to participate in community life.
 - (6) Quality assurance expertise, to assist the regional center to provide the necessary coordination and cooperation with the area board in conducting quality-of-life assessments and coordinating the regional center quality assurance efforts.

Temporary Service Provider Relief

Section 4791 contained a provision which sunsetted on June 30, 2013. This section states, “Notwithstanding any other provision of law or regulation, from July 1, 2010, until June 30, 2013, regional centers may temporarily modify personnel requirements, functions, or qualifications, or staff training requirements for providers, except for licensed or certified residential providers, whose payments are reduced by 1.25 percent pursuant to the amendments to Section 10 of Chapter 13 of the Third Extraordinary Session of the Statutes of 2009, as amended by the act amending this section...”

... (d) Notwithstanding any other provision of law or regulation, the department shall suspend, from July 1, 2010, until June 30, 2013, the requirements described in Sections 56732 and 56800 of Title 17 of the California Code of Regulations requiring community-based day programs and in-home respite agencies to conduct annual reviews and to submit written reports to vendoring regional centers, user regional centers, and the department.

(e) Notwithstanding any other provision of law or regulation, from July 1, 2010, until June 30, 2013, a residential service provider, vendored by a regional center and whose payment is reduced by 1.25 percent pursuant to the amendments to Section 10 of Chapter 13 of the Third Extraordinary Session of the Statutes of 2009, as amended by the act amending this section, shall not be required to complete quarterly and

Regional Center Directors and Board Presidents
July 12, 2013
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semiannual progress reports required in subdivisions (b) and (c) of Section 56026 of Title 17 of the California Code of Regulations. During program review, the provider shall inform the regional center case manager of the consumer's progress and any barrier to the implementation of the individual program plan for each consumer residing in the residence."

If you have any questions regarding this correspondence, please contact Brian Winfield, at (916) 654-1569.

Sincerely,

Original Signed by

NANCY BARGMANN
Deputy Director
Community Services Division

cc: Eileen Richey, ARCA
Mark Hutchinson, DDS

AGENDA ITEM 6C
2014 LEGISLATIVE PLATFORM

Please review the following draft of the legislative platform and be prepared to give comments.

State Council on DD
2013 – 2014 Legislative and Public Policy Platform
DRAFT - ~~August 22~~ October 17, 2013

The State Council on Developmental Disabilities (Council) is established by state and federal law, the Lanterman Act and the federal Developmental Disabilities and Bill of Rights Act.

The Council advocates for the development and implementation of policies and practices that achieve self-determination, independence, productivity and inclusion in all aspects of community life for Californians with developmental disabilities and their families. To that end, the Council develops and implements goals, objectives, and strategies designed to improve and enhance the availability and quality of services and supports.

The Council is comprised of 31 members appointed by the Governor, including individuals with disabilities, their families, the developmental disabilities network partners, and state agencies.

In addition to the Council's Sacramento headquarters, 13 local area offices, or Area Boards, provide services to individuals with developmental disabilities and their families including, but not limited to, advocacy assistance, training, monitoring and public information. Area Boards strive to ensure that appropriate laws, regulations and policies pertaining to the rights of individuals are observed and protected.

This document conveys the Council's position on major policy issues that affect individuals with developmental disabilities and their families.

SELF-DETERMINATION

Individuals with developmental disabilities and their families must be given the option to control their service dollars and their services through Self-Determination. With the support of those they choose and trust, people with developmental disabilities and their families are best suited to understand their own unique needs, develop their own life goals, and to construct those services and supports most appropriate to ~~achieve those goals~~ reach their full potential. Self-Determination gives ~~regional center clients~~ people the tools and the basic human right to pursue life, liberty and ~~the pursuit of~~ happiness in the ways that they choose.

EMPLOYMENT

A regular job with decent pay gives people a chance to contribute and be valued at a work site; a chance to make friends with co-workers and be more a part of their communities; a chance to pull themselves out of poverty and reduce their reliance on state support; a chance for a life of greater dignity.

Integrated competitive employment is the priority outcome for working age individuals with developmental disabilities, regardless of the severity of their disability. Policies and practices must set expectations for employment, promote collaboration between state agencies, and remove barriers to integrated competitive employment through access to information, benefits counseling, job training, postsecondary education, and ~~adequate~~ appropriate provider rates that incentivize quality employment outcomes.

PROMISE OF LANTERMAN ACT

~~The Lanterman Act promises to honor the needs and choices of each person with a developmental disability to live integrated, productive lives in their home community by establishing an array of quality services throughout the state. The right to access needed services and supports shall not be undermined through categorical service elimination, service caps, means testing, or family cost participation fees and other financial barriers.~~

ACCESS TO SERVICES

The right to access needed services and supports shall not be undermined through categorical service elimination, service caps, means testing, or family cost participation fees and other financial barriers. The health and human service system has a duty to ensure that Californians shall not impose artificial limitations, ~~barriers~~ or reductions in community-based services and supports ~~are not employed and that~~ would compromise the health and safety of persons with developmental disabilities ~~are not compromised.~~

EQUITY

~~Regional center services and supports must be distributed equitably to individuals based on their need, and not based on their ethnicity, race, or income. Disparities in services can result in severe health, economic, and quality of life consequences.~~

Regional center services and supports must be distributed equitably so that individuals receive culturally and linguistically competent services and supports that meet their needs, regardless of their race, ethnicity or income.

EDUCATION

Schools shall implement the goals of the Individuals with Disabilities Education Act (IDEA) to provide children with disabilities with free appropriate public education, and prepare them for post-secondary education, employment, and independent living. To the maximum extent possible students with disabilities should be educated alongside their non-disabled peers in the least restrictive environment. School districts/educational authorities need to be held accountable for implementing the letter and the intent of IDEA including measureable post-secondary goals.

HEALTH CARE

Individuals should be reimbursed for insurance co-pays, co-insurance and deductibles, when their health insurance covers therapies that are on their IPPs.

California has an obligation to assure that individuals with disabilities transitioning into Medi-Cal managed care, the Duals Demonstration, and the Coordinated Care Initiative have continuity of care, a full continuum of health care services and equipment, and access to plain language information and supports to make informed decisions about their health care options.

California must support individuals with developmental disabilities with co-existing health conditions that require routine preventative care, as well as mental health treatment, dental care, durable medical equipment, and attention to women's health issues.

HOUSING

Increase and enhance community integrated living options for individuals with developmental disabilities through access to housing subsidy programs and neighborhood education to reduce discrimination. Affordable, accessible, and sustained housing options must be continually developed.

SELF-ADVOCACY

Individuals with developmental disabilities must be provided the opportunity and support to assume their rightful leadership in the service system and society, including voting and other civic responsibilities. Self-advocates must have access to enhanced training, plain language materials, and policy making activities.

INCLUSION (OR Community Participation, below)

Individuals with developmental disabilities must have access to community opportunities such as recreation, education, and socialization with their peers without disabilities.

COMMUNITY PARTICIPATION

Individuals with developmental disabilities must be supported to participate in their communities through activities that non-disabled people of the same age take part in, such as education, employment, recreation, organizational affiliations, spiritual development, and civic responsibilities.

TRANSPORTATION

Access to transportation is essential to the education, employment and inclusion of individuals with disabilities. Individuals with developmental disabilities must be a part of transportation planning and policymaking to assure their needs and perspectives are heard and addressed. Mobility training must be a standard program among public transportation providers to increase the use of public transportation and reduce reliance on more costly segregated systems.

VICTIMS OF CRIME

Individuals with developmental disabilities have a right to be safe. However, they experience a much greater rate of victimization and a far lower rate of prosecution for crimes against them than does the general public. The same level of due process protections must be provided to all people. Individuals with disabilities need to be trained and supported in how to avoid becoming victims of crime and to understand how their participation in identification and prosecution can impact outcomes.

QUALITY OF SERVICES AND SUPPORTS

The State of California must ensure that public monies are used to achieve desired outcomes for individuals with developmental disabilities and their families.

Outcomes and satisfaction must be measured, and that information used to improve the system of services and supports.

AMENDED IN SENATE APRIL 2, 2013

SENATE BILL

No. 663

Introduced by Senator Lara

February 22, 2013

An act to add Section 1385 to the Evidence Code, and to amend Sections 261, 286, 288, 288a, 289, 1048.1, and 1050 of, and to add Section 13519.06 to, the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 663, as amended, Lara. Sexual assault: victims with intellectual and developmental disabilities.

Existing

(1) Existing law proscribes various types of sexual assault, including the crime of rape, which rape perpetrated against a person other than the spouse of the perpetrator. Rape perpetrated against a person other than the spouse of the perpetrator is punishable by imprisonment in the state prison for 3, 6, or 8 years. Existing law defines rape of a person other than the spouse of the perpetrator to include circumstances in which the person is incapable of giving consent because of a developmental disability.

Existing law also specifically proscribes crimes committed against elder and dependent adults. Existing law defines, for purposes of these provisions, a "dependent adult" to mean any person who is between 18 and 64 years of age, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities.

The bill would revise the definition of certain sex offenses, including rape; sodomy, and oral copulation, to apply if the victim is

developmentally disabled, as defined, and either (A) the person lacks the legal mental capacity, as defined, to give consent when compared to a reasonable person who does not have a developmental disability and this fact is known or reasonably should be known to the person committing the act, or (B) the defendant is a caretaker, as defined, or a care provider, as defined. By revising the definitions of existing crimes, the bill would impose a state-mandated local program.

(2) Existing law governs the admissibility of evidence in civil and criminal proceedings. Existing law, the hearsay rule, generally excludes from evidence a statement that was made other than by a witness while testifying at a hearing if that statement is offered to prove the truth of the matter stated.

This bill would create an exception to the hearsay rule for certain out-of-court statements made by a person with a developmental disability (A) if the declarant is a victim of a crime, (B) if the statements describe a specified sex offense performed with, by, on, or in the presence of the declarant, (C) if the statements describe any act of child abuse to which the declarant was subjected or which the declarant witnessed, or (D) if the statements describe a specified sex offense or an act of domestic violence, and specified other criteria are met.

(3) Existing law also governs criminal procedure. Among other provisions, existing law requires that, in scheduling a trial date at an arraignment in superior court involving any of specified offenses, including sexual assault, reasonable efforts be made to avoid setting that trial, when that case is assigned to a particular prosecuting attorney, on the same day that another case is set for trial involving the same prosecuting attorney. Existing law also requires that continuances be granted only upon a showing of good cause and defines good cause to include specified cases, including cases of sexual abuse, sexual assault, and domestic violence.

This bill would make those provisions applicable to a case involving a crime against a person with a developmental disability.

(4) Existing law also directs the Commission on Peace Officer Standards and Training to establish minimum standards relating to the training of law enforcement officers and establishes standards that are specifically applicable in specific types of cases, including domestic violence and the handling of persons with developmental disabilities or mental illness.

The bill would require the Commission on Peace Officer Standards and Training to develop, and periodically update as necessary, a model

general order or other formal policy for crime victims with developmental disabilities, as specified. The bill would require each law enforcement agency to adopt and implement the model policy, as specified, within one year of the date when the commission adopts the model policy. By imposing new duties and a higher level of service on law enforcement agencies, the bill would impose a state-mandated local program.

The bill would also express the intent of the Legislature to address the problem of sexual violence against people with intellectual and various developmental disabilities and set forth related findings and declarations.

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

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

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

~~This bill would express the intent of the Legislature to enact legislation that would help to ensure that there is justice for individuals with intellectual and developmental disabilities who are victims of sexual assault and would set forth related findings and declarations.~~

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

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

- 1 SECTION 1. (a) The Legislature finds and declares all of the
- 2 following:
- 3 (1) Throughout society sexual violence against people with
- 4 intellectual and various developmental disabilities, including
- 5 persons residing in institutions, is a grave problem. The violent
- 6 criminals who commit these acts typically go unpunished and
- 7 remain free to continue committing these crimes, while the victims
- 8 rarely get the support and assistance they need and deserve.
- 9 (2) Researchers have noted that over the past decade, crimes
- 10 against people with developmental disabilities have reached

1 epidemic levels. This problem has reached epidemic levels, yet
2 has been ignored, and the criminal justice system has failed to
3 address this public health problem adequately.

4 (3) The epidemic is increasing, and will likely continue to
5 increase, with the aging of the developmental disability population,
6 and the explosive rate of increase of individuals with autism and
7 fetal alcohol syndrome disorder.

8 (4) In enacting Section 13519.06 of the Penal Code, it is the
9 intent of the Legislature to develop and implement training
10 programs similar to the training currently provided to law
11 enforcement employees for handling cases involving domestic
12 violence and other serious crimes, for law enforcement employees
13 handling cases involving sexual violence against persons with
14 developmental disabilities.

15 (b) By the enactment of this act, it is the intent of the Legislature
16 to take serious action to begin to remedy these outrages.

17 SEC. 2. Section 1385 is added to the Evidence Code, to read:

18 1385. (a) Evidence of a statement by a person with a
19 developmental disability is not made inadmissible by the hearsay
20 rule if offered in a criminal or juvenile proceeding in which the
21 person is alleged to have been a victim of a crime and the
22 conditions of subdivision (e) are satisfied.

23 (b) Evidence of a statement by a person with a developmental
24 disability that describes all or part of an offense described in
25 Section 261, 286, 288, 288a, or 289 of the Penal Code performed
26 with, by, on, or in the presence of the declarant, is not made
27 inadmissible by the hearsay rule if offered in a criminal, juvenile,
28 or civil proceeding and the conditions of subdivision (e) are
29 satisfied.

30 (c) Evidence of a statement by a person with a developmental
31 disability that describes any act of child abuse, including, but not
32 limited to, the crimes described in Section 273a, 273ab, or 273d
33 of the Penal Code, to which the declarant was subjected or which
34 the declarant witnessed, is not made inadmissible by the hearsay
35 rule if offered in a criminal, juvenile, or civil proceeding in which
36 a child is alleged to be a victim of child abuse or the subject of a
37 proceeding alleging that a child is within the jurisdiction of the
38 juvenile court on the basis of abuse or neglect, pursuant to Section
39 300 of the Welfare and Institutions Code, and the conditions of
40 subdivision (e) are satisfied.

1 (d) Evidence of a statement by a person with a developmental
2 disability, that describes all or part of any offense described in
3 Section 261, 286, 288, 288a, or 289 of the Penal Code, or that
4 describes an act of domestic violence, is not made inadmissible
5 by the hearsay rule if offered in a criminal, juvenile, or civil
6 proceeding and the conditions of subdivision (e) are satisfied.

7 (e) The exceptions to the hearsay rule described in subdivisions
8 (a) to (d), inclusive, of this section shall apply only if the court
9 finds in a hearing conducted outside the presence of the jury that
10 the time, content, and circumstances of the statement provide
11 sufficient safeguards of reliability and either of the following apply:

12 (1) The statement is a nontestimonial statement.

13 (2) One of the following applies:

14 (A) The declarant testifies at the proceeding.

15 (B) If the declarant is unavailable to testify, the defendant has
16 had an opportunity to cross-examine the declarant in a previous
17 proceeding and there is corroborative evidence of the act that is
18 the subject of the statement.

19 (f) If a statement described in this section is admitted into
20 evidence, the court shall instruct the jury in the final written
21 instructions that during the proceeding the jury heard evidence
22 regarding a person's statement, and it is for the jury to determine
23 the weight and credit to be given to that statement, and, in making
24 that determination, the jury shall consider the nature of the
25 statement, the circumstances under which the statement was made,
26 and any other relevant factor.

27 (g) The proponent of the statement shall give the adverse party
28 reasonable notice of his or her intention to offer the statement and
29 the particulars of the statement.

30 (h) For purposes of this section, a "developmental disability"
31 means an intellectual disability that originates before an individual
32 attains 18 years of age, continues, or can be expected to continue,
33 indefinitely, and constitutes a substantial intellectual disability for
34 that individual. This term shall include mental retardation, cerebral
35 palsy, epilepsy, and autism if the condition severely impairs the
36 cognitive abilities of the individual. This term shall also include
37 disabling conditions found to be closely related to mental
38 retardation or to require treatment similar to that required for
39 individuals with mental retardation, but shall not include other
40 disabling conditions that are solely physical in nature.

1 *SEC. 3. Section 261 of the Penal Code is amended to read:*

2 261. (a) Rape is an act of sexual intercourse accomplished
3 with a person not the spouse of the perpetrator, under any of the
4 following circumstances:

5 (1) ~~Where a~~ *If the person is incapable, because of a mental*
6 ~~disorder or developmental or physical disability, of incapable of~~
7 *giving legal consent, and this is known or reasonably should be*
8 ~~known to the person committing the act consent and he or she is~~
9 *a person described in subparagraph (A) or (B). Notwithstanding*
10 *the existence of a conservatorship pursuant to the provisions of*
11 *the Lanterman-Petris-Short Act (Part 1 (commencing with Section*
12 *5000) of Division 5 of the Welfare and Institutions Code), the*
13 *prosecuting attorney shall prove, as an element of the crime, that*
14 ~~a mental disorder or developmental or physical disability rendered~~
15 ~~the alleged victim incapable of giving consent. the facts specified~~
16 *in subparagraph (A) or (B). For purposes of this paragraph, a*
17 *person is incapable of giving legal consent if he or she:*

18 (A) *Has a mental disorder or physical disability, the mental*
19 *disorder or physical disability rendered the alleged victim*
20 *incapable of giving legal consent, and these facts are known or*
21 *reasonably should be known to the person committing the act.*

22 (B) *Has a developmental disability and either of the following*
23 *applies:*

24 (i) *The person lacks the legal capacity to give consent when*
25 *compared to a reasonable person who does not have a*
26 *developmental disability and this fact is known or reasonably*
27 *should be known to the person committing the act. For purposes*
28 *of this clause, a court shall determine whether a person lacks the*
29 *legal capacity to give consent pursuant to Part 17 (commencing*
30 *with Section 810) of Division 2 of the Probate Code.*

31 (ii) *The defendant is either of the following:*

32 (I) *A caretaker, as defined in Section 288.*

33 (II) *A care provider, meaning a person who provides assistance*
34 *with the activities of daily living, including any person that directly*
35 *or indirectly owns, administers, or operates a developmental*
36 *center, a community care facility as defined in Sections 1502 and*
37 *1504 of the Health and Safety Code, or a health facility, as defined*
38 *in Section 1250 of the Health and Safety Code, and includes all*
39 *agents, employees, and contractors of the care provider who are*
40 *responsible for providing care to clients.*

1 (2) ~~Where~~*If* it is accomplished against a person's will by means
2 of force, violence, duress, menace, or fear of immediate and
3 unlawful bodily injury on the person or another.

4 (3) ~~Where~~*If* a person is prevented from resisting by any
5 intoxicating or anesthetic substance, or any controlled substance,
6 and this condition was known, or reasonably should have been
7 known by the accused.

8 (4) ~~Where~~*If* a person is at the time unconscious of the nature
9 of the act, and this is known to the accused. As used in this
10 paragraph, "unconscious of the nature of the act" means incapable
11 of resisting because the victim meets one of the following
12 conditions:

13 (A) Was unconscious or asleep.

14 (B) Was not aware, knowing, perceiving, or cognizant that the
15 act occurred.

16 (C) Was not aware, knowing, perceiving, or cognizant of the
17 essential characteristics of the act due to the perpetrator's fraud in
18 fact.

19 (D) Was not aware, knowing, perceiving, or cognizant of the
20 essential characteristics of the act due to the perpetrator's fraudulent
21 representation that the sexual penetration served a professional
22 purpose when it served no professional purpose.

23 (5) ~~Where~~*If* a person submits under the belief that the person
24 committing the act is the victim's spouse, and this belief is induced
25 by any artifice, pretense, or concealment practiced by the accused,
26 with intent to induce the belief.

27 (6) ~~Where~~*If* the act is accomplished against the victim's will
28 by threatening to retaliate in the future against the victim or any
29 other person, and there is a reasonable possibility that the
30 perpetrator will execute the threat. As used in this paragraph,
31 "threatening to retaliate" means a threat to kidnap or falsely
32 imprison, or to inflict extreme pain, serious bodily injury, or death.

33 (7) ~~Where~~*If* the act is accomplished against the victim's will
34 by threatening to use the authority of a public official to incarcerate,
35 arrest, or deport the victim or another, and the victim has a
36 reasonable belief that the perpetrator is a public official. As used
37 in this paragraph, "public official" means a person employed by
38 a governmental agency who has the authority, as part of that
39 position, to incarcerate, arrest, or deport another. The perpetrator
40 does not actually have to be a public official.

1 (b) As used in this section, ~~“duress”~~ *the following definitions*
2 *apply:*

3 (1) *“Developmental disability” has the same meaning as found*
4 *in subdivision (h) of Section 1385 of the Evidence Code.*

5 (2) *“Duress” means a direct or implied threat of force, violence,*
6 *danger, or retribution sufficient to coerce a reasonable person of*
7 *ordinary susceptibilities to perform an act which otherwise would*
8 *not have been performed, or acquiesce in an act to which one*
9 *otherwise would not have submitted. The total circumstances,*
10 *including the age of the victim, and his or her relationship to the*
11 *defendant, are factors to consider in appraising the existence of*
12 *duress.*

13 (c)

14 (3) ~~As used in this section, “menace”~~ *“Menace” means any*
15 *threat, declaration, or act which shows an intention to inflict an*
16 *injury upon another.*

17 *SEC. 4. Section 286 of the Penal Code is amended to read:*

18 286. (a) Sodomy is sexual conduct consisting of contact
19 between the penis of one person and the anus of another person.
20 Any sexual penetration, however slight, is sufficient to complete
21 the crime of sodomy.

22 (b) (1) Except as provided in Section 288, any person who
23 participates in an act of sodomy with another person who is under
24 18 years of age shall be punished by imprisonment in the state
25 prison, or in a county jail for not more than one year.

26 (2) Except as provided in Section 288, any person ~~over the age~~
27 ~~of 21 years of age~~ who participates in an act of sodomy with
28 another person who is under 16 years of age shall be guilty of a
29 felony.

30 (c) (1) Any person who participates in an act of sodomy with
31 another person who is under 14 years of age and more than 10
32 years younger than he or she shall be punished by imprisonment
33 in the state prison for three, six, or eight years.

34 (2) (A) Any person who commits an act of sodomy when the
35 act is accomplished against the victim’s will by means of force,
36 violence, duress, menace, or fear of immediate and unlawful bodily
37 injury on the victim or another person shall be punished by
38 imprisonment in the state prison for three, six, or eight years.

39 (B) Any person who commits an act of sodomy with another
40 person who is under 14 years of age when the act is accomplished

1 against the victim's will by means of force, violence, duress,
2 menace, or fear of immediate and unlawful bodily injury on the
3 victim or another person shall be punished by imprisonment in the
4 state prison for 9, 11, or 13 years.

5 (C) Any person who commits an act of sodomy with another
6 person who is a minor 14 years of age or older when the act is
7 accomplished against the victim's will by means of force, violence,
8 duress, menace, or fear of immediate and unlawful bodily injury
9 on the victim or another person shall be punished by imprisonment
10 in the state prison for 7, 9, or 11 years.

11 (D) This paragraph does not preclude prosecution under Section
12 269, Section 288.7, or any other provision of law.

13 (3) Any person who commits an act of sodomy where the act
14 is accomplished against the victim's will by threatening to retaliate
15 in the future against the victim or any other person, and there is a
16 reasonable possibility that the perpetrator will execute the threat,
17 shall be punished by imprisonment in the state prison for three,
18 six, or eight years.

19 (d) (1) Any person who, while voluntarily acting in concert
20 with another person, either personally or aiding and abetting that
21 other person, commits an act of sodomy when the act is
22 accomplished against the victim's will by means of force or fear
23 of immediate and unlawful bodily injury on the victim or another
24 person or where the act is accomplished against the victim's will
25 by threatening to retaliate in the future against the victim or any
26 other person, and there is a reasonable possibility that the
27 perpetrator will execute the threat, shall be punished by
28 imprisonment in the state prison for five, seven, or nine years.

29 (2) Any person who, while voluntarily acting in concert with
30 another person, either personally or aiding and abetting that other
31 person, commits an act of sodomy upon a victim who is under 14
32 years of age, when the act is accomplished against the victim's
33 will by means of force or fear of immediate and unlawful bodily
34 injury on the victim or another person, shall be punished by
35 imprisonment in the state prison for 10, 12, or 14 years.

36 (3) Any person who, while voluntarily acting in concert with
37 another person, either personally or aiding and abetting that other
38 person, commits an act of sodomy upon a victim who is a minor
39 14 years of age or older, when the act is accomplished against the
40 victim's will by means of force or fear of immediate and unlawful

1 bodily injury on the victim or another person, shall be punished
2 by imprisonment in the state prison for 7, 9, or 11 years.

3 (4) This subdivision does not preclude prosecution under Section
4 269, Section 288.7, or any other provision of law.

5 (e) Any person who participates in an act of sodomy with any
6 person of any age while confined in any state prison, as defined
7 in Section 4504, or in any local detention facility, as defined in
8 Section 6031.4, shall be punished by imprisonment in the state
9 prison, or in a county jail for not more than one year.

10 (f) Any person who commits an act of sodomy, and the victim
11 is at the time unconscious of the nature of the act and this is known
12 to the person committing the act, shall be punished by
13 imprisonment in the state prison for three, six, or eight years. As
14 used in this subdivision, “unconscious of the nature of the act”
15 means incapable of resisting because the victim meets one of the
16 following conditions:

17 (1) Was unconscious or asleep.

18 (2) Was not aware, knowing, perceiving, or cognizant that the
19 act occurred.

20 (3) Was not aware, knowing, perceiving, or cognizant of the
21 essential characteristics of the act due to the perpetrator’s fraud in
22 fact.

23 (4) Was not aware, knowing, perceiving, or cognizant of the
24 essential characteristics of the act due to the perpetrator’s fraudulent
25 representation that the sexual penetration served a professional
26 purpose when it served no professional purpose.

27 (g) Except as provided in subdivision (h), *if* a person ~~who~~
28 commits an act of sodomy, and the victim is at the time ~~incapable,~~
29 ~~because of a mental disorder or developmental or physical~~
30 ~~disability, incapable of giving legal consent, and this is known or~~
31 ~~reasonably should be known to the person committing the act,~~
32 *consent and is described in paragraph (1) or (2), the person shall*
33 *be punished by imprisonment in the state prison for three, six, or*
34 *eight years. Notwithstanding the existence of a conservatorship*
35 *pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing*
36 *with Section 5000) of Division 5 of the Welfare and Institutions*
37 *Code), the prosecuting attorney shall prove, as an element of the*
38 *crime, that a mental disorder or developmental or physical*
39 *disability rendered the alleged victim incapable of giving consent.*
40 *the facts specified in paragraph (1) or (2). For purposes of this*

1 *paragraph, a victim is incapable of giving legal consent if he or*
2 *she:*

3 *(1) Is incapable of giving legal consent because of a mental*
4 *disorder or physical disability and this fact is known or reasonably*
5 *should be known to the person committing the act.*

6 *(2) Has a developmental disability and either of the following*
7 *applies:*

8 *(A) The person lacks the legal mental capacity to give consent*
9 *when compared to a reasonable person who does not have a*
10 *developmental disability and this fact is known or reasonably*
11 *should be known to the person committing the act. For purposes*
12 *of this subparagraph, a court shall determine whether a person*
13 *lacks the legal capacity to give consent pursuant to Part 17*
14 *(commencing with Section 810) of Division 2 of the Probate Code.*

15 *(B) The defendant is either of the following:*

16 *(i) A caretaker.*

17 *(ii) A care provider.*

18 *(h) Any person who commits an act of sodomy, and the victim*
19 *is at the time incapable, because of a mental disorder or*
20 *developmental or physical disability, of giving legal consent, and*
21 *this is known or reasonably should be known to the person*
22 *committing the act, and both the defendant and the victim are at*
23 *the time confined in a state hospital for the care and treatment of*
24 *the mentally disordered or in any other public or private facility*
25 *for the care and treatment of the mentally disordered approved by*
26 *a county mental health director, shall be punished by imprisonment*
27 *in the state prison, or in a county jail for not more than one year.*
28 *Notwithstanding the existence of a conservatorship pursuant to*
29 *the Lanterman-Petris-Short Act (Part 1 (commencing with Section*
30 *5000) of Division 5 of the Welfare and Institutions Code), the*
31 *prosecuting attorney shall prove, as an element of the crime, that*
32 *a mental disorder or developmental or physical disability rendered*
33 *the alleged victim incapable of giving legal consent.*

34 *(i) Any person who commits an act of sodomy, where the victim*
35 *is prevented from resisting by an intoxicating or anesthetic*
36 *substance, or any controlled substance, and this condition was*
37 *known, or reasonably should have been known by the accused,*
38 *shall be punished by imprisonment in the state prison for three,*
39 *six, or eight years.*

1 (j) Any person who commits an act of sodomy, where the victim
2 submits under the belief that the person committing the act is the
3 victim's spouse, and this belief is induced by any artifice, pretense,
4 or concealment practiced by the accused, with intent to induce the
5 belief, shall be punished by imprisonment in the state prison for
6 three, six, or eight years.

7 (k) Any person who commits an act of sodomy, where the act
8 is accomplished against the victim's will by threatening to use the
9 authority of a public official to incarcerate, arrest, or deport the
10 victim or another, and the victim has a reasonable belief that the
11 perpetrator is a public official, shall be punished by imprisonment
12 in the state prison for three, six, or eight years.

13 ~~As used in this subdivision, "public official" means a person~~
14 ~~employed by a governmental agency who has the authority, as part~~
15 ~~of that position, to incarcerate, arrest, or deport another. The~~
16 ~~perpetrator does not actually have to be a public official.~~

17 ~~(f) As used in subdivisions (c) and (d), "threatening to retaliate"~~
18 ~~means a threat to kidnap or falsely imprison, or inflict extreme~~
19 ~~pain, serious bodily injury, or death.~~

20 ~~(m)~~

21 (l) In addition to any punishment imposed under this section,
22 the judge may assess a fine not to exceed seventy dollars (\$70)
23 against any person who violates this section, with the proceeds of
24 this fine to be used in accordance with Section 1463.23. The court,
25 however, shall take into consideration the defendant's ability to
26 pay, and no defendant shall be denied probation because of his or
27 her inability to pay the fine permitted under this subdivision.

28 (m) *As used in this section, the following definitions apply:*

29 (1) *A "care provider" means a person who provides assistance*
30 *with the activities of daily living, including any person who directly*
31 *or indirectly owns, administers, or operates a developmental*
32 *center, a community care facility, as defined in Sections 1502 and*
33 *1504 of the Health and Safety Code, or a health facility, as defined*
34 *in Section 1250 of the Health and Safety Code, and all agents,*
35 *employees, and contractors of the care provider who are*
36 *responsible for providing care to clients.*

37 (2) *A "caretaker" has the same meaning as set forth in Section*
38 *288.*

39 (3) *"Developmental disability" has the same meaning as found*
40 *in subdivision (h) of Section 1385 of the Evidence Code.*

1 (4) As used in subdivision (k), “public official” means a person
2 employed by a governmental agency who has the authority, as
3 part of that position, to incarcerate, arrest, or deport another. The
4 perpetrator does not actually have to be a public official.

5 (5) As used in subdivisions (c) and (d), “threatening to retaliate”
6 means a threat to kidnap or falsely imprison, or to inflict extreme
7 pain, serious bodily injury, or death.

8 SEC. 5. Section 288 of the Penal Code is amended to read:

9 288. (a) Except as provided in subdivision (i), any person who
10 willfully and lewdly commits any lewd or lascivious act, including
11 any of the acts constituting other crimes provided for in Part 1,
12 upon or with the body, or any part or member thereof, of a child
13 who is under the age of 14 years of age, with the intent of arousing,
14 appealing to, or gratifying the lust, passions, or sexual desires of
15 that person or the child, is guilty of a felony and shall be punished
16 by imprisonment in the state prison for three, six, or eight years.

17 (b) (1) Any person who commits an act described in subdivision
18 (a) by use of force, violence, duress, menace, or fear of immediate
19 and unlawful bodily injury on the victim or another person, is
20 guilty of a felony and shall be punished by imprisonment in the
21 state prison for 5, 8, or 10 years.

22 (2) Any person who is a caretaker and commits an act described
23 in subdivision (a) upon a dependent person, *including a person*
24 *with a developmental disability, as defined in subdivision (d)*, by
25 use of force, violence, duress, menace, or fear of immediate and
26 unlawful bodily injury on the victim or another person, with the
27 intent described in subdivision (a), is guilty of a felony and shall
28 be punished by imprisonment in the state prison for 5, 8, or 10
29 years.

30 (c) (1) Any person who commits an act described in subdivision
31 (a) with the intent described in that subdivision, and the victim is
32 a child of 14 or 15 years, and that person is at least 10 years older
33 than the child, is guilty of a public offense and shall be punished
34 by imprisonment in the state prison for one, two, or three years,
35 or by imprisonment in a county jail for not more than one year. In
36 determining whether the person is at least 10 years older than the
37 child, the difference in age shall be measured from the birth date
38 of the person to the birth date of the child.

39 (2) Any person who is a caretaker and commits an act described
40 in subdivision (a) upon a dependent person, *including a person*

1 *with a developmental disability, as defined in subdivision (d), with*
2 *the intent described in subdivision (a), is guilty of a public offense*
3 *and shall be punished by imprisonment in the state prison for one,*
4 *two, or three years, or by imprisonment in a county jail for not*
5 *more than one year.*

6 (d) (1) In any arrest or prosecution under this section or Section
7 288.5, the peace officer, district attorney, and the court shall
8 consider the needs of the child victim, *person with a developmental*
9 *disability, or other dependent person* and shall do whatever is
10 necessary, within existing budgetary resources, and constitutionally
11 permissible to prevent psychological harm to the child victim or
12 to prevent psychological harm to the *person with a developmental*
13 *disability or other dependent person* victim resulting from
14 participation in the court process.

15 (2) *For purposes of this subdivision, “developmental disability”*
16 *has the same meaning as found in subdivision (h) of Section 1385*
17 *of the Evidence Code.*

18 (e) Upon the conviction of any person for a violation of
19 subdivision (a) or (b), the court may, in addition to any other
20 penalty or fine imposed, order the defendant to pay an additional
21 fine not to exceed ten thousand dollars (\$10,000). In setting the
22 amount of the fine, the court shall consider any relevant factors,
23 including, but not limited to, the seriousness and gravity of the
24 offense, the circumstances of its commission, whether the
25 defendant derived any economic gain as a result of the crime, and
26 the extent to which the victim suffered economic losses as a result
27 of the crime. Every fine imposed and collected under this section
28 shall be deposited in the Victim-Witness Assistance Fund to be
29 available for appropriation to fund child sexual exploitation and
30 child sexual abuse victim counseling centers and prevention
31 programs pursuant to Section 13837.

32 If the court orders a fine imposed pursuant to this subdivision,
33 the actual administrative cost of collecting that fine, not to exceed
34 2 percent of the total amount paid, may be paid into the general
35 fund of the county treasury for the use and benefit of the county.

36 (f) For purposes of paragraph (2) of subdivision (b) and
37 paragraph (2) of subdivision (c), the following definitions apply:

38 (1) “Caretaker” means an owner, operator, administrator,
39 employee, independent contractor, agent, or volunteer of any of

- 1 the following public or private facilities when the facilities provide
2 care for elder or dependent persons:
- 3 (A) Twenty-four hour health facilities, as defined in Sections
4 1250, 1250.2, and 1250.3 of the Health and Safety Code.
 - 5 (B) Clinics.
 - 6 (C) Home health agencies.
 - 7 (D) Adult day health care centers.
 - 8 (E) Secondary schools that serve dependent persons and
9 postsecondary educational institutions that serve dependent persons
10 or elders.
 - 11 (F) Sheltered workshops.
 - 12 (G) Camps.
 - 13 (H) Community care facilities, as defined by Section 1402 of
14 the Health and Safety Code, and residential care facilities for the
15 elderly, as defined in Section 1569.2 of the Health and Safety
16 Code.
 - 17 (I) Respite care facilities.
 - 18 (J) Foster homes.
 - 19 (K) Regional centers for persons with developmental disabilities.
 - 20 (L) A home health agency licensed in accordance with Chapter
21 8 (commencing with Section 1725) of Division 2 of the Health
22 and Safety Code.
 - 23 (M) An agency that supplies in-home supportive services.
 - 24 (N) Board and care facilities.
 - 25 (O) Any other protective or public assistance agency that
26 provides health services or social services to elder or dependent
27 persons, including, but not limited to, in-home supportive services,
28 as defined in Section 14005.14 of the Welfare and Institutions
29 Code.
 - 30 (P) Private residences.
- 31 (2) "Board and care facilities" means licensed or unlicensed
32 facilities that provide assistance with one or more of the following
33 activities:
- 34 (A) Bathing.
 - 35 (B) Dressing.
 - 36 (C) Grooming.
 - 37 (D) Medication storage.
 - 38 (E) Medical dispensation.
 - 39 (F) Money management.

1 (3) “Dependent person” means any person who has a physical
2 or mental impairment that substantially restricts his or her ability
3 to carry out normal activities or to protect his or her rights,
4 including, but not limited to, persons who have physical or
5 developmental disabilities or whose physical or mental abilities
6 have significantly diminished because of age. “Dependent person”
7 includes any person who is admitted as an inpatient to a 24-hour
8 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of
9 the Health and Safety Code.

10 (g) Paragraph (2) of subdivision (b) and paragraph (2) of
11 subdivision (c) apply to the owners, operators, administrators,
12 employees, independent contractors, agents, or volunteers working
13 at these public or private facilities and only to the extent that the
14 individuals personally commit, conspire, aid, abet, or facilitate any
15 act prohibited by paragraph (2) of subdivision (b) and paragraph
16 (2) of subdivision (c).

17 (h) Paragraph (2) of subdivision (b) and paragraph (2) of
18 subdivision (c) do not apply to a caretaker who is a spouse of, or
19 who is in an equivalent domestic relationship with, the dependent
20 person under care.

21 (i) (1) Any person convicted of a violation of subdivision (a)
22 shall be imprisoned in the state prison for life with the possibility
23 of parole if the defendant personally inflicted bodily harm upon
24 the victim.

25 (2) The penalty provided in this subdivision shall only apply if
26 the fact that the defendant personally inflicted bodily harm upon
27 the victim is pled and proved.

28 (3) As used in this subdivision, “bodily harm” means any
29 substantial physical injury resulting from the use of force that is
30 more than the force necessary to commit the offense.

31 *SEC. 6. Section 288a of the Penal Code is amended to read:*

32 288a. (a) Oral copulation is the act of copulating the mouth
33 of one person with the sexual organ or anus of another person.

34 (b) (1) Except as provided in Section 288, any person who
35 participates in an act of oral copulation with another person who
36 is under 18 years of age shall be punished by imprisonment in the
37 state prison, or in a county jail for a period of not more than one
38 year.

1 (2) Except as provided in Section 288, any person over the age
2 of 21 years who participates in an act of oral copulation with
3 another person who is under 16 years of age is guilty of a felony.

4 (c) (1) Any person who participates in an act of oral copulation
5 with another person who is under 14 years of age and more than
6 10 years younger than he or she shall be punished by imprisonment
7 in the state prison for three, six, or eight years.

8 (2) (A) Any person who commits an act of oral copulation when
9 the act is accomplished against the victim's will by means of force,
10 violence, duress, menace, or fear of immediate and unlawful bodily
11 injury on the victim or another person shall be punished by
12 imprisonment in the state prison for three, six, or eight years.

13 (B) Any person who commits an act of oral copulation upon a
14 person who is under 14 years of age, when the act is accomplished
15 against the victim's will by means of force, violence, duress,
16 menace, or fear of immediate and unlawful bodily injury on the
17 victim or another person, shall be punished by imprisonment in
18 the state prison for 8, 10, or 12 years.

19 (C) Any person who commits an act of oral copulation upon a
20 minor who is 14 years of age or older, when the act is accomplished
21 against the victim's will by means of force, violence, duress,
22 menace, or fear of immediate and unlawful bodily injury on the
23 victim or another person, shall be punished by imprisonment in
24 the state prison for 6, 8, or 10 years.

25 (D) This paragraph does not preclude prosecution under Section
26 269, Section 288.7, or any other provision of law.

27 (3) Any person who commits an act of oral copulation where
28 the act is accomplished against the victim's will by threatening to
29 retaliate in the future against the victim or any other person, and
30 there is a reasonable possibility that the perpetrator will execute
31 the threat, shall be punished by imprisonment in the state prison
32 for three, six, or eight years.

33 (d) (1) Any person who, while voluntarily acting in concert
34 with another person, either personally or by aiding and abetting
35 that other person, commits an act of oral copulation (1) when the
36 act is accomplished against the victim's will by means of force or
37 fear of immediate and unlawful bodily injury on the victim or
38 another person, or (2) where the act is accomplished against the
39 victim's will by threatening to retaliate in the future against the
40 victim or any other person, and there is a reasonable possibility

1 that the perpetrator will execute the threat, or (3) where the victim
2 is at the time ~~incapable, because of a mental disorder or~~
3 ~~developmental or physical disability, incapable~~ of giving legal
4 consent, and this is known or reasonably should be known to the
5 person committing the act *as described in subparagraph (A) or*
6 *(B)*, shall be punished by imprisonment in the state prison for five,
7 seven, or nine years. Notwithstanding the appointment of a
8 conservator with respect to the victim pursuant to the provisions
9 of the Lanterman-Petris-Short Act (Part 1 (commencing with
10 Section 5000) of Division 5 of the Welfare and Institutions Code),
11 the prosecuting attorney shall prove, as an element of the crime
12 described under paragraph (3), ~~that a mental disorder or~~
13 ~~developmental or physical disability rendered the alleged victim~~
14 ~~incapable of giving legal consent.~~ *the facts specified in*
15 *subparagraph (A) or (B). For purposes of this paragraph, a victim*
16 *is incapable of giving legal consent if he or she:*

17 *(A) Has a mental disorder or physical disability, the mental*
18 *disorder or physical disability rendered the alleged victim*
19 *incapable of giving legal consent, and these facts are known or*
20 *reasonably should be known to the person committing the act.*

21 *(B) Has a developmental disability and either of the following*
22 *applies:*

23 *(i) The person lacks the legal mental capacity to give consent*
24 *when compared to a reasonable person who does not have a*
25 *developmental disability and this fact is known or reasonably*
26 *should be known to the person committing the act. For purposes*
27 *of this clause, a court shall determine whether a person lacks the*
28 *legal capacity to give consent pursuant to Part 17 (commencing*
29 *with Section 810) of Division 2 of the Probate Code.*

30 *(ii) The defendant is either of the following:*

31 *(I) A caretaker, as defined in Section 288.*

32 *(II) A care provider.*

33 (2) Any person who, while voluntarily acting in concert with
34 another person, either personally or aiding and abetting that other
35 person, commits an act of oral copulation upon a victim who is
36 under 14 years of age, when the act is accomplished against the
37 victim's will by means of force or fear of immediate and unlawful
38 bodily injury on the victim or another person, shall be punished
39 by imprisonment in the state prison for 10, 12, or 14 years.

1 (3) Any person who, while voluntarily acting in concert with
2 another person, either personally or aiding and abetting that other
3 person, commits an act of oral copulation upon a victim who is a
4 minor 14 years of age or older, when the act is accomplished
5 against the victim's will by means of force or fear of immediate
6 and unlawful bodily injury on the victim or another person, shall
7 be punished by imprisonment in the state prison for 8, 10, or 12
8 years.

9 (4) This paragraph does not preclude prosecution under Section
10 269, Section 288.7, or any other provision of law.

11 (e) Any person who participates in an act of oral copulation
12 while confined in any state prison, as defined in Section 4504 or
13 in any local detention facility as defined in Section 6031.4, shall
14 be punished by imprisonment in the state prison, or in a county
15 jail for a period of not more than one year.

16 (f) Any person who commits an act of oral copulation, and the
17 victim is at the time unconscious of the nature of the act and this
18 is known to the person committing the act, shall be punished by
19 imprisonment in the state prison for a period of three, six, or eight
20 years. As used in this subdivision, "unconscious of the nature of
21 the act" means incapable of resisting because the victim meets one
22 of the following conditions:

23 (1) Was unconscious or asleep.

24 (2) Was not aware, knowing, perceiving, or cognizant that the
25 act occurred.

26 (3) Was not aware, knowing, perceiving, or cognizant of the
27 essential characteristics of the act due to the perpetrator's fraud in
28 fact.

29 (4) Was not aware, knowing, perceiving, or cognizant of the
30 essential characteristics of the act due to the perpetrator's fraudulent
31 representation that the oral copulation served a professional purpose
32 when it served no professional purpose.

33 (g) Except as provided in subdivision (h), *if any person who*
34 *commits an act of oral copulation, and the victim is at the time*
35 *incapable, because of a mental disorder or developmental or*
36 *physical disability, incapable of giving legal consent, and this is*
37 *known or reasonably should be known to the person committing*
38 *the act consent as described in paragraph (1) or (2), the person*
39 *who commits the act shall be punished by imprisonment in the*
40 *state prison, for three, six, or eight years. Notwithstanding the*

1 existence of a conservatorship pursuant to the provisions of the
2 Lanterman-Petris-Short Act (Part 1 (commencing with Section
3 5000) of Division 5 of the Welfare and Institutions Code), the
4 prosecuting attorney shall prove, as an element of the crime, ~~that~~
5 ~~a mental disorder or developmental or physical disability rendered~~
6 ~~the alleged victim incapable of giving consent.~~ *the facts specified*
7 *in paragraph (1) or (2). For purposes of this subdivision, a victim*
8 *is incapable of giving legal consent if he or she:*

9 (1) *Is incapable of giving legal consent because of a mental*
10 *disorder or physical disability and this fact is known or reasonably*
11 *should be known to the person committing the act.*

12 (2) *Has a developmental disability and either of the following*
13 *applies:*

14 (A) *The person lacks the legal mental capacity to give consent*
15 *when compared to a reasonable person who does not have a*
16 *developmental disability and this fact is known or reasonably*
17 *should be known to the person committing the act. For purposes*
18 *of this paragraph, a court shall determine whether a person lacks*
19 *the legal capacity to give consent pursuant to Part 17 (commencing*
20 *with Section 810) of Division 2 of the Probate Code.*

21 (B) *The defendant is either of the following:*

22 (i) *A caretaker.*

23 (ii) *A care provider.*

24 (h) Any person who commits an act of oral copulation, and the
25 victim is at the time incapable, because of a mental disorder or
26 developmental or physical disability, of giving legal consent, and
27 this is known or reasonably should be known to the person
28 committing the act, and both the defendant and the victim are at
29 the time confined in a state hospital for the care and treatment of
30 the mentally disordered or in any other public or private facility
31 for the care and treatment of the mentally disordered approved by
32 a county mental health director, shall be punished by imprisonment
33 in the state prison, or in a county jail for a period of not more than
34 one year. Notwithstanding the existence of a conservatorship
35 pursuant to the provisions of the Lanterman-Petris-Short Act (Part
36 1 (commencing with Section 5000) of Division 5 of the Welfare
37 and Institutions Code), the prosecuting attorney shall prove, as an
38 element of the crime, that a mental disorder or developmental or
39 physical disability rendered the alleged victim incapable of giving
40 legal consent.

1 (i) Any person who commits an act of oral copulation, where
2 the victim is prevented from resisting by any intoxicating or
3 anesthetic substance, or any controlled substance, and this condition
4 was known, or reasonably should have been known by the accused,
5 shall be punished by imprisonment in the state prison for a period
6 of three, six, or eight years.

7 (j) Any person who commits an act of oral copulation, where
8 the victim submits under the belief that the person committing the
9 act is the victim's spouse, and this belief is induced by any artifice,
10 pretense, or concealment practiced by the accused, with intent to
11 induce the belief, shall be punished by imprisonment in the state
12 prison for a period of three, six, or eight years.

13 (k) Any person who commits an act of oral copulation, where
14 the act is accomplished against the victim's will by threatening to
15 use the authority of a public official to incarcerate, arrest, or deport
16 the victim or another, and the victim has a reasonable belief that
17 the perpetrator is a public official, shall be punished by
18 imprisonment in the state prison for a period of three, six, or eight
19 years.

20 ~~As used in this subdivision, "public official" means a person~~
21 ~~employed by a governmental agency who has the authority, as part~~
22 ~~of that position, to incarcerate, arrest, or deport another. The~~
23 ~~perpetrator does not actually have to be a public official.~~

24 ~~(l) As used in subdivisions (c) and (d), "threatening to retaliate"~~
25 ~~means a threat to kidnap or falsely imprison, or to inflict extreme~~
26 ~~pain, serious bodily injury, or death.~~

27 (m)

28 (l) In addition to any punishment imposed under this section,
29 the judge may assess a fine not to exceed seventy dollars (\$70)
30 against any person who violates this section, with the proceeds of
31 this fine to be used in accordance with Section 1463.23. The court
32 shall, however, take into consideration the defendant's ability to
33 pay, and no defendant shall be denied probation because of his or
34 her inability to pay the fine permitted under this subdivision.

35 (m) *As used in this section, the following definitions apply:*

36 (l) *A "care provider" means a person who provides assistance*
37 *with the activities of daily living, including any person who directly*
38 *or indirectly owns, administers, or operates a developmental*
39 *center, a community care facility, as defined in Sections 1502 and*
40 *1504 of the Health and Safety Code, or a health facility, as defined*

1 *in Section 1250 of the Health and Safety Code, and all agents,*
2 *employees, and contractors of the care provider who are*
3 *responsible for providing care to clients.*

4 (2) *A “caretaker” has the same meaning as set forth in Section*
5 *288.*

6 (3) *“Developmental disability” has the same meaning as found*
7 *in subdivision (h) of Section 1385 of the Evidence Code.*

8 (4) *As used in subdivision (k), “public official” means a person*
9 *employed by a governmental agency who has the authority, as*
10 *part of that position, to incarcerate, arrest, or deport another. The*
11 *perpetrator does not actually have to be a public official.*

12 (5) *As used in subdivisions (c) and (d), “threatening to retaliate”*
13 *means a threat to kidnap or falsely imprison, or to inflict extreme*
14 *pain, serious bodily injury, or death.*

15 *SEC. 7. Section 289 of the Penal Code is amended to read:*

16 289. (a) (1) (A) *Any person who commits an act of sexual*
17 *penetration when the act is accomplished against the victim’s will*
18 *by means of force, violence, duress, menace, or fear of immediate*
19 *and unlawful bodily injury on the victim or another person shall*
20 *be punished by imprisonment in the state prison for three, six, or*
21 *eight years.*

22 (B) *Any person who commits an act of sexual penetration upon*
23 *a child who is under 14 years of age, when the act is accomplished*
24 *against the victim’s will by means of force, violence, duress,*
25 *menace, or fear of immediate and unlawful bodily injury on the*
26 *victim or another person, shall be punished by imprisonment in*
27 *the state prison for 8, 10, or 12 years.*

28 (C) *Any person who commits an act of sexual penetration upon*
29 *a minor who is 14 years of age or older, when the act is*
30 *accomplished against the victim’s will by means of force, violence,*
31 *duress, menace, or fear of immediate and unlawful bodily injury*
32 *on the victim or another person, shall be punished by imprisonment*
33 *in the state prison for 6, 8, or 10 years.*

34 (D) *This paragraph does not preclude prosecution under Section*
35 *269, Section 288.7, or any other provision of law.*

36 (2) *Any person who commits an act of sexual penetration when*
37 *the act is accomplished against the victim’s will by threatening to*
38 *retaliate in the future against the victim or any other person, and*
39 *there is a reasonable possibility that the perpetrator will execute*

1 the threat, shall be punished by imprisonment in the state prison
2 for three, six, or eight years.

3 (b) Except as provided in subdivision (c), ~~any if a person who~~
4 commits an act of sexual penetration, and the victim is at the time
5 ~~incapable, because of a mental disorder or developmental or~~
6 ~~physical disability, of~~ *incapable of giving legal consent, and this*
7 *is known or reasonably should be known to the person committing*
8 *the act or causing the act to be committed, the victim is a person*
9 *described in paragraph (1) or (2), the person committing the act*
10 *shall be punished by imprisonment in the state prison for three,*
11 *six, or eight years. Notwithstanding the appointment of a*
12 *conservator with respect to the victim pursuant to the provisions*
13 *of the Lanterman-Petris-Short Act (Part 1 (commencing with*
14 *Section 5000) of Division 5 of the Welfare and Institutions Code),*
15 *the prosecuting attorney shall prove, as an element of the*
16 *crime, that a mental disorder or developmental or physical disability*
17 *rendered the alleged victim incapable of giving legal consent.*
18 *crime the facts described in paragraph (1) or (2):*

19 (1) *The victim is incapable of giving legal consent because of*
20 *a mental disorder or physical disability and this fact is known or*
21 *reasonably should be known to the person committing the act.*

22 (2) *The victim has a developmental disability and either of the*
23 *following applies:*

24 (A) *The victim lacks the legal mental capacity to give consent*
25 *when compared to a reasonable person who does not have a*
26 *developmental disability and this fact is known or reasonably*
27 *should be known to the person committing the act. For purposes*
28 *of this paragraph, a court shall determine whether a person lacks*
29 *the legal capacity to give consent pursuant to Part 17 (commencing*
30 *with Section 810) of Division 2 of the Probate Code.*

31 (B) *The person defendant is either of the following:*

32 (i) *A caretaker as defined in Section 288.*

33 (ii) *A care provider.*

34 (c) Any person who commits an act of sexual penetration, and
35 the victim is at the time incapable, because of a mental disorder
36 or developmental or physical disability, of giving legal consent,
37 and this is known or reasonably should be known to the person
38 committing the act or causing the act to be committed and both
39 the defendant and the victim are at the time confined in a state
40 hospital for the care and treatment of the mentally disordered or

1 in any other public or private facility for the care and treatment of
2 the mentally disordered approved by a county mental health
3 director, shall be punished by imprisonment in the state prison, or
4 in a county jail for a period of not more than one year.
5 Notwithstanding the existence of a conservatorship pursuant to
6 the provisions of the Lanterman-Petris-Short Act (Part 1
7 (commencing with Section 5000) of Division 5 of the Welfare and
8 Institutions Code), the prosecuting attorney shall prove, as an
9 element of the crime, that a mental disorder or developmental or
10 physical disability rendered the alleged victim incapable of giving
11 legal consent.

12 (d) Any person who commits an act of sexual penetration, and
13 the victim is at the time unconscious of the nature of the act and
14 this is known to the person committing the act or causing the act
15 to be committed, shall be punished by imprisonment in the state
16 prison for three, six, or eight years. As used in this subdivision,
17 “unconscious of the nature of the act” means incapable of resisting
18 because the victim meets one of the following conditions:

19 (1) Was unconscious or asleep.

20 (2) Was not aware, knowing, perceiving, or cognizant that the
21 act occurred.

22 (3) Was not aware, knowing, perceiving, or cognizant of the
23 essential characteristics of the act due to the perpetrator’s fraud in
24 fact.

25 (4) Was not aware, knowing, perceiving, or cognizant of the
26 essential characteristics of the act due to the perpetrator’s fraudulent
27 representation that the sexual penetration served a professional
28 purpose when it served no professional purpose.

29 (e) Any person who commits an act of sexual penetration when
30 the victim is prevented from resisting by any intoxicating or
31 anesthetic substance, or any controlled substance, and this condition
32 was known, or reasonably should have been known by the accused,
33 shall be punished by imprisonment in the state prison for a period
34 of three, six, or eight years.

35 (f) Any person who commits an act of sexual penetration when
36 the victim submits under the belief that the person committing the
37 act or causing the act to be committed is the victim’s spouse, and
38 this belief is induced by any artifice, pretense, or concealment
39 practiced by the accused, with intent to induce the belief, shall be

1 punished by imprisonment in the state prison for a period of three,
2 six, or eight years.

3 (g) Any person who commits an act of sexual penetration when
4 the act is accomplished against the victim's will by threatening to
5 use the authority of a public official to incarcerate, arrest, or deport
6 the victim or another, and the victim has a reasonable belief that
7 the perpetrator is a public official, shall be punished by
8 imprisonment in the state prison for a period of three, six, or eight
9 years.

10 As used in this subdivision, "public official" means a person
11 employed by a governmental agency who has the authority, as part
12 of that position, to incarcerate, arrest, or deport another. The
13 perpetrator does not actually have to be a public official.

14 (h) Except as provided in Section 288, any person who
15 participates in an act of sexual penetration with another person
16 who is under 18 years of age shall be punished by imprisonment
17 in the state prison or in the county jail for a period of not more
18 than one year.

19 (i) Except as provided in Section 288, any person over the age
20 of 21 years who participates in an act of sexual penetration with
21 another person who is under 16 years of age shall be guilty of a
22 felony.

23 (j) Any person who participates in an act of sexual penetration
24 with another person who is under 14 years of age and who is more
25 than 10 years younger than he or she shall be punished by
26 imprisonment in the state prison for three, six, or eight years.

27 (k) As used in this section:

28 (1) *A "care provider" means a person who provides assistance*
29 *with the activities of daily living, including any person who directly*
30 *or indirectly owns, administers, or operates a developmental*
31 *center, a community care facility, as defined in Sections 1502 and*
32 *1504 of the Health and Safety Code, or a health facility, as defined*
33 *in Section 1250 of the Health and Safety Code, and all agents,*
34 *employees, and contractors of the care provider who are*
35 *responsible for providing care to clients.*

36 (2) *"Developmental disability" has the same meaning as found*
37 *in subdivision (h) of Section 1385 of the Evidence Code.*

38 (1)

39 (3) "Sexual penetration" is the act of causing the penetration,
40 however slight, of the genital or anal opening of any person or

1 causing another person to so penetrate the defendant's or another
 2 person's genital or anal opening for the purpose of sexual arousal,
 3 gratification, or abuse by any foreign object, substance, instrument,
 4 or device, or by any unknown object.

5 ~~(2)~~

6 (4) "Foreign object, substance, instrument, or device" shall
 7 include any part of the body, except a sexual organ.

8 ~~(3)~~

9 (5) "Unknown object" shall include any foreign object,
 10 substance, instrument, or device, or any part of the body, including
 11 a penis, when it is not known whether penetration was by a penis
 12 or by a foreign object, substance, instrument, or device, or by any
 13 other part of the body.

14 (l) As used in subdivision (a), "threatening to retaliate" means
 15 a threat to kidnap or falsely imprison, or inflict extreme pain,
 16 serious bodily injury or death.

17 (m) As used in this section, "victim" includes any person who
 18 the defendant causes to penetrate the genital or anal opening of
 19 the defendant or another person or whose genital or anal opening
 20 is caused to be penetrated by the defendant or another person and
 21 who otherwise qualifies as a victim under the requirements of this
 22 section.

23 *SEC. 8. Section 1048.1 of the Penal Code is amended to read:*

24 1048.1. (a) In scheduling a trial date at an arraignment in
 25 superior court involving ~~murder~~, *any of the following offenses,*
 26 *reasonable efforts shall be made to avoid setting that trial, when*
 27 *that case is assigned to a particular prosecuting attorney, on the*
 28 *same day that another case is set for trial involving the same*
 29 *prosecuting attorney:*

30 (1) *Murder*, as defined in subdivision (a) of Section 187, ~~an~~
 31 ~~alleged~~.

32 (2) *An alleged* sexual assault offense, as described in
 33 subdivisions (a) and (b) of Section 11165.1, ~~or an alleged~~.

34 (3) *Alleged* child abuse offense, as described in Section 11165.6;
 35 ~~or a~~.

36 (4) *A case being handled in the Career Criminal Prosecution*
 37 *Program pursuant to Sections 999b through to 999h, reasonable*
 38 *efforts shall be made to avoid setting that trial, when that case is*
 39 *assigned to a particular prosecuting attorney, on the same day that*

1 another case is set for trial involving the same prosecuting attorney
2 inclusive.

3 (5) *A case involving an allegation of a crime committed against*
4 *a person with a developmental disability.*

5 (b) *For purposes of this section, a “developmental disability”*
6 *has the same meaning as found in subdivision (h) of Section 1385*
7 *of the Evidence Code.*

8 *SEC. 9. Section 1050 of the Penal Code is amended to read:*

9 1050. (a) The welfare of the people of the State of California
10 requires that all proceedings in criminal cases shall be set for trial
11 and heard and determined at the earliest possible time. To this end,
12 the Legislature finds that the criminal courts are becoming
13 increasingly congested with resulting adverse consequences to the
14 welfare of the people and the defendant. Excessive continuances
15 contribute substantially to this congestion and cause substantial
16 hardship to victims and other witnesses. Continuances also lead
17 to longer periods of presentence confinement for those defendants
18 in custody and the concomitant overcrowding and increased
19 expenses of local jails. It is therefore recognized that the people,
20 the defendant, and the victims and other witnesses have the right
21 to an expeditious disposition, and to that end it shall be the duty
22 of all courts and judicial officers and of all counsel, both for the
23 prosecution and the defense, to expedite these proceedings to the
24 greatest degree that is consistent with the ends of justice. In
25 accordance with this policy, criminal cases shall be given
26 precedence over, and set for trial and heard without regard to the
27 pendency of, any civil matters or proceedings. In further accordance
28 with this policy, death penalty cases in which both the prosecution
29 and the defense have informed the court that they are prepared to
30 proceed to trial shall be given precedence over, and set for trial
31 and heard without regard to the pendency of, other criminal cases
32 and any civil matters or proceedings, unless the court finds in the
33 interest of justice that it is not appropriate.

34 (b) To continue any hearing in a criminal proceeding, including
35 the trial, (1) a written notice shall be filed and served on all parties
36 to the proceeding at least two court days before the hearing sought
37 to be continued, together with affidavits or declarations detailing
38 specific facts showing that a continuance is necessary and (2)
39 within two court days of learning that he or she has a conflict in
40 the scheduling of any court hearing, including a trial, an attorney

1 shall notify the calendar clerk of each court involved, in writing,
2 indicating which hearing was set first. A party shall not be deemed
3 to have been served within the meaning of this section until that
4 party actually has received a copy of the documents to be served,
5 unless the party, after receiving actual notice of the request for
6 continuance, waives the right to have the documents served in a
7 timely manner. Regardless of the proponent of the motion, the
8 prosecuting attorney shall notify the people's witnesses and the
9 defense attorney shall notify the defense's witnesses of the notice
10 of motion, the date of the hearing, and the witnesses' right to be
11 heard by the court.

12 (c) Notwithstanding subdivision (b), a party may make a motion
13 for a continuance without complying with the requirements of that
14 subdivision. However, unless the moving party shows good cause
15 for the failure to comply with those requirements, the court may
16 impose sanctions as provided in Section 1050.5.

17 (d) When a party makes a motion for a continuance without
18 complying with the requirements of subdivision (b), the court shall
19 hold a hearing on whether there is good cause for the failure to
20 comply with those requirements. At the conclusion of the hearing,
21 the court shall make a finding whether good cause has been shown
22 and, if it finds that there is good cause, shall state on the record
23 the facts proved that justify its finding. A statement of the finding
24 and a statement of facts proved shall be entered in the minutes. If
25 the moving party is unable to show good cause for the failure to
26 give notice, the motion for continuance shall not be granted.

27 (e) Continuances shall be granted only upon a showing of good
28 cause. Neither the convenience of the parties nor a stipulation of
29 the parties is in and of itself good cause.

30 (f) At the conclusion of the motion for continuance, the court
31 shall make a finding whether good cause has been shown and, if
32 it finds that there is good cause, shall state on the record the facts
33 proved that justify its finding. A statement of facts proved shall
34 be entered in the minutes.

35 (g) (1) When deciding whether or not good cause for a
36 continuance has been shown, the court shall consider the general
37 convenience and prior commitments of all witnesses, including
38 peace officers. Both the general convenience and prior
39 commitments of each witness also shall be considered in selecting
40 a continuance date if the motion is granted. The facts as to

1 inconvenience or prior commitments may be offered by the witness
2 or by a party to the case.

3 (2) For purposes of this section, “good cause” includes, but is
4 not limited to, those cases ~~involving murder, as where any of the~~
5 *following has occurred and the prosecuting attorney assigned to*
6 *the case has another trial, preliminary hearing, or motion to*
7 *suppress in progress in that court or another court:*

8 (A) *Murder, as defined in subdivision (a) of Section 187;*
9 *allegations.*

10 (B) *Allegations that involve stalking, as defined in Section 646.9;*
11 *a violation.*

12 (C) *A violation of one or more of the sections specified in*
13 *subdivision (a) of Section 11165.1 or Section ~~11165.6, or domestic~~*
14 *11165.6.*

15 (D) *Domestic violence as defined in Section 13700, ~~or a~~.*

16 (E) *A case being handled in the Career Criminal Prosecution*
17 *Program pursuant to Sections ~~999b through to 999h, or a~~ inclusive.*

18 (F) *A hate crime, as defined in Title 11.6 (commencing with*
19 *Section 422.6) of Part 1, ~~has occurred and the prosecuting attorney~~*
20 *assigned to the case has another trial, preliminary hearing, or*
21 *motion to suppress in progress in that court or another court. A*
22 *continuance.*

23 (G) *A case involving a crime against a person with a*
24 *developmental disability.*

25 (H) *A continuance under this ~~paragraph~~ subdivision shall be*
26 *limited to a maximum of 10 additional court days.*

27 (3) Only one continuance per case may be granted to the people
28 under this subdivision for cases involving stalking, hate crimes,
29 or cases handled under the Career Criminal Prosecution Program.
30 Any continuance granted to the people in a case involving stalking
31 or handled under the Career Criminal Prosecution Program shall
32 be for the shortest time possible, not to exceed 10 court days.

33 (h) Upon a showing that the attorney of record at the time of
34 the defendant’s first appearance in the superior court on an
35 indictment or information is a Member of the Legislature of this
36 state and that the Legislature is in session or that a legislative
37 interim committee of which the attorney is a duly appointed
38 member is meeting or is to meet within the next seven days, the
39 defendant shall be entitled to a reasonable continuance not to
40 exceed 30 days.

1 (i) A continuance shall be granted only for that period of time
2 shown to be necessary by the evidence considered at the hearing
3 on the motion. Whenever any continuance is granted, the court
4 shall state on the record the facts proved that justify the length of
5 the continuance, and those facts shall be entered in the minutes.

6 (j) Whenever it shall appear that any court may be required,
7 because of the condition of its calendar, to dismiss an action
8 pursuant to Section 1382, the court must immediately notify the
9 Chair of the Judicial Council.

10 (k) This section shall not apply when the preliminary
11 examination is set on a date less than 10 court days from the date
12 of the defendant's arraignment on the complaint, and the
13 prosecution or the defendant moves to continue the preliminary
14 examination to a date not more than 10 court days from the date
15 of the defendant's arraignment on the complaint.

16 (l) This section is directory only and does not mandate dismissal
17 of an action by its terms.

18 (m) *For purposes of this section, a "developmental disability"*
19 *has the same meaning as found in subdivision (h) of Section 1385*
20 *of the Evidence Code.*

21 *SEC. 10. Section 13519.06 is added to the Penal Code, to read:*

22 *13519.06. (a) The Commission on Peace Officer Standards*
23 *and Training shall develop, and periodically update as necessary,*
24 *a model general order or other formal policy for dealing with*
25 *crime victims with developmental disabilities.*

26 *(b) The purpose of the model policy shall be to ensure equal*
27 *protection of the law for people with developmental disabilities*
28 *by ensuring highly professional law enforcement that takes full*
29 *account of the unique needs of victims with developmental*
30 *disabilities. To that end, the model policy shall include all of the*
31 *following:*

32 *(1) Information on the wide prevalence of crimes against people*
33 *with developmental disabilities.*

34 *(2) A statement from the agency's law enforcement executive*
35 *emphasizing the agency's high-priority commitment to providing*
36 *equal protection to meeting the special needs of victims with*
37 *developmental disabilities.*

38 *(3) The fact that victims and witnesses with developmental*
39 *disabilities can be highly credible witnesses when interviewed*

1 *appropriately and when given instructions for appropriate*
2 *interview techniques.*

3 (4) *A description of the training materials that are available,*
4 *including, but not limited to, further interview training*
5 *opportunities and the telecourse developed by the commission*
6 *pursuant to Section 13515.*

7 (5) *The definitions of a “dependent adult,” as set forth in Section*
8 *368, and “dependent person,” as set forth in Section 288, noting*
9 *that they apply to people with developmental disabilities regardless*
10 *of the fact that some may live independently.*

11 (6) *The importance of enforcing provisions requiring certain*
12 *persons to report elder and dependent adult abuse and child abuse*
13 *and that prohibit interference with that reporting.*

14 (7) *A list of resources available to law enforcement agencies,*
15 *including any local resources.*

16 (8) *A general requirement that suspects in these cases be*
17 *arrested whenever there is probable cause and absent exigent*
18 *circumstances, including cases of violations of emergency*
19 *protective orders, temporary restraining orders, or similar court*
20 *orders, and cases of mandated reporters who fail to make a report*
21 *as required by law.*

22 (9) *Assisting victims in pursuing criminal options, including*
23 *connecting the victim with the appropriate social service agencies*
24 *that can provide them additional support.*

25 (10) *Detailed instructions regarding the procedures for*
26 *obtaining an emergency protective order and specifying that the*
27 *order may be sought at any time, and including a space for the*
28 *telephone number for the court clerk in the appropriate court*
29 *jurisdiction.*

30 (11) *Procedures to handle each report, including (A) prompt*
31 *response to all reported serious or violent crimes in progress and*
32 *cases in which serious or violent crimes may be imminent, or (B)*
33 *followup of each report to determine whether there is probable*
34 *cause for arrest or other law enforcement intervention.*

35 (12) *Procedures for seeking assistance from the Bureau of*
36 *Medi-Cal Fraud and Elder Abuse.*

37 (13) *Procedures for cooperating with county adult protective*
38 *services and child protective services and local long-term care*
39 *ombudsman programs, and stating that law enforcement agencies*

1 shall retain responsibility for all criminal investigations, pursuant
2 to subdivision (b) of Section 368.5.

3 (14) The law enforcement agency's reporting and
4 cross-reporting requirements, including those pursuant to
5 paragraph (1) of subdivision (a) of Section 422.55 and Section
6 13023 of this code, and subdivisions (b), (c), (e), and (f) of Section
7 15640 of the Welfare and Institutions Code.

8 (15) A requirement that the law enforcement agency report to
9 the appropriate professional licensing, credentialing, or regulatory
10 agency where there is reasonable suspicion that a professional
11 person subject the regulatory agency's jurisdiction committed a
12 crime against a person with a developmental disability or failed
13 to report, as required, regardless of whether the law enforcement
14 agency or a prosecutor has pursued or intends to pursue criminal
15 prosecution.

16 (16) A procedure to allow designated supervisors to develop
17 alternative provisions of the policy to apply in unusual individual
18 cases, including a requirement for written reports to the chief,
19 sheriff, or director of the law enforcement agency each time this
20 occurs.

21 (c) In developing the model policy, the commission shall consult
22 the California Police Chiefs Association, the California State
23 Sheriffs' Association, the California District Attorneys Association,
24 the Bureau of Medi-Cal Fraud and Elder Abuse, the California
25 Long-Term Care Ombudsman Association, the County Welfare
26 Directors Association, and subject-matter experts from the
27 developmental disability field including the State Department of
28 Developmental Services, regional centers, and advocacy
29 organizations, including those the commission consulted in
30 developing the telecourse pursuant to Section 13515.

31 (d) Within one year of the date when the commission adopts the
32 model policy, each law enforcement agency in this state shall adopt
33 and implement the model policy, including any changes consistent
34 with subdivision (b) that the agency deems appropriate.

35 SEC. 11. No reimbursement is required by this act pursuant
36 to Section 6 of Article XIII B of the California Constitution for
37 certain costs that may be incurred by a local agency or school
38 district because, in that regard, this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

1 *the Government Code, or changes the definition of a crime within*
2 *the meaning of Section 6 of Article XIII B of the California*
3 *Constitution.*

4 *However, if the Commission on State Mandates determines that*
5 *this act contains other costs mandated by the state, reimbursement*
6 *to local agencies and school districts for those costs shall be made*
7 *pursuant to Part 7 (commencing with Section 17500) of Division*
8 *4 of Title 2 of the Government Code.*

9 SECTION 1. ~~(a) The Legislature hereby finds and declares~~
10 ~~all of the following:~~

11 ~~(1) Research has found that despite a high number of sexual~~
12 ~~assaults committed against people with intellectual disabilities,~~
13 ~~there are very few criminal convictions in these cases.~~

14 ~~(2) Research indicates that no action was taken in almost half~~
15 ~~of these cases and that prosecution or disciplinary action took place~~
16 ~~in only 18.5 percent of the cases.~~

17 ~~(3) It has been reported that 65 percent of these cases that were~~
18 ~~reported to the police were not prosecuted because the police~~
19 ~~declined to press charges, usually citing the victim as an~~
20 ~~incompetent witness.~~

21 ~~(4) It is understood that among the factors that contribute to the~~
22 ~~difficulty in obtaining criminal convictions in these cases is a lack~~
23 ~~of clear protocols and direction for law enforcement, and a lack~~
24 ~~of necessary or additional protections for people with intellectual~~
25 ~~and developmental disabilities.~~

26 ~~(b) It is the intent of the Legislature to enact legislation that~~
27 ~~would help to ensure that there is justice for individuals with~~
28 ~~intellectual and developmental disabilities who are victims of~~
29 ~~sexual assault.~~

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AMENDED IN SENATE SEPTEMBER 11, 2013

AMENDED IN SENATE APRIL 9, 2013

SENATE BILL

No. 579

**Introduced by Senator Berryhill
(Coauthor: Senator Emmerson)**

February 22, 2013

An act to add Section 4751 to the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

SB 579, as amended, Berryhill. Developmental services: *Commission on 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.

The California Community Care Facilities Act provides for the licensure and regulation of community care facilities, including residential facilities, adult day programs, small family homes, and group homes, by the State Department of Social Services.

Existing law requires the State Department of Public Health to license and regulate various types of health facilities, and requires the State Department of Public Health and the State Department of Developmental Services to jointly develop and implement licensing regulations appropriate for intermediate care facilities/developmentally disabled-nursing and intermediate care facility/developmentally disabled-continuous nursing.

This bill would establish the Commission on the Oversight Efficiency and Quality Enhancement Model to investigate methods of implementing a unified oversight and quality enhancement process that ensures the welfare, community participation, health, and safety of individuals with developmental disabilities who are served in programs licensed by the Community Care Licensing Division of the State Department of Social Services. The bill would require the process to also enhance accountability and quality review processes for the services directly provided by regional centers. The bill would state the intent of the Legislature that the State Department of Developmental Services identify regional center catchment areas for voluntary participation in a pilot project consistent with the recommendations of the commission. The bill would require, by February 14, 2015, the State Department of Developmental Services, the State Council on Developmental Disabilities, and the Association of Regional Center Agencies to select representatives to serve on the commission, as prescribed.

The bill would require the commission to develop a uniform data collection system that provides reliable, valid, and actionable data from multiple stakeholder perspectives to be consistently deployed at regional centers. This bill would require the commission to review current regulatory standards to better focus on reliable data to measure outcomes for individuals served and the impact of services on the lives of individuals and their families, in accordance with prescribed characteristics. The bill would require the commission, by March 30, 2015, to determine the best methods for collecting input on relevant regulatory standards and to request public input on those standards, as specified. The bill would require the commission to review and compile, by September 30, 2015, the input received and to submit, by December 30, 2015, its recommendations to the State Department of Developmental Services.

This bill would require the commission to create a process to review relevant regulations governing the Licensing and Certification Division of the State Department of Public Health and to report on that process to the Legislature by December 31, 2015.

This bill would require regional centers that seek consideration for participation in any program to pilot new quality enhancement systems to collect baseline data, as determined by the department, in programs and services for people with developmental disabilities that are licensed by the Community Care Licensing Division of the State Department of Social Services.

~~This bill would, commencing January 1, 2014, and to the extent that funds are made available, establish a 4 ½-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.~~

~~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 4571 is added to the Welfare and
- 2 Institutions Code, to read:
- 3 4571. (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) There is evidence that the current system, in which three
- 9 state-funded entities, the State Department of Developmental
- 10 Services, the regional centers, and the Community Care Licensing
- 11 Division of the State Department of Social Services, are charged
- 12 with monitoring and maintaining quality services and supports
- 13 for people with developmental disabilities, is duplicative and
- 14 confusing and fails to produce data essential for service
- 15 improvement.
- 16 (3) The efficiency and efficacy of the oversight and quality
- 17 review processes can be significantly enhanced by unifying the

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

5 *(b) The Commission on the Oversight Efficiency and Quality*
6 *Enhancement Model shall be established to investigate methods*
7 *of implementing a unified oversight and quality enhancement*
8 *process. This process shall ensure the welfare, community*
9 *participation, health, and safety of all those with developmental*
10 *disabilities who are served in programs currently licensed by the*
11 *Community Care Licensing Division of the State Department of*
12 *Social Services. This process shall also enhance accountability*
13 *and quality review processes for the services directly provided by*
14 *regional centers. At the conclusion of the investigation, it is the*
15 *intent of the Legislature that, based upon the information, analysis,*
16 *and recommendations of the commission, the State Department of*
17 *Developmental Services shall identify regional center catchment*
18 *areas for voluntary participation in a pilot project consistent with*
19 *the recommendations of the commission.*

20 *(c) (1) (A) On or before February 14, 2015, State Department*
21 *of Developmental Services, the State Council on Developmental*
22 *Disabilities, and the Association of Regional Center Agencies shall*
23 *each select three representatives to serve on the commission, for*
24 *a total of nine representatives.*

25 *(B) Each agency shall select each of the following types of*
26 *representatives to serve on the commission:*

27 *(i) One representative who is a service provider, or an employee*
28 *of a service provider.*

29 *(ii) One representative who is an individual served by a regional*
30 *center, or the family member of that individual.*

31 *(iii) One representative who is a professional with experience*
32 *in quality systems or reviews.*

33 *(C) The commission may select up to three additional public*
34 *members to serve on the commission to meet representational or*
35 *expertise needs.*

36 *(2) The commission shall examine existing regulations and*
37 *recommend changes to the State Department of Developmental*
38 *Services, as specified in subdivision (d).*

39 *(3) The commission shall develop a uniform data collection*
40 *system that provides reliable, valid, and actionable data from*

1 multiple stakeholder perspectives to be consistently deployed at
2 regional centers. The data system shall include information on
3 service provider and regional center performance, as well as
4 outcomes consistent with individual program plan goals. The data
5 system shall be flexible, and have the capacity to allow field-based
6 data entry and analysis and to document, measure, and analyze
7 the implementation of the model. To the extent possible, data
8 currently being collected by regional centers or the department
9 shall be utilized in the data system.

10 (4) The commission shall consider the experience and outcomes
11 from the Agnews Developmental Center, Bay Area Quality
12 Management System and from current quality reviews of unlicensed
13 Lanterman Developmental Disabilities Services Act support
14 models, including family home agencies and supported living, in
15 developing the structure, standards, and data collection
16 methodologies for the system.

17 (d) The commission shall review current standards in Titles 17
18 and 22 of the California Code of Regulations to better focus on
19 reliable data to measure outcomes for individuals served and the
20 impact of services on the lives of individuals and their families.
21 Recommendations for system design and regulatory change shall
22 reflect the following characteristics:

23 (1) Be lean, simple, efficient, and understood by the people
24 served and those who serve them.

25 (2) Avoid unnecessary redundancies of process, permissions,
26 oversight, and enforcement.

27 (3) Base objective reviews on quality standards that, in
28 accordance with Lanterman Developmental Disabilities Services
29 Act principles, address individual outcomes, including, but not
30 limited to, health, safety, independence, choice, empowerment,
31 inclusion, and participation in community life. Outcome measures
32 are to be consistent with performance measures for regional
33 centers.

34 (4) Base subjective reviews of the impact on individuals and
35 families on satisfaction data collected by an independent third
36 party that surveys a statistically significant sample of service
37 providers and individuals and families providing or receiving those
38 services.

1 (5) Shift the focus of quality efforts to a service enhancement
2 model that encourages and recognizes service provider and
3 regional center improvements.

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

9 (7) Report aggregate service and individual outcomes to
10 highlight excellence, innovation, and satisfaction in the services
11 provided and in the lives of individuals with developmental
12 disabilities.

13 (8) Enhance transparency, accountability, quality standards,
14 and measurement processes for the services directly provided by
15 regional centers consistent with regional center performance
16 contracts.

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

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

23 (e) On or before March 30, 2015, the commission shall
24 determine the best methods of collecting input on relevant sections
25 of Titles 17 and 22 of the California Code of Regulations.

26 (1) These methods shall include, but not be limited to, the
27 following:

28 (A) At least two public meetings, with one meeting held in
29 southern California and one meeting held in northern California.

30 (B) The electronic submission of comments.

31 (2) The commission shall request public input concerning the
32 revision, retention, or removal of relevant sections of Titles 17
33 and 22 of the California Code of Regulations.

34 (A) The commission shall solicit comment on issue areas
35 including, but not limited to, the following:

36 (i) Certification and vendorization processes.

37 (ii) Complaints.

38 (iii) Quality oversight and monitoring requirements.

39 (iv) Decertification and devendorization processes.

1 (B) *The commission shall take comment on the following*
2 *regulations:*

3 (i) *Articles 2 (commencing with Section 54302), 4 (commencing*
4 *with Section 54370), and 5 (commencing with Section 54830) of*
5 *Subchapter 2 of Chapter 3 of Division 2 of Title 17 of the*
6 *California Code of Regulations.*

7 (ii) *Sections 56003, 56005, and 56009 of Article 2 of Subchapter*
8 *4 of Chapter 3 of Title 17 of the California Code of Regulations.*

9 (iii) *Articles 3 (commencing with Section 56013), 5 (commencing*
10 *with Section 56022), 8 (commencing with Section 56046), 9*
11 *(commencing with Section 56053), and 11 (commencing with*
12 *Section 56061) of Subchapter 4 of Chapter 3 of Division 2 of Title*
13 *17 of the California Code of Regulations.*

14 (iv) *Sections 56712, 56732, and 56742 of Subchapter 5 of*
15 *Chapter 3 of Division 2 of Title 17 of the Code of Regulations.*

16 (v) *Chapters 3 (commencing with Section 82000), 4*
17 *(commencing with Section 83000), 5 (commencing with Section*
18 *84000), and 6 (commencing with Section 85000) of Division 6 of*
19 *Title 22 of the Code of Regulations.*

20 (f) *On or before September 30, 2015, the commission shall*
21 *review and compile the input received based on its relevance to*
22 *the criteria described in subdivision (d). On or before December*
23 *31, 2015, the commission shall submit to the State Department of*
24 *Developmental Services its recommended changes to Titles 17 and*
25 *22 of the California Code of Regulations. The commission shall*
26 *also recommend, based on input received, the most effective entity*
27 *or entities for enforcing the regulations.*

28 (g) *On or before March 30, 2015, the commission shall create*
29 *a process to review relevant regulations governing the Licensing*
30 *and Certification Division of the State Department of Public*
31 *Health, guided by the criteria described in subdivision (d). The*
32 *commission shall report on this process to the Legislature on or*
33 *before December 31, 2015.*

34 (h) *From January 1, 2015, to December 1, 2015, inclusive,*
35 *regional centers that seek consideration for participation in any*
36 *program to pilot new quality enhancement systems shall collect*
37 *baseline data, as determined by the commission, on existing service*
38 *quality and quality assurance processes in programs and services*
39 *for people with developmental disabilities that are licensed by the*

1 *Community Care Licensing Division of the State Department of*
2 *Social Services.*

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Senate, April 9, 2013. (JR11)**

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