

# **LEGISLATIVE AND PUBLIC POLICY COMMITTEE**

## **MEETING NOTICE/AGENDA**

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### **Meeting Site**

State Council Office  
1507 21<sup>st</sup> Street, Suite 210  
Sacramento, CA 95811  
(916) 322-8481

### **Teleconference Site**

Tri-Counties Regional Center  
1900 E. Los Angeles Avenue,  
Second Floor  
Simi Valley, CA

**May 19, 2011**

**10:00 a.m. – 4:00 p.m.**

*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](mailto:michael.brett@scdd.ca.gov) by 5:00 pm, May 18, 2011.*

*\*Denotes action item.*

Page

- |                                   |              |   |
|-----------------------------------|--------------|---|
| 1. CALL TO ORDER                  | R. Ceragioli |   |
| 2. ESTABLISHMENT OF QUORUM        | R. Ceragioli |   |
| 3. INTRODUCTIONS AND ANNOUNCEMENT | R. Ceragioli |   |
| 4. * APPROVAL OF 4/21/11 MINUTES  | R. Ceragioli | 3 |

## 5. PUBLIC COMMENTS

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

## 6. LEGISLATIVE ISSUES

### A. State Legislation

(i) * Assembly Bill 889	K. Alipourfard	6
(ii) * Senate Bill 368	M. Corral	43
(iii) * Senate Bill 411	K. Alipourfard	83
(iv) * Assembly Bill 40	M. Corral	103
(v) * Assembly Bill 443	K. Alipourfard	119
(vi) * Senate Bill 472	M. Corral	123
(vii) * Assembly Bill 1244	K. Alipourfard	131
(viii) * Senate Bill 177	M. Corral	176
(ix) Council Legislative Update	C. Arroyo	190

B. 2011-12 State Budget Update	C. Risley	192
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- (i) \* May Revision/DDS Best Practices Reductions

## 7. POLICY ISSUES 220

A. *Council Legislative Platform Brochure	C. Risley
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## 8. AREA BOARD LEGISLATIVE UPDATES R. Smith

## 9. INFORMATION ITEMS C. Arroyo

## 10. ADJOURNMENT R. Ceragioli

**DRAFT**  
**Legislative & Public Policy (LPPC) Committee Minutes**  
**April 21, 2011**

**Members Present**

Ray Ceragioli, Chairperson  
Jennifer Allen  
Dan Boomer  
Marilyn Barraza  
Lisa Cooley  
Connie Lapin  
David Mulvaney  
Margaret Shipp  
Leroy Shipp  
Rocio Smith

**Members Absent**

Tho Vinh Banh  
Denise Filz  
Bill Moore

**Others Present**

Karim Alipourfard  
Christofer Arroyo  
Carol Risley  
Melissa Corral

**1. CALL TO ORDER**

Ray Ceragioli, Chairperson, 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.

**4. APPROVAL OF 3/17/11 MINUTES**

It was moved, seconded (Mulvaney/Allen), and carried to approve the 3/17/11 Committee minutes with changes to indicate Dan Boomer was absent and correct a typographical error in Senate Bill 309.

**5. PUBLIC COMMENTS**

No comments were provided.

## 6. LEGISLATIVE ISSUES

The LPPC discussed and took action on the following legislative bills:

- Assembly Bill 1375 – it was moved, seconded (M. Shipp/L. Shipp) and carried to watch AB 1375 bill and work with the bill author to refine it.
- Senate Bill 764 – it was moved, seconded (Lapin/Barraza) and carried to watch SB 764 and work with the bill author to refine it.
- Senate Bill 161 – it was moved, seconded (Boomer/Mulvaney) and carried to support SB 161 with amendments designed to protect the students' health, safety, privacy and dignity during the allowed intervention.
- Assembly Bill 1205 – it was moved, seconded (Lapin/Barraza) and carried to oppose AB 1205 because of the lack of discussion about actual provision of direct services and to request the bill be dual referred to human services policy committee.
- Senate Bill 462 – it was moved, seconded (L. Shipp/Barraza) and carried to oppose SB 462.
- Assembly Bill 876 – it was moved, seconded (L. Shipp/Mulvaney) and carried to support AB 846.
- Assembly Bill 862 – it was moved, seconded (Barraza/Boomer) and carried to support AB 862 if amended back to the February 17, 2011 version.
- Assembly Bill 533 – it was moved, seconded (L. Shipp/Lapin) and carried to support AB 533I with amendments to include the programs funded by through the Department of Developmental Services.
- SB 176 and SB 889 – these bills are dead.

The legislative report was reviewed and several bills were spotlighted.

The status and actions on the state budget were reviewed. The Governor's plan to include an initiative in November to increase state revenue and the impact of an all "cuts" budget were discussed.

## **7. POLICY ISSUES**

A draft legislative platform was distributed and discussed. It was moved, seconded (Boomer/Lapin) and carried that staff finalize the brochure consistent with the discussion and present it to Executive Committee in June for approval.

## **8. EXECUTIVE COMMITTEE ON LPPC ITEMS**

- Assembly Bill (AB) 171 – support
- AB 181 – support if amended
- AB 39 – support
- Senate Bill (SB) 121 – watch
- AB 170 – oppose unless amended
- AB 154 – support with amendments
- Budget bills – supported all of the LPPC recommendations, with the exception of two issues:
  - opposed language to reduce or eliminate adult day programs
  - opposed service standards that result in the reduction of needed services

## **9. AREA BOARD LEGISLATIVE UPDATES**

No report.

## **10. INFORMATION ITEMS**

The next two LPPC meetings are scheduled on 5/19 and 6/16.

## **11. ADJOURNMENT**

The meeting was adjourned at 2:30 PM.



## LEGISLATIVE AGENDA ITEM DETAIL SHEET

**BILL NUMBER/ISSUE:** Assembly Bill 889: Domestic Work Employees

**SUMMARY:** Existing law regulates the wages, hours, and working conditions of any man, woman, and minor employed in any occupation, trade, or industry, whether compensation is measured by time, piece, or otherwise, except for individuals employed as outside salesmen and individuals participating in specified national service programs. Under existing law, the Industrial Welfare Commission within the Department of Industrial Relations is authorized to adopt rules, regulations, and orders to ensure that employers comply with those provisions of law.

This bill would regulate the wages, hours, and working conditions of domestic work employees, as defined. Specifically, this bill would, among other things, provide a private right of action for a domestic work employee when those regulations are violated by his or her employer; provide an overtime compensation rate for domestic work employees; and require paid vacation and paid sick days for domestic work employees. This bill would also expressly state that the provisions of Wage Order Number 15 of the Industrial Welfare Commission, with specified exceptions, apply to a domestic work employee, but would provide that these new domestic work provisions shall prevail over protections in that order or any other law that afford less protection to a domestic work employee.

**BACKGROUND:** Domestic workers" or "household workers" are generally comprised of housekeepers, nannies and caregivers of children and others who work in private households to care for the health, safety and well-being of those under their care. This bill defines "domestic work employee" as an individual who performs domestic work (including live-in domestic work employees and personal attendants). **The term does not include In-Home Supportive Services program employees, specified family members, or minor babysitters.**

Advocates contend that domestic workers often labor under harsh conditions, work long hours for low wages without benefits or job security, and face termination without notice or severance pay leaving many suddenly without income. In the worst cases domestic workers are verbally and physically abused or sexually assaulted, and stripped of their privacy and dignity.

**ANALYSIS/DISCUSSION:** One useful analysis includes the following overview of the treatment of domestic workers under California law:

"In California, 'all persons employed in household occupations, whether paid on a time, piece rate, commission, or other basis' are entitled to be paid the state minimum wage. Live-in domestic workers cannot be charged for food or housing without a voluntary, written agreement. Like its federal counterpart, California wage and hour laws exclude

personal attendants. However, personal attendants, whether live-in or not, are entitled to the California minimum wage if they spend more than twenty percent of their time doing other housework.

Non-live-in domestic workers are entitled to overtime pay under California law under the same conditions as under federal law; however, in California such workers are also entitled to rest periods. Ten minute rest periods and a thirty minute meal period are considered on-duty and counted as time worked, unless the employee is relieved of all duty during the meal period.

Live-in domestic workers are entitled to overtime only if they work more than nine hours in a workday or if they work on the sixth or seventh workday. These workers must be given at least 12 consecutive off-duty hours on any workday. Work during off duty time is compensable as overtime. Personal attendants are not entitled to meal breaks or rest breaks.

All domestic workers in California are entitled to be free from sexual harassment.

Many domestic workers are entitled to workers' compensation benefits if they are injured on the job. To qualify for domestic workers must work more than 52 hours during the 90 days prior to injury and must have earned \$100 or more during the same 90 days.

Though rights and protections are relatively broad in California, domestic workers still do not enjoy the full complement of employment protections provided to most of the state's workers. Domestic workers may suffer discrimination, since California's Fair Employment and Housing Act only prohibits employers with five or more employees from discrimination on the basis of race, sex, religion, national origin, pregnancy, age, disability, marital status, sexual orientation, gender identity, or on the basis of an English only policy. California occupational safety and health law excludes 'household domestic service.' Domestic workers who provide 'domestic service in a private home' are excluded from obtaining unemployment insurance benefits unless the worker was paid \$1000 or more in any calendar quarter in the calendar year or the preceding year. Undocumented immigrant workers are not eligible to collect unemployment insurance in California.

California employment and labor law provides most domestic workers with minimum wages and maximum hours, workers' compensation for injuries on the job, and protection from sexual harassment. However, domestic workers in California are left without many of the basic legal protections afforded to other workers in this state."

According to the author, in California there are around 200,000 domestic workers who serve as housekeepers, nannies, and caregivers in private homes. Domestic workers

are primarily immigrant women who work in private households in order to provide for their own families as the primary income earner.

The role of domestic workers is essential to California as it enables others to participate in the workforce. Without these domestic workers many Californians would be forced to forgo their own jobs to address their household needs, the result being that the well-being of many California families and the economy as a whole would suffer.

However, the author states that, despite the importance of their work, domestic workers have historically received wages well below the poverty line and continue to be excluded from some of the most fundamental labor protections other Californian workers enjoy. Domestic workers have historically been exempted from laws governing the rights afforded to other workers - decent wages, a safe and healthy workplace health, workers compensation and other labor protections.

The author notes that domestic workers are among the most isolated and vulnerable workforce in the state. The unique nature of their work requires protections to prevent abuse and mistreatment from occurring behind closed doors, out of the public eye. Therefore, this bill provides domestic workers with industry-specific protections to use kitchen facilities and cook their own food, and creates standards for sleep, sick days, living wage increases, and paid vacations.

The California Association for Health Services at Home (CAHSAH) strongly opposes this bill, arguing that it would significantly increase the cost of home care for seniors, people with disabilities, and other frail Californians, and would further strengthen an already dangerously large underground economy.

CAHSAH states that hundreds of thousands of Californians depend on home care services to keep them safe and healthy in their home and to avoid institutionalization. Their specific and unique needs require flexibility in how a home care company can best provide care, and this has long been accomplished through certain exemptions in labor law which keeps the cost of care affordable and allow for continuity of care. In this economic downturn it can be especially challenging for seniors to continue to pay for the care, particularly if they require 24 hour live-in assistance.

CAHSAH contends that this bill proposes to drastically increase the cost of care by overturning these longstanding exemptions and adding additional liabilities and costly burdens such as paid vacation days, paid sick days, mandatory wage increases, and a 21-day notice of termination.

CAHSAH notes that there is already a robust underground economy in home care where neither the consumer nor the worker has any protections against financial, physical, or emotional abuse.

The underground economy has no oversight, taxes are not paid, liability is not covered, and it often leads to one side taking advantage of the other. If the cost of home care is drastically increased, as proposed in this bill, CAHSAH argues that the price difference between legitimate home care companies and the underground option will widen and the underground economy will dramatically grow, at a detriment to all stakeholders involved.

Finally, CAHSAH concludes that if this bill passes, significant regulatory burdens will be placed on the home care industry, causing the job growth in this sector, which California has benefited from, to come to a halt.

The California Disability Services Association (CDSA) also opposes this measure. Among other things, CDSA states that changing the current system would result in disruptive shift changes. Service providers could not afford to pay overtime for periods beyond eight hours. The solution would be a required shift change - in the middle of the night. In other words, a person would go to sleep with one support staff and wake up with another - a change that is both disruptive and unsettling for many vulnerable individuals.

Moreover, CDSA contends that there is simply no funding available to implement these proposals. Unless the Legislature is prepared to provide tens of millions of dollars to fund these requirements, CDSA argues that it is unfeasible and potentially disastrous to impose these conditions on the organizations that provide these vitally important services.

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Support public policies that positively impact the lives of persons with developmental disabilities and their families.

**PRIOR COUNCIL ACTIVITY:** None

**RECOMMENDATION(S):** While supportive of the proposed protections, without financial support this bill could reduce the level of personal services and supports for persons with disabilities and place them at risk of institutionalization. Oppose AB 889.

**ATTACHMENT(S):** AB 889 and Assembly Committee on Labor and Employment analysis.

**PREPARED:** Karim Alipourfard May 5, 2011

AMENDED IN ASSEMBLY MAY 4, 2011

AMENDED IN ASSEMBLY APRIL 6, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 889**

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**Introduced by Assembly Members Ammiano and V. Manuel Pérez  
(Coauthors: Assembly Members Allen, Cedillo, Fuentes, Ma, and  
Monning)  
(Coauthor: Senator De León)**

February 17, 2011

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An act to amend Sections 226, 3351, 3352, 3551, 3708, 3715, 6303, and 6314 of, to repeal Section 4156 of, and to add Part 4.5 (commencing with Section 1450) to Division 2 of, the Labor Code, relating to domestic work employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 889, as amended, Ammiano. Domestic work employees.

Existing law regulates the wages, hours, and working conditions of any man, woman, and minor employed in any occupation, trade, or industry, whether compensation is measured by time, piece, or otherwise, except for individuals employed as outside salesmen and individuals participating in specified national service programs. Under existing law, the Industrial Welfare Commission within the Department of Industrial Relations is authorized to adopt rules, regulations, and orders to ensure that employers comply with those provisions of law.

This bill would specially regulate the wages, hours, and working conditions of domestic work employees, as defined. Specifically, this bill would, among other things, provide a private right of action for a domestic work employee when those regulations are violated by his or

her employer; provide an overtime compensation rate for domestic work employees; ~~and require annual pay increases;~~ paid vacation; and paid sick days for domestic work employees; ~~and require that a domestic work employer provide written notice of termination 21 days in advance.~~ This bill would also expressly state that the provisions of Wage Order Number 15 of the Industrial Welfare Commission, with specified exceptions, apply to a domestic work employee, but would provide that these new domestic work provisions shall prevail over protections in that order or any other law that afford less protection to a domestic work employee.

Existing law requires an employer to provide its employees with specified information regarding their wages either semimonthly or at the time of each wage payment. Under existing law, this requirement does not apply to employers of persons who engage in specified types of household domestic service.

This bill would delete the exclusion for employers of persons who engage in specified types of household domestic service, thereby requiring those employers to provide the above-described information.

Existing law requires employers to carry workers' compensation insurance. The failure to secure workers' compensation as required by the workers' compensation law is a misdemeanor. Under existing law, employers of persons who engage in specified types of household domestic service and who work less than a specified number of hours are excluded from that definition of employer and are therefore excluded from the requirement to carry workers' compensation insurance, as specified.

This bill would remove that exclusion and require all domestic work employers, as defined, to carry workers' compensation insurance and would make conforming changes. By expanding the definition of a crime, this bill would impose a state-mandated local program.

Existing law, the California Occupational Safety and Health Act of 1973, requires employers to comply with certain standards ensuring healthy and safe working conditions, as specified. Under existing law, employment related to household domestic services is excluded from the provisions of the act.

This bill would remove that exclusion and require domestic work employers to comply with the requirements of the act.

The Division of Occupational Safety and Health of the Department of Industrial Relations is charged with enforcing occupational health

and safety laws, orders, and standards, including the investigation of alleged violations of those provisions.

This bill would provide a process for investigating alleged violations of the above provisions when the place of employment is a residential dwelling.

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

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

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

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

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

3 (a) As recognized by the State of California in Resolution  
4 Chapter 119 of the Statutes of 2010, it is the policy of the state to  
5 encourage and protect the rights of domestic work employees.

6 (b) California’s domestic workers, which includes housekeepers,  
7 nannies, and caregivers for children, persons with disabilities, and  
8 the elderly, work in private households to care for the health, safety,  
9 and well-being of the most important aspects of Californians’ lives:  
10 their families and homes.

11 (c) Domestic workers play a critical role in California’s  
12 economy, working to ensure the health and prosperity of California  
13 families and freeing others to participate in the workforce, which  
14 is increasingly necessary in these difficult economic times. The  
15 labor of domestic workers is central to the ongoing prosperity of  
16 the state but, despite the value of their work, domestic workers  
17 have not received the same protection under state laws as workers  
18 in other industries. Most domestic workers labor to support families  
19 and children of their own, and more than half are primary income  
20 earners, but two-thirds of domestic workers earn low wages or  
21 wages below the poverty line.

22 (d) Because domestic workers care for the most important  
23 elements of their employers’ lives, their families and homes, it is  
24 in the interest of employees, employers, and the people of the State

1 of California to ensure that the rights of domestic workers are  
2 respected, protected, and enforced.

3 (e) The vast majority of domestic workers are women of color  
4 and immigrants and are particularly vulnerable to unlawful  
5 employment practices and abuses. Domestic workers usually work  
6 alone, behind closed doors, and out of the public eye, leaving them  
7 isolated, vulnerable to abuse and exploitation, and unable to  
8 advocate collectively for better working conditions. Domestic  
9 workers often labor under harsh conditions, work long hours for  
10 low wages without benefits or job security, and face termination  
11 without notice or severance pay, leaving many suddenly without  
12 both a job and a home. In the worst cases, domestic workers are  
13 verbally and physically abused or sexually assaulted, forced to  
14 sleep in conditions unfit for human habitation, and stripped of their  
15 privacy and dignity.

16 (f) Domestic workers are still excluded from the most basic  
17 protections afforded the rest of the labor force under state and  
18 federal law, including the rights to fair wages, safe and healthy  
19 working conditions, workers' compensation, and protection from  
20 discriminatory and abusive treatment. The treatment of domestic  
21 workers under federal and state laws has historically reflected  
22 stereotypical assumptions about the nature of domestic work,  
23 specifically that the relationship between employer and "servant"  
24 was "personal," rather than commercial, in character, that  
25 employment within a household was not "real" productive work,  
26 and that women did not work to support their families.

27 (g) Given the limited legal protections historically provided to  
28 domestic workers, and bearing in mind the unique conditions and  
29 demands of this private, home-based industry, the Legislature, as  
30 an exercise of the police power of the State of California for the  
31 protection of the public welfare, prosperity, health, safety, and  
32 peace of its people, further finds that domestic workers are entitled  
33 to industry-specific protections and labor standards that eliminate  
34 discriminatory provisions in the labor laws and guarantee domestic  
35 workers basic workplace rights to ensure that domestic workers  
36 are treated with equality, respect, and dignity.

37 SEC. 2. Section 226 of the Labor Code is amended to read:

38 226. (a) Every employer shall, semimonthly or at the time of  
39 each payment of wages, furnish each of his or her employees,  
40 either as a detachable part of the check, draft, or voucher paying

1 the employee's wages, or separately when wages are paid by  
2 personal check or cash, an accurate itemized statement in writing  
3 showing (1) gross wages earned, (2) total hours worked by the  
4 employee, except for any employee whose compensation is solely  
5 based on a salary and who is exempt from payment of overtime  
6 under subdivision (a) of Section 515 or any applicable order of  
7 the Industrial Welfare Commission, (3) the number of piece-rate  
8 units earned and any applicable piece rate if the employee is paid  
9 on a piece-rate basis, (4) all deductions, provided that all deductions  
10 made on written orders of the employee may be aggregated and  
11 shown as one item, (5) net wages earned, (6) the inclusive dates  
12 of the period for which the employee is paid, (7) the name of the  
13 employee and his or her social security number, except that by  
14 January 1, 2008, only the last four digits of his or her social security  
15 number or an employee identification number other than a social  
16 security number may be shown on the itemized statement, (8) the  
17 name and address of the legal entity that is the employer, and (9)  
18 all applicable hourly rates in effect during the pay period and the  
19 corresponding number of hours worked at each hourly rate by the  
20 employee. The deductions made from payments of wages shall be  
21 recorded in ink or other indelible form, properly dated, showing  
22 the month, day, and year, and a copy of the statement or a record  
23 of the deductions shall be kept on file by the employer for at least  
24 three years at the place of employment or at a central location  
25 within the State of California.

26 (b) An employer that is required by this code or any regulation  
27 adopted pursuant to this code to keep the information required by  
28 subdivision (a) shall afford current and former employees the right  
29 to inspect or copy the records pertaining to that current or former  
30 employee, upon reasonable request to the employer. The employer  
31 may take reasonable steps to assure the identity of a current or  
32 former employee. If the employer provides copies of the records,  
33 the actual cost of reproduction may be charged to the current or  
34 former employee.

35 (c) An employer who receives a written or oral request to inspect  
36 or copy records pursuant to subdivision (b) pertaining to a current  
37 or former employee shall comply with the request as soon as  
38 practicable, but no later than 21 calendar days from the date of the  
39 request. A violation of this subdivision is an infraction.  
40 Impossibility of performance, not caused by or a result of a

1 violation of law, shall be an affirmative defense for an employer  
2 in any action alleging a violation of this subdivision. An employer  
3 may designate the person to whom a request under this subdivision  
4 will be made.

5 (d) An employee suffering injury as a result of a knowing and  
6 intentional failure by an employer to comply with subdivision (a)  
7 is entitled to recover the greater of all actual damages or fifty  
8 dollars (\$50) for the initial pay period in which a violation occurs  
9 and one hundred dollars (\$100) per employee for each violation  
10 in a subsequent pay period, not exceeding an aggregate penalty of  
11 four thousand dollars (\$4,000), and is entitled to an award of costs  
12 and reasonable attorney's fees.

13 (e) A failure by an employer to permit a current or former  
14 employee to inspect or copy records within the time set forth in  
15 subdivision (c) entitles the current or former employee or the Labor  
16 Commissioner to recover a seven-hundred-fifty-dollar (\$750)  
17 penalty from the employer.

18 (f) An employee may also bring an action for injunctive relief  
19 to ensure compliance with this section, and is entitled to an award  
20 of costs and reasonable attorney's fees.

21 (g) This section does not apply to the state, to any city, county,  
22 city and county, district, or to any other governmental entity, except  
23 that if the state or a city, county, city and county, district, or other  
24 governmental entity furnishes its employees with a check, draft,  
25 or voucher paying the employee's wages, the state or a city, county,  
26 city and county, district, or other governmental entity shall, by  
27 January 1, 2008, use no more than the last four digits of the  
28 employee's social security number or shall use an employee  
29 identification number other than the social security number on the  
30 itemized statement provided with the check, draft, or voucher.

31 SEC. 3. Part 4.5 (commencing with Section 1450) is added to  
32 Division 2 of the Labor Code, to read:

33  
34 PART 4.5. DOMESTIC WORK EMPLOYEES

35  
36 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

37  
38 1450. This part shall be known and may be cited as the  
39 Domestic Work Employee Equality, Fairness, and Dignity Act.

40 1451. As used in this part, the following definitions apply:

1 (a) “Domestic work” means services related to the care of  
2 persons in private households or maintenance of private households  
3 or their premises. Domestic work occupations include childcare  
4 providers, caregivers of sick, convalescing, or elderly persons,  
5 house cleaners, housekeepers, maids, and other household  
6 occupations.

7 (b) (1) “Domestic work employee” means an individual who  
8 performs domestic work and includes live-in domestic work  
9 employees and personal attendants.

10 (2) “Domestic work employee” does not include any of the  
11 following:

12 (A) Any person who performs services through the In-Home  
13 Supportive Services program under Article 7 (commencing with  
14 Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare  
15 and Institutions Code.

16 (B) Any person who is the parent, grandparent, spouse, child,  
17 or legally adopted child of the domestic work employer.

18 (C) Any person under 18 years of age who is employed as a  
19 babysitter for a minor child of the domestic work employer.

20 (D) *Any person employed by a licensed health facility, as defined*  
21 *in Section 1250 of the Health and Safety Code.*

22 (c) (1) “Domestic work employer” means a person, including  
23 corporate officers or executives, who directly or indirectly, or  
24 through an agent or any other person, including through the  
25 services of a third-party employer, temporary service, or staffing  
26 agency or similar entity, employs or exercises control over the  
27 wages, hours, or working conditions of a domestic work employee.

28 (2) “Domestic work employer” does not include ~~the~~ *any of the*  
29 *following:*

30 (A) *The State of California or individuals who receive domestic*  
31 *work services through the In-Home Supportive Services program*  
32 *under Article 7 (commencing with Section 12300) of Chapter 3*  
33 *of Part 3 of Division 9 of the Welfare and Institutions Code.*

34 (B) *An employment agency that is required to comply with*  
35 *Section 1812.5095 of the Civil Code and that operates solely to*  
36 *procure, offer, refer, provide, or attempt to provide work to*  
37 *domestic workers if the relationship between the employment*  
38 *agency and the domestic workers for whom the agency procures,*  
39 *offers, refers, provides, or attempts to provide domestic work is*  
40 *characterized by all of the factors listed in subdivision (b) of*

1 *Section 1812.5095 of the Civil Code and Section 687.2 of the*  
2 *Unemployment Insurance Code.*

3 *(C) A licensed health facility, as defined in Section 1250 of the*  
4 *Health and Safety Code.*

5 (d) "Emergency" means an unpredictable or unavoidable  
6 occurrence of a serious nature that occurs unexpectedly requiring  
7 immediate action.

8 (e) "Hours worked" means the time during which a domestic  
9 work employee is subject to the control of a domestic work  
10 employer, and includes all time the domestic work employee is  
11 suffered or permitted to work, whether or not required to do so.

12 (f) "Live-in domestic work employee" means a domestic work  
13 employee who lives in the establishment where he or she works.

14 (g) "Personal attendant" means a person who performs domestic  
15 work related to the supervision, feeding, or dressing of a child or  
16 other person who, by reason of advanced age, physical disability,  
17 or mental deficiency, needs supervision. Personal attendant  
18 includes babysitters. The status of "personal attendant" applies if  
19 no significant amount of work other than the foregoing is required.

20 1452. The Division of Labor Standards Enforcement shall  
21 enforce this part.

22 1453. (a) Any domestic work employee aggrieved by a  
23 violation of this part may bring an administrative action pursuant  
24 to Section 98 or may bring a civil action in a court of competent  
25 jurisdiction against the domestic work employer violating this part.

26 (b) Upon prevailing, a domestic work employee bringing an  
27 action pursuant to this section shall be entitled to any legal or  
28 equitable relief as may be appropriate to remedy the violation,  
29 including the payment of any back wages unlawfully withheld,  
30 the payment of an additional sum as liquidated damages or  
31 penalties as specified in this part, reinstatement of employment,  
32 interest, or injunctive relief, or any combination of these remedies,  
33 as appropriate. A domestic work employee bringing a civil action  
34 pursuant to this section shall also be entitled to recover an award  
35 of reasonable attorney's fees and costs, including expert witness  
36 fees.

37 (c) The rights and remedies specified in this part are cumulative  
38 and nonexclusive and are in addition to any other rights or remedies  
39 afforded by contract or under other provisions of law. If a provision  
40 of Wage Order Number 15 of the Industrial Welfare Commission

1 or any other provision of law affords less protection to a domestic  
2 work employee, this part shall prevail.

3 (d) Notwithstanding any provision of this code or Section 340  
4 of the Code of Civil Procedure, to commence an action for a  
5 violation of this part a domestic work employee shall file an  
6 administrative or civil complaint within three years of the violation.  
7

8 CHAPTER 2. DOMESTIC WORK EMPLOYEE RIGHTS  
9

10 1454. Except where otherwise provided in this chapter, Section  
11 510 applies to a domestic work employee.

12 1455. (a) A domestic work employee who is required to be  
13 on duty for 24 consecutive hours or more shall have a minimum  
14 of eight consecutive hours for uninterrupted sleep, except in an  
15 emergency.

16 (b) If a domestic work employee is required to be on duty for  
17 24 consecutive hours or more, the domestic work employer and  
18 the domestic work employee may agree in writing to exclude a  
19 bona fide regularly scheduled sleeping period of not more than  
20 eight hours for uninterrupted sleep from hours worked, provided  
21 that the domestic work employer otherwise complies with this  
22 section and Section 1457. If no written agreement to the contrary  
23 is present, the eight hours of sleeping time shall constitute hours  
24 worked.

25 (c) There is a rebuttable presumption that a domestic work  
26 employee did not receive eight consecutive hours for uninterrupted  
27 sleep if he or she is required to be on duty for 24 consecutive hours  
28 or more and the domestic work employer does not hire a  
29 replacement worker for at least eight consecutive hours in the  
30 24-hour work period.

31 (d) A domestic work employer shall pay a sum of fifty dollars  
32 (\$50) to the domestic work employee for each day that the domestic  
33 employer violates this section.

34 1456. (a) A live-in domestic work employee who is not  
35 required to be on duty for 24 consecutive hours or more shall have  
36 at least 12 consecutive hours free of duty during each workday of  
37 24 hours, of which a minimum of eight consecutive hours are for  
38 uninterrupted sleep. A live-in domestic work employee suffered  
39 or permitted to work during the 12 consecutive off-duty hours shall  
40 be compensated in accordance with Section 510.

1 (b) A live-in domestic work employee shall not be required to  
 2 work more than five days in any one workweek without a day off  
 3 of not less than 24 consecutive hours, except in an emergency. A  
 4 live-in domestic work employee who is suffered or permitted to  
 5 work in excess of five workdays in any workweek shall be  
 6 compensated in accordance with Section 510.

7 (c) A domestic work employer shall pay a sum of fifty dollars  
 8 (\$50) to the domestic work employee for each day that the domestic  
 9 work employer violates this section.

10 1457. Live-in domestic work employees and domestic work  
 11 employees who work 24 consecutive hours or more shall be  
 12 provided sleeping accommodations that are adequate, decent, and  
 13 sanitary according to usual customary standards. Domestic work  
 14 employees shall not be required to share a bed.

15 1458. Except as otherwise provided in this Part, the provisions  
 16 of Industrial Welfare Commission Wage Order Number 15, except  
 17 Section 6, shall apply to a domestic work employee.

18 ~~1459. (a) A domestic work employee shall earn a wage~~  
 19 ~~increase each year on the same day of the employee's original date~~  
 20 ~~of hire. The increase shall be in a percentage amount corresponding~~  
 21 ~~to the prior year's percentage increase, if any, in the Consumer~~  
 22 ~~Price Index for urban wage earners and clerical workers for~~  
 23 ~~California as computed by the Division of Labor Statistics and~~  
 24 ~~Research within the department.~~

25 ~~(b) In any action brought to recover unpaid annual cost of living~~  
 26 ~~pay increases pursuant to Section 1453, a domestic work employee~~  
 27 ~~shall be entitled to recover liquidated damages in an amount equal~~  
 28 ~~to the wages unlawfully unpaid and interest thereon.~~

29 ~~(c) Notwithstanding subdivision (b), if the domestic work~~  
 30 ~~employer demonstrates to the satisfaction of the court or the Labor~~  
 31 ~~Commissioner, as applicable, that the act or omission giving rise~~  
 32 ~~to the action was in good faith and that the domestic work employer~~  
 33 ~~had reasonable grounds for believing that the act or omission did~~  
 34 ~~not violate subdivision (a), the court or Labor Commissioner may,~~  
 35 ~~in its discretion, refuse to award liquidated damages or award any~~  
 36 ~~amount of liquidated damages not exceeding the amount specified~~  
 37 ~~in subdivision (b).~~

38 1460. (a) A domestic work employer shall permit a domestic  
 39 work employee who works five hours or more to choose the food  
 40 he or she eats and to prepare his or her own meals. A domestic

1 work employer shall permit a domestic work employee to use the  
2 job site's kitchen facilities and kitchen appliances without charge  
3 or deduction from pay.

4 (b) If a domestic work employer and the domestic work  
5 employee agree that the domestic work employer will provide  
6 meals and the domestic work employer wishes to offset the costs  
7 of those meals pursuant to Industrial Welfare Commission Wage  
8 Order Number 15, the domestic work employee may request and  
9 receive specific food items for those meals.

10 (c) A domestic work employer who violates this section shall  
11 pay a sum of fifty dollars (\$50) to each domestic work employee  
12 for each day that he or she violated this section.

13 1461. (a) (1) A domestic work employee shall accrue paid  
14 vacation benefits at the rate of not less than one hour per every 30  
15 hours worked, beginning at the commencement of employment or  
16 the operative date of this provision, whichever occurs first. A  
17 domestic work employer shall permit a domestic work employee  
18 to use accrued paid vacation after one year of service. One year  
19 of service is completed on the 365th calendar day of employment.

20 (2) Unused accrued paid vacation benefits shall carry over from  
21 year to year. However, a domestic work employer may limit a  
22 domestic work employee's use of accrued paid vacation as follows:

23 (A) After the first year of service, a domestic work employee  
24 may use 40 hours or five days of paid vacation in each calendar  
25 year, whichever is greater.

26 (B) After the fifth year of service, a domestic work employee  
27 may use 80 hours or 10 days of paid vacation in each calendar  
28 year, whichever is greater.

29 (C) After the tenth year of service, a domestic work employee  
30 may use 120 hours or 15 days of paid vacation in each calendar  
31 year, whichever is greater.

32 (b) A domestic work employer shall not require, as a condition  
33 of taking paid vacation, that the domestic work employee search  
34 for or find a replacement worker to cover the hours during which  
35 the domestic work employee is on paid vacation leave.

36 (c) (1) A domestic work employee aggrieved by a violation of  
37 this section shall be entitled to all of the following:

38 (A) The amount of any paid vacation unlawfully withheld.

39 (B) A penalty of two hundred fifty dollars (\$250).

40 (C) Appropriate equitable relief.

1 (2) A domestic work employee is not aggrieved by a violation  
2 of this section if the domestic work employer can demonstrate that  
3 it denied a request to use paid vacation because of an emergency  
4 and provided another opportunity for the domestic work employee  
5 to take vacation time within three months of the date the domestic  
6 work employee originally requested to use paid vacation.

7 (d) Upon request, a domestic work employer shall provide to a  
8 domestic work employee an annual statement indicating the amount  
9 and periods of accrued vacation.

10 1462. (a) (1) A domestic work employee shall accrue paid  
11 sick days at the rate of not less than one hour per every 30 hours  
12 worked, beginning at the commencement of employment or the  
13 operative date of this provision, whichever occurs first. A domestic  
14 work employer shall permit a domestic work employee to use  
15 accrued paid sick days as they are accrued, beginning on the 90th  
16 calendar day of employment

17 (2) Unused accrued paid sick days shall carry over from year  
18 to year. However, a domestic work employer may limit a domestic  
19 work employee's use of paid sick days to 40 hours or five days in  
20 each calendar year, whichever is greater.

21 (b) (1) A domestic work employee may use accumulated sick  
22 days for the diagnosis, care, or treatment of an existing health  
23 condition; preventive care; or care and services related to domestic  
24 violence or sexual assault.

25 (2) A domestic work employee may use accumulated sick days  
26 for himself or herself, or his or her child or legal ward; parent;  
27 sibling; grandparent; grandchild; and spouse or registered domestic  
28 partner under any state or local law. The aforementioned child,  
29 parent, sibling, grandparent, and grandchild relationships include  
30 biological relationships and relationships resulting from adoption;  
31 step-relationships; legal guardianships; foster care relationships;  
32 and in loco parentis relationships. "Child" includes a child of a  
33 domestic partner.

34 (c) A domestic work employer is not required to provide  
35 compensation to a domestic work employee for accrued, unused  
36 paid sick days upon termination, resignation, retirement, or other  
37 separation from employment.

38 (d) A domestic work employer shall not require as a condition  
39 of taking paid sick days that the domestic work employee search

1 for or find a replacement worker to cover the hours during which  
2 the domestic work employee is on paid sick days.

3 (e) A domestic work employee aggrieved by a violation of this  
4 section shall be entitled to all of the following:

5 (1) Reinstatement.

6 (2) The amount of any sick days unlawfully withheld.

7 (3) A penalty equal to the amount of the paid sick days  
8 unlawfully withheld multiplied by three, or two hundred fifty  
9 dollars (\$250), whichever amount is greater.

10 (4) Appropriate equitable relief.

11 ~~1465. (a) (1) A domestic work employee is entitled to written~~  
12 ~~notice of termination 21 days before his or her final day of~~  
13 ~~employment.~~

14 ~~(2) If a domestic work employer does not provide notice of~~  
15 ~~termination as required by paragraph (1), the domestic work~~  
16 ~~employee is entitled to his or her wages for the period of violation,~~  
17 ~~up to a maximum of 21 days.~~

18 ~~(b) A domestic work employer may terminate a domestic work~~  
19 ~~employee without providing the notice required in paragraph (1)~~  
20 ~~of subdivision (a) if the termination is based on the domestic work~~  
21 ~~employee causing intentional physical or psychological harm to~~  
22 ~~the person he or she cares for or intentional physical damage to~~  
23 ~~the work premises.~~

24 SEC. 4. Section 3351 of the Labor Code is amended to read:

25 3351. "Employee" means every person in the service of an  
26 employer under any appointment or contract of hire or  
27 apprenticeship, express or implied, oral or written, whether lawfully  
28 or unlawfully employed, and includes:

29 (a) Aliens and minors.

30 (b) All elected and appointed paid public officers.

31 (c) All officers and members of boards of directors of  
32 quasi-public or private corporations while rendering actual service  
33 for the corporations for pay; provided that, where the officers and  
34 directors of the private corporation are the sole shareholders  
35 thereof, the corporation and the officers and directors shall come  
36 under the compensation provisions of this division only by election  
37 as provided in subdivision (a) of Section 4151.

38 (d) A person employed by the owner or occupant of a residential  
39 dwelling whose duties are incidental to the ownership,  
40 maintenance, or use of the dwelling, including the care and

1 supervision of children, persons of advanced age, or persons with  
2 physical or mental disabilities, or whose duties are personal and  
3 not in the course of the trade, business, profession, or occupation  
4 of the owner or occupant.

5 (e) All persons incarcerated in a state penal or correctional  
6 institution while engaged in assigned work or employment or  
7 engaged in work performed under contract.

8 (f) All working members of a partnership or limited liability  
9 company receiving wages irrespective of profits from the  
10 partnership or limited liability company, provided that where the  
11 working members of the partnership or limited liability company  
12 are general partners or managers, the partnership or limited liability  
13 company and the partners or managers shall come under the  
14 compensation provisions of this division only by election as  
15 provided in subdivision (a) of Section 4151. If a private corporation  
16 is a general partner or manager, "working members of a partnership  
17 or limited liability company" shall include the corporation and the  
18 officers and directors of the corporation, provided that the officers  
19 and directors are the sole shareholders of the corporation. If a  
20 limited liability company is a partner or member, "working  
21 members of the partnership or limited liability company" shall  
22 include the managers of the limited liability company.

23 (g) For the purposes of subdivisions (c) and (f), the persons  
24 holding the power to revoke a trust as to shares of a private  
25 corporation or as to general partnership or limited liability company  
26 interests held in the trust, shall be deemed to be the shareholders  
27 of the private corporation, or the general partners of the partnership,  
28 or the managers of the limited liability company.

29 SEC. 5. Section 3352 of the Labor Code is amended to read:

30 3352. "Employee" excludes the following:

31 (a) Any person defined in subdivision (d) of Section 3351 who  
32 is employed by his or her parent, spouse, or child.

33 (b) Any person performing services in return for aid or  
34 sustenance only, received from any religious, charitable, or relief  
35 organization.

36 (c) Any person holding an appointment as deputy clerk or deputy  
37 sheriff appointed for his or her own convenience, and who receives  
38 no compensation from the county or municipal corporation or from  
39 the citizens thereof for his or her services as the deputy. This  
40 exclusion is operative only as to employment by the county or

1 municipal corporation and does not deprive any person so  
2 deputized from recourse against a private person employing him  
3 or her for injury occurring in the course of and arising out of the  
4 employment.

5 (d) Any person performing voluntary services at or for a  
6 recreational camp, hut, or lodge operated by a nonprofit  
7 organization, exempt from federal income tax under Section 501  
8 of the Internal Revenue Code, of which he or she or a member of  
9 his or her family is a member and who receives no compensation  
10 for those services other than meals, lodging, or transportation.

11 (e) Any person performing voluntary service as a ski patrolman  
12 who receives no compensation for those services other than meals  
13 or lodging or the use of ski tow or ski lift facilities.

14 (f) Any person employed by a ski lift operator to work at a snow  
15 ski area who is relieved of and not performing any prescribed  
16 duties, while participating in recreational activities on his or her  
17 own initiative.

18 (g) Any person, other than a regular employee, participating in  
19 sports or athletics who receives no compensation for the  
20 participation other than the use of athletic equipment, uniforms,  
21 transportation, travel, meals, lodgings, or other expenses incidental  
22 thereto.

23 (h) Any person performing voluntary service for a public agency  
24 or a private, nonprofit organization who receives no remuneration  
25 for the services other than meals, transportation, lodging, or  
26 reimbursement for incidental expenses.

27 (i) Any person, other than a regular employee, performing  
28 officiating services relating to amateur sporting events sponsored  
29 by any public agency or private, nonprofit organization, who  
30 receives no remuneration for these services other than a stipend  
31 for each day of service no greater than the amount established by  
32 the Department of Personnel Administration as a per diem expense  
33 for employees or officers of the state. The stipend shall be  
34 presumed to cover incidental expenses involved in officiating,  
35 including, but not limited to, meals, transportation, lodging, rule  
36 books and courses, uniforms, and appropriate equipment.

37 (j) Any student participating as an athlete in amateur sporting  
38 events sponsored by any public agency, public or private nonprofit  
39 college, university or school, who receives no remuneration for  
40 the participation other than the use of athletic equipment, uniforms,

1 transportation, travel, meals, lodgings, scholarships, grants-in-aid,  
2 or other expenses incidental thereto.

3 (k) Any law enforcement officer who is regularly employed by  
4 a local or state law enforcement agency in an adjoining state and  
5 who is deputized to work under the supervision of a California  
6 peace officer pursuant to paragraph (4) of subdivision (a) of Section  
7 832.6 of the Penal Code.

8 (l) Any law enforcement officer who is regularly employed by  
9 the Oregon State Police, the Nevada Department of Motor Vehicles  
10 and Public Safety, or the Arizona Department of Public Safety and  
11 who is acting as a peace officer in this state pursuant to subdivision  
12 (a) of Section 830.39 of the Penal Code.

13 (m) Any person, other than a regular employee, performing  
14 services as a sports official for an entity sponsoring an  
15 intercollegiate or interscholastic sports event, or any person  
16 performing services as a sports official for a public agency, public  
17 entity, or a private nonprofit organization, which public agency,  
18 public entity, or private nonprofit organization sponsors an amateur  
19 sports event. For purposes of this subdivision, "sports official"  
20 includes an umpire, referee, judge, scorekeeper, timekeeper, or  
21 other person who is a neutral participant in a sports event.

22 (n) Any person who is an owner-builder, as defined in  
23 subdivision (a) of Section 50692 of the Health and Safety Code,  
24 who is participating in a mutual self-help housing program, as  
25 defined in Section 50087 of the Health and Safety Code, sponsored  
26 by a nonprofit corporation.

27 SEC. 6. Section 3551 of the Labor Code is amended to read:

28 3551. (a) Every employer subject to the compensation  
29 provisions of this code shall give every new employee, either at  
30 the time the employee is hired or by the end of the first pay period,  
31 written notice of the information contained in Section 3550. The  
32 content of the notice required by this section shall be prescribed  
33 by the administrative director after consultation with the  
34 Commission on Health and Safety and Workers' Compensation.

35 (b) The notice required by this section shall be easily  
36 understandable and available in both English and Spanish. In  
37 addition to the information contained in Section 3550, the content  
38 of the notice required by this section shall include:

39 (1) Generally, how to obtain appropriate medical care for a job  
40 injury.

1 (2) The role and function of the primary treating physician.

2 (3) A form that the employee may use as an optional method  
3 for notifying the employer of the name of the employee's "personal  
4 physician," as defined by Section 4600, or "personal chiropractor,"  
5 as defined by Section 4601.

6 (c) The content of the notice required by this section shall be  
7 made available to employers and insurers by the administrative  
8 director. Insurers shall provide this notice to each of their  
9 policyholders, with advice concerning the requirements of this  
10 section and the penalties for a failure to provide this notice to all  
11 employees.

12 SEC. 7. Section 3708 of the Labor Code is amended to read:

13 3708. In such action it is presumed that the injury to the  
14 employee was a direct result and grew out of the negligence of the  
15 employer, and the burden of proof is upon the employer, to rebut  
16 the presumption of negligence. It is not a defense to the employer  
17 that the employee was guilty of contributory negligence, or  
18 assumed the risk of the hazard complained of, or that the injury  
19 was caused by the negligence of a fellow servant. No contract or  
20 regulation shall restore to the employer any of the foregoing  
21 defenses.

22 SEC. 8. Section 3715 of the Labor Code is amended to read:

23 3715. (a) Any employee whose employer has failed to secure  
24 the payment of compensation as required by this division, or his  
25 or her dependents in case death has ensued, may, in addition to  
26 proceeding against his or her employer by civil action in the courts  
27 as provided in Section 3706, file his or her application with the  
28 appeals board for compensation and the appeals board shall hear  
29 and determine the application for compensation in like manner as  
30 in other claims and shall make the award to the claimant as he or  
31 she would be entitled to receive if the employer had secured the  
32 payment of compensation as required, and the employer shall pay  
33 the award in the manner and amount fixed thereby or shall furnish  
34 to the appeals board a bond, in any amount and with any sureties  
35 as the appeals board requires, to pay the employee the award in  
36 the manner and amount fixed thereby.

37 (b) (1) In any claim in which it is alleged that the employer has  
38 failed to secure the payment of compensation, the director, only  
39 for purposes of this section and Section 3720, shall determine, on  
40 the basis of the evidence available to him or her, whether the

1 employer was prima facie illegally uninsured. A finding that the  
2 employer was prima facie illegally uninsured shall be made when  
3 the director determines that there is sufficient evidence to constitute  
4 a prima facie case that the employer employed an employee on  
5 the date of the alleged injury and had failed to secure the payment  
6 of compensation, and that the employee was injured arising out  
7 of, and occurring in the course of, the employment.

8 (2) Failure of the employer to furnish within 10 days the written  
9 statement in response to a written demand for a written statement  
10 prescribed in Section 3711, addressed to the employer at its address  
11 as shown on the official address record of the appeals board, shall  
12 constitute in itself sufficient evidence for a prima facie case that  
13 the employer failed to secure the payment of compensation.

14 (3) A written denial by the insurer named in the statement  
15 furnished by the employer as prescribed in Section 3711, that the  
16 employer was so insured as claimed, or the nonexistence of a valid  
17 certificate of consent to self-insure for the time of the claimed  
18 injury, if the statement furnished by the employer claims the  
19 employer was self-insured, shall constitute in itself sufficient  
20 evidence for a prima facie case that the employer had failed to  
21 secure the payment of compensation.

22 (4) The nonexistence of a record of the employer's insurance  
23 with the Workers' Compensation Insurance Rating Bureau shall  
24 constitute in itself sufficient evidence for a prima facie case that  
25 the employer failed to secure the payment of compensation.

26 (5) The un rebutted written declaration under penalty of perjury  
27 by the injured employee, or applicant other than the employee,  
28 that the employee was employed by the employer at the time of  
29 the injury, and that he or she was injured in the course of his or  
30 her employment, shall constitute, in itself, sufficient evidence for  
31 a prima facie case that the employer employed the employee at  
32 the time of the injury, and that the employee was injured arising  
33 out of, and occurring in the course of, the employment.

34 (c) (1) When the director determines that an employer was  
35 prima facie illegally uninsured, the director shall mail a written  
36 notice of the determination to the employer at his or her address  
37 as shown on the official address record of the appeals board, and  
38 to any other more recent address the director may possess. The  
39 notice shall advise the employer of its right to appeal the finding,  
40 and that a lien may be placed against the employer's and any parent

1 corporation's property, or the property of substantial shareholders  
2 of a corporate employer as defined by Section 3717.

3 (2) Any employer aggrieved by a finding of the director that it  
4 was prima facie illegally uninsured may appeal the finding by  
5 filing a petition before the appeals board. The petition shall be  
6 filed within 20 days after the finding is issued. The appeals board  
7 shall hold a hearing on the petition within 20 days after the petition  
8 is filed with the appeals board. The appeals board shall have  
9 exclusive jurisdiction to determine appeals of the findings by the  
10 director, and no court of this state has jurisdiction to review, annul,  
11 or suspend the findings or the liens created thereunder, except as  
12 provided by Article 2 (commencing with Section 5950) of Chapter  
13 7 of Part 4 of Division 4.

14 (d) (1) Any claim brought against an employer under this  
15 section may be resolved by the director by compromise and release  
16 or stipulated findings and award as long as the appeals board has  
17 acquired jurisdiction over the employer and the employer has been  
18 given notice and an opportunity to object.

19 (2) Notice may be given by service on the employer of an  
20 appeals board notice of intention to approve the compromise and  
21 release or stipulated findings and award. The employer shall have  
22 20 days after service of the notice of intention to file an objection  
23 with the appeals board and show good cause therefor.

24 (3) If the employer objects, the appeals board shall determine  
25 if there is good cause for the objection.

26 (4) If the appeals board finds good cause for the objection, the  
27 director may proceed with the compromise and release or stipulated  
28 findings and award if doing so best serves the interest of the  
29 Uninsured Employers Fund, but shall have no cause of action  
30 against the employer under Section 3717 unless the appeals board  
31 case is tried to its conclusion and the employer is found liable.

32 (5) If the appeals board does not find good cause for the  
33 objection, and the compromise and release or stipulated findings  
34 and award is approved, the Uninsured Employers Fund shall have  
35 a cause of action against the employer pursuant to Section 3717.

36 (e) The director may adopt regulations to implement and  
37 interpret the procedures provided for in this section.

38 SEC. 9. Section 4156 of the Labor Code is repealed.

39 SEC. 10. Section 6303 of the Labor Code is amended to read:

1 6303. (a) "Place of employment" means any place, and the  
2 premises appurtenant thereto, where employment is carried on,  
3 except a place where the health and safety jurisdiction is vested  
4 by law in, and actively exercised by, any state or federal agency  
5 other than the division.

6 (b) "Employment" includes the carrying on of any trade,  
7 enterprise, project, industry, business, occupation, or work,  
8 including all excavation, demolition, and construction work, or  
9 any process or operation in any way related thereto, in which any  
10 person is engaged or permitted to work for hire.

11 (c) "Employment," for purposes of this division only, also  
12 includes volunteer firefighting when covered by Division 4  
13 (commencing with Section 3200) pursuant to Section 3361.

14 (d) Subdivision (c) shall become operative on January 1, 2004.

15 SEC. 11. Section 6314 of the Labor Code is amended to read:

16 6314. (a) To make an investigation or inspection, the chief of  
17 the division and all qualified divisional inspectors and investigators  
18 authorized by him or her shall, upon presenting appropriate  
19 credentials to the employer, have free access to any place of  
20 employment to investigate and inspect during regular working  
21 hours, and at other reasonable times when necessary for the  
22 protection of safety and health, and within reasonable limits and  
23 in a reasonable manner. The chief or his or her authorized  
24 representative may, during the course of any investigation or  
25 inspection, obtain any statistics, information, or any physical  
26 materials in the possession of the employer that are directly related  
27 to the purpose of the investigation or inspection, conduct any tests  
28 necessary to the investigation or inspection, and take photographs.  
29 Photographs taken by the division during the course of any  
30 investigation or inspection shall be considered to be confidential  
31 information pursuant to the provisions of Section 6322, and shall  
32 not be deemed to be public records for purposes of the California  
33 Public Records Act.

34 (b) If permission to investigate or inspect the place of  
35 employment is refused, or the facts or circumstances reasonably  
36 justify the failure to seek permission, the chief or his or her  
37 authorized representative may obtain an inspection warrant  
38 pursuant to the provisions of Title 13 (commencing with Section  
39 1822.50) of the Code of Civil Procedure. Cause for the issuance  
40 of a warrant shall be deemed to exist if there has been an industrial

1 accident, injury, or illness reported, if any complaint that violations  
2 of occupational safety and health standards exist at the place of  
3 employment has been received by the division, or if the place of  
4 employment to be inspected has been chosen on the basis of  
5 specific neutral criteria contained in a general administrative plan  
6 for the enforcement of this division.

7 (c) The chief and his or her authorized representatives may issue  
8 subpoenas to compel the attendance of witnesses and the  
9 production of books, papers, records, and physical materials,  
10 administer oaths, examine witnesses under oath, take verification  
11 or proof of written materials, and take depositions and affidavits  
12 for the purpose of carrying out the duties of the division.

13 (d) In the course of any investigation or inspection of an  
14 employer or place of employment by an authorized representative  
15 of the division, a representative of the employer and a  
16 representative authorized by his or her employees shall have an  
17 opportunity to accompany him or her on the tour of inspection.  
18 Any employee or employer, or their authorized representatives,  
19 shall have the right to discuss safety and health violations or safety  
20 and health problems with the inspector privately during the course  
21 of an investigation or inspection. Where there is no authorized  
22 employee representative, the chief or his or her authorized  
23 representatives shall consult with a reasonable number of  
24 employees concerning matters of health and safety of the place of  
25 employment.

26 (e) During any investigation of an industrial accident or  
27 occupational illness conducted by the division pursuant to the  
28 provisions of Section 6313, the chief or his or her authorized  
29 representative may issue an order to preserve physical materials  
30 or the accident site as they were at the time the accident or illness  
31 occurred if, in the opinion of the division, it is necessary to do so  
32 in order to determine the cause or causes of the accident or illness,  
33 and the evidence is in potential danger of being removed, altered,  
34 or tampered with. Under these circumstances, the division shall  
35 issue that order in a manner that will avoid, to the extent possible,  
36 any interference with normal business operations.

37 A conspicuous notice that an order has been issued shall be  
38 prepared by the division and shall be posted by the employer in  
39 the area or on the article to be preserved. The order shall be limited

1 to the immediate area and the machines, devices, apparatus, or  
2 equipment directly associated with the accident or illness.

3 Any person who knowingly violates an order issued by the  
4 division pursuant to this subdivision shall, upon conviction, be  
5 punished by a fine of not more than five thousand dollars (\$5,000).

6 (f) (1) In the case where the place of employment is a residential  
7 dwelling, the chief of the division or his or her authorized  
8 representative shall initiate telephone contact with the employer  
9 as soon as possible, but not later than three working days after  
10 receipt of a complaint charging a serious violation, as described  
11 in Section 6309, and not later than 14 calendar days after receipt  
12 of a complaint charging a nonserious violation.

13 (2) When telephone contact is successfully made, the chief of  
14 the division or his or her authorized representative shall do all of  
15 the following:

16 (A) Notify the employer of the existence of any allegedly unsafe  
17 or unhealthful conditions.

18 (B) Describe the alleged hazard and any specific regulatory  
19 standard alleged to have been violated.

20 (C) Inform the employer that he or she is required pursuant to  
21 Section 6401.7 to investigate and abate any hazard discovered  
22 during the investigation.

23 (D) Inform the employer by letter sent by facsimile or electronic  
24 mail, or by certified mail if the domestic work employer cannot  
25 receive facsimile or electronic mail, of each alleged hazard and  
26 each specific standard alleged to have been violated.

27 (E) Inform the employer that if the division determines that the  
28 employer's response is unsatisfactory for any reason, the division  
29 shall seek permission from the employer to enter the residential  
30 dwelling to investigate the matter, and, if permission is denied,  
31 may secure a court order to conduct an onsite inspection of the  
32 residential dwelling.

33 (F) Provide the complainant with copies of the regulation alleged  
34 to have been violated, the division's letter to the employer, and all  
35 subsequent correspondence concerning the investigation of any  
36 hazards.

37 (3) An employer subject to investigation shall do both of the  
38 following:

39 (i) Provide to the division, within 14 days of the employer's  
40 receipt of the division's letter, a letter describing the results of the

1 employer's investigation of the alleged hazards and a description  
2 of all actions taken, in the process of being taken, or planned to  
3 be taken, by the employer to abate the alleged hazard, including  
4 any applicable measurements or monitoring results, invoices for  
5 equipment purchased, and photographs or video that document  
6 correction of the alleged hazard.

7 (ii) Provide a copy of the division's letter to the employer, and  
8 all subsequent correspondence from and to the employer, to the  
9 affected employee, or prominently post the letter and  
10 correspondence in the method prescribed by subdivision (a) of  
11 Section 6318.

12 SEC. 12. No reimbursement is required by this act pursuant to  
13 Section 6 of Article XIII B of the California Constitution because  
14 the only costs that may be incurred by a local agency or school  
15 district will be incurred because this act creates a new crime or  
16 infraction, eliminates a crime or infraction, or changes the penalty  
17 for a crime or infraction, within the meaning of Section 17556 of  
18 the Government Code, or changes the definition of a crime within  
19 the meaning of Section 6 of Article XIII B of the California  
20 Constitution.

O



## BILL ANALYSIS

AB 889

Page A

Date of Hearing: April 13, 2011

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT  
 Sandre Swanson, Chair  
 AB 889 (Ammiano) - As Amended: April 6, 2011

(Corrected)

SUBJECT : Domestic work employees.SUMMARY : Enacts the Domestic Work Employee Equality, Fairness and Dignity Act. Specifically, this bill :

- 1) Defines "domestic work" to mean services related to the care of persons in private households or maintenance of private households or their premises.
- 2) Defines "domestic work employee" as an individual who performs domestic work (including live-in domestic work employees and personal attendants). The term does not include In-Home Supportive Services program employees, specified family members, or minor babysitters.
- 3) Defines a "domestic work employer" as a person who (including through the services of a third-party employer) employs or exercises control over the wages, hours or working conditions of a domestic work employee.
- 4) Establishes specific employment rights for domestic work employees, including the following:
  - a) A domestic work employee shall be entitled to overtime after eight hours in a workday or 40 hours in a workweek.
  - b) A domestic work employee who is required to be on duty for 24 consecutive hours or more shall have a minimum of eight consecutive hours of uninterrupted sleep except in an emergency.
  - c) A live-in domestic work employee shall not be required to work more than five days in any one workweek without a day off.
  - d) Live-in domestic work employees and those who work for more than 24 consecutive hours shall be provided sleeping

D

AB 889

Page B

accommodations that are adequate, decent and sanitary.

- e) A domestic work employee shall earn an annual wage increase equal to the percentage increase in the Consumer Price Index for urban wage earners and clerical workers.
  - f) A domestic work employee is entitled to meal and rest periods, as specified.
  - g) A domestic work employer shall permit a domestic work employee who works five hours or more to choose the food he or she eats and to prepare his or her own meals.
  - h) A domestic work employee shall accrue paid vacation benefits as specified.
  - i) A domestic work employee shall accrue paid sick days, as specified.
  - j) A domestic work employee is entitled to written notice of termination 21 days before his or her final day of employment, except where the termination is based on the employee causing intentional physical or psychological harm or damage to the work premises.
- 5) Specifies certain penalties and remedial provisions, and provides for a private right of action for enforcement, of the aforementioned rights.
  - 6) Eliminates the current requirement that domestic workers must work at least 52 hours and earn more than \$100 in the previous 90 days to be eligible for worker's compensation coverage.
  - 7) Eliminates the exemption in current occupational safety and health law for "household domestic service" and establishes a specific enforcement protocol for the Division of Occupational Safety and Health where the place of employment is a

residential dwelling.

8) Makes other related and conforming changes.

9) Makes related legislative findings and declarations.

FISCAL EFFECT : Unknown

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AB 889  
Page C

COMMENTS : This bill proposes to enact the "Domestic Work Employee Equality, Fairness and Dignity Act."

General Background on Domestic Workers

"Domestic workers" or "household workers" are generally comprised of housekeepers, nannies and caregivers of children and others who work in private households to care for the health, safety and well-being of those under their care.

A recent study generally summarizes the general status of domestic workers as follows:

"[Domestic] workers work in the private homes of their employers, performing tasks such as in-home child, patient, and elder care, housework, and cooking. They are primarily female immigrants; some live in the home of their employer working around the clock, while others work in various households where the work is temporary and sporadic. Many are 'unaffiliated' workers, meaning they have no connection to a hiring or temporary agency. The independent, private, often isolated nature of domestic labor means that household workers often lack information about their rights or knowledge of the laws of this country and are frequently exploited by employers. Those who are undocumented live in constant fear of being deported. While supporting their employers' homes and families, household workers frequently find themselves working in substandard and often exploitative conditions, earning poverty wages too low to support their own families, and lacking access to basic health care. Their vulnerable situation subsidizes the productivity and affluence of the U.S. economy and yet this occupation is little understood and marginalized by the larger society and policymakers."<1>

Advocates contend that domestic workers often labor under harsh conditions, work long hours for low wages without benefits or job security, and face termination without notice or severance pay leaving many suddenly without income. In the worst cases domestic workers are verbally and physically abused or sexually assaulted, and stripped of their privacy and dignity.

<1> "Behind Closed Doors: Working Conditions of California's Household Workers." Mujeres Unidas y Activas, Day Labor Program Women's Collective of La Raza Centro Legal, Data Center (March 2007), p. 2.

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AB 889  
Page D

Treatment Under Federal and State Labor Laws

In general, domestic workers are largely excluded from some of the more basic protections afforded to other workers under state and federal law, including the rights to overtime wages, safe and healthy working conditions, workers' compensation, employment discrimination and the right to engage in collective bargaining.

One useful analysis includes the following overview of the treatment of domestic workers under California law:

"In California, 'all persons employed in household occupations, whether paid on a time, piece rate, commission, or other basis' are entitled to be paid the state minimum wage. Live-in domestic workers cannot be charged for food or housing without a voluntary, written agreement. Like its federal counterpart, California wage and hour laws exclude personal attendants. However, personal attendants, whether live-in or not, are entitled to the California minimum wage if they spend more than twenty percent of their time doing other housework.

Non-live-in domestic workers are entitled to overtime pay

under California law under the same conditions as under federal law; however, in California such workers are also entitled to rest periods. Ten minute rest periods and a thirty minute meal period are considered on-duty and counted as time worked, unless the employee is relieved of all duty during the meal period.

Live-in domestic workers are entitled to overtime only if they work more than nine hours in a workday or if they work on the sixth or seventh workday. These workers must be given at least 12 consecutive off-duty hours on any workday. Work during off duty time is compensable as overtime. Personal attendants are not entitled to meal breaks or rest breaks.

All domestic workers in California are entitled to be free from sexual harassment.

Many domestic workers are entitled to workers' compensation benefits if they are injured on the job. To qualify for

AB 889  
Page E

benefits under California's Worker Compensation Law, domestic workers must work more than 52 hours during the 90 days prior to injury and must have earned \$100 or more during the same 90 days.

Though rights and protections are relatively broad in California, domestic workers still do not enjoy the full complement of employment protections provided to most of the state's workers. Domestic workers may suffer discrimination, since California's Fair Employment and Housing Act only prohibits employers with five or more employees from discrimination on the basis of race, sex, religion, national origin, pregnancy, age, disability, marital status, sexual orientation, gender identity, or on the basis of an English only policy. California occupational safety and health law excludes 'household domestic service.' Domestic workers who provide 'domestic service in a private home' are excluded from obtaining unemployment insurance benefits unless the worker was paid \$1000 or more in any calendar quarter in the calendar year or the preceding year. Undocumented immigrant workers are not eligible to collect unemployment insurance in California.

California employment and labor law provides most domestic workers with minimum wages and maximum hours, workers' compensation for injuries on the job, and protection from sexual harassment. However, domestic workers in California are left without many of the basic legal protections afforded to other workers in this state."<2>

#### Spotlight on Overtime Protection Under California Law

As discussed above, domestic workers are excluded from most labor and employment law protections under California law. However, the payment of overtime is one particular issue of disparity that has garnered significant attention in recent years - and is therefore worth addressing in some detail.

Under existing law for most non-exempt employees, any work in excess of eight hours day, in excess of 40 hours a week, and the

<2> Left Out: Assessing the Rights of Migrant Domestic Workers in the United States, Seeking Alternatives." Human Rights Center, UC Berkeley International Human Rights Clinic, Boalt Hall School of Law (November 2003), pp. 5-7.

AB 889  
Page F

first eight hours on the seventh day of work must be compensated at no less than one and one-half times the regular rate of pay. Existing law also requires that any work in excess of 12 hours a day and in excess of eight hours on the seventh day of work are to be compensated at no less than twice the regular rate of pay.

#### Treatment of "Personal Attendants" Under the Industrial Welfare Commission Wage Orders

In 1986, the Industrial Welfare Commission (IWC) adopted a complete exemption from the overtime provisions and other requirements of the Wage Orders for individuals employed as "personal attendants." The minimum wage exemption was

eliminated on January 1, 2001 thereby entitling "personal attendants" to the state minimum wage for all hours worked. However, as discussed below, a partial or complete overtime exemption continues to exist for "personal attendants" under the IWC Wage Orders.

1. IWC Wage Order 15

IWC Wage Order 15 applies to "household occupations," defined as all services related to the care of persons or maintenance of a private household or its premises by an employee of a private householder.

Under Wage Order 15, "personal attendants" are defined as including:

"babysitters and means any person employed by a private householder or by any third party employer recognized in the health care industry to work in a private household, to supervise, feed, or dress a child or person who by reason of advanced age, physical disability, or mental deficiency needs supervision."

"Personal attendants" are completely exempt from the general overtime requirements of Wage Order 15. Therefore, "personal

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AB 889

Page G

attendants" are only required to be paid straight-time for all hours worked, regardless of whether they work more than eight hours in a day or 40 hours in a week.

Wage Order 15 also specifies that the status of "personal attendant" shall apply when no significant amount of work other than the foregoing is required. This limitation is intended to prevent the overtime exemption from applying to employees who work in households but who are not "personal attendants". Under this limitation, an employee who performs some of the work of a "personal attendant" but also a significant amount of other work falls outside of the exemption.

A recent opinion letter issued by the Division of Labor Standards Enforcement (DLSE) that sought to clarify the definition of "personal attendants" under Wage Order 15 stated the following:

"We cannot provide you with a comprehensive list of acceptable duties for a personal attendant. However, it is instructional, and not inconsistent with the long standing DLSE position, to consider those duties included by the U.S. Department of Health and Human Services National Center for Health Statistics' definitions for activities of daily living. Such activities relate to personal care and include, but are not limited to, such duties as bathing, showering, getting in or out of a bed or chair and using a toilet. 'Supervising' may also include assistance in obtaining medical care, preparing meals, managing money, shopping for groceries and personal items, using a telephone or performing housework when such activities are related to the independent living of the person and cannot be performed by him or herself alone due to a health or age limitation. It must be noted, however, that any general housekeeping duties performed should not exceed 20% of the weekly working time spent by the personal attendant to maintain his or her exemption under IWC Wage Order 15."

Wage Order 15 also has specific provisions related to "live-in" household employees who are not "personal attendants." First,

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AB 889

Page H

Wage Order 15 specifies that a live-in employee shall have at

least 12 consecutive hours free of duty during each workday of 24 hours, and the total span of hours for a workday shall be no more than 12 hours. Wage Order 15 also specifies that a live-in employee shall have at least three hours free of duty during the 12 hour span of work. Finally, a live-in employee who works during scheduled off-duty hours or during the 12 consecutive off-duty hours is entitled to overtime for such hours.

The net result is that a live-in employee essentially works a nine hour day and is entitled to overtime for any hours worked beyond that. However, as discussed above, an employee who is a "personal attendant" is completely exempt from overtime under Wage Order 15.

2. IWC Wage Order 5

Wage Order 5 (which covers the "public housekeeping" industry) contains a partial overtime exemption for "personal attendants" that is narrower than the exemption contained in Wage Order 15 and applies to individuals employed by nonprofit organizations.

Under Wage Order 5, a "personal attendant" is defined as including:

"babysitters and means any person employed by a non-profit organization covered by this order to supervise, feed or dress a child or person who by reason of advanced age, physical disability or mental deficiency needs supervision."

Under Wage Order 5, a "personal attendant" may work up to 40 hours and six days in a workweek without overtime. Therefore, "personal attendants" under Wage Order 5 may work over eight hours in a day without receiving overtime, as long as their total hours for the week do not exceed 40.

3. Federal Exemption for "Companions"

It may also be useful to point out the federal exemption for "companions" under the Fair Labor Standards Act (FLSA), which is much broader than the exemption under state law.

The FLSA provides an exemption to minimum wage and overtime requirements for individuals employed in domestic service

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AB 889

Page 1

employment to provide babysitting services on a casual basis, or to provide companionship services for individuals who are unable to care for themselves because of age or infirmity. Companion services include "those services which provide fellowship, care and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. It does not include services that require and are performed by trained personnel, such as a registered nurse or a practical nurse.

FLSA regulations state that companionship services may include household work related to the care of the aged or infirm person such as meal preparation, bed making, washing clothes, and other similar services. Companions may perform general household work as long as such work is incidental and does not exceed 20 percent of the total weekly hours worked. Household work related to the care of the individual is not counted towards this 20 percent limitation.

RECENT OVERSIGHT HEARING

On June 9, 2010, this Committee convened an oversight hearing entitled, "Behind Closed Doors: Working Conditions of California Domestic Workers." That hearing featured testimony by domestic workers, academics, lawyers, worker advocates, public health officials and others. The hearing explored in detail the working conditions of domestic workers in California and the status of state and federal laws that apply (or do not apply) to domestic workers.

RECENT NEW YORK STATE LEGISLATION :

On July 1, 2010, the New York State Legislature passed the first-in-the-nation domestic worker "bill of rights." The bill was signed by Governor Paterson on August 31, 2010 and went into effect on November 29, 2010.

Among other things, the New York statute:

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AB 889

Page J

Establishes an eight hour workday and overtime after 40 hours a week for live-out domestic workers (44 hours for live-in domestic workers).

Provides for one day of rest each calendar week.

Provides for three paid days off after one year of employment.

Establishes protection against workplace discrimination based on race, gender, sexual orientation, national origin, disability, marital status and domestic violence victim status.

Establishes protection against sexual harassment by the employer.

It should be noted that under the New York legislation the term "domestic worker" is defined to exclude any worker who provides companionship services and "who is employed by an employer or agency other than the family or household using his or her services."

ARGUMENTS IN SUPPORT :

According to the author, in California there are around 200,000 domestic workers who serve as housekeepers, nannies, and caregivers in private homes. Domestic workers are primarily immigrant women who work in private households in order to provide for their own families as the primary income earner. The role of domestic workers is essential to California as it enables others to participate in the workforce. Without these domestic workers many Californians would be forced to forgo their own jobs to address their household needs, the result being that the well-being of many California families and the economy as a whole would suffer.

However, the author states that, despite the importance of their work, domestic workers have historically received wages well below the poverty line and continue to be excluded from some of the most fundamental labor protections other Californian workers enjoy. Domestic workers have historically been exempted from laws governing the rights afforded to other workers - decent wages, a safe and healthy workplace health, workers compensation and other labor protections.

The author notes that domestic workers are among the most isolated and vulnerable workforce in the state. The unique nature of their work requires protections to prevent abuse and

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AB 889

Page K

mistreatment from occurring behind closed doors, out of the public eye. Therefore, this bill provides domestic workers with industry-specific protections to use kitchen facilities and cook their own food, and creates standards for sleep, sick days, living wage increases, and paid vacations.

Similarly, supporters argue that this bill would extend equal rights to domestic workers and standardize an industry made largely invisible. Domestic workers are the backbone of the economy yet they have been excluded from basic labor laws. This bill seeks to provide domestic workers with equal labor rights and industry-wide standards so that they can provide quality care to the individuals and homes with which they are entrusted.

provides uniform protection to all domestic workers. They believe this uniformity will increase the quality of care and standardize the industry.

Supporters contend that this bill simplifies the law

Finally, supporters state that domestic workers are the bedrock of our society - they do the work that makes all other work possible. This bill will not only protect this significant and valuable workforce, but also will invest in the wellbeing of Californian's families and homes.

ARGUMENTS IN OPPOSITION :

The California Association for Health Services at Home (CAHSAH) strongly opposes this bill, arguing that it would significantly increase the cost of home care for seniors, people with disabilities, and other frail Californians, and would further strengthen an already dangerously large underground economy.

CAHSAH states that hundreds of thousands of Californians depend

on home care services to keep them safe and healthy in their home and to avoid institutionalization. Their specific and unique needs require flexibility in how a home care company can best provide care, and this has long been accomplished through certain exemptions in labor law which keep the cost of care affordable and allow for continuity of care. In this economic downturn it can be especially challenging for seniors to continue to pay for the care, particularly if they require 24 hour live-in assistance.

CAHSAH contends that this bill proposes to drastically increase the cost of care by overturning these longstanding exemptions

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AB 889

Page L

and adding additional liabilities and costly burdens such as paid vacation days, paid sick days, mandatory wage increases, and a 21-day notice of termination.

CAHSAH notes that there is already a robust underground economy in home care where neither the consumer nor the worker has any protections against financial, physical, or emotional abuse. The underground economy has no oversight, taxes are not paid, liability is not covered, and it often leads to one side taking advantage of the other. If the cost of home care is drastically increased, as proposed in this bill, CAHSAH argues that the price difference between legitimate home care companies and the underground option will widen and the underground economy will dramatically grow, at a detriment to all stakeholders involved. Finally, CAHSAH concludes that if this bill passes, significant regulatory burdens will be placed on the home care industry, causing the job growth in this sector, which California has benefited from, to come to a halt.

The California Disability Services Association (CDSA) also opposes this measure. Among other things, CDSA states that changing the current system would result in disruptive shift changes. Service providers could not afford to pay overtime for periods beyond eight hours. The solution would be a required shift change - in the middle of the night. In other words, a person would go to sleep with one support staff and wake up with another - a change that is both disruptive and unsettling for many vulnerable individuals.

Moreover, CDSA contends that there is simply no funding available to implement these proposals. Unless the Legislature is prepared to provide tens of millions of dollars to fund these requirements, CDSA argues that it is unfeasible and potentially disastrous to impose these conditions on the organizations that provide these vitally important services.

PRIOR AND RELATED LEGISLATION :

HR 11 (Ammiano) of 2011 recognizes March 30th as International Domestic Workers' Day. HR 11 was heard before this Committee on March 30, 2011.

ACR 163 (V. Manuel Perez) of 2010 encouraged greater protections in federal and state law for domestic workers.

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AB 889

Page M

AB 2536 (Montanez) of 2006 was the most ambitious legislation aimed at these issues in recent history. As introduced, AB 2536 would have eliminated the overtime exemption under California law for most "personal attendants." There was significant opposition, and the bill was subsequently narrowed to generally apply only to nannies.

AB 2536 was vetoed by Governor Schwarzenegger, who stated the following in his veto message:

"This bill would require overtime payment for personal attendants who are nannies. The existing overtime exemption was intended to keep these jobs above ground and to allow those in need of such services to find assistance at a price they can afford. Removing this exemption would dramatically increase the costs of these attendants and potentially drive employment underground.

I am also concerned that this bill creates new liquidated damages penalties against employers of all household workers, not merely nannies. In short, this bill subjects

seniors and the severely disabled who hire household workers to a new cause for civil litigation. Given the increase in frivolous labor law litigation in recent years, I cannot support subjecting seniors and the disabled to additional liability."

ACR 141 (Cedillo) of 2000 which declared March 30 as Domestic Worker Appreciation Day in recognition of all domestic workers for their hard work and dedication, their contribution to the stability and well-being of the Californian family household, and their often overlooked contributions to California's economy.

REGISTERED SUPPORT / OPPOSITION :

Support

9to5 National Association of Working Women  
 AD 13 San Francisco  
 Alameda Labor Council, AFL-CIO  
 American Civil Liberties Union  
 American Federation of State, County and Municipal Employees, Local 3299  
 American Federation of Teachers, Local 2121

AB 889  
 Page N

Asian Pacific Islander Equality, Northern California  
 Asian Americans for Civil Rights & Equality  
 Asian Communities for Reproductive Justice  
 Asian Immigrant Women Advocates  
 Asian Pacific American Legal Center  
 Asian Pacific Environmental Network  
 Asian/Pacific Islander Youth Promoting Advocacy and Leadership  
 AWARE-LA  
 Berkeley-East Bay Gray Panthers  
 Black Alliance for Just Immigration  
 CA Conference Board of the Amalgamated Transit Union  
 CA Conference of Machinists  
 CA Official Court Reporters Association  
 California Alliance for Retired American  
 California Coalition for Women Prisoners  
 California Communities United Institute  
 California Employment Lawyers Association  
 California Immigrant Policy Center  
 California Labor Federation, AFL-CIO  
 California Legal Rural Assistance Foundation  
 California Nurses Association/National Nurses Organizing Committee  
 California Teamsters Public Affairs Council  
 Canal Alliance  
 CARECEN  
 Caring Hands Workers' Association  
 Causa Justa: Just Cause  
 Center for Independence of Individuals with Disabilities of San Mateo County  
 Center for Young Women's Development  
 Clergy and Laity United for Economic Justice of Los Angeles  
 Coalition for Humane Immigrant Rights of Los Angeles  
 Community Actively Living Independent & Free  
 Community Resources for Independent Living  
 Community United Against Violence  
 Data Center  
 DataCenter  
 East Bay Alliance for a Sustainable Economy  
 Echo Park United Methodist Church  
 Edward Chiera Associates  
 Elizabeth Russell, MA  
 Engineers and Scientists of California  
 Enlace  
 Equal Rights Advocates  
 Filipino Advocates for Justice

AB 889  
 Page O

Filipino Migrant Center  
 Golden Gate University School of Law Women's Employment Rights Clinic  
 Hand in Hand-Domestic Employers Association  
 Interfaith Coalition for Immigrant Rights  
 International Longshore and Warehouse Union  
 Jobs with Justice San Francisco  
 Kehilla Community Synagogue  
 Labor Project for Working Families





## LEGISLATIVE AGENDA ITEM DETAIL SHEET

**BILL NUMBER/ISSUE:** Senate Bill 368: Decisionmaking

**BILL SUMMARY:** This bill would include the right to make decisions about a minor's developmental services as one of the rights taken away from parents when a minor is removed from their custody under certain circumstances.

**BACKGROUND:** Currently the law provides protection to minors who are removed from their parents for specified reasons (abuse, neglect, etc.) During the time the minor is removed from the home and becomes a ward of the court, the court appoints a responsible adult to make educational decisions on behalf of the minor. This bill would include developmental services as part of the decisions that the representative can make including: 1) accessing the minor's information, 2) participation in the IPP process, 3) participate in the fair hearing process and, 4) provide for written consent for establishing eligibility.

**ANALYSIS/DISCUSSION:** Children who have been removed from their parent's custody may not receive educational, health or developmental service planning due to the significant disruption in their lives. Therefore, it would assist in the child's life to have an individual who has the right to make those decisions on their behalf when the parent's rights have been removed.

This is even more tragic when the minor's family may not have applied for developmental services on their behalf and those services are needed. This bill would allow for the appointed individual (typically a foster parent) to apply for those services.

This bill includes provisions for the court appointed foster parent to also serve as the minor's authorized representative during developmental services processes (IPP, receiving confidential information, filing for fair hearings, etc.)

The bill inadvertently may increase more authority for the authorized representatives appointed by the area boards pursuant to WIC 4548 since no distinction is clearly made between the authorized representative this bill creates and the area board appointment.

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Shape public policy that positively impacts Californians with developmental disabilities and their families.

**PRIOR COUNCIL ACTIVITY:** None

**RECOMMENDATION(S):** Support SB 368.

**ATTACHMENTS:** SB 368 and Senate Human Services analysis

**PREPARED:** Melissa C. Corral, May 3, 2011

AMENDED IN SENATE APRIL 4, 2011

**SENATE BILL**

**No. 368**

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**Introduced by Senator Liu**

February 15, 2011

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An act to add Section 1529.3 to the Health and Safety amend Sections 319, 361, 706.5, 726, 4514, 4646, 4646.5, 4648, and 4701.6 of the Welfare and Institutions Code, relating to foster care developmental services.

LEGISLATIVE COUNSEL'S DIGEST

SB 368, as amended, Liu. ~~Foster parent training: teen foster youth.~~  
*Developmental services: decisionmaking.*

*Existing law authorizes a peace officer, without a warrant, to take into temporary custody a minor when the officer has reasonable cause for believing that the minor is in danger, as specified. Existing law provides for a hearing process to deem the child a dependent child of the court. Under existing law, during the hearing process the court is authorized to temporarily limit the right of a parent or guardian to make educational decisions for the child and to temporarily appoint, or make itself, these decisions, as specified. Under existing law, once the minor is adjudged a dependent child of the court, the court may limit the ability of a parent or guardian to make educational decisions for the minor.*

*This bill would authorize the court to limit the right of a parent or guardian to make decisions about developmental services and to appoint a responsible adult, or to make itself, those decisions, as specified.*

*Under existing law, a minor may be adjudged a ward of the court for specified reasons. The court may limit the control to be exercised over the ward by a parent or guardian, including educational*

decisionmaking, and appoint a responsible adult, as specified, to make those decisions.

*This bill would extend those provisions to decisions relating to developmental services.*

*Under existing law, the Lanterman Developmental Disabilities Services Act, the State Department of Developmental Services is authorized to contract with regional centers to provide support and services to individuals with developmental disabilities. The services and supports to be provided to a regional center consumer are contained in an individual program plan (IPP), developed in accordance with prescribed requirements through an individual program planning process. Existing law defines "authorized representative" for purposes of the act to include a person having legal custody of a minor claimant or a person with written authority to act as representative of the claimant.*

*This bill would add to the definition of "authorized representative" a responsible adult appointed through a court order made pursuant to the limitation of developmental services decisionmaking authority, as set forth above, and who does not have a conflict of interest, as defined. The bill would give the authorized representative rights to access the minor's information, participate in the IPP process, participate in the fair hearing process, and provide written consent for purposes of establishing eligibility for regional center services and supports to the same extent as that provided under the law to parents, legal guardians, and conservators.*

~~Existing law requires the State Department of Social Services to license community care facilities, including facilities that provide foster care services for children. A violation of community care facility provisions is a misdemeanor. Existing law regulates foster family homes and provides for their licensure by certified foster family agencies, the county, or the State Department of Social Services. Existing law requires every licensed foster parent to complete specified preplacement training and additional annual training.~~

~~This bill would require the training for licensed foster parents to also include specified training in issues relevant to providing foster care for teenagers. The training required by the bill would be included within existing preplacement and postplacement training program requirements, and would not increase the number of required training hours for the foster parent. By changing the definition of a crime, this bill would create a state-mandated local program.~~

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

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

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

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

1     **SECTION 1.** *Section 319 of the Welfare and Institutions Code*  
2 *is amended to read:*

3     319. (a) At the initial petition hearing, the court shall examine  
4 the child's parents, guardians, or other persons having relevant  
5 knowledge and hear the relevant evidence as the child, the child's  
6 parents or guardians, the petitioner, or their counsel desires to  
7 present. The court may examine the child, as provided in Section  
8 350.

9     (b) The social worker shall report to the court on the reasons  
10 why the child has been removed from the parent's physical custody,  
11 the need, if any, for continued detention, the available services  
12 and the referral methods to those services that could facilitate the  
13 return of the child to the custody of the child's parents or guardians,  
14 and whether there are any relatives who are able and willing to  
15 take temporary physical custody of the child. The court shall order  
16 the release of the child from custody unless a prima facie showing  
17 has been made that the child comes within Section 300, the court  
18 finds that continuance in the parent's or guardian's home is  
19 contrary to the child's welfare, and any of the following  
20 circumstances exist:

21     (1) There is a substantial danger to the physical health of the  
22 child or the child is suffering severe emotional damage, and there  
23 are no reasonable means by which the child's physical or emotional  
24 health may be protected without removing the child from the  
25 parent's or guardian's physical custody.

26     (2) There is substantial evidence that a parent, guardian, or  
27 custodian of the child is likely to flee the jurisdiction of the court.

28     (3) The child has left a placement in which he or she was placed  
29 by the juvenile court.

1 (4) The child indicates an unwillingness to return home, if the  
2 child has been physically or sexually abused by a person residing  
3 in the home.

4 (c) If the matter is continued pursuant to Section 322 or for any  
5 other reason, the court shall find that the continuance of the child  
6 in the parent's or guardian's home is contrary to the child's welfare  
7 at the initial petition hearing or order the release of the child from  
8 custody.

9 (d) (1) The court shall also make a determination on the record,  
10 referencing the social worker's report or other evidence relied  
11 upon, as to whether reasonable efforts were made to prevent or  
12 eliminate the need for removal of the child from his or her home,  
13 pursuant to subdivision (b) of Section 306, and whether there are  
14 available services that would prevent the need for further detention.  
15 Services to be considered for purposes of making this determination  
16 are case management, counseling, emergency shelter care,  
17 emergency in-home caretakers, out-of-home respite care, teaching  
18 and demonstrating homemakers, parenting training, transportation,  
19 and any other child welfare services authorized by the State  
20 Department of Social Services pursuant to Chapter 5 (commencing  
21 with Section 16500) of Part 4 of Division 9. The court shall also  
22 review whether the social worker has considered whether a referral  
23 to public assistance services pursuant to Chapter 2 (commencing  
24 with Section 11200) and Chapter 7 (commencing with Section  
25 14000) of Part 3, Chapter 1 (commencing with Section 17000) of  
26 Part 5, and Chapter 10 (commencing with Section 18900) of Part  
27 6 of Division 9 would have eliminated the need to take temporary  
28 custody of the child or would prevent the need for further detention.

29 (2) If the child can be returned to the custody of his or her parent  
30 or guardian through the provision of those services, the court shall  
31 place the child with his or her parent or guardian and order that  
32 the services shall be provided. If the child cannot be returned to  
33 the physical custody of his or her parent or guardian, the court  
34 shall determine if there is a relative who is able and willing to care  
35 for the child, and has been assessed pursuant to paragraph (1) of  
36 subdivision (d) of Section 309.

37 (e) If a court orders a child detained, the court shall state the  
38 facts on which the decision is based, specify why the initial removal  
39 was necessary, reference the social worker's report or other  
40 evidence relied upon to make its determination whether

1 continuance in the home of the parent or legal guardian is contrary  
2 to the child's welfare, order temporary placement and care of the  
3 child to be vested with the county child welfare department pending  
4 the hearing held pursuant to Section 355 or further order of the  
5 court, and order services to be provided as soon as possible to  
6 reunify the child and his or her family if appropriate.

7 (f) (1) If the child is not released from custody, the court may  
8 order that the child shall be placed in the assessed home of a  
9 relative, in an emergency shelter or other suitable licensed place,  
10 in a place exempt from licensure designated by the juvenile court,  
11 or in the assessed home of a nonrelative extended family member  
12 as defined in Section 362.7 for a period not to exceed 15 judicial  
13 days.

14 (2) As used in this section, "relative" means an adult who is  
15 related to the child by blood, adoption, or affinity within the fifth  
16 degree of kinship, including stepparents, stepsiblings, and all  
17 relatives whose status is preceded by the words "great,"  
18 "great-great," or "grand," or the spouse of any of these persons,  
19 even if the marriage was terminated by death or dissolution.  
20 However, only the following relatives shall be given preferential  
21 consideration for placement of the child: an adult who is a  
22 grandparent, aunt, uncle, or sibling of the child.

23 (3) The court shall consider the recommendations of the social  
24 worker based on the assessment pursuant to paragraph (1) of  
25 subdivision (d) of Section 309 of the relative's home, including  
26 the results of a criminal records check and prior child abuse  
27 allegations, if any, prior to ordering that the child be placed with  
28 a relative. The court shall order the parent to disclose to the social  
29 worker the names, residences, and any known identifying  
30 information of any maternal or paternal relatives of the child. The  
31 social worker shall initiate the assessment pursuant to Section  
32 361.3 of any relative to be considered for continuing placement.

33 (g) (1) At the initial hearing upon the petition filed in  
34 accordance with subdivision (c) of Rule 5.520 of the California  
35 Rules of Court or anytime thereafter up until the time that the  
36 minor is adjudged a dependent child of the court or a finding is  
37 made dismissing the petition, the court may temporarily limit the  
38 right of the parent or guardian to make educational *or*  
39 *developmental services* decisions for the child and temporarily  
40 appoint a responsible adult to make educational *or developmental*

1 *services* decisions for the child if all of the following conditions  
2 are found:

3 (A) The parent or guardian is unavailable, unable, or unwilling  
4 to exercise educational *or developmental services* rights for the  
5 child.

6 (B) The county placing agency has made diligent efforts to  
7 locate and secure the participation of the parent or guardian in  
8 educational *or developmental services* decisionmaking.

9 (C) The child's educational *and developmental services* needs  
10 cannot be met without the temporary appointment of a responsible  
11 adult.

12 (2) If the court cannot identify a responsible adult to make  
13 educational decisions for the child and the appointment of a  
14 surrogate parent, as defined in subdivision (a) of Section 56050  
15 of the Education Code, is not warranted, the court may, with the  
16 input of any interested person, make educational decisions for the  
17 child. *If the court cannot identify a responsible adult to make*  
18 *developmental services decisions for the child, the court may, with*  
19 *the input of the any interested person, make developmental services*  
20 *decisions for the child.* If the court makes educational *or*  
21 *developmental services* decisions for the child, the court shall also  
22 issue appropriate orders to ensure that every effort is made to  
23 identify a responsible adult to make future educational *or*  
24 *developmental services* decisions for the child.

25 (3) Any temporary appointment of a responsible adult and  
26 temporary limitation on the right of the parent or guardian to make  
27 educational *or developmental services* decisions for the child shall  
28 be specifically addressed in the court order. Any order made under  
29 this section shall expire at the conclusion of the hearing held  
30 pursuant to Section 361 or upon dismissal of the petition. Upon  
31 the entering of disposition orders, any additional needed limitation  
32 on the parent's or guardian's educational *or developmental services*  
33 rights shall be addressed pursuant to Section 361.

34 *SEC. 2. Section 361 of the Welfare and Institutions Code is*  
35 *amended to read:*

36 361. (a) In all cases in which a minor is adjudged a dependent  
37 child of the court on the ground that the minor is a person described  
38 by Section 300, the court may limit the control to be exercised  
39 over the dependent child by any parent or guardian and shall by  
40 its order clearly and specifically set forth all those limitations. Any

1 limitation on the right of the parent or guardian to make educational  
2 *or developmental services* decisions for the child shall be  
3 specifically addressed in the court order. The limitations may not  
4 exceed those necessary to protect the child. If the court specifically  
5 limits the right of the parent or guardian to make educational *or*  
6 *developmental services* decisions for the child, the court shall at  
7 the same time appoint a responsible adult to make educational *or*  
8 *developmental services* decisions for the child until one of the  
9 following occurs:

10 (1) The minor reaches 18 years of age, unless the child chooses  
11 not to make educational *or developmental services* decisions for  
12 himself or herself, or is deemed by the court to be incompetent.

13 (2) Another responsible adult is appointed to make educational  
14 *or developmental services* decisions for the minor pursuant to this  
15 section.

16 (3) The right of the parent or guardian to make educational *or*  
17 *developmental services* decisions for the minor is fully restored.

18 (4) A successor guardian or conservator is appointed.

19 (5) The child is placed into a planned permanent living  
20 arrangement pursuant to paragraph (3) of subdivision (g) of Section  
21 366.21, Section 366.22, or Section 366.26, at which time, *for*  
22 *educational decisionmaking*, the foster parent, relative caretaker,  
23 or nonrelative extended family member as defined in Section 362.7,  
24 has the right to represent the child in educational matters pursuant  
25 to Section 56055 of the Education Code, *and for decisions relating*  
26 *to developmental services, the foster parent, relative caregiver,*  
27 *or nonrelative extended family member of the planned permanent*  
28 *living arrangement shall become the authorized representative for*  
29 *the child pursuant to Section 4701.6 unless the court specifies*  
30 *otherwise in a court order.*

31 An individual who would have a conflict of interest in  
32 representing the child may not be appointed to make educational  
33 *or developmental services* decisions. For purposes of this section,  
34 “an individual who would have a conflict of interest,” means a  
35 person having any interests that might restrict or bias his or her  
36 ability to make educational *or developmental services* decisions,  
37 including, but not limited to, those conflicts of interest prohibited  
38 by Section 1126 of the Government Code, and the receipt of  
39 compensation or attorneys’ fees for the provision of services  
40 pursuant to this section. A foster parent may not be deemed to

1 have a conflict of interest solely because he or she receives  
2 compensation for the provision of services pursuant to this section.

3 If the court is unable to appoint a responsible adult to make  
4 educational decisions for the child and paragraphs (1) to (5),  
5 inclusive, do not apply, and the child has either been referred to  
6 the local educational agency for special education and related  
7 services, or has a valid individualized education program, the court  
8 shall refer the child to the local educational agency for appointment  
9 of a surrogate parent pursuant to Section 7579.5 of the Government  
10 Code.

11 If the court cannot identify a responsible adult to make  
12 educational decisions for the child, the appointment of a surrogate  
13 parent as defined in subdivision (a) of Section 56050 of the  
14 Education Code is not warranted, and there is no foster parent to  
15 exercise the authority granted by Section 56055 of the Education  
16 Code, the court may, with the input of any interested person, make  
17 educational decisions for the child.

18 *If the court cannot identify a responsible adult to make*  
19 *developmental services decisions for the child, the court may, with*  
20 *the input of any interested person, make developmental services*  
21 *decisions for the child.*

22 All educational and school placement decisions shall seek to  
23 ensure that the child is in the least restrictive educational programs  
24 and has access to the academic resources, services, and  
25 extracurricular and enrichment activities that are available to all  
26 pupils. In all instances, educational and school placement decisions  
27 shall be based on the best interests of the child.

28 (b) Subdivision (a) does not limit the ability of a parent to  
29 voluntarily relinquish his or her child to the State Department of  
30 Social Services or to a licensed county adoption agency at any  
31 time while the child is a dependent child of the juvenile court, if  
32 the department or agency is willing to accept the relinquishment.

33 (c) A dependent child may not be taken from the physical  
34 custody of his or her parents or guardian or guardians with whom  
35 the child resides at the time the petition was initiated, unless the  
36 juvenile court finds clear and convincing evidence of any of the  
37 following circumstances listed in paragraphs (1) to (5), inclusive,  
38 and, in an Indian child custody proceeding, paragraph (6):

39 (1) There is or would be a substantial danger to the physical  
40 health, safety, protection, or physical or emotional well-being of

1 the minor if the minor were returned home, and there are no  
2 reasonable means by which the minor's physical health can be  
3 protected without removing the minor from the minor's parent's  
4 or guardian's physical custody. The fact that a minor has been  
5 adjudicated a dependent child of the court pursuant to subdivision  
6 (e) of Section 300 shall constitute prima facie evidence that the  
7 minor cannot be safely left in the physical custody of the parent  
8 or guardian with whom the minor resided at the time of injury.  
9 The court shall consider, as a reasonable means to protect the  
10 minor, the option of removing an offending parent or guardian  
11 from the home. The court shall also consider, as a reasonable means  
12 to protect the minor, allowing a nonoffending parent or guardian  
13 to retain physical custody as long as that parent or guardian  
14 presents a plan acceptable to the court demonstrating that he or  
15 she will be able to protect the child from future harm.

16 (2) The parent or guardian of the minor is unwilling to have  
17 physical custody of the minor, and the parent or guardian has been  
18 notified that if the minor remains out of their physical custody for  
19 the period specified in Section 366.26, the minor may be declared  
20 permanently free from their custody and control.

21 (3) The minor is suffering severe emotional damage, as indicated  
22 by extreme anxiety, depression, withdrawal, or untoward aggressive  
23 behavior toward himself or herself or others, and there are no  
24 reasonable means by which the minor's emotional health may be  
25 protected without removing the minor from the physical custody  
26 of his or her parent or guardian.

27 (4) The minor or a sibling of the minor has been sexually abused,  
28 or is deemed to be at substantial risk of being sexually abused, by  
29 a parent, guardian, or member of his or her household, or other  
30 person known to his or her parent, and there are no reasonable  
31 means by which the minor can be protected from further sexual  
32 abuse or a substantial risk of sexual abuse without removing the  
33 minor from his or her parent or guardian, or the minor does not  
34 wish to return to his or her parent or guardian.

35 (5) The minor has been left without any provision for his or her  
36 support, or a parent who has been incarcerated or institutionalized  
37 cannot arrange for the care of the minor, or a relative or other adult  
38 custodian with whom the child has been left by the parent is  
39 unwilling or unable to provide care or support for the child and

1 the whereabouts of the parent is unknown and reasonable efforts  
2 to locate him or her have been unsuccessful.

3 (6) In an Indian child custody proceeding, continued custody  
4 of the child by the parent or Indian custodian is likely to result in  
5 serious emotional or physical damage to the child, and that finding  
6 is supported by testimony of a “qualified expert witness” as  
7 described in Section 224.6.

8 (A) Stipulation by the parent, Indian custodian, or the Indian  
9 child’s tribe, or failure to object, may waive the requirement of  
10 producing evidence of the likelihood of serious damage only if the  
11 court is satisfied that the party has been fully advised of the  
12 requirements of the Indian Child Welfare Act (25 U.S.C. Sec. 1901  
13 et seq.), and has knowingly, intelligently, and voluntarily waived  
14 them.

15 (B) Failure to meet non-Indian family and child-rearing  
16 community standards, or the existence of other behavior or  
17 conditions that meet the removal standards of this section, will not  
18 support an order for placement in the absence of the finding in this  
19 paragraph.

20 (d) The court shall make a determination as to whether  
21 reasonable efforts were made to prevent or to eliminate the need  
22 for removal of the minor from his or her home or, if the minor is  
23 removed for one of the reasons stated in paragraph (5) of  
24 subdivision (c), whether it was reasonable under the circumstances  
25 not to make any of those efforts, or, in the case of an Indian child  
26 custody proceeding, whether active efforts as required in Section  
27 361.7 were made and that these efforts have proved unsuccessful.  
28 The court shall state the facts on which the decision to remove the  
29 minor is based.

30 (e) The court shall make all of the findings required by  
31 subdivision (a) of Section 366 in either of the following  
32 circumstances:

33 (1) The minor has been taken from the custody of his or her  
34 parent or guardian and has been living in an out-of-home placement  
35 pursuant to Section 319.

36 (2) The minor has been living in a voluntary out-of-home  
37 placement pursuant to Section 16507.4.

38 *SEC. 3. Section 706.5 of the Welfare and Institutions Code is*  
39 *amended to read:*

1 706.5. (a) If placement in foster care is recommended by the  
2 probation officer, or where the minor is already in foster care  
3 placement or pending placement pursuant to an earlier order, the  
4 social study prepared by the probation officer that is received into  
5 evidence at disposition pursuant to Section 706 shall include a  
6 case plan, as described in Section 706.6. If the court elects to hold  
7 the first status review at the disposition hearing, the social study  
8 shall also include, but not be limited to, the factual material  
9 described in subdivision (c).

10 (b) If placement in foster care is not recommended by the  
11 probation officer prior to disposition, but the court orders foster  
12 care placement, the court shall order the probation officer to prepare  
13 a case plan, as described in Section 706.6, within 30 days of the  
14 placement order. The case plan shall be filed with the court.

15 (c) At each status review hearing, the social study shall include,  
16 but not be limited to, an updated case plan as described in Section  
17 706.6 and the following information:

18 (1) The continuing necessity for and appropriateness of the  
19 placement.

20 (2) The extent of the probation department's compliance with  
21 the case plan in making reasonable efforts to safely return the  
22 minor to the minor's home or to complete whatever steps are  
23 necessary to finalize the permanent placement of the minor.

24 (3) The extent of progress that has been made by the minor and  
25 parent or guardian toward alleviating or mitigating the causes  
26 necessitating placement in foster care.

27 (4) If the first permanency planning hearing has not yet occurred,  
28 the social study shall include the likely date by which the minor  
29 may be returned to and safely maintained in the home or placed  
30 for adoption, appointed a legal guardian, permanently placed with  
31 a fit and willing relative, or referred to another planned permanent  
32 living arrangement.

33 (5) Whether the minor has been or will be referred to educational  
34 services and what services the minor is receiving, including special  
35 education and related services if the minor has exceptional needs  
36 as described in Part 30 (commencing with Section 56000) of  
37 Division 4 of Title 2 of the Education Code or accommodations  
38 if the child has disabilities as described in Chapter 16 (commencing  
39 with Section 701) of Title 29 of the United States Code Annotated.  
40 The probation officer or child advocate shall solicit comments

1 from the appropriate local education agency prior to completion  
2 of the social study.

3 (6) If the parent or guardian is unwilling or unable to participate  
4 in making an educational *or developmental services* decision for  
5 his or her child, or if other circumstances exist that compromise  
6 the ability of the parent or guardian to make educational *or*  
7 *developmental services* decisions for the child, the probation  
8 department shall consider whether the right of the parent or  
9 guardian to make educational *or developmental services* decisions  
10 for the minor should be limited. If the study makes that  
11 recommendation, it shall identify whether there is a responsible  
12 adult available to make educational *or developmental services*  
13 decisions for the minor pursuant to Section 726.

14 (d) At each permanency planning hearing, the social study shall  
15 include, but not be limited to, an updated case plan as described  
16 in Section 706.6, the factual material described in subdivision (c)  
17 of this section, and a recommended permanent plan for the minor.

18 *SEC. 4. Section 726 of the Welfare and Institutions Code is*  
19 *amended to read:*

20 726. (a) In all cases in which a minor is adjudged a ward or  
21 dependent child of the court, the court may limit the control to be  
22 exercised over the ward or dependent child by any parent or  
23 guardian and shall in its order, clearly and specifically set forth all  
24 those limitations, but no ward or dependent child shall be taken  
25 from the physical custody of a parent or guardian, unless upon the  
26 hearing the court finds one of the following facts:

27 (1) That the parent or guardian is incapable of providing or has  
28 failed or neglected to provide proper maintenance, training, and  
29 education for the minor.

30 (2) That the minor has been tried on probation while in custody  
31 and has failed to reform.

32 (3) That the welfare of the minor requires that custody be taken  
33 from the minor's parent or guardian.

34 (b) Whenever the court specifically limits the right of the parent  
35 or guardian to make educational *or developmental services*  
36 decisions for the minor, the court shall at the same time appoint a  
37 responsible adult to make educational *or developmental services*  
38 decisions for the child until one of the following occurs:

1 (1) The minor reaches 18 years of age, unless the child chooses  
2 not to make educational *or developmental services* decisions for  
3 himself or herself, or is deemed by the court to be incompetent.

4 (2) Another responsible adult is appointed to make educational  
5 *or developmental services* decisions for the minor pursuant to this  
6 section.

7 (3) The right of the parent or guardian to make educational *or*  
8 *developmental services* decisions for the minor is fully restored.

9 (4) A successor guardian or conservator is appointed.

10 (5) The child is placed into a planned permanent living  
11 arrangement pursuant to paragraph (5) or (6) of subdivision (b) of  
12 Section 727.3, at which time, *for educational decisionmaking*, the  
13 foster parent, relative caretaker, or nonrelative extended family  
14 member as defined in Section 362.7 has the right to represent the  
15 child in educational matters pursuant to Section 56055 of the  
16 Education Code, *and for decisions relating to developmental*  
17 *services, the foster parent, relative caregiver, or nonrelative*  
18 *extended family member of the planned permanent living*  
19 *arrangement shall become the authorized representative for the*  
20 *child pursuant to Section 4701.6 unless the court specifies*  
21 *otherwise in a court order.*

22 An individual who would have a conflict of interest in  
23 representing the child, as specified under federal regulations, may  
24 not be appointed to make educational decisions. *The limitations*  
25 *applicable to conflicts of interest for educational rights holders*  
26 *shall also apply to authorized representatives for developmental*  
27 *services decisions pursuant to Section 4701.6.* For purposes of this  
28 section, “an individual who would have a conflict of interest,”  
29 means a person having any interests that might restrict or bias his  
30 or her ability to make educational *or developmental services*  
31 decisions, including, but not limited to, those conflicts of interest  
32 prohibited by Section 1126 of the Government Code, and the  
33 receipt of compensation or attorneys’ fees for the provision of  
34 services pursuant to this section. A foster parent may not be deemed  
35 to have a conflict of interest solely because he or she receives  
36 compensation for the provision of services pursuant to this section.

37 If the court is unable to appoint a responsible adult to make  
38 educational decisions for the child and paragraphs (1) to (5),  
39 inclusive, do not apply, and the child has either been referred to  
40 the local educational agency for special education and related

1 services, or has a valid individualized education program, the court  
2 shall refer the child to the local educational agency for appointment  
3 of a surrogate parent pursuant to Section 7579.5 of the Government  
4 Code.

5 All educational and school placement decisions shall seek to  
6 ensure that the child is in the least restrictive educational programs  
7 and has access to the academic resources, services, and  
8 extracurricular and enrichment activities that are available to all  
9 pupils. In all instances, educational and school placement decisions  
10 shall be based on the best interests of the child.

11 (c) If the minor is removed from the physical custody of his or  
12 her parent or guardian as the result of an order of wardship made  
13 pursuant to Section 602, the order shall specify that the minor may  
14 not be held in physical confinement for a period in excess of the  
15 maximum term of imprisonment which could be imposed upon an  
16 adult convicted of the offense or offenses which brought or  
17 continued the minor under the jurisdiction of the juvenile court.

18 As used in this section and in Section 731, “maximum term of  
19 imprisonment” means the longest of the three time periods set  
20 forth in paragraph (2) of subdivision (a) of Section 1170 of the  
21 Penal Code, but without the need to follow the provisions of  
22 subdivision (b) of Section 1170 of the Penal Code or to consider  
23 time for good behavior or participation pursuant to Sections 2930,  
24 2931, and 2932 of the Penal Code, plus enhancements which must  
25 be proven if pled.

26 If the court elects to aggregate the period of physical confinement  
27 on multiple counts or multiple petitions, including previously  
28 sustained petitions adjudging the minor a ward within Section 602,  
29 the “maximum term of imprisonment” shall be the aggregate term  
30 of imprisonment specified in subdivision (a) of Section 1170.1 of  
31 the Penal Code, which includes any additional term imposed  
32 pursuant to Section 667, 667.5, 667.6, or 12022.1 of the Penal  
33 Code, and Section 11370.2 of the Health and Safety Code.

34 If the charged offense is a misdemeanor or a felony not included  
35 within the scope of Section 1170 of the Penal Code, the “maximum  
36 term of imprisonment” is the longest term of imprisonment  
37 prescribed by law.

38 “Physical confinement” means placement in a juvenile hall,  
39 ranch, camp, forestry camp or secure juvenile home pursuant to  
40 Section 730, or in any institution operated by the Youth Authority.

1 This section does not limit the power of the court to retain  
2 jurisdiction over a minor and to make appropriate orders pursuant  
3 to Section 727 for the period permitted by Section 607.

4 *SEC. 5. Section 4514 of the Welfare and Institutions Code, as*  
5 *amended by Section 100 of Chapter 178 of the Statutes of 2010,*  
6 *is amended to read:*

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

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

27 (b) When the person with a developmental disability, who has  
28 the capacity to give informed consent, designates individuals to  
29 whom information or records may be released, except that nothing  
30 in this chapter shall be construed to compel a physician,  
31 psychologist, social worker, marriage and family therapist, nurse,  
32 attorney, or other professional to reveal information that has been  
33 given to him or her in confidence by a family member of the person  
34 unless a valid release has been executed by that family member.

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

39 (d) If the person with a developmental disability is a minor,  
40 *dependent*, ward, or conservatee, and his or her parent, guardian,

1 conservator, ~~or~~ limited conservator with access to confidential  
 2 records, *or authorized representative*, designates, in writing,  
 3 persons to whom records or information may be disclosed, except  
 4 that nothing in this chapter shall be construed to compel a  
 5 physician, psychologist, social worker, marriage and family  
 6 therapist, nurse, attorney, or other professional to reveal  
 7 information that has been given to him or her in confidence by a  
 8 family member of the person unless a valid release has been  
 9 executed by that family member.

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

16  
 17 “ \_\_\_\_\_  
 18 Date

19  
 20 As a condition of doing research concerning persons with  
 21 developmental disabilities who have received services from \_\_\_\_\_  
 22 (fill in the facility, agency or person), I, \_\_\_\_\_, agree to obtain the  
 23 prior informed consent of persons who have received services to  
 24 the maximum degree possible as determined by the appropriate  
 25 institutional review board or boards for protection of human  
 26 subjects reviewing my research, or the person’s parent, guardian,  
 27 or conservator, and I further agree not to divulge any information  
 28 obtained in the course of the research to unauthorized persons, and  
 29 not to publish or otherwise make public any information regarding  
 30 persons who have received services so those persons who received  
 31 services are identifiable.

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

35  
 36 \_\_\_\_\_”  
 37 Signed

38  
 39 (f) To the courts, as necessary to the administration of justice.

1 (g) To governmental law enforcement agencies as needed for  
2 the protection of federal and state elective constitutional officers  
3 and their families.

4 (h) To the Senate Committee on Rules or the Assembly  
5 Committee on Rules for the purposes of legislative investigation  
6 authorized by the committee.

7 (i) To the courts and designated parties as part of a regional  
8 center report or assessment in compliance with a statutory or  
9 regulatory requirement, including, but not limited to, Section  
10 1827.5 of the Probate Code, Sections 1001.22 and 1370.1 of the  
11 Penal Code, Section 6502 of the Welfare and Institutions Code,  
12 and Section 56557 of Title 17 of the California Code of  
13 Regulations.

14 (j) To the attorney for the person with a developmental disability  
15 in any and all proceedings upon presentation of a release of  
16 information signed by the person, except that when the person  
17 lacks the capacity to give informed consent, the regional center or  
18 state developmental center director or designee, upon satisfying  
19 himself or herself of the identity of the attorney, and of the fact  
20 that the attorney represents the person, shall release all information  
21 and records relating to the person except that nothing in this article  
22 shall be construed to compel a physician, psychologist, social  
23 worker, marriage and family therapist, nurse, attorney, or other  
24 professional to reveal information that has been given to him or  
25 her in confidence by a family member of the person unless a valid  
26 release has been executed by that family member.

27 (k) Upon written consent by a person with a developmental  
28 disability previously or presently receiving services from a regional  
29 center or state developmental center, the director of the regional  
30 center or state developmental center, or his or her designee, may  
31 release any information, except information that has been given  
32 in confidence by members of the family of the person with  
33 developmental disabilities, requested by a probation officer charged  
34 with the evaluation of the person after his or her conviction of a  
35 crime if the regional center or state developmental center director  
36 or designee determines that the information is relevant to the  
37 evaluation. The consent shall only be operative until sentence is  
38 passed on the crime of which the person was convicted. The  
39 confidential information released pursuant to this subdivision shall  
40 be transmitted to the court separately from the probation report

1 and shall not be placed in the probation report. The confidential  
2 information shall remain confidential except for purposes of  
3 sentencing. After sentencing, the confidential information shall be  
4 sealed.

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

12 (m) When a person with a developmental disability dies from  
13 any cause, natural or otherwise, while hospitalized in a state  
14 developmental center, the State Department of Developmental  
15 Services, the physician in charge of the client, or the professional  
16 in charge of the facility or his or her designee, shall release  
17 information and records to the coroner. The State Department of  
18 Developmental Services, the physician in charge of the client, or  
19 the professional in charge of the facility or his or her designee,  
20 shall not release any notes, summaries, transcripts, tapes, or records  
21 of conversations between the resident and health professional  
22 personnel of the hospital relating to the personal life of the resident  
23 that is not related to the diagnosis and treatment of the resident’s  
24 physical condition. Any information released to the coroner  
25 pursuant to this section shall remain confidential and shall be sealed  
26 and shall not be made part of the public record.

27 (n) To authorized licensing personnel who are employed by, or  
28 who are authorized representatives of, the State Department of  
29 Health Services, and who are licensed or registered health  
30 professionals, and to authorized legal staff or special investigators  
31 who are peace officers who are employed by, or who are authorized  
32 representatives of, the State Department of Social Services, as  
33 necessary to the performance of their duties to inspect, license,  
34 and investigate health facilities and community care facilities, and  
35 to ensure that the standards of care and services provided in these  
36 facilities are adequate and appropriate and to ascertain compliance  
37 with the rules and regulations to which the facility is subject. The  
38 confidential information shall remain confidential except for  
39 purposes of inspection, licensing, or investigation pursuant to  
40 Chapter 2 (commencing with Section 1250) and Chapter 3

1 (commencing with Section 1500) of Division 2 of the Health and  
2 Safety Code, or a criminal, civil, or administrative proceeding in  
3 relation thereto. The confidential information may be used by the  
4 State Department of Health Services or the State Department of  
5 Social Services in a criminal, civil, or administrative proceeding.  
6 The confidential information shall be available only to the judge  
7 or hearing officer and to the parties to the case. Names which are  
8 confidential shall be listed in attachments separate to the general  
9 pleadings. The confidential information shall be sealed after the  
10 conclusion of the criminal, civil, or administrative hearings, and  
11 shall not subsequently be released except in accordance with this  
12 subdivision. If the confidential information does not result in a  
13 criminal, civil, or administrative proceeding, it shall be sealed after  
14 the State Department of Health Services or the State Department  
15 of Social Services decides that no further action will be taken in  
16 the matter of suspected licensing violations. Except as otherwise  
17 provided in this subdivision, confidential information in the  
18 possession of the State Department of Health Services or the State  
19 Department of Social Services shall not contain the name of the  
20 person with a developmental disability.

21 (o) To any board which licenses and certifies professionals in  
22 the fields of mental health and developmental disabilities pursuant  
23 to state law, when the Director of Developmental Services has  
24 reasonable cause to believe that there has occurred a violation of  
25 any provision of law subject to the jurisdiction of a board and the  
26 records are relevant to the violation. The information shall be  
27 sealed after a decision is reached in the matter of the suspected  
28 violation, and shall not subsequently be released except in  
29 accordance with this subdivision. Confidential information in the  
30 possession of the board shall not contain the name of the person  
31 with a developmental disability.

32 (p) To governmental law enforcement agencies by the director  
33 of a regional center or state developmental center, or his or her  
34 designee, when (1) the person with a developmental disability has  
35 been reported lost or missing or (2) there is probable cause to  
36 believe that a person with a developmental disability has  
37 committed, or has been the victim of, murder, manslaughter,  
38 mayhem, aggravated mayhem, kidnapping, robbery, carjacking,  
39 assault with the intent to commit a felony, arson, extortion, rape,  
40 forcible sodomy, forcible oral copulation, assault or battery, or

1 unlawful possession of a weapon, as provided in any provision  
2 listed in Section 16590 of the Penal Code.

3 This subdivision shall be limited solely to information directly  
4 relating to the factual circumstances of the commission of the  
5 enumerated offenses and shall not include any information relating  
6 to the mental state of the patient or the circumstances of his or her  
7 treatment unless relevant to the crime involved.

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

14 (q) To the Youth Authority and Adult Correctional Agency or  
15 any component thereof, as necessary to the administration of  
16 justice.

17 (r) To an agency mandated to investigate a report of abuse filed  
18 pursuant to either Section 11164 of the Penal Code or Section  
19 15630 of the Welfare and Institutions Code for the purposes of  
20 either a mandated or voluntary report or when those agencies  
21 request information in the course of conducting their investigation.

22 (s) When a person with developmental disabilities, or the parent,  
23 guardian, or conservator of a person with developmental disabilities  
24 who lacks capacity to consent, fails to grant or deny a request by  
25 a regional center or state developmental center to release  
26 information or records relating to the person with developmental  
27 disabilities within a reasonable period of time, the director of the  
28 regional or developmental center, or his or her designee, may  
29 release information or records on behalf of that person provided  
30 both of the following conditions are met:

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

33 (2) The person, or the person's parent, guardian, or conservator,  
34 has been advised annually in writing of the policy of the regional  
35 center or state developmental center for release of confidential  
36 client information or records when the person with developmental  
37 disabilities, or the person's parent, guardian, or conservator, fails  
38 to respond to a request for release of the information or records  
39 within a reasonable period of time. A statement of policy contained

1 in the client's individual program plan shall be deemed to comply  
2 with the notice requirement of this paragraph.

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

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

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

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

13 (i) The appointing authority has provided written notice to the  
14 consumer and the consumer's legal representative or, if the  
15 consumer has no legal representative or if the legal representative  
16 is a state agency, to the clients' rights advocate, and the consumer,  
17 the consumer's legal representative, or the clients' rights advocate  
18 has not objected in writing to the appointing authority within five  
19 business days of receipt of the notice, or the appointing authority,  
20 upon review of the objection has determined that the circumstances  
21 on which the adverse action is based are egregious or threaten the  
22 health, safety, or life of the consumer or other consumers and  
23 without the information the adverse action could not be taken.

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

27 (I) Prohibits the parties from disclosing or using the information  
28 or records for any purpose other than the proceedings for which  
29 the information or records were requested or provided.

30 (II) Requires the employee and the employee's legal  
31 representative to return to the appointing authority all records  
32 provided to them under this subdivision, including, but not limited  
33 to, all records and documents or copies thereof that are no longer  
34 in the possession of the employee or the employee's legal  
35 representative because they were from any source containing  
36 confidential information protected by this section, and all copies  
37 of those records and documents, within 10 days of the date that  
38 the adverse action becomes final except for the actual records and  
39 documents submitted to the administrative tribunal as a component  
40 of an appeal from the adverse action.

1 (III) Requires the parties to submit the stipulation to the  
2 administrative tribunal with jurisdiction over the adverse action  
3 at the earliest possible opportunity.

4 (2) For the purposes of this subdivision, the State Personnel  
5 Board may, prior to any appeal from adverse action being filed  
6 with it, issue a protective order, upon application by the appointing  
7 authority, for the limited purpose of prohibiting the parties from  
8 disclosing or using information or records for any purpose other  
9 than the proceeding for which the information or records were  
10 requested or provided, and to require the employee or the  
11 employee's legal representative to return to the appointing authority  
12 all records provided to them under this subdivision, including, but  
13 not limited to, all records and documents from any source  
14 containing confidential information protected by this section, and  
15 all copies of those records and documents, within 10 days of the  
16 date that the adverse action becomes final, except for the actual  
17 records and documents that are no longer in the possession of the  
18 employee or the employee's legal representatives because they  
19 were submitted to the administrative tribunal as a component of  
20 an appeal from the adverse action.

21 (3) Individual identifiers, including, but not limited to, names,  
22 social security numbers, and hospital numbers, that are not  
23 necessary for the prosecution or defense of the adverse action,  
24 shall not be disclosed.

25 (4) All records, documents, or other materials containing  
26 confidential information protected by this section that have been  
27 submitted or otherwise disclosed to the administrative agency or  
28 other person as a component of an appeal from an adverse action  
29 shall, upon proper motion by the appointing authority to the  
30 administrative tribunal, be placed under administrative seal and  
31 shall not, thereafter, be subject to disclosure to any person or entity  
32 except upon the issuance of an order of a court of competent  
33 jurisdiction.

34 (5) For purposes of this subdivision, an adverse action becomes  
35 final when the employee fails to answer within the time specified  
36 in Section 19575 of the Government Code, or, after filing an  
37 answer, withdraws the appeal, or, upon exhaustion of the  
38 administrative appeal or of the judicial review remedies as  
39 otherwise provided by law.

1     *SEC. 6. Section 4646 of the Welfare and Institutions Code is*  
2 *amended to read:*

3     4646. (a) It is the intent of the Legislature to ensure that the  
4 individual program plan and provision of services and supports  
5 by the regional center system is centered on the individual and the  
6 family of the individual with developmental disabilities and takes  
7 into account the needs and preferences of the individual and the  
8 family, where appropriate, as well as promoting community  
9 integration, independent, productive, and normal lives, and stable  
10 and healthy environments. It is the further intent of the Legislature  
11 to ensure that the provision of services to consumers and their  
12 families be effective in meeting the goals stated in the individual  
13 program plan, reflect the preferences and choices of the consumer,  
14 and reflect the cost-effective use of public resources.

15     (b) The individual program plan is developed through a process  
16 of individualized needs determination. The individual with  
17 developmental disabilities and, where appropriate, his or her  
18 parents, legal guardian or conservator, or authorized representative,  
19 shall have the opportunity to actively participate in the development  
20 of the plan.

21     (c) An individual program plan shall be developed for any  
22 person who, following intake and assessment, is found to be  
23 eligible for regional center services. These plans shall be completed  
24 within 60 days of the completion of the assessment. At the time  
25 of intake, the regional center shall inform the consumer and, where  
26 appropriate, his or her parents, legal guardian or conservator, or  
27 authorized representative, of the services available through the  
28 local area board and the protection and advocacy agency designated  
29 by the Governor pursuant to federal law, and shall provide the  
30 address and telephone numbers of those agencies.

31     (d) Individual program plans shall be prepared jointly by the  
32 planning team. Decisions concerning the consumer's goals,  
33 objectives, and services and supports that will be included in the  
34 consumer's individual program plan and purchased by the regional  
35 center or obtained from generic agencies shall be made by  
36 agreement between the regional center representative and the  
37 consumer or, where appropriate, the parents, legal guardian,  
38 conservator, or authorized representative at the program plan  
39 meeting.

1 (e) Regional centers shall comply with the request of a  
2 consumer, or where appropriate, the request of his or her parents,  
3 legal guardian, ~~or conservator, or authorized representative~~, that  
4 a designated representative receive written notice of all meetings  
5 to develop or revise his or her individual program plan and of all  
6 notices sent to the consumer pursuant to Section 4710. The  
7 designated representative may be a parent or family member.

8 (f) If a final agreement regarding the services and supports to  
9 be provided to the consumer cannot be reached at a program plan  
10 meeting, then a subsequent program plan meeting shall be  
11 convened within 15 days, or later at the request of the consumer  
12 or, when appropriate, the parents, legal guardian, conservator, or  
13 authorized representative or when agreed to by the planning team.  
14 Additional program plan meetings may be held with the agreement  
15 of the regional center representative and the consumer or, where  
16 appropriate, the parents, legal guardian, conservator, or authorized  
17 representative.

18 (g) An authorized representative of the regional center and the  
19 consumer or, where appropriate, his or her parents, legal guardian,  
20 ~~or conservator, or authorized representative~~ shall sign the  
21 individual program plan prior to its implementation. If the  
22 consumer or, where appropriate, his or her parents, legal guardian,  
23 ~~or conservator, or authorized representative~~, does not agree with  
24 all components of the plan, ~~they~~ *he or she* may indicate that  
25 disagreement on the plan. Disagreement with specific plan  
26 components shall not prohibit the implementation of services and  
27 supports agreed to by the consumer or, where appropriate, his or  
28 her parents, legal guardian, ~~or conservator, or authorized~~  
29 *representative*. If the consumer or, where appropriate, his or her  
30 parents, legal guardian, ~~or conservator, or authorized~~  
31 *representative*, does not agree with the plan in whole or in part,  
32 he or she shall be sent written notice of the fair hearing rights, as  
33 required by Section 4701.

34 *SEC. 7. Section 4646.5 of the Welfare and Institutions Code*  
35 *is amended to read:*

36 4646.5. (a) The planning process for the individual program  
37 plan described in Section 4646 shall include all of the following:

38 (1) Gathering information and conducting assessments to  
39 determine the life goals, capabilities and strengths, preferences,  
40 barriers, and concerns or problems of the person with

1 developmental disabilities. For children with developmental  
2 disabilities, this process should include a review of the strengths,  
3 preferences, and needs of the child and the family unit as a whole.  
4 Assessments shall be conducted by qualified individuals and  
5 performed in natural environments whenever possible. Information  
6 shall be taken from the consumer, his or her parents and other  
7 family members, his or her friends, advocates, *authorized*  
8 *representative if applicable*, providers of services and supports,  
9 and other agencies. The assessment process shall reflect awareness  
10 of, and sensitivity to, the lifestyle and cultural background of the  
11 consumer and the family.

12 (2) A statement of goals, based on the needs, preferences, and  
13 life choices of the individual with developmental disabilities, and  
14 a statement of specific, time-limited objectives for implementing  
15 the person's goals and addressing his or her needs. These objectives  
16 shall be stated in terms that allow measurement of progress or  
17 monitoring of service delivery. These goals and objectives should  
18 maximize opportunities for the consumer to develop relationships,  
19 be part of community life in the areas of community participation,  
20 housing, work, school, and leisure, increase control over his or her  
21 life, acquire increasingly positive roles in community life, and  
22 develop competencies to help accomplish these goals.

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

26 (4) A schedule of the type and amount of services and supports  
27 to be purchased by the regional center or obtained from generic  
28 agencies or other resources in order to achieve the individual  
29 program plan goals and objectives, and identification of the  
30 provider or providers of service responsible for attaining each  
31 objective, including, but not limited to, vendors, contracted  
32 providers, generic service agencies, and natural supports. The plan  
33 shall specify the approximate scheduled start date for services and  
34 supports and shall contain timelines for actions necessary to begin  
35 services and supports, including generic services.

36 (5) When agreed to by the consumer, the parents ~~or~~, legally  
37 appointed guardian, *or authorized representative* of a minor  
38 consumer, or the legally appointed conservator of an adult  
39 consumer or the authorized representative, including those  
40 appointed pursuant to subdivision (d) of Section 4548 and

1 subdivision (e) of Section 4705, a review of the general health  
 2 status of the adult or child including a medical, dental, and mental  
 3 health needs shall be conducted. This review shall include a  
 4 discussion of current medications, any observed side effects, and  
 5 the date of last review of the medication. Service providers shall  
 6 cooperate with the planning team to provide any information  
 7 necessary to complete the health status review. If any concerns  
 8 are noted during the review, referrals shall be made to regional  
 9 center clinicians or to the consumer's physician, as appropriate.  
 10 Documentation of health status and referrals shall be made in the  
 11 consumer's record by the service coordinator.

12 (6) A schedule of regular periodic review and reevaluation to  
 13 ascertain that planned services have been provided, that objectives  
 14 have been fulfilled within the times specified, and that consumers  
 15 and families are satisfied with the individual program plan and its  
 16 implementation.

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

25 (c) (1) The department, with the participation of representatives  
 26 of a statewide consumer organization, the Association of Regional  
 27 Center Agencies, an organized labor organization representing  
 28 service coordination staff, and the Organization of Area Boards  
 29 shall prepare training material and a standard format and  
 30 instructions for the preparation of individual program plans, which  
 31 embodies an approach centered on the person and family.

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

34 (3) The department shall biennially review a random sample of  
 35 individual program plans at each regional center to assure that  
 36 these plans are being developed and modified in compliance with  
 37 Section 4646 and this section.

38 *SEC. 8. Section 4648 of the Welfare and Institutions Code is*  
 39 *amended to read:*

1 4648. In order to achieve the stated objectives of a consumer's  
2 individual program plan, the regional center shall conduct activities,  
3 including, but not limited to, all of the following:

4 (a) Securing needed services and supports.

5 (1) It is the intent of the Legislature that services and supports  
6 assist individuals with developmental disabilities in achieving the  
7 greatest self-sufficiency possible and in exercising personal  
8 choices. The regional center shall secure services and supports  
9 that meet the needs of the consumer, as determined in the  
10 consumer's individual program plan, and within the context of the  
11 individual program plan, the planning team shall give highest  
12 preference to those services and supports which would allow  
13 minors with developmental disabilities to live with their families,  
14 adult persons with developmental disabilities to live as  
15 independently as possible in the community, and that allow all  
16 consumers to interact with persons without disabilities in positive,  
17 meaningful ways.

18 (2) In implementing individual program plans, regional centers,  
19 through the planning team, shall first consider services and supports  
20 in natural community, home, work, and recreational settings.  
21 Services and supports shall be flexible and individually tailored  
22 to the consumer and, where appropriate, his or her family.

23 (3) A regional center may, pursuant to vendorization or a  
24 contract, purchase services or supports for a consumer from any  
25 individual or agency which the regional center and consumer or,  
26 where appropriate, his or her parents, legal guardian, or  
27 conservator, or authorized representatives, determines will best  
28 accomplish all or any part of that consumer's program plan.

29 (A) Vendorization or contracting is the process for identification,  
30 selection, and utilization of service vendors or contractors, based  
31 on the qualifications and other requirements necessary in order to  
32 provide the service.

33 (B) A regional center may reimburse an individual or agency  
34 for services or supports provided to a regional center consumer if  
35 the individual or agency has a rate of payment for vendored or  
36 contracted services established by the department, pursuant to this  
37 division, and is providing services pursuant to an emergency  
38 vendorization or has completed the vendorization procedures or  
39 has entered into a contract with the regional center and continues  
40 to comply with the vendorization or contracting requirements. The

1 director shall adopt regulations governing the vendorization process  
2 to be utilized by the department, regional centers, vendors and the  
3 individual or agency requesting vendorization.

4 (C) Regulations shall include, but not be limited to: the vendor  
5 application process, and the basis for accepting or denying an  
6 application; the qualification and requirements for each category  
7 of services that may be provided to a regional center consumer  
8 through a vendor; requirements for emergency vendorization;  
9 procedures for termination of vendorization; the procedure for an  
10 individual or an agency to appeal any vendorization decision made  
11 by the department or regional center.

12 (D) A regional center may vendorize a licensed facility for  
13 exclusive services to persons with developmental disabilities at a  
14 capacity equal to or less than the facility's licensed capacity. A  
15 facility already licensed on January 1, 1999, shall continue to be  
16 vendorized at their full licensed capacity until the facility agrees  
17 to vendorization at a reduced capacity.

18 (E) Effective July 1, 2009, notwithstanding any other provision  
19 of law or regulation to the contrary, a regional center shall not  
20 newly vendor a State Department of Social Services licensed  
21 24-hour residential care facility with a licensed capacity of 16 or  
22 more beds, unless the facility qualifies for receipt of federal funds  
23 under the Medicaid Program.

24 (4) Notwithstanding subparagraph (B), a regional center may  
25 contract or issue a voucher for services and supports provided to  
26 a consumer or family at a cost not to exceed the maximum rate of  
27 payment for that service or support established by the department.  
28 If a rate has not been established by the department, the regional  
29 center may, for an interim period, contract for a specified service  
30 or support with, and establish a rate of payment for, any provider  
31 of the service or support necessary to implement a consumer's  
32 individual program plan. Contracts may be negotiated for a period  
33 of up to three years, with annual review and subject to the  
34 availability of funds.

35 (5) In order to ensure the maximum flexibility and availability  
36 of appropriate services and supports for persons with  
37 developmental disabilities, the department shall establish and  
38 maintain an equitable system of payment to providers of services  
39 and supports identified as necessary to the implementation of a  
40 consumers' individual program plan. The system of payment shall

1 include provision for a rate to ensure that the provider can meet  
2 the special needs of consumers and provide quality services and  
3 supports in the least restrictive setting as required by law.

4 (6) The regional center and the consumer, or where appropriate,  
5 his or her parents, legal guardian, conservator, or authorized  
6 representative, including those appointed pursuant to subdivision  
7 (d) of Section 4548 or subdivision (e) of Section 4705, shall,  
8 pursuant to the individual program plan, consider all of the  
9 following when selecting a provider of consumer services and  
10 supports:

11 (A) A provider's ability to deliver quality services or supports  
12 which can accomplish all or part of the consumer's individual  
13 program plan.

14 (B) A provider's success in achieving the objectives set forth  
15 in the individual program plan.

16 (C) Where appropriate, the existence of licensing, accreditation,  
17 or professional certification.

18 (D) The cost of providing services or supports of comparable  
19 quality by different providers, if available, shall be reviewed, and  
20 the least costly available provider of comparable service, including  
21 the cost of transportation, who is able to accomplish all or part of  
22 the consumer's individual program plan, consistent with the  
23 particular needs of the consumer and family as identified in the  
24 individual program plan, shall be selected. In determining the least  
25 costly provider, the availability of federal financial participation  
26 shall be considered. The consumer shall not be required to use the  
27 least costly provider if it will result in the consumer moving from  
28 an existing provider of services or supports to more restrictive or  
29 less integrated services or supports.

30 (E) The consumer's *choice of providers*, or, where appropriate,  
31 ~~the parents, legal guardian, or conservator of a consumer's parent's,~~  
32 *legal guardian's, authorized representative's, or conservator's*  
33 choice of providers.

34 (7) No service or support provided by any agency or individual  
35 shall be continued unless the consumer or, where appropriate, his  
36 or her parents, legal guardian, or conservator, or authorized  
37 representative, including those appointed pursuant to subdivision  
38 (d) of Section 4548, *subdivision (b) of Section 4701.6*, or  
39 subdivision (e) of Section 4705, is satisfied and the regional center  
40 and the consumer or, when appropriate, the person's parents or

1 legal guardian or conservator agree that planned services and  
2 supports have been provided, and reasonable progress toward  
3 objectives have been made.

4 (8) Regional center funds shall not be used to supplant the  
5 budget of any agency which has a legal responsibility to serve all  
6 members of the general public and is receiving public funds for  
7 providing those services.

8 (9) (A) A regional center may, directly or through an agency  
9 acting on behalf of the center, provide placement in, purchase of,  
10 or follow-along services to persons with developmental disabilities  
11 in, appropriate community living arrangements, including, but not  
12 limited to, support service for consumers in homes they own or  
13 lease, foster family placements, health care facilities, and licensed  
14 community care facilities. In considering appropriate placement  
15 alternatives for children with developmental disabilities, approval  
16 by the child's parent or guardian shall be obtained before placement  
17 is made.

18 (B) Effective July 1, 2012, notwithstanding any other provision  
19 of law or regulation to the contrary, a regional center shall not  
20 purchase residential services from a State Department of Social  
21 Services licensed 24-hour residential care facility with a licensed  
22 capacity of 16 or more beds. This prohibition on regional center  
23 purchase of residential services shall not apply to either of the  
24 following:

25 (i) A residential facility with a licensed capacity of 16 or more  
26 beds that has been approved to participate in the department's  
27 Home and Community Based Services Waiver or another existing  
28 waiver program or certified to participate in the Medi-Cal program.

29 (ii) A residential facility service provider that has a written  
30 agreement and specific plan prior to July 1, 2012, with the  
31 vendoring regional center to downsize the existing facility by  
32 transitioning its residential services to living arrangements of 15  
33 beds or less or restructure the large facility to meet federal  
34 Medicaid eligibility requirements on or before June 30, 2013.

35 (C) Each person with developmental disabilities placed by the  
36 regional center in a community living arrangement shall have the  
37 rights specified in this division. These rights shall be brought to  
38 the person's attention by any means necessary to reasonably  
39 communicate these rights to each resident, provided that, at a  
40 minimum, the Director of Developmental Services prepare,

1 provide, and require to be clearly posted in all residential facilities  
2 and day programs a poster using simplified language and pictures  
3 that is designed to be more understandable by persons with  
4 cognitive disabilities and that the rights information shall also be  
5 available through the regional center to each residential facility  
6 and day program in alternative formats, including, but not limited  
7 to, other languages, braille, and audio tapes, when necessary to  
8 meet the communication needs of consumers.

9 (D) Consumers are eligible to receive supplemental services  
10 including, but not limited to, additional staffing, pursuant to the  
11 process described in subdivision (d) of Section 4646. Necessary  
12 additional staffing that is not specifically included in the rates paid  
13 to the service provider may be purchased by the regional center if  
14 the additional staff are in excess of the amount required by  
15 regulation and the individual's planning team determines the  
16 additional services are consistent with the provisions of the  
17 individual program plan. Additional staff should be periodically  
18 reviewed by the planning team for consistency with the individual  
19 program plan objectives in order to determine if continued use of  
20 the additional staff is necessary and appropriate and if the service  
21 is producing outcomes consistent with the individual program plan.  
22 Regional centers shall monitor programs to ensure that the  
23 additional staff is being provided and utilized appropriately.

24 (10) Emergency and crisis intervention services including, but  
25 not limited to, mental health services and behavior modification  
26 services, may be provided, as needed, to maintain persons with  
27 developmental disabilities in the living arrangement of their own  
28 choice. Crisis services shall first be provided without disrupting a  
29 person's living arrangement. If crisis intervention services are  
30 unsuccessful, emergency housing shall be available in the person's  
31 home community. If dislocation cannot be avoided, every effort  
32 shall be made to return the person to his or her living arrangement  
33 of choice, with all necessary supports, as soon as possible.

34 (11) Among other service and support options, planning teams  
35 shall consider the use of paid roommates or neighbors, personal  
36 assistance, technical and financial assistance, and all other service  
37 and support options which would result in greater self-sufficiency  
38 for the consumer and cost-effectiveness to the state.

1 (12) When facilitation as specified in an individual program  
2 plan requires the services of an individual, the facilitator shall be  
3 of the consumer's choosing.

4 (13) The community support may be provided to assist  
5 individuals with developmental disabilities to fully participate in  
6 community and civic life, including, but not limited to, programs,  
7 services, work opportunities, business, and activities available to  
8 persons without disabilities. This facilitation shall include, but not  
9 be limited to, any of the following:

10 (A) Outreach and education to programs and services within  
11 the community.

12 (B) Direct support to individuals which would enable them to  
13 more fully participate in their community.

14 (C) Developing unpaid natural supports when possible.

15 (14) Other services and supports may be provided as set forth  
16 in Sections 4685, 4686, 4687, 4688, and 4689, when necessary.

17 (15) Notwithstanding any other provision of law or regulation  
18 to the contrary, effective July 1, 2009, regional centers shall not  
19 purchase experimental treatments, therapeutic services, or devices  
20 that have not been clinically determined or scientifically proven  
21 to be effective or safe or for which risks and complications are  
22 unknown. Experimental treatments or therapeutic services include  
23 experimental medical or nutritional therapy when the use of the  
24 product for that purpose is not a general physician practice. For  
25 regional center consumers receiving these services as part of their  
26 individual program plan (IPP) or individualized family service  
27 plan (IFSP) on July 1, 2009, this prohibition shall apply on August  
28 1, 2009.

29 (b) (1) Advocacy for, and protection of, the civil, legal, and  
30 service rights of persons with developmental disabilities as  
31 established in this division.

32 (2) Whenever the advocacy efforts of a regional center to secure  
33 or protect the civil, legal, or service rights of any of its consumers  
34 prove ineffective, the regional center or the person with  
35 developmental disabilities or his or her parents, legal guardian, or  
36 other representative may request the area board to initiate action  
37 under the provisions defining area board advocacy functions  
38 established in this division.

- 1 (c) The regional center may assist consumers and families  
2 directly, or through a provider, in identifying and building circles  
3 of support within the community.
- 4 (d) In order to increase the quality of community services and  
5 protect consumers, the regional center shall, when appropriate,  
6 take either of the following actions:
- 7 (1) Identify services and supports that are ineffective or of poor  
8 quality and provide or secure consultation, training, or technical  
9 assistance services for any agency or individual provider to assist  
10 that agency or individual provider in upgrading the quality of  
11 services or supports.
- 12 (2) Identify providers of services or supports that may not be  
13 in compliance with local, state, and federal statutes and regulations  
14 and notify the appropriate licensing or regulatory authority, or  
15 request the area board to investigate the possible noncompliance.
- 16 (e) When necessary to expand the availability of needed services  
17 of good quality, a regional center may take actions that include,  
18 but are not limited to, the following:
- 19 (1) Soliciting an individual or agency by requests for proposals  
20 or other means, to provide needed services or supports not presently  
21 available.
- 22 (2) Requesting funds from the Program Development Fund,  
23 pursuant to Section 4677, or community placement plan funds  
24 designated from that fund, to reimburse the startup costs needed  
25 to initiate a new program of services and supports.
- 26 (3) Using creative and innovative service delivery models,  
27 including, but not limited to, natural supports.
- 28 (f) Except in emergency situations, a regional center shall not  
29 provide direct treatment and therapeutic services, but shall utilize  
30 appropriate public and private community agencies and service  
31 providers to obtain those services for its consumers.
- 32 (g) Where there are identified gaps in the system of services  
33 and supports or where there are identified consumers for whom  
34 no provider will provide services and supports contained in his or  
35 her individual program plan, the department may provide the  
36 services and supports directly.
- 37 (h) At least annually, regional centers shall provide the  
38 consumer, his or her parents, legal guardian, conservator, or  
39 authorized representative a statement of services and supports the  
40 regional center purchased for the purpose of ensuring that they are

1 delivered. The statement shall include the type, unit, month, and  
2 cost of services and supports purchased.

3 *SEC. 9. Section 4701.6 of the Welfare and Institutions Code*  
4 *is amended to read:*

5 4701.6. (a) "Authorized representative" means the conservator  
6 of an adult, the guardian, conservator, or parent or person having  
7 legal custody of a minor claimant, or a person or agency appointed  
8 pursuant to subdivision (d) of Section 4548 or subdivision (e) of  
9 Section 4705 and authorized in writing by the claimant or by the  
10 legal guardian, conservator, or parent or person having legal  
11 custody of a minor claimant to act for or represent the claimant  
12 under this chapter.

13 (b) (1) *"Authorized representative" also means a responsible*  
14 *adult appointed by a court order made pursuant to subdivision (g)*  
15 *of Section 319, subdivision (a) of Section 361, or subdivision (b)*  
16 *of Section 726, who the court determines is an appropriate*  
17 *representative for the minor, and who does not have a conflict of*  
18 *interest, as defined in subdivision (i) of Section 7579.5 of the*  
19 *Government Code, including, but not limited to, a foster parent,*  
20 *caregiver, or court appointed special advocate.*

21 (2) *Notwithstanding any other law, an authorized representative*  
22 *designated through a court order described in this subdivision*  
23 *shall have the right to access the minor's information and records,*  
24 *the right to participate in the individual program planning process,*  
25 *and the right to participate in the fair hearing process for the*  
26 *minor to the same extent as provided under law to the minor's*  
27 *parents, legal guardian, or conservator. Representation shall also*  
28 *include the ability to provide written consent for purposes of*  
29 *establishing eligibility for regional center services and supports*  
30 *for the minor, as well as for the purpose of individual program*  
31 *plan development and revision, including, but not limited to, the*  
32 *authorization of assessments of, and the provision of services to,*  
33 *the minor.*

34 ~~SECTION 1. The Legislature finds and declares as follows:~~

35 ~~(a) Persons desiring to provide, or continue to provide, foster~~  
36 ~~care should receive training in order to assist them in being~~  
37 ~~effective substitute caregivers, and to enhance the safety and~~  
38 ~~growth of the children placed with them.~~

1 ~~(b) There is a need to develop a basic curriculum, a program~~  
2 ~~for continuing education, and specialized training for foster parents~~  
3 ~~earing for children with unique needs.~~

4 ~~SEC. 2. Section 1529.3 is added to the Health and Safety Code,~~  
5 ~~to read:~~

6 ~~1529.3. (a) As a part of the training required by this article, if~~  
7 ~~a foster parent intends to begin or continue to care for youth 14~~  
8 ~~years of age or older, in order to provide the foster parent with the~~  
9 ~~skills and expertise to care for this important population, the foster~~  
10 ~~parent shall receive training in issues relevant to teenagers,~~  
11 ~~including, but not limited to, all of the following subjects:~~

12 ~~(1) Education rights.~~

13 ~~(2) Accessing independent living program services and assisting~~  
14 ~~the teenager with independent living skills.~~

15 ~~(3) College acceptance and financial aid.~~

16 ~~(4) Drug prevention.~~

17 ~~(5) Financial literacy.~~

18 ~~(6) Avoiding teen-parent conflict.~~

19 ~~(b) The training required pursuant to this section shall be~~  
20 ~~included within existing preplacement and postplacement training~~  
21 ~~program requirements, and shall not increase the number of~~  
22 ~~required training hours for the foster parent.~~

23 ~~SEC. 3. No reimbursement is required by this act pursuant to~~  
24 ~~Section 6 of Article XIII B of the California Constitution because~~  
25 ~~the only costs that may be incurred by a local agency or school~~  
26 ~~district will be incurred because this act creates a new crime or~~  
27 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
28 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
29 ~~the Government Code, or changes the definition of a crime within~~  
30 ~~the meaning of Section 6 of Article XIII B of the California~~  
31 ~~Constitution.~~



BILL ANALYSIS

SENATE HUMAN SERVICES COMMITTEE  
Senator Carol Liu, Chair

BILL NO: SB 368  
5  
AUTHOR: Liu  
B  
VERSION: April 4, 2011  
HEARING DATE: April 12, 2011  
3  
FISCAL: Appropriations  
6  
8  
CONSULTANT:  
Hailey

SUBJECT

Developmental services: decision making

SUMMARY

Gives courts the authority to appoint an authorized representative to assist a minor child who has developmental disabilities in ensuring that his or her needs are met by their regional center. Modeled on statutes establishing court-appointed "educational rights holders."

ABSTRACT

Current law

1. Gives the juvenile court the authority to limit a parent's right to make educational decisions about their child and to appoint an "educational rights holder" to make those decisions.
  2. Assigns to probation departments the responsibility to consider identifying a person to make educational decisions for the child when the parents of a ward of the court are
- Continued---

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STAFF ANALYSIS OF SENATE BILL 368 (Liu) Page  
2

unable or unwilling to make those decisions.

3. Provides authority to the juvenile court to appoint an educational rights holder to make educational decisions for a dependent or ward of the court.
4. Provides access to records and information of a minor with developmental disabilities to a parent, guardian, conservator, or limited conservator, under specific circumstances.
5. Establishes a system of regional centers to provide case management and purchase of services to individuals found to have one of several specific developmental disabilities before their 18th birthday.
6. Directs regional centers to establish an individualized program plan (IPP) with each client detailing needs and services.
7. Establishes processes by which clients of regional centers can share information contained in the IPP with other person and can identify those who can represent them in the writing of an IPP.
8. Establishes a legal process for the appointment of an "authorized representative," defined as "the conservator of an adult, [or] the guardian, conservator, or parent or person having legal custody of a minor claimant" who is a client of a regional center, to assist a client in a fair hearing procedure for resolving conflicts with a regional center or to assist an area board for developmental disabilities in its pursuit of legal, administrative, or other appropriate remedies to ensure the protection of the legal, civil, and service rights of persons who require services or who are receiving services in the area.

This bill

1. Adds to the definition of an "authorized representative" of a client of a regional center to include a responsible adult, appointed by a court order, who the court determines is an appropriate representative for the minor.
2. Gives to the authorized representative the authority to

STAFF ANALYSIS OF SENATE BILL 368 (Liu) Page  
3

access a minor's information and records, the right to participate in the IPP process, and the right to participate in the fair hearing process for the minor to the same extent as provided under law to the minor's parents, legal guardian, or conservator.

3. Gives to the authorized representative the ability to provide written consent for purposes of establishing eligibility for regional center services and supports for the minor, as well as for the purpose of an IPP revision, including the authorization of assessments of, and the provision of services to, the minor.
4. Provides to the juvenile court and to probation departments the authority to include decisions about developmental services when appointing an educational rights holder or a person to make educational decisions for a child.
5. Gives to court-appointed "educational rights holders," in general, the authority to make decisions about developmental services as well as about education when the child in question is a client of the regional center.

FISCAL IMPACT

Unknown

BACKGROUND AND DISCUSSION

The author states that children in the dependency and delinquency systems may lack a parent or guardian willing or able to make decisions on their behalf. California law recognizes this fact in the realm of educational decisions by establishing "educational rights holders" to represent the interests of wards and dependents in their dealings with schools providing special education and related services. The author believes that there is an analogous need for a person to represent the interests of these same children in their dealings with a regional center.

The bill gives court-appointed authorized representatives the right to have access to a child's information and records, including the child's regional center case file,

STAFF ANALYSIS OF SENATE BILL 368 (Liu) Page  
4

the right to participate in the IPP process, and the right to provide written consent for the child in dealings with a regional center that include assessment, eligibility, and the creation of an IPP.

Arguments in support

Public Counsel, the bill's sponsor, notes that adoptive cases processed through the county dependency system are frequently not receiving regional center services, despite eligibility, and the children's caregivers have no access to the child's regional center records, including the IPP. In these cases, court-appointed educational rights holders do not have access to the regional center records and may be denied status as the child's representative when seeking regional center services.

POSITIONS

Support: Public Counsel (sponsor)  
California Probation Parole and Correctional Association  
Chief Probation Officers of California  
Children's Law Center of Los Angeles  
Disability Rights California  
Youth Law Center

Oppose: None received

-- END --



## LEGISLATIVE AGENDA ITEM DETAIL SHEET

**BILL NUMBER/SUBJECT:** Senate Bill 411: Home Care Services Act of 2011

**BILL SUMMARY:** This bill creates the "Home Care Services Act of 2011" which will require the Department of Public Health to license and regulate home care organizations.

Existing law provides for the In-Home Supportive Services (IHSS) program, a county-administered program under which qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. The IHSS program includes various eligibility requirements for individuals who provide services to recipients under the program. Under existing law, a private provider of in-home care services is not subject to the requirements of the IHSS program. This bill would enact the Home Care Services Act of 2011, which would provide for the licensure and regulation of home care organizations, as defined, by the State Department of Public Health, and the certification of home care aides. The bill would exclude specified entities from the definition of a home care organization. The bill would impose various licensure requirements on a home care organization and would also impose a civil penalty on an individual or entity that operates a home care organization without a license. The bill would require a home care organization to provide a client with specified information before arranging for the provision of home care services, as defined, to that client, including, but not limited to, the types and hours of available home care services, the extent to which payment may be expected from specified sources, and the availability of services provided by the State Long-Term Care Ombudsman. In addition, the home care organization would be required, among other things, to distribute to the client its advance directive policy and provide a written notice to the client of certain rights. The bill would also prohibit a home care organization from hiring an individual as a home care aide unless that individual meets certain requirements, including, but not limited to, demonstrating that he or she has specified language skills and completing a minimum of 5 hours of training as specified. This bill contains other related provisions and other existing laws.

**BACKGROUND:** California's senior population is rapidly increasing. By 2030 it is estimated that the number of residents age 85 and older will be over 1.3 million people. The best place to care for seniors and persons with disabilities is in the least restrictive environment. Private home care agencies are among the options to help assist individuals stay in their home. According to the author, private agencies that place care providers in the homes of our most vulnerable residents do so without any regulatory oversight from the state and without any requirement that they meet minimum standards of employee screening and training.

**ANALYSIS/DISCUSSION:** The author believes SB 411 will mandate necessary safeguards to protect the most vulnerable residents. SB 411 will require private home care agencies to annually assess home care aide performance and effectiveness, supervise their employees once every 62 days, provide consumers access to a supervisor at all times services are being provided, document a backup staffing plan in the event that a particular home care aide is unavailable, and require a background check of all home care aides as well as 8 hours of annual training. According to prosecutors, for every reported incident of abuse or neglect in the home, four go unreported. Twenty-eight other states have moved forward with licensing private home care services, including Florida, Illinois, New York, Oregon, Pennsylvania, Washington, and Texas.

SB 411 is sponsored by Service Employees International Union (SEIU) and supported by the American Federation of, State, County and Municipal Employees, California, Older Women League of California and Sacramento Capitol Chapter of the Older Women's League.

This bill is opposed by the California Association for Health Services at Home

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Support public policies that positively impact the lives of persons with developmental disabilities and their families

**PRIOR COUNCIL ACTIVITY:** None

**LPPC RECOMMENDATION(S):** Support SB 411

**ATTACHMENT(S):** SB 411

**PREPARED:** Karim Alipourfard, May 5, 2011

AMENDED IN SENATE APRIL 28, 2011

AMENDED IN SENATE APRIL 26, 2011

AMENDED IN SENATE APRIL 7, 2011

**SENATE BILL**

**No. 411**

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**Introduced by Senator Price**  
**(Coauthors: Senators Alquist, DeSaulnier, Padilla, and Vargas)**

February 16, 2011

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An act to add Chapter 13 (commencing with Section 1796.10) to Division 2 of the Health and Safety Code, relating to public health, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 411, as amended, Price. Home Care Services Act of 2011.

Existing law provides for the In-Home Supportive Services (IHSS) program, a county-administered program under which qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. The IHSS program includes various eligibility requirements for individuals who provide services to recipients under the program. Under existing law, a private provider of in-home care services is not subject to the requirements of the IHSS program.

Existing law provides for the licensing and regulation of various community care facilities by the State Department of Social Services.

This bill would enact the Home Care Services Act of 2011, which would provide for the licensure and regulation of home care organizations, as defined, by the State Department of Public Health, *and the certification of home care aides*. The bill would exclude specified entities from the definition of a home care organization. The bill would impose various licensure requirements on a home care

organization and would also impose a civil penalty on an individual or entity that operates a home care organization without a license. The bill would require a home care organization to provide a client with specified information before arranging for the provision of home care services, as defined, to that client, including, but not limited to, the types and hours of available home care services, the extent to which payment may be expected from specified sources, and the availability of services provided by the State Long-Term Care Ombudsman. In addition, the home care organization would be required, among other things, to distribute to the client its advance directive policy and provide a written notice to the client of certain rights. The bill would also prohibit a home care organization from hiring an individual as a home care aide unless that individual meets certain requirements, including, but not limited to, demonstrating that he or she has specified language skills and completing a minimum of 5 hours of training as specified.

~~This bill would require a home care organization to conduct background clearances on for home care aides, as specified, and to prescribed, and would set forth specific duties of the home care organization, the department, and the Department of Justice in this regard. The bill would require home care aides to demonstrate they are free of active tuberculosis. The bill would also require a home care organization to conduct regular evaluations of its home care aides, as specified, and to ensure that home care aides demonstrate basic competency in certain areas. The bill would establish the Home Care Organization and Home Care Aide Certification Fund, would authorize the department to impose various fees to be deposited in that fund, and would make a continuous appropriation from that fund, except as specified, to the department to carry out the provisions of the bill. This bill, in addition, would prescribe enforcement procedures, fines, and penalties for violations of the act.~~

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

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

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) Seniors, individuals with disabilities, and the frail elderly
- 4 frequently find themselves in need of part-time to full-time
- 5 assistance from a caregiver in order to live at home independently.

1 (b) Out of the 701,000 estimated home care aides working in  
2 the country, more than 70,000 work in California.

3 (c) The Employment Development Department has identified  
4 home care services as one of the fastest growing fields of  
5 employment.

6 (d) In California, most individuals hiring a home care  
7 organization believe that the home care aide entering their home  
8 has been thoroughly screened and trained. However, a business  
9 license is the only requirement needed to provide nonmedical home  
10 care services in an individual's home.

11 (e) In view of the increasing number of home care aides entering  
12 private homes, the number of incidents of abuse and neglect by  
13 home care aides currently being reported in the media is alarming  
14 and concerning because, according to prosecutors, for every  
15 reported incident of abuse or neglect, four others go unreported.

16 (f) Twenty-three states, including Texas, Illinois, Florida, and  
17 New York, have standards requiring home care organizations to  
18 register or obtain a license.

19 (g) Discharge planners commonly maintain lists of home care  
20 aides and home care organizations for purposes of patient referral  
21 without any information about the individuals or the organizations,  
22 thereby placing both the patient and the referring organization at  
23 risk.

24 (h) Typically, family members looking for home care services  
25 are in a crisis and will not ask all of the "right" questions when  
26 choosing a home care organization. In addition, there is currently  
27 no centralized list of home care organizations in California for  
28 family members, seniors, or disabled individuals to consult when  
29 in need of home care services for their loved ones or themselves.

30 SEC. 2. Chapter 13 (commencing with Section 1796.10) is  
31 added to Division 2 of the Health and Safety Code, to read:

32  
33 CHAPTER 13. HOME CARE SERVICES

34  
35 Article 1. General Provisions

36  
37 1796.10. This chapter shall be known and may be cited as the  
38 Home Care Services Act of 2011.

39 1796.11. The State Department of Public Health shall  
40 administer and enforce this chapter.

1 1796.12. For purposes of this chapter, the following definitions  
2 shall apply:

3 (a) "Client" means an individual who receives home care  
4 services.

5 (b) "Department" means the State Department of Public Health.

6 (c) "Home care aide" means an individual who provides home  
7 care services to a client in the client's residence, and is  
8 synonymous, for purposes of this chapter, with "caregiver,"  
9 "custodial care," "personal care attendant," "homemaker," and  
10 "companion." In addition, "home care aide" includes an individual  
11 who qualifies as a personal attendant, as defined in Industry Wage  
12 Order 15-2001, issued by the Industrial Welfare Commission, who  
13 provides home care services.

14 (d) (1) "Home care organization" or "organization" means an  
15 individual, partnership, corporation, limited liability company,  
16 joint venture, association, or other entity that arranges for the  
17 provision of home care services by a home care aide to a client in  
18 the client's residence and that is licensed pursuant to this chapter.

19 (2) "Home care organization" does not include any of the  
20 following:

21 (A) A home health agency licensed under Chapter 8  
22 (commencing with Section 1725).

23 (B) A hospice licensed under Chapter 8.5 (commencing with  
24 Section 1745).

25 (C) A health facility licensed under Chapter 2 (commencing  
26 with Section 1250).

27 (D) A county providing in-home supportive services pursuant  
28 to Article 7 (commencing with Section 12300) of Chapter 3 of  
29 Part 3 of Division 9 of the Welfare and Institutions Code, without  
30 regard to whether the county provides these services as a public  
31 authority or through a nonprofit consortium established pursuant  
32 to Section 12301.6 of the Welfare and Institutions Code.

33 (e) "Residence" means a temporary or permanent location where  
34 a client receives home care services.

35 (f) "Transportation" means transportation in a motor vehicle in  
36 good working order provided by a home care aide who is a licensed  
37 and insured driver.

38 1796.13. (a) For purposes of this chapter, "home care services"  
39 means services provided by a home care aide to a client who,  
40 because of advanced age or physical or mental infirmity, cannot

1 perform these services for himself or herself. These services  
 2 include, but are not limited to, bathing, dressing, feeding,  
 3 exercising, personal hygiene and grooming, transferring,  
 4 ambulating, positioning, toileting and incontinence care, assisting  
 5 with medication that the client normally self-administers,  
 6 housekeeping, meal planning and preparation, laundry,  
 7 transportation, correspondence, making telephone calls, shopping  
 8 for personal care items or groceries, and companionship. This  
 9 subdivision shall not be construed to authorize a home care aide  
 10 to administer medication that would otherwise require  
 11 administration or oversight by a licensed healthcare professional.

- 12 (b) Home care services shall not include any of the following:
- 13 (1) Services authorized to be provided by a licensed home health  
 14 agency under Chapter 8 (commencing with Section 1725).
  - 15 (2) Services authorized to be provided by a licensed hospice  
 16 pursuant to Chapter 8.5 (commencing with Section 1745).
  - 17 (3) Services authorized to be provided by a licensed health  
 18 facility pursuant to Chapter 2 (commencing with Section 1250).
  - 19 (4) In-home supportive services provided pursuant to Article 7  
 20 (commencing with Section 12300) of Chapter 3 of Part 3 of  
 21 Division 9 of the Welfare and Institutions Code.
  - 22 (5) Services authorized to be provided by a licensed residential  
 23 care facility for the elderly pursuant to Chapter 3.2 (commencing  
 24 with Section 1569).
- 25 (c) This chapter shall not be construed to prohibit an individual  
 26 from employing a home care aide without the assistance of a home  
 27 care organization.

28  
 29 Article 2. Licensure

30  
 31 1796.20. (a) An individual, partnership, corporation, limited  
 32 liability company, joint venture, association, or other entity shall  
 33 not arrange for the provision of home care services by a home care  
 34 aide to a client in this state without first obtaining a license pursuant  
 35 to this chapter.

36 (b) An individual or entity that violates this chapter shall be  
 37 liable for a civil penalty not to exceed nine hundred dollars (\$900)  
 38 per day for each calendar day of each violation.

39 (c) Upon discovering that an individual or entity is in violation  
 40 of this chapter, the department shall send a written notice of

1 noncompliance to the individual or entity and to the Attorney  
2 General or appropriate district attorney. Upon receiving this notice,  
3 the Attorney General or district attorney shall do any or all of the  
4 following:

5 (1) Issue a cease and desist order, which shall remain in effect  
6 until the individual or entity has obtained a license pursuant to this  
7 chapter. If the individual or entity fails to comply with the cease  
8 and desist order within 20 calendar days, the Attorney General or  
9 a district attorney shall apply for an injunction.

10 (2) Impose the civil penalty described in subdivision (b).

11 (3) Bring an action against the individual or entity under Chapter  
12 5 (commencing with Section 17200) of Part 2 of Division 7 of the  
13 Business and Professions Code.

14 1796.21. A home care organization that has its principal place  
15 of business in another state, in addition to the other requirements  
16 of this chapter, shall comply with both of the following  
17 requirements before arranging for the provision of home care  
18 services by a home care aide to a client in California:

19 (a) Have an office in California.

20 (b) Obtain authorization from the Secretary of State to conduct  
21 business in California.

22 1796.22. The enactment of this chapter is an exercise of the  
23 police power of the state for the protection of the public welfare,  
24 prosperity, health, safety, and peace of its people. The civil  
25 penalties provided by this chapter are in addition to any other  
26 penalty provided by law.

27 1796.23. In order to carry out the provisions of this chapter,  
28 the department shall do all of the following:

29 (a) Adopt rules and regulations to implement this chapter.

30 (b) Establish procedures for the receipt, investigation, and  
31 resolution of complaints against home care organizations.

32 (c) Investigate complaints concerning misconduct by certified  
33 home care aides. The department may take disciplinary action in  
34 accordance with subdivision (b) of Section 1796.41.

35 (d) Maintain a registry, on the department's Internet Web site,  
36 of the certification status of all certified home care aides, the name  
37 and location of the home care aide's employer, home care  
38 organization, and the status of any proposed or completed  
39 disciplinary action against the certified home care aide. The  
40 department also may request and maintain additional employment

1 information for certified home care aides, as necessary, which  
2 shall not be publicly available on the registry.

3 1796.24. (a) The department shall issue a license to a home  
4 care organization that meets all of the following requirements:

5 (1) Submits an application, on a form prescribed by the  
6 department.

7 (2) Pays a licensure fee, as prescribed by the department  
8 pursuant to Section 1796.71.

9 (3) Submits proof of general and professional liability insurance  
10 in the amount of at least one million dollars (\$1,000,000) per  
11 occurrence and three million dollars (\$3,000,000) in the aggregate.

12 (4) Submits proof of a valid workers' compensation policy  
13 covering its home care aides. The proof shall consist of the policy  
14 number, the effective and expiration dates of the policy, and the  
15 name and address of the policy carrier.

16 (5) Passes any background clearance, as required pursuant to  
17 Section 1796.26.

18 (6) Provides the department with a list of all of its home care  
19 aides and proof that each satisfies the requirements of Section  
20 1796.60.

21 (7) Complies with the requirements of this chapter.

22 (b) The term of a license issued under this section is one year.

23 The license may be renewed upon application to the board and  
24 payment of the renewal fee prescribed by the board pursuant to  
25 Section 1796.71.

26 (c) Following the receipt of an application for a license or  
27 renewal of a license under this section, the department shall  
28 conduct an onsite inspection of the applicant to ensure compliance  
29 with this chapter.

30 1796.25. At least 30 days before the expiration of a license,  
31 the department shall mail to the licensee, at the latest address  
32 furnished by the licensee to the department, a notice stating the  
33 amount of the renewal fee and the date on which it is due, and that  
34 failure to pay that fee on or before the date due will result in the  
35 expiration of the license.

36 1796.26. (a) In order to obtain a license, the following  
37 individual or individuals shall consent to the background clearance  
38 described in subdivision (b) of Section 1796.62:

39 (1) The owner or owners of a home care organization if the  
40 owners are individuals.

1 (2) If the owner of a home care organization is a corporation,  
2 limited liability company, joint venture, association, or other entity,  
3 an individual having a 10-percent or greater interest in that entity.

4 (b) (1) *The department shall electronically submit to the*  
5 *Department of Justice fingerprint images and related information*  
6 *required by the Department of Justice of all home care*  
7 *organization owners, as described in subdivision (a) for the*  
8 *purposes of obtaining information as to the existence and content*  
9 *of a record of state or federal convictions and state or federal*  
10 *arrests and also information as to the existence and content of a*  
11 *record of state or federal arrests for which the Department of*  
12 *Justice establishes that the person is free on bail or on his or her*  
13 *own recognizance pending trial or appeal.*

14 (2) *When received, the Department of Justice shall forward to*  
15 *the Federal Bureau of Investigation requests for federal summary*  
16 *criminal history information received pursuant to this section. The*  
17 *Department of Justice shall review the information returned from*  
18 *the Federal Bureau of Investigation and compile and disseminate*  
19 *a response to the department.*

20 (3) *The Department of Justice shall provide a state and federal*  
21 *response to the department pursuant to paragraph (1) of*  
22 *subdivision (p) of Section 11105 of the Penal Code.*

23 (4) *The department shall request from the Department of Justice*  
24 *subsequent arrest notification service, as provided pursuant to*  
25 *Section 11105.2 of the Penal Code, for persons described in*  
26 *paragraph (1).*

27 (5) *The Department of Justice shall charge a fee not to exceed*  
28 *the actual cost of processing the request described in this*  
29 *subdivision.*

30 (b)

31 (c) *If the background clearance conducted pursuant to*  
32 *subdivision (a) discloses a conviction for a felony or a crime that*  
33 *evidences an unfitness to operate a home care organization, the*  
34 *application for a license shall be denied. This subdivision shall not*  
35 *be applied to deny a license if the individual or individuals, as*  
36 *applicable, present evidence satisfactory to the department that*  
37 *the individual or individuals, as applicable, have been rehabilitated*  
38 *and presently are of good character so as to justify the issuance of*  
39 *a license.*

1 1796.27. A private or public organization, with the exception  
 2 of a county providing in-home supportive services pursuant to  
 3 Article 7 (commencing with Section 12300) of Chapter 3 of Part  
 4 3 of Division 9 of the Welfare and Institutions Code, shall not do  
 5 any of the following, unless it is licensed under this chapter:

6 (a) Represent itself to be a home care organization by its name  
 7 or advertising, soliciting, or any other presentments to the public,  
 8 or in the context of services within the scope of this chapter, imply  
 9 that it is licensed to provide those services or to make any reference  
 10 to employee bonding in relation to those services.

11 (b) Use the terms “home care organization,” “home care,”  
 12 “in-home care,” or any combination of those terms, within its  
 13 name.

14  
 15 Article 3. Complaints, Inspections, and Investigations  
 16

17 1796.30. (a) The department shall investigate complaints filed  
 18 against home care organizations.

19 (b) The department shall verify through annual random,  
 20 unannounced inspections that a home care organization meets the  
 21 requirements of this chapter and the regulations adopted pursuant  
 22 thereto.

23 (c) An investigation or inspection conducted by the department  
 24 pursuant to this chapter may include, but is not limited to, the  
 25 following:

26 (1) Inspection of the books, records, and premises of a home  
 27 care organization. An organization’s refusal to make those records,  
 28 books, or premises available shall constitute cause for the  
 29 revocation of the organization’s license.

30 (2) Direct observation of the provision of home care services  
 31 to a client in the client’s residence, if the client’s consent is  
 32 obtained.

33  
 34 Article 4. Home Care Organization Operating Requirements  
 35

36 1796.40. A home care organization shall do all of the following:

37 (a) Post its license in its place of business in a conspicuous  
 38 location, visible both to clients and to its home care aides.

39 (b) Operate the organization in a commercial office space that  
 40 complies with local zoning ordinances.

1 (c) Have plans, procedures, and policies in place, including all  
2 of the following:

3 (1) Plans and procedures to be followed in the event of  
4 emergencies or natural disasters that would result in the interruption  
5 of home care services.

6 (2) A documented backup staffing plan in the event that a home  
7 care aide scheduled to provide home care services becomes  
8 unavailable.

9 (3) A written policy regarding advance directives.

10 (4) A receipt and disbursement policy for expenditures made  
11 on behalf of a client to ensure that financial abuse does not occur.

12 (d) Maintain a valid workers' compensation policy covering its  
13 home care aides.

14 (e) Maintain an employee dishonesty bond, including third-party  
15 coverage, with a minimum limit of ten thousand dollars (\$10,000).

16 (f) Comply with the regulations adopted by the department  
17 implementing this chapter.

18 1796.41. With respect to home care aides employed by a home  
19 care organization, the organization shall consult the department's  
20 registry before hiring an individual or placing him or her in direct  
21 contact with patients. In addition, the organization shall do all of  
22 the following:

23 (a) Ensure that each of its home care aides meets the  
24 requirements of Section 1796.61.

25 (b) Investigate complaints made by a client, or a client's family  
26 member or guardian, against home care aides regarding a service  
27 that is or fails to be furnished. The organization shall document  
28 both the existence and the resolution of those complaints.

29 (c) Evaluate home care aides as follows:

30 (1) Conduct an annual assessment of the performance and  
31 effectiveness of each home care aide, including, if client consent  
32 is obtained, at least one observation of the aide providing home  
33 care services in the residence of a client.

34 (2) Every 62 days, supervise each home care aide providing  
35 home care services in the residence of a client, provided that client  
36 consent is obtained. The supervision required by this paragraph  
37 shall not be billed to the client.

38 (d) Ensure that a home care aide, when providing services to a  
39 client, has access at all times to a representative of the organization

1 who is in a supervisory capacity and who does not regularly render  
2 home care services to that client.

3 (e) Require a home care aide, while providing home care  
4 services, to wear a badge that includes all of the following  
5 information in 12-point type or larger:

6 (1) The aide's name.

7 (2) A photograph of the aide.

8 (3) The name of the home care organization.

9 (4) The expiration date of the license of the home care  
10 organization.

11 (5) The home care aide's certificate number as issued by the  
12 department.

13 (f) Require home care aides to demonstrate that they are free  
14 of active tuberculosis, pursuant to Section 1796.63.

15 (g) Require home care aides to annually complete not less than  
16 eight paid hours of paid department-approved training on  
17 job-related topics.

18 (h) Prohibit home care aides from accepting money or property  
19 from a client without written permission from the home care  
20 organization.

21  
22 Article 5. Client Rights  
23

24 1796.50. With respect to clients, a home care organization shall  
25 do all of the following:

26 (a) Advise a client of any change in the client's plan for home  
27 care services.

28 (b) Before arranging for the provision of home care services to  
29 a client, do all of the following:

30 (1) Distribute to the client its advance directive policy, along  
31 with a written summary of applicable state law.

32 (2) Advise the client of its policy regarding the disclosure of  
33 client records.

34 (3) Inform the client of the types and hours of available home  
35 care services.

36 (4) Inform the client, orally and in writing, of the home care  
37 services that are or are not covered by Medi-Cal or Medicare, as  
38 applicable, and the extent to which payment may be expected from  
39 the client, from Medicare or Medi-Cal, and from any other source.

1 (c) Inform the client, both orally and in writing, of a change to  
2 the information provided in paragraph (4) of subdivision (b) as  
3 soon as possible, but not later than 30 days of becoming aware of  
4 that change.

5 (d) Have a written agreement with the client that includes, but  
6 is not limited to, the cost of and the hours during which home care  
7 services will be provided to the client and reference to the personal  
8 attendant requirements, if applicable, as referenced in Wage Order  
9 15-2001, issued by the Industrial Welfare Commission.

10 (e) Inform the client, both orally and in writing, at the time of  
11 arranging for the provision of home care services, of the availability  
12 of services provided by the Office of State Long-Term Care  
13 Ombudsman, including independent complaint resolution services,  
14 and provide the client with written contact information for the  
15 office.

16 1796.51. (a) Home care clients are entitled to the following  
17 rights:

18 (1) The right to have the client's property treated with respect.

19 (2) The right to voice grievances free from reprisal regarding a  
20 home care service that is or fails to be provided or regarding the  
21 violation of any of the rights listed in this section.

22 (3) The right to be informed of and to participate in the planning  
23 of the client's home care services.

24 (4) The right to confidentiality of the client's personal  
25 information.

26 (b) Before arranging for the provision of home care services to  
27 a client, a home care organization shall provide a written notice  
28 to the client stating that the client has all of the rights enumerated  
29 in subdivision (a).

30 (c) A home care organization shall maintain written  
31 documentation showing that it has complied with subdivision (a).

32 (d) If a client lacks the capacity to understand the rights listed  
33 in this section, as determined by a court of competent jurisdiction  
34 or by the client's physician, unless the physician's opinion is  
35 controverted by the client or the client's legal representative, the  
36 client's legal representative shall have those rights.

37 (e) A home care organization shall protect, and promote the  
38 exercise of, the rights listed in this section.

Article 6. Home Care Aides

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1796.60. (a) Beginning January 1, 2013, the department ~~shall require any person hired as a long-term care worker for the elderly or persons with disabilities to be certified as a home care aide~~ shall require any person hired as a home care aide to be certified within 30 days from the date of being hired.

(b) In order to receive a certificate from the department to provide home care services for the elderly or persons with disabilities, a home care aide shall meet the minimum training requirements in this section. Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section.

(c) A prospective home care aide shall complete a minimum of five hours of entry-level training, as follows:

- (1) Two hours of orientation training regarding his or her role as caregiver and the applicable terms of employment.
- (2) Three hours of safety training, including basic safety precautions, emergency procedures, and infection control.
- (3) Other training related to core competencies and population-specific competencies as required by regulation.

(d) The department shall only approve a training curriculum that satisfies both of the following conditions:

- (1) The training curriculum has been developed with input from consumer and worker representatives.
- (2) The training curriculum requires comprehensive instruction by qualified instructors on the competencies and training topics identified in this section.

(e) The department shall issue a home care aide certificate to each individual who meets the requirements of this section.

(f) The department shall set a fee for certification under this section that shall be paid for by the employer.

(g) An individual who wishes, independent of an employer-employee relationship, to obtain a certificate to provide home care aide services, shall pay for his or her own certification.

1796.61. (a) On and after January 1, 2012, a home care organization shall not hire an individual as a home care aide unless the individual complies with all of the following requirements:

- (1) Completes an individual interview, to the satisfaction of the organization.

1 (2) Provides at least two work- or school-related references or,  
2 for an individual with no previous work experience, at least two  
3 character references from nonrelatives. The organization shall  
4 verify the references before hiring the individual.

5 (3) Demonstrates that he or she possesses sufficient language  
6 skills to read and understand instructions, prepare and maintain  
7 written reports and records, and communicate with a client.

8 (b) A home care organization that hires an individual pursuant  
9 to subdivision (a) shall ensure that the individual, within the first  
10 30 days of employment, satisfactorily completes the home care  
11 certification training in Section 1796.60.

12 1796.62. (a) A home care organization shall conduct and pay  
13 for a background clearance on an individual hired as a home care  
14 aide, unless the individual holds a valid, unexpired license or  
15 registration in a health-related field that requires a background  
16 check as a condition of the license or registration.

17 ~~(b) The background clearance shall consist of a live scan criminal~~  
18 ~~history record check conducted by the Department of Justice.~~  
19 ~~Within five working days after receiving a criminal record or~~  
20 ~~information from the Department of Justice, the licensee shall~~  
21 ~~notify the department and the applicant of any criminal convictions~~  
22 ~~reported.~~

23 (b) (1) *The home care organization shall electronically submit*  
24 *to the Department of Justice fingerprint images and related*  
25 *information required by the Department of Justice of all home*  
26 *care aides, as defined under subdivision (c) of Section 1796.12,*  
27 *for the purposes of obtaining information as to the existence and*  
28 *content of a record of state convictions and state arrests, and also*  
29 *information as to the existence and content of a record of state*  
30 *arrests for which the Department of Justice establishes that the*  
31 *person is free on bail or on his or her own recognizance pending*  
32 *trial or appeal.*

33 (2) *The Department of Justice shall provide a state response to*  
34 *the department pursuant to paragraph (1) of subdivision (n) of*  
35 *Section 11105 of the Penal Code.*

36 (3) *The home care organization shall request from the*  
37 *Department of Justice subsequent arrest notification service, as*  
38 *provided pursuant to Section 11105.2 of the Penal Code, for*  
39 *persons described in paragraph (1).*

1 (4) *The Department of Justice shall charge a fee not to exceed*  
2 *the actual cost of processing the request described in this*  
3 *subdivision.*

4 (c) If the background check required by subdivision (b) discloses  
5 a conviction or incarceration for a conviction of any of the  
6 following provisions of the Penal Code within 10 years, the  
7 organization shall deny or terminate, as applicable, the employment  
8 of that individual:

9 (1) Fraud against a government health care or supportive  
10 services program, including Medicare, Medicaid, or services  
11 provided under Title V, Title XX, or Title XXI of the federal Social  
12 Security Act, or a violation of subdivision (a) of Section 273a of  
13 the Penal Code, or Section 368 of the Penal Code, or similar  
14 violations in another jurisdiction.

15 (2) A violent or serious felony, as specified in subdivision (c)  
16 of Section 667.5 of the Penal Code and subdivision (c) of Section  
17 1192.7 of the Penal Code.

18 (3) A felony offense for which a person is required to register  
19 under subdivision (c) of Section 290 of the Penal Code. For  
20 purposes of this subparagraph, the 10-year time period specified  
21 in this section shall commence with the date of conviction for, or  
22 incarceration following a conviction for, the underlying offense,  
23 and not the date of registration.

24 (4) A felony offense described in paragraph (2) of subdivision  
25 (c) or paragraph (2) of subdivision (g) of Section 10980.

26 (d) Notwithstanding subdivision (c), a certification shall not be  
27 denied under this section if the applicant has obtained a certificate  
28 of rehabilitation under Chapter 3.5 (commencing with Section  
29 4852.01) of Title 6 of Part 3 of the Penal Code or the information  
30 or accusation against him or her has been dismissed pursuant to  
31 Section 1203.4 of the Penal Code.

32 (e) The organization shall complete and pay for the background  
33 clearance specified in subdivision (b) on home care aides whose  
34 employment began before January 1, 2012, within 180 days of the  
35 effective date of this section.

36 (f) A home care aide hired on or after January 1, 2012, shall not  
37 be permitted to provide home care services until he or she passes  
38 the background clearance pursuant to this section.

39 1796.63. (a) An individual hired as a home care aide on or  
40 after January 1, 2012, shall be terminated from employment unless

1 the individual submitted to an examination within six months prior  
2 to employment or submits to an examination within 14 days after  
3 employment to determine that the individual is free of active  
4 tuberculosis. For purposes of this section, “examination” consists  
5 of a tuberculin skin test and, if that test is positive, an X-ray of the  
6 lungs.

7 (b) A home care aide whose employment with a home care  
8 organization began before January 1, 2012, within 14 days of the  
9 effective date of this section, shall submit to the examination  
10 described in subdivision (a).

11 (c) After submitting to an examination, a home care aide whose  
12 tuberculin skin test is negative shall be required to undergo an  
13 examination at least once every two years. Once a home care aide  
14 has a documented positive skin test that has been followed by an  
15 X-ray, the examination is no longer required.

16 (d) After the examination, a home care aide shall submit, and  
17 the organization shall keep on file, a certificate from the examining  
18 practitioner showing that the home care aide was examined and  
19 found free from active tuberculosis.

20 (e) The examination is a condition of initial and continuing  
21 employment with the home care organization. The home care aide  
22 shall pay the cost of the examination.

23 (f) A home care aide who transfers employment from one  
24 organization to another shall be deemed to meet the requirements  
25 of subdivision (a) or (b) if that individual can produce a certificate  
26 showing that he or she submitted to the examination within the  
27 past two years and was found to be free of communicable  
28 tuberculosis, or if it is verified by the organization previously  
29 employing him or her that it has a certificate on file which contains  
30 that showing.

31 (g) Notwithstanding the results of an examination, a home care  
32 aide shall annually complete a tuberculosis survey that includes,  
33 but is not limited to, all of the following information:

34 (1) The individual’s name, address, and telephone number.

35 (2) The date and result of all previous tuberculin skin tests and,  
36 where applicable, all X-ray examinations.

37 (3) Answers to questions concerning whether the individual has  
38 recently experienced any of the following symptoms:

39 (A) A chronic cough for a period exceeding two weeks.

- 1 (B) Chronic fatigue or listlessness for a period exceeding two
- 2 weeks.
- 3 (C) Fever for a period exceeding one week.
- 4 (D) Night sweats.
- 5 (E) Unexplained weight loss of eight pounds or more.

6  
7 Article 7. Revenues

8  
9 1796.70. (a) There is in the State Treasury the Home Care  
10 Organization and Home Care Aide Certification Fund.  
11 Notwithstanding Section 13340 of the Government Code, and  
12 ~~except as provided~~ *except for money in the fines and penalties*  
13 *account as set forth* in subdivision (b), all money in the fund is  
14 continuously appropriated to the department for the purpose of  
15 carrying out and enforcing this chapter.

16 (b) Fines and penalties collected pursuant to this chapter shall  
17 be deposited into a separable penalty account in the fund and shall  
18 be expended, upon appropriation by the Legislature, for the purpose  
19 of carrying out and enforcing this chapter.

20 1796.71. (a) The department shall assess licensure, renewal,  
21 background check, and other fees for each location of a home care  
22 organization in amounts sufficient to cover the costs of  
23 administering this chapter. The department shall also assess from  
24 the employer of each home care aid a fee in an amount sufficient  
25 to pay the cost of providing certification of home care aides.

26 (b) The department may periodically adjust these fees for  
27 inflation. The fees collected pursuant to this chapter shall be  
28 deposited in the fund.

29  
30 Article 8. Enforcement and Penalties

31  
32 1796.80. (a) A home care organization operating in violation  
33 of this chapter or any rule adopted hereunder may be subject to  
34 the penalties or fines levied or licensure action taken by the  
35 department as specified in this section.

36 (b) When the department determines that a home care  
37 organization is in violation of this chapter or any rules promulgated  
38 hereunder, a notice of violation shall be served upon the licensee.  
39 Each notice of violation shall be prepared in writing and shall  
40 specify the nature of the violation and the statutory provision or

1 rule alleged to have been violated. The notice shall inform the  
2 licensee of any action the department may take under this chapter,  
3 including the requirement of an agency plan of correction,  
4 assessment of a penalty, or action to suspend, revoke, or deny  
5 renewal of the license. The director or his or her designee shall  
6 also inform the licensee of rights to a hearing under this chapter.

7 (c) The department may impose a fine of up to nine hundred  
8 dollars (\$900) per violation per day commencing on the date the  
9 violation was identified and ending on the date each violation is  
10 corrected, or action is taken to suspend, revoke, or deny renewal  
11 of the license, whichever comes first.

12 (d) In determining the penalty or licensure action, the director  
13 shall consider all of the following factors:

14 (1) The gravity of the violation, including the probability that  
15 death or serious physical or mental harm to a client will result or  
16 has resulted, the severity of the actual or potential harm, and the  
17 extent to which the provisions of the applicable statutes or  
18 regulations were violated.

19 (2) The reasonable diligence exercised by the licensee and  
20 efforts to correct violations.

21 (3) Any previous violation committed by the licensee.

22 (4) The financial benefit to the home care organization of  
23 committing or continuing the violation.

24 (e) The department shall adopt regulations establishing  
25 procedures for notices, correction plans, appeals, and hearings. In  
26 developing the procedures, the department shall convene and  
27 consult with a working group of affected stakeholders.

O

## LEGISLATIVE AGENDA ITEM DETAIL SHEET

**BILL NUMBER/ISSUE:** Assembly Bill 40: Elder and Dependent Abuse Reporting

**BILL SUMMARY:** This bill would require a mandated reporter to report abuse to both the local ombudsman and local law enforcement agency.

**BACKGROUND:** Currently, the law requires that mandated reporters make a report of suspected abuse to either the local ombudsman or local law enforcement.

**ANALYSIS/DISCUSSION:** Adult Protective Services (APS) and local law enforcement have authority to investigate and to take appropriate action when a report has been made regarding suspected abuse or neglect; however, APS currently does not have jurisdiction to receiving reports from individuals residing in long term care homes.

The long term care ombudsmen have jurisdiction over receiving reports of suspected abuse, but they do not have investigative authority and in most cases, they cannot release any information unless a release of information is signed by an appropriate person (the individual, their family, conservator, etc.) Therefore, the viability of the ombudsman's office affirmatively addressing the abuse reports is compromised.

This bill identifies this issue and attempts to resolve it by requiring all suspected abuse reports to go directly to local law enforcement in addition to the ombudsman's office. Therefore, potentially more abuse reports would be investigated.

The concerns are: 1) over-reporting and overlap of services, 2) investigations will not be conducted by the local law enforcement if they are lacking in resources, 3) why not include APS in the process since they already have the expertise and have authority to conduct investigations for all other individuals not residing in long term care.

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Shape public policy that positively impacts Californians with developmental disabilities and their families.

**PRIOR COUNCIL ACTIVITY:** None

**RECOMMENDATION(S):** Support AB 40 with amendments that would include APS in the reporting process.

**ATTACHMENTS:** AB 40 and Aging and Long Term Care Committee analysis.

**PREPARED:** Melissa C. Corral, May 3, 2011



AMENDED IN ASSEMBLY MARCH 21, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 40**

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**Introduced by Assembly Member Yamada**

December 6, 2010

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An act to amend ~~Section 15630~~ *Sections 15630, 15630.1, and 15631* of the Welfare and Institutions Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 40, as amended, Yamada. Elder abuse: reporting.

The Elder Abuse and Dependent Adult Civil Protection Act establishes various procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. The act requires certain persons, called mandated reporters, to report known or suspected instances of elder or dependent adult abuse. The act requires a mandated reporter, *and authorizes any person who is not a mandated reporter*, to report the abuse to the local ~~ombudsperson~~ *ombudsman* or the local law enforcement agency if the abuse occurs in a long-term care facility. Failure to report physical abuse and financial abuse of an elder or dependent adult under the act is a misdemeanor.

This bill would, instead, require the mandated reporter, *and authorize any person who is not a mandated reporter*, to report the abuse to both the local ~~ombudsperson~~ *ombudsman* and the local law enforcement agency. ~~This bill would also make various technical, nonsubstantive changes.~~

*Existing law requires a mandated reporter of suspected financial abuse of an elder or dependent adult, as defined, to report a known or suspected instance of financial abuse, as described, to the local ombudsman or the local law enforcement agency if the mandated*

*reporter knows that the elder or dependent adult resides in a long-term care facility.*

*This bill would, instead, require the mandated reporter to report the abuse to both the local ombudsman and the local law enforcement agency. This bill would also make various technical nonsubstantive changes.*

By changing the scope of an existing crime, this bill would impose a state-mandated local program. By increasing the duties of local law enforcement agencies, this bill would impose a state-mandated local program.

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

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

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

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

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

- 1 SECTION 1. Section 15630 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 15630. (a) Any person who has assumed full or intermittent
- 4 responsibility for the care or custody of an elder or dependent
- 5 adult, whether or not he or she receives compensation, including
- 6 administrators, supervisors, and any licensed staff of a public or
- 7 private facility that provides care or services for elder or dependent
- 8 adults, or any elder or dependent adult care custodian, health
- 9 practitioner, clergy member, or employee of a county adult
- 10 protective services agency or a local law enforcement agency, is
- 11 a mandated reporter.
- 12 (b) (1) Any mandated reporter who, in his or her professional
- 13 capacity, or within the scope of his or her employment, has
- 14 observed or has knowledge of an incident that reasonably appears
- 15 to be physical abuse, as defined in Section 15610.63, abandonment,
- 16 abduction, isolation, financial abuse, or neglect, or is told by an

1 elder or dependent adult that he or she has experienced behavior,  
2 including an act or omission, constituting physical abuse, as defined  
3 in Section 15610.63, abandonment, abduction, isolation, financial  
4 abuse, or neglect, or reasonably suspects that abuse, shall report  
5 the known or suspected instance of abuse by telephone immediately  
6 or as soon as practicably possible, and by written report sent within  
7 two working days, as follows:

8 (A) If the abuse has occurred in a long-term care facility, except  
9 a state mental health hospital or a state developmental center, the  
10 report shall be made to both the local ~~ombudsperson~~ *ombudsman*  
11 and the local law enforcement agency.

12 The local ~~ombudsperson~~ *ombudsman* and the local law  
13 enforcement agency shall, as soon as practicable, except in the  
14 case of an emergency or pursuant to a report required to be made  
15 pursuant to clause (v), in which case these actions shall be taken  
16 immediately, do all of the following:

17 (i) Report to the State Department of Public Health any case of  
18 known or suspected abuse occurring in a long-term health care  
19 facility, as defined in subdivision (a) of Section 1418 of the Health  
20 and Safety Code.

21 (ii) Report to the State Department of Social Services any case  
22 of known or suspected abuse occurring in a residential care facility  
23 for the elderly, as defined in Section 1569.2 of the Health and  
24 Safety Code, or in an adult day care facility, as defined in paragraph  
25 (2) of subdivision (a) of Section 1502.

26 (iii) Report to the State Department of Public Health and the  
27 California Department of Aging any case of known or suspected  
28 abuse occurring in an adult day health care center, as defined in  
29 subdivision (b) of Section 1570.7 of the Health and Safety Code.

30 (iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse  
31 any case of known or suspected criminal activity.

32 (v) Report all cases of known or suspected physical abuse and  
33 financial abuse to the local district attorney's office in the county  
34 where the abuse occurred.

35 (B) If the suspected or alleged abuse occurred in a state mental  
36 hospital or a state developmental center, the report shall be made  
37 to designated investigators of the State Department of Mental  
38 Health or the State Department of Developmental Services, or to  
39 the local law enforcement agency.

1 Except in an emergency, the local law enforcement agency shall,  
2 as soon as practicable, report any case of known or suspected  
3 criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.

4 (C) If the abuse has occurred any place other than one described  
5 in subparagraph (A), the report shall be made to the adult protective  
6 services agency or the local law enforcement agency.

7 (2) (A) A mandated reporter who is a clergy member who  
8 acquires knowledge or reasonable suspicion of elder or dependent  
9 adult abuse during a penitential communication is not subject to  
10 paragraph (1). For purposes of this subdivision, "penitential  
11 communication" means a communication that is intended to be in  
12 confidence, including, but not limited to, a sacramental confession  
13 made to a clergy member who, in the course of the discipline or  
14 practice of his or her church, denomination, or organization is  
15 authorized or accustomed to hear those communications and under  
16 the discipline tenets, customs, or practices of his or her church,  
17 denomination, or organization, has a duty to keep those  
18 communications secret.

19 (B) This subdivision shall not be construed to modify or limit  
20 a clergy member's duty to report known or suspected elder and  
21 dependent adult abuse if he or she is acting in the capacity of a  
22 care custodian, health practitioner, or employee of an adult  
23 protective services agency.

24 (C) Notwithstanding any other provision in this section, a clergy  
25 member who is not regularly employed on either a full-time or  
26 part-time basis in a long-term care facility or does not have care  
27 or custody of an elder or dependent adult shall not be responsible  
28 for reporting abuse or neglect that is not reasonably observable or  
29 discernible to a reasonably prudent person having no specialized  
30 training or experience in elder or dependent care.

31 (3) (A) A mandated reporter who is a physician and surgeon,  
32 a registered nurse, or a psychotherapist, as defined in Section 1010  
33 of the Evidence Code, shall not be required to report, pursuant to  
34 paragraph (1), an incident if all of the following conditions exist:

35 (i) The mandated reporter has been told by an elder or dependent  
36 adult that he or she has experienced behavior constituting physical  
37 abuse, as defined in Section 15610.63, abandonment, abduction,  
38 isolation, financial abuse, or neglect.

- 1 (ii) The mandated reporter is not aware of any independent  
2 evidence that corroborates the statement that the abuse has  
3 occurred.
- 4 (iii) The elder or dependent adult has been diagnosed with a  
5 mental illness or dementia, or is the subject of a court-ordered  
6 conservatorship because of a mental illness or dementia.
- 7 (iv) In the exercise of clinical judgment, the physician and  
8 surgeon, the registered nurse, or the psychotherapist, as defined  
9 in Section 1010 of the Evidence Code, reasonably believes that  
10 the abuse did not occur.
- 11 (B) This paragraph shall not be construed to impose upon  
12 mandated reporters a duty to investigate a known or suspected  
13 incident of abuse and shall not be construed to lessen or restrict  
14 any existing duty of mandated reporters.
- 15 (4) (A) In a long-term care facility, a mandated reporter shall  
16 not be required to report as a suspected incident of abuse, as defined  
17 in Section 15610.07, an incident if all of the following conditions  
18 exist:
  - 19 (i) The mandated reporter is aware that there is a proper plan  
20 of care.
  - 21 (ii) The mandated reporter is aware that the plan of care was  
22 properly provided or executed.
  - 23 (iii) A physical, mental, or medical injury occurred as a result  
24 of care provided pursuant to clause (i) or (ii).
  - 25 (iv) The mandated reporter reasonably believes that the injury  
26 was not the result of abuse.
- 27 (B) This paragraph shall not be construed to require a mandated  
28 reporter to seek, nor to preclude a mandated reporter from seeking,  
29 information regarding a known or suspected incident of abuse prior  
30 to reporting. This paragraph shall apply only to those categories  
31 of mandated reporters that the State Department of Public Health  
32 determines, upon approval by the Bureau of Medi-Cal Fraud and  
33 Elder Abuse and the state long-term care ~~ombudsperson~~  
34 *ombudsman*, have access to plans of care and have the training  
35 and experience necessary to determine whether the conditions  
36 specified in this section have been met.
- 37 (c) (1) Any mandated reporter who has knowledge, or  
38 reasonably suspects, that types of elder or dependent adult abuse  
39 for which reports are not mandated have been inflicted upon an  
40 elder or dependent adult, or that his or her emotional well-being

1 is endangered in any other way, may report the known or suspected  
2 instance of abuse.

3 (2) If the suspected or alleged abuse occurred in a long-term  
4 care facility other than a state mental health hospital or a state  
5 developmental center, the report may be made to the long-term  
6 care ~~ombudsperson~~ *ombudsman* program. Except in an emergency,  
7 the local ~~ombudsperson~~ *ombudsman* shall report any case of known  
8 or suspected abuse to the State Department of Public Health and  
9 any case of known or suspected criminal activity to the Bureau of  
10 Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

11 (3) If the suspected or alleged abuse occurred in a state mental  
12 health hospital or a state developmental center, the report may be  
13 made to the designated investigator of the State Department of  
14 Mental Health or the State Department of Developmental Services  
15 or to a local law enforcement agency or to the local ~~ombudsperson~~  
16 *ombudsman*. Except in an emergency, the local ~~ombudsperson~~  
17 *ombudsman* and the local law enforcement agency shall report any  
18 case of known or suspected criminal activity to the Bureau of  
19 Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

20 (4) If the suspected or alleged abuse occurred in a place other  
21 than a place described in paragraph (2) or (3), the report may be  
22 made to the county adult protective services agency.

23 (5) If the conduct involves criminal activity not covered in  
24 subdivision (b), it may be immediately reported to the appropriate  
25 law enforcement agency.

26 (d) If two or more mandated reporters are present and jointly  
27 have knowledge or reasonably suspect that types of abuse of an  
28 elder or a dependent adult for which a report is or is not mandated  
29 have occurred, and there is agreement among them, the telephone  
30 report may be made by a member of the team selected by mutual  
31 agreement, and a single report may be made and signed by the  
32 selected member of the reporting team. Any member who has  
33 knowledge that the member designated to report has failed to do  
34 so shall thereafter make the report.

35 (e) A telephone report of a known or suspected instance of elder  
36 or dependent adult abuse shall include, if known, the name of the  
37 person making the report, the name and age of the elder or  
38 dependent adult, the present location of the elder or dependent  
39 adult, the names and addresses of family members or any other  
40 adult responsible for the elder's or dependent adult's care, the

1 nature and extent of the elder's or dependent adult's condition, the  
2 date of the incident, and any other information, including  
3 information that led that person to suspect elder or dependent adult  
4 abuse, as requested by the agency receiving the report.

5 (f) The reporting duties under this section are individual, and  
6 no supervisor or administrator shall impede or inhibit the reporting  
7 duties, and no person making the report shall be subject to any  
8 sanction for making the report. However, internal procedures to  
9 facilitate reporting, ensure confidentiality, and apprise supervisors  
10 and administrators of reports may be established, provided they  
11 are not inconsistent with this chapter.

12 (g) (1) Whenever this section requires a county adult protective  
13 services agency to report to a law enforcement agency, the law  
14 enforcement agency shall, immediately upon request, provide a  
15 copy of its investigative report concerning the reported matter to  
16 that county adult protective services agency.

17 (2) Whenever this section requires a law enforcement agency  
18 to report to a county adult protective services agency, the county  
19 adult protective services agency shall, immediately upon request,  
20 provide to that law enforcement agency a copy of its investigative  
21 report concerning the reported matter.

22 (3) The requirement to disclose investigative reports pursuant  
23 to this subdivision shall not include the disclosure of social services  
24 records or case files that are confidential, nor shall this subdivision  
25 be construed to allow disclosure of any reports or records if the  
26 disclosure would be prohibited by any other provision of state or  
27 federal law.

28 (h) Failure to report, or impeding or inhibiting a report of,  
29 physical abuse, as defined in Section 15610.63, abandonment,  
30 abduction, isolation, financial abuse, or neglect of an elder or  
31 dependent adult, in violation of this section, is a misdemeanor,  
32 punishable by not more than six months in the county jail, by a  
33 fine of not more than one thousand dollars (\$1,000), or by both  
34 that fine and imprisonment. Any mandated reporter who willfully  
35 fails to report, or impedes or inhibits a report of, physical abuse,  
36 as defined in Section 15610.63, abandonment, abduction, isolation,  
37 financial abuse, or neglect of an elder or dependent adult, in  
38 violation of this section, if that abuse results in death or great bodily  
39 injury, shall be punished by not more than one year in a county  
40 jail, by a fine of not more than five thousand dollars (\$5,000), or

1 by both that fine and imprisonment. If a mandated reporter  
2 intentionally conceals his or her failure to report an incident known  
3 by the mandated reporter to be abuse or severe neglect under this  
4 section, the failure to report is a continuing offense until a law  
5 enforcement agency specified in paragraph (1) of subdivision (b)  
6 of Section 15630 discovers the offense.

7 (i) For purposes of this section, “dependent adult” shall have  
8 the same meaning as in Section 15610.23.

9 *SEC. 2. Section 15630.1 of the Welfare and Institutions Code*  
10 *is amended to read:*

11 15630.1. (a) As used in this section, “mandated reporter of  
12 suspected financial abuse of an elder or dependent adult” means  
13 all officers and employees of financial institutions.

14 (b) As used in this section, the term “financial institution” means  
15 any of the following:

16 (1) A depository institution, as defined in Section 3(c) of the  
17 Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).

18 (2) An institution-affiliated party, as defined in Section 3(u) of  
19 the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).

20 (3) A federal credit union or state credit union, as defined in  
21 Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752),  
22 including, but not limited to, an institution-affiliated party of a  
23 credit union, as defined in Section 206(r) of the Federal Credit  
24 Union Act (12 U.S.C. Sec. 1786(r)).

25 (c) As used in this section, “financial abuse” has the same  
26 meaning as in Section 15610.30.

27 (d) (1) Any mandated reporter of suspected financial abuse of  
28 an elder or dependent adult who has direct contact with the elder  
29 or dependent adult or who reviews or approves the elder or  
30 dependent adult’s financial documents, records, or transactions,  
31 in connection with providing financial services with respect to an  
32 elder or dependent adult, and who, within the scope of his or her  
33 employment or professional practice, has observed or has  
34 knowledge of an incident, that is directly related to the transaction  
35 or matter that is within that scope of employment or professional  
36 practice, that reasonably appears to be financial abuse, or who  
37 reasonably suspects that abuse, based solely on the information  
38 before him or her at the time of reviewing or approving the  
39 document, record, or transaction in the case of mandated reporters  
40 who do not have direct contact with the elder or dependent adult,

1 shall report the known or suspected instance of financial abuse by  
2 telephone immediately, or as soon as practicably possible, and by  
3 written report sent within two working days to the local adult  
4 protective services agency or the local law enforcement agency.

5 (2) When two or more mandated reporters jointly have  
6 knowledge or reasonably suspect that financial abuse of an elder  
7 or a dependent adult for which the report is mandated has occurred,  
8 and when there is an agreement among them, the telephone report  
9 may be made by a member of the reporting team who is selected  
10 by mutual agreement. A single report may be made and signed by  
11 the selected member of the reporting team. Any member of the  
12 team who has knowledge that the member designated to report has  
13 failed to do so shall thereafter make that report.

14 (3) If the mandated reporter knows that the elder or dependent  
15 adult resides in a long-term care facility, as defined in Section  
16 15610.47, the report shall be made to the local ombudsman ~~or~~ *and*  
17 local law enforcement agency.

18 (e) An allegation by the elder or dependent adult, or any other  
19 person, that financial abuse has occurred is not sufficient to trigger  
20 the reporting requirement under this section if both of the following  
21 conditions are met:

22 (1) The mandated reporter of suspected financial abuse of an  
23 elder or dependent adult is aware of no other corroborating or  
24 independent evidence of the alleged financial abuse of an elder or  
25 dependent adult. The mandated reporter of suspected financial  
26 abuse of an elder or dependent adult is not required to investigate  
27 any accusations.

28 (2) In the exercise of his or her professional judgment, the  
29 mandated reporter of suspected financial abuse of an elder or  
30 dependent adult reasonably believes that financial abuse of an  
31 elder or dependent adult did not occur.

32 (f) Failure to report financial abuse under this section shall be  
33 subject to a civil penalty not exceeding one thousand dollars  
34 (\$1,000) or if the failure to report is willful, a civil penalty not  
35 exceeding five thousand dollars (\$5,000), which shall be paid by  
36 the financial institution that is the employer of the mandated  
37 reporter to the party bringing the action. Subdivision (h) of Section  
38 15630 shall not apply to violations of this section.

39 (g) (1) The civil penalty provided for in subdivision (f) shall  
40 be recovered only in a civil action brought against the financial

1 institution by the Attorney General, district attorney, or county  
2 counsel. No action shall be brought under this section by any  
3 person other than the Attorney General, district attorney, or county  
4 counsel. Multiple actions for the civil penalty may not be brought  
5 for the same violation.

6 (2) Nothing in the Financial Elder Abuse Reporting Act of 2005  
7 shall be construed to limit, expand, or otherwise modify any civil  
8 liability or remedy that may exist under this or any other law.

9 (h) As used in this section, “suspected financial abuse of an  
10 elder or dependent adult” occurs when a person who is required  
11 to report under subdivision (a) observes or has knowledge of  
12 behavior or unusual circumstances or transactions, or a pattern of  
13 behavior or unusual circumstances or transactions, that would lead  
14 an individual with like training or experience, based on the same  
15 facts, to form a reasonable belief that an elder or dependent adult  
16 is the victim of financial abuse as defined in Section 15610.30.

17 (i) Reports of suspected financial abuse of an elder or dependent  
18 adult made by an employee or officer of a financial institution  
19 pursuant to this section are covered under subdivision (b) of Section  
20 47 of the Civil Code.

21 (j) This section shall remain in effect only until January 1, 2013,  
22 and as of that date is repealed, unless a later enacted statute, that  
23 is enacted before January 1, 2013, deletes or extends that date.

24 *SEC. 3. Section 15631 of the Welfare and Institutions Code is*  
25 *amended to read:*

26 15631. (a) Any person who is not a mandated reporter under  
27 Section 15630, who knows, or reasonably suspects, that an elder  
28 or a dependent adult has been the victim of abuse may report that  
29 abuse to a long-term care ombudsman program or local law  
30 enforcement agency *or both the long-term care ombudsman*  
31 *program and local law enforcement agency* when the abuse is  
32 alleged to have occurred in a long-term care facility.

33 (b) Any person who is not a mandated reporter under Section  
34 15630, who knows, or reasonably suspects, that an elder or a  
35 dependent adult has been the victim of abuse in any place other  
36 than a long-term care facility may report the abuse to the county  
37 adult protective services agency or local law enforcement agency.

38 ~~SEC. 2.~~

39 *SEC. 4.* No reimbursement is required by this act pursuant to  
40 Section 6 of Article XIII B of the California Constitution for certain

1 costs that may be incurred by a local agency or school district  
2 because, in that regard, this act creates a new crime or infraction,  
3 eliminates a crime or infraction, or changes the penalty for a crime  
4 or infraction, within the meaning of Section 17556 of the  
5 Government Code, or changes the definition of a crime within the  
6 meaning of Section 6 of Article XIII B of the California  
7 Constitution.

8 However, if the Commission on State Mandates determines that  
9 this act contains other costs mandated by the state, reimbursement  
10 to local agencies and school districts for those costs shall be made  
11 pursuant to Part 7 (commencing with Section 17500) of Division  
12 4 of Title 2 of the Government Code.

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## BILL ANALYSIS

AB 40  
Page 1

Date of Hearing: March 29, 2011

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE  
Mariko Yamada, Chair  
AB 40 (Yamada) - As Amended: March 21, 2011

SUBJECT : Elder Abuse: Reporting

SUMMARY : This bill requires mandated reporters of elder or dependent adult abuse to report suspected or known instances of elder or dependent adult abuse, which is believed to have occurred in a long-term care facility, to both the Long-Term Care Ombudsman (LTCO) and local law enforcement. This bill also requires mandated reporters of suspected financial abuse of an elder or dependent adult to report known or suspected instances of financial abuse against an individual living in a long-term care facility, to both the LTCO and local law enforcement. Current law requires mandated reporters of elder and dependent adult abuse to report to either the LTCO or local law enforcement.

EXISTING LAW:

1. Establishes legislative findings and intent that, among other things, finds and declares that:
  - a. Elders and dependent adults may be subjected to abuse, neglect, or abandonment and that California has the responsibility to protect them.
  - b. Various factors contribute to the incidence of abuse, such as economic instability of the family, resentment of caretakers, stress upon the caretaker, and substance abuse.
  - c. Uniform state guidelines, which specify when county adult protective service agencies are to investigate allegations of abuse of elders and dependent adults and the appropriate role of local law enforcement is necessary in order to ensure that a minimum level of protection is provided to elders and dependent adults in each county.
  - d. Adult protective services agencies, LTCO programs, and local law enforcement agencies shall receive referrals or complaints of abuse from public or private agencies, mandated reporters or any other source having reasonable cause to know that the welfare of an elder or dependent

AB 40  
Page 2

adult is endangered.

- e. Law enforcement, the LTCO and/or Adult Protective Services (APS) shall take any actions considered necessary to protect the elder or dependent adult and correct the situation and ensure the individual's safety.
1. Defines various terms for purposes of reporting, investigating and mitigating elder or dependent adult abuse.
    - Abandonment;
    - Abduction;
    - Abuse of and elder or dependent adult;
    - Adult protective services;
    - Care custodian;
    - Clients rights advocate;
    - Clergy;
    - Dependent adult;
    - Elder;
    - Developmentally disabled person;
    - Financial abuse;
    - Health practitioner;
    - Imminent danger;
    - Isolation;
    - Local law enforcement agency;
    - Long-term care facility;
    - Long-term Care Ombudsman;
    - Neglect;
    - Physical abuse;
    - Reasonable suspicion; and,
    - Others
  1. Declares any person who has assumed full or intermittent responsibility for the care of an elder or dependent adult, (whether compensated or not), health practitioner, clergy member or employee of an APS or law enforcement agency as a 'mandated reporter'.

2. Declares all employees and officers of a financial institution to be mandated reporters of financial abuse of an elder or dependent adult.
3. Establishes the LTCO program, by the Older American's Act (OAA) and places it within the California Department of Aging (CDA) by the Older Californians Act (OCA) in order to encourage community contact and involvement with elderly patients or residents of long-term care facilities or

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AB 40  
Page 3

residential facilities through the use of volunteers and volunteer programs. Existing law also compels LTCO to investigate and seek to resolve complaints and concerns communicated by, or on behalf of, patients, residents, or clients of any long-term care facility.

4. Existing law also establishes protocol for mandated reporters, as defined, when reporting elder and dependent adult abuse. Generally, mandated reporters of elder and dependent adult abuse are required to report observed or known incidents that reasonably appear to be physical abuse (i.e. assault, battery, assault with a deadly weapon, unreasonable and prolonged physical restraint, deprivation of food or water, sexual assault, use of chemical restraints for punishment or beyond the constraints of the attending physician's orders), abandonment, abduction, isolation, financial abuse, or neglect. When the abuse occurs outside a long-term care facility, the mandated reporters report abuse to the local APS program, or to law enforcement. When the abuse occurs within a long-term care facility, the mandated reporters report to the LTCO or the local law enforcement.

THIS BILL

AB 40, as amended, requires mandated reporters to report physical abuse which occurs within a long-term care facility, and financial abuse of a resident of a long-term care facility, to both the LTCO and local law enforcement. Current law provides for a mandate to report to the Long-Term Care Ombudsman or local law enforcement.

BACKGROUND

The LTCO program is administered through the CDA and 35 local programs contracted through the network of local area agencies on aging (AAA). The program utilizes approximately 950 volunteers and 155 paid full-time and part-time staff to serve as resident/patient advocates of residents in over 9,000 long-term care facilities. Volunteers initially receive a minimum of 36 hours of training to carry-out their duties. According to the CDA website, the primary responsibility of the program is to investigate and endeavor to resolve complaints made by, or on behalf of, individual residents in long-term care facilities. The goal of the program is to advocate for the rights of all residents of long-term care facilities.

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AB 40  
Page 4

According to the author, the LTCO program is operating under conflicting mandates. Under the OAA mandate, LTCO serve as a resident advocate and are prohibited from disclosing information on reports of abuse to anyone without the written consent of the subject of the report. However, under the state's mandated reporting laws, LTCO are required to receive and initiate investigations of reports of abuse. The author contends that the LTCO is not designed to carry-out investigative roles due to their federal prohibition from disclosing information on reports - a prohibition which precludes reporting to law enforcement and licensing agencies - even when the subject's well-being may be in jeopardy. Without the consent of the resident(s) involved, or their legal representatives, criminal activities that would otherwise be subject to swift and decisive action by law enforcement and licensing agencies, is left to the advocacy devices of volunteers.

The Welfare and Institutions Code acknowledges the conflict, yet affirms that LTCO can only cross report with the consent of the resident (§ 15640.9(d)), further stating that; "If a victim or potential victim of the neglect withholds consent to being identified in that report, the report shall contain circumstantial information about the neglect but shall not identify that victim or potential victim and the bureau and the reporting agency shall maintain the confidentiality of the

report until the report becomes a matter of public record." According to the author, this becomes particularly troubling in abuse cases reported to the LTCO where the victim is unable to offer consent to share information with law enforcement personnel in order to complete a thorough investigation and secure justice-it creates a loophole which allows criminal activity to go unchecked.

Recent Report

The California State Senate Office of Oversight and Outcomes issued a report in November of 2009 entitled California's Elder Abuse Investigators: Ombudsmen Shackled by Conflicting Laws and Duties. In the report, the issue of conflicting mandates was discussed extensively, and the report concluded, among other things, that California should adopt a policy that requires mandated reporters to report to both Ombudsman and local law enforcement. The report further concluded that state law should be changed to conform with federal law with regard to obtaining consent, and recommends transferring responsibility of receiving mandated reports and investigating abuse to another entity, while informing the Ombudsman.

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AB 40  
Page 5

Arguments in Support

According to supporters, current law effectively defeats much of the purpose of mandating reports of abuse of people with disabilities and elders in long-term care facilities because it allows mandated reporters to report exclusively to the LTCO who have no law enforcement powers and are prohibited by federal law from reporting these crimes to the police and licensing agencies.

The Contra Costa Area Agency on Aging writes that AB 40 would strengthen reporting requirements so that the heinous crime of elder abuse can be investigated and prosecuted more expeditiously and effectively.

Arguments in Opposition

According to opponents, AB 40 "changes to whom the mandated reporter makes a report of neglect," and may lead to over-reporting. The California Association of Health Facilities (CAHF-"Oppose unless Amended") is concerned that over-reporting may overwhelm scarce facility and/or community resources. CAHF further argues that the California Department of Public Health's continued failure to issue regulations defining specific portions of the reporting statute, including what constitutes "alleged or suspected" abuse and "resident-to-resident" abuse has led to gross over reporting of incidents by mandated reporters in long-term care settings. These assertions may be reflected in statistics acquired from the previously mentioned California Senate Office of Oversight and Outcomes report that finds that compared to other states, California's paid and volunteer LTCO staff receives far more reports than paid and volunteer LTCO staff in other states. In California, each LTCO volunteer receives and completes on average, 8-9 reports of abuse and neglect annually. In other states, volunteer LTCO complete only 1-2. In California, each paid staff receives and completes an average of 38 cases per year. In the rest of the US, paid LTCO staff complete about 12 per year.

The California Hospital Association (CHA) is also opposed unless amended and proposes adopting language to conform to a recommendation from a recent Senate Office of Oversight and Outcomes report entitled California's Elder Abuse Investigators: Ombudsmen Shackled by Conflicting Laws and Duties. One of eleven recommendations asserts that California may want to consider transferring the responsibility of receiving mandated reports and investigating abuse to another entity, such as state

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AB 40  
Page 6

licensing units or local Adult Protective Services not bound by the Older American's Act, while also requiring the Ombudsman program to continue to be informed of mandated reports.

The California Association of Marriage and Family Therapists argues that "for mandated reporters to make two separate reports about persons in long-term care facilities is excessive."

Although not opposed, CALA, the California Assisted Living Association expresses concerns and implies that AB 40 would have the effect of criminalizing common dementia-related behaviors; "Under this bill, a care provider who witnesses an 82 year old

assisted living resident with advanced Alzheimer's disease push another resident would be required to contact the police."

FISCAL EFFECT : Unknown.

REGISTERED SUPPORT / OPPOSITION :

Support

The Arc of California  
California Advocates for Nursing Home Reform (CANHR)  
California Commission on Aging (CCoA)  
California District Attorneys Association (CDA)  
California Police Chiefs Association  
California Senior Legislature (CSL)  
Contra Costa County Advisory Council on Aging  
Crime Victims United of California (CVUC)  
San Luis Obispo County Adult Abuse Prevention Council

Opposition

California Association of Health Facilities (CAHF)  
California Association of Marriage and Family Therapists  
California Hospital Association

Concerns

\_\_\_\_\_ California Assisted Living Association (CALA)

\_\_\_\_\_ Analysis Prepared by : Robert MacLaughlin / AGING & L.T.C. /  
(916) 319-3990

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## LEGISLATIVE AGENDA ITEM DETAIL SHEET

**BILL NUMBER/ISSUE:** Assembly Bill 443: Children with Disabilities: Insurance Coverage

**BILL SUMMARY:** Existing law requires that every individual with exceptional needs, as defined, who is eligible, be provided with educational instruction, services, or both, at no cost to his or her parent or guardian or, as appropriate, to him or her. A free appropriate public education is required to be made available to individuals with exceptional needs in accordance with specified federal regulations adopted pursuant to the federal Individuals with Disabilities Education Act. Existing law requires counties to coordinate the service responsibilities of this requirement, including assessment and the provision of necessary services.

This bill would require the county, upon referral and during the individualized education program planning process, to ask the parent or legal guardian of the child or youth whether the child or youth is covered by a private health insurance provider and, if the child or youth has private health insurance, would authorize the county or other provider to seek reimbursement from that insurance company for medically necessary services provided to the child or youth.

### **BACKGROUND:**

**ANALYSIS/DISCUSSION:** According to the author's staff AB 443 is a two-year bill.

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Support public policies that positively impact the lives of persons with developmental disabilities and their families.

**PRIOR COUNCIL ACTIVITY:** None

**RECOMMENDATION(S):** Watch AB 443

**ATTACHMENT(S):** AB 443

**PREPARED:** Karim Alipourfard, May 5, 2011



AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 443**

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**Introduced by Assembly Member Bonilla**

February 15, 2011

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An act to ~~amend Section 8630 of the Education Code, relating to education programs~~ *add Section 7583 to the Government Code, relating to children with disabilities.*

LEGISLATIVE COUNSEL'S DIGEST

AB 443, as amended, Bonilla. ~~Education programs: California Summer Science and Technology Academy. Children with disabilities: insurance coverage.~~

*Existing law requires that every individual with exceptional needs, as defined, who is eligible be provided with educational instruction, services, or both, at no cost to his or her parent or guardian or, as appropriate, to him or her. A free appropriate public education is required to be made available to individuals with exceptional needs in accordance with specified federal regulations adopted pursuant to the federal Individuals with Disabilities Education Act. Existing law requires counties to coordinate the service responsibilities of this requirement, including assessment and the provision of necessary services.*

*This bill would require the county, upon referral and during the individualized education program planning process, to ask the parent or legal guardian of the child or youth whether the child or youth is covered by a private health insurance provider and, if the child or youth has private health insurance, would authorize the county or other provider to seek reimbursement from that insurance company for*

*medically necessary services provided to the child or youth. By imposing additional duties on counties, this bill would impose a state-mandated local program.*

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

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

~~Existing law establishes the California Summer Science and Technology Academy to be a statewide program that is required to be developed and operated to identify public high school pupils with high academic potential in mathematics, science, and technology, with an emphasis on females and minority members, to participate in university-based research programs. Existing law states legislative intent pertaining to the functions of this academy.~~

~~This bill would make technical, nonsubstantive changes to that legislative intent.~~

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. Section 7583 is added to the Government Code,
- 2     to read:
- 3     7583. (a) Upon referral and during the individualized
- 4     education program planning process the county shall ask the
- 5     parent or legal guardian of the child or youth whether the child
- 6     or youth is covered by a private health insurance provider. If the
- 7     child or youth has private health insurance, that information shall
- 8     be included in the child's or youth's record or individualized
- 9     education program.
- 10    (b) The county or other provider may seek reimbursement from
- 11    a private health insurance provider for medically necessary
- 12    treatment services provided to a child referred by a local education
- 13    agency for an assessment or a disabled child or youth with an
- 14    individualized education program.

1     *SEC. 2. If the Commission on State Mandates determines that*  
2     *this act contains costs mandated by the state, reimbursement to*  
3     *local agencies and school districts for those costs shall be made*  
4     *pursuant to Part 7 (commencing with Section 17500) of Division*  
5     *4 of Title 2 of the Government Code.*

6     ~~SECTION 1. Section 8630 of the Education Code is amended~~  
7     ~~to read:~~

8     ~~8630. It is the intent of the Legislature, pursuant to this chapter,~~  
9     ~~to do all of the following:~~

10    ~~(a) Support the educational experiences of all pupils, and assist~~  
11    ~~them to excel, in the fields of mathematics, science, and~~  
12    ~~technology, especially with regard to females and minority~~  
13    ~~members who have been traditionally underrepresented in those~~  
14    ~~fields.~~

15    ~~(b) Encourage and improve upon the performance of California~~  
16    ~~pupils in national competitions in mathematics, science, and~~  
17    ~~technology.~~

18    ~~(c) Provide opportunities for capable pupils to participate in~~  
19    ~~summer honors research programs with research faculty at the~~  
20    ~~University of California and other institutions of higher education.~~

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## LEGISLATIVE AGENDA ITEM DETAIL SHEET

**BILL NUMBER/ISSUE:** SB 472: Early Intervention Services

**BILL SUMMARY:** This bill would attempt to consolidate the assessment process for all early intervention services received from multiple agencies which would streamline the assessment process and save families from multiple appointments.

**BACKGROUND:** Directs the Superintendent of Public Instruction and the Secretary of the Health and Human Services Agency to find ways to consolidate the assessments and attendant paperwork of children with disabilities who receive services from more than one agency, and to either develop an integrated assessment instrument that can be performed in one place at one times each year and serve the assessment needs of all service agencies, or to develop a process whereby the several assessments can be conducted in one place and time.

**ANALYSIS/DISCUSSION:** Children from birth to 36 months who are identified as having a developmental disability or at risk of developing a disability are assisted by the federal Early Intervention Act. In order to receive services, many different assessments are conducted by various agencies (regional centers, California Children's Service, etc.) and by different providers (speech and language professionals, psychologists, etc.)

This bill would require the California Health and Human Services Secretary and the Superintendent of Public Instruction to develop an integrated assessment tool or a process to consolidated assessments to coordinate multiple agency assessments and report back to the Legislature by 2013.

Concerns regarding the consolidation into one tool are: 1) the diversity and expertise required for each assessment, 2) can one tool effectively capture the individual needs of the child and, 3) the development of the tool does not ensure that the experts are sufficiently involved in the process.

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Shape public policy that positively impacts Californians with developmental disabilities and their families.

**PRIOR COUNCIL ACTIVITY:** None

**RECOMMENDATION(S):** Support SB 472 with amendments that would ensure that individual needs are considered for each family and include experts in the development of the process.

**ATTACHMENTS:** SB 472 and Senate Human Services analysis.

**PREPARED:** Melissa C. Corral, May 3, 2011

AMENDED IN SENATE MAY 2, 2011  
AMENDED IN SENATE APRIL 11, 2011

**SENATE BILL**

**No. 472**

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**Introduced by Senator Correa  
(Coauthor: Senator Hancock)**

February 17, 2011

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An act to add Section 95016.5 to the Government Code, relating to children's services.

LEGISLATIVE COUNSEL'S DIGEST

SB 472, as amended, Correa. Early intervention services: assessments.

Existing law, the California Early Intervention Services Act, is administered jointly by the Secretary of the Health and Human Services Agency and the Superintendent of Public Instruction, with the State Department of Developmental Services as the lead agency responsible for administration and coordination of the statewide system of services for the enhancement of the development of children who have disabilities or who are at risk of having disabilities and to minimize the potential for delays in their development. Under existing law, these provisions are in effect only until the state terminates its participation in prescribed components of the federal Individuals with Disabilities Education Act.

This bill would require the secretary and the superintendent to develop either an integrated assessment instrument or a process to consolidate assessments to be used to coordinate multiple agency assessments, and to report to the Legislature by January 1, 2013.

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 95016.5 is added to the Government  
2 Code, to read:

3 95016.5. (a) The Legislature finds and declares all of the  
4 following:

5 (1) Children receiving special education and related services  
6 are often clients of a regional center, of the California Children's  
7 Services program, and recipients of county health or mental health  
8 services.

9 (2) Each organization may require separate assessments annually  
10 and may require parents to provide the same information multiple  
11 times on separate required forms.

12 (3) Multiple assessments can be a burden on families and  
13 children who must find the time and resources to travel to several  
14 different locations each year for multiple assessments.

15 (b) With the goal of finding ways to consolidate assessments  
16 and the attendant paperwork, the Secretary of California Health  
17 and Human Services and the Superintendent of Public Instruction,  
18 or their designees, *in consultation with representatives of county*  
19 *mental health services and the California Children's Services*  
20 *program*, shall develop either of the following to be used to  
21 coordinate multiple agency assessments:

22 (1) An integrated assessment instrument that can be performed  
23 in one place at one time each year and that will serve the  
24 assessment needs of all service agencies.

25 (2) A process whereby the several assessments can be conducted  
26 in one place and time.

27 (c) The integrated assessment instrument or process shall  
28 initially focus on infants and toddlers; however, it shall be flexible  
29 enough to continue to serve as an instrument or process to  
30 coordinate assessments for needed services as the child continues  
31 to age.

32 (d) The secretary and superintendent shall complete this work  
33 by January 1, 2013, and shall report their findings to the Legislature  
34 at that time.

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## BILL ANALYSIS

SENATE HUMAN  
SERVICES COMMITTEE  
Senator Carol Liu, Chair

BILL NO: SB 472  
S  
AUTHOR: Correa  
B  
VERSION: April 11, 2011  
HEARING DATE: April 26, 2011  
4  
FISCAL: Rules; Appropriations  
7

2  
CONSULTANT:  
Hailey

SUBJECT

Early intervention services: assessment

SUMMARY

Directs the Superintendent of Public Instruction and the Secretary of the Health and Human Services Agency to develop a unified assessment for infants and toddlers with disabilities or to develop a process to coordinate needed assessments in one place and at one time each year.

ABSTRACT

Current law

1. Establishes various programs to assess and provide health, education, and therapeutic services to persons who have or may have a disability.

2. Provides for the administration of these programs through local education agencies, county offices of education, county departments of health and mental health, regional centers, and other state and local government entities.

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STAFF ANALYSIS OF SENATE BILL 472 (Correa) Page  
2

3. Establishes the California Early Intervention Services Act (Government Code Sections 95000 through 95029) to provide for the enhancement of the development of infants and young children who have disabilities or who are at risk of having disabilities.

4. Establishes, through federal law, the Individuals with Disabilities Education Act (IDEA) to provide for the education of children with disabilities, up to age 21.

This bill

1. Makes findings and declarations about children receiving special education and related services.  
2. Directs the Superintendent of Public Instruction and the Secretary of the Human Services Agency to find ways to consolidate the assessments and attendant paperwork of children with disabilities who receive services from more than one agency, and to either develop an integrated assessment instrument that can be performed in one place at one time each year and serve the assessment needs of all service agencies, or to develop a process whereby the several assessments can be conducted in one place and time.

3. Directs this effort to focus first on infants and toddlers, but be flexible enough to continue to serve as an instrument or a process as the child ages.

4. Directs the secretary and superintendent to complete this work by January 1, 2013, and report their findings to the Legislature.

FISCAL IMPACT

Unknown.

BACKGROUND AND DISCUSSION

The author has met with parents in his district who are raising children with severe and multiple disabilities. All of these children have an individual education plan with their local school district or county office of education; most have an individual program plan with the regional center; some receive services from California

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STAFF ANALYSIS OF SENATE BILL 472 (Correa) Page  
3

Children's Services, some receive services from the county mental health department; some receive other therapeutic services, such as speech and language therapy, through their local education agency or county office; and, some have partial coverage for services through Medicaid or private health care insurance. For some families, county-provided services include in-home supportive services (IHSS).

For each of these services, there is an assessment and there are periodic reassessments - both to ensure eligibility for services and to evaluate the effectiveness of those services, therapies, and educational programs. Each program provides these assessments on their own calendar and at their own locations, with parents being responsible to make and keep appointments. These many assessments, located around the county or sometimes in a neighboring county, can be a burden on parents causing lost time at work and a burden on the children causing lost time in educational and therapeutic programs - as well as the challenges and frustrations of arranging transportation or using public transportation.

In addition to the challenges of making and completing multiple appointments in various locations, parents report to the author that these assessments often cover the same topics as others conducted by a different service organization.

The author argues that there may be ways to consolidate assessments or to bring multiple assessments to one place in order to complete them more quickly and efficiently and to relieve parents and children of the burdens of travel and time.

The California Early Intervention Services Act

In response to overwhelming evidence that early intervention works in mitigating the severity of the effects of disabilities - and sometimes inhibiting the development of a disability altogether - the Legislature passed the California Early Intervention Services Act. Versions of the act date back to the 1970s and early 1980s when, in response to Public Law 94-142, the Education of All Handicapped Children Act, the Legislature established model programs to reach children younger than those

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STAFF ANALYSIS OF SENATE BILL 472 (Correa) Page  
4

accommodated by the new federal law. This relationship between state and federal law remains to this day: the federal Individuals with Disabilities Education Act (IDEA) makes the public schools responsible for providing educational services to all children with a disability once they reach 36 months of age and permits local education agency services to children younger than 36 months of age. The California Early Intervention Services Act provides for services to children birth through the time that IDEA and the public schools take over the lead role.

A place to start

This bill begins with those infants and toddlers served through the California Early Intervention Services Act and it provides for flexibility so that, over time, older children and their families would receive the benefits of consolidated assessments. According to the Department of Developmental Services, the numbers of children being served in the current school year are 3,525 in the prevention program and 27,500 in Early Start, the program for young children who have a disability.

COMMENT AND QUESTIONS

Is one instrument a feasible possibility?

Because the range of disabilities and of therapies is

broad, some professionals question the possibility that one assessment instrument is feasible. Physical therapists, occupational therapists, psychologists, speech and language therapists, physicians, and teachers may each be responsible for one part of a child's individual program plan or individual education plan. And each may need to do an assessment of the child that in part at least is unique. Should the language of the bill be amended to provide additional options - for partial consolidation of assessments (given that all of them include a medical history and some have overlapping elements with one or more of the other assessments)?

Do the superintendent and secretary have access to persons with experience providing direct service?

Because neither the office of the Superintendent of Public Instruction nor the programs within the several departments that report to the Secretary of Health and Human Services

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STAFF ANALYSIS OF SENATE BILL 472 (Correa) Page 5

provide direct services, some professionals question whether the bill brings enough expertise to the table. Should the language of the bill be amended to encourage the superintendent and the secretary to involve or to consult representatives of counties, local education agencies, and regional centers? In addition, the superintendent can ask the state's special education commission, which is comprised of a range of professionals and parents, to provide comment and recommendations. Staff recommends against making this review more formal than as described in the bill; however, providing for consultation with providers of direct service should ensure richer findings.

Should superintendent and the secretary also consider changes in the assessment processes of older children?

As noted above, the bill directs the superintendent and the secretary to begin with infants and toddlers. Should it be amended to direct the superintendent and the secretary to consider the assessments and reassessments of older children as well?

POSITIONS

Support: California Coalition for Families and Children  
California Council of Community Mental Health Agencies  
Mental Health Association of California  
The Arc of California  
United Cerebral Palsey  
1 individual

Oppose: None received

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STAFF ANALYSIS OF SENATE BILL 472 (Correa) Page 6



## LEGISLATIVE AGENDA ITEM DETAIL SHEET

**BILL NUMBER/ISSUE:** Assembly Bill 1244: Developmental Services:  
Self-Determination

**BILL SUMMARY:** This bill establishes the Self-Determination Program providing individuals with developmental disabilities with an individual funding allocation to give them greater control over the purchase of services and supports needed to implement their individual program plans. Specifically this bill strikes existing statutory provisions establishing the Self-Directed Services Program (SDS) in Welfare & Institutions Code (WIC section 4685.7) and, instead, provides for a Self-Determination Program, which makes available to individuals with developmental disabilities receiving services under the Lanterman Developmental Services Act an individualized funding allocation, computed in a fair, transparent, and equitable manner based on the individual's characteristics and need, to enable them to exercise their rights to make choices in their lives and access services and supports they choose to implement their individual program plans (IPPs). It also provides that the SD Program shall be designed to promote and be evaluated against core quality outcomes, including health and safety, community membership and participation, employment and transportation.

**BACKGROUND:** The Individual Budget Advocates Workgroup (IBAW) in a point by point validation of an individual choice budget refers to universal human aspirations, short and long term cost savings, individualized allocation, flexibility, conflict of interest free fiscal management and other administrative and operational values endeavors to support the individual choice budget legislation. Notwithstanding the current fiscal limitation environment, this bill is within the domain of the Council's organizational values and objectives.

**ANALYSIS/DISCUSSION:** The Lanterman Act has led to tremendous advancements in deinstitutionalization, community integrated services, disability rights and family support. However, the long-term national trends away from congregate services and toward highly individualized options has led to the demand by people with disabilities for control over their services and lives. People seek homes of their own, where they control who comes in and who supports them. They seek real membership in their communities, participating as a valued member in community organizations and activities that they choose. They seek to develop and preserve long-term reciprocal relationships, with friends, family, neighbors, and others in their communities. And people want to earn income to begin to overcome the barriers inherent to a life of poverty.

Self-determination, the author says, "leads to those outcomes that people seek" and, "in an environment of fiscal constraint, and with more and more limits put on the availability of traditional services, Self-Determination offers an alternative to the cost pressures and increasing limits of the traditional developmental services system."

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Support public policies that positively impact the lives of persons with developmental disabilities and their families.

**PRIOR COUNCIL ACTIVITY:** The Council currently has a support position on AB 1244. However since the bill has been amended since that position was adopted, it is being returned for update to LPPC.

**RECOMMENDATION(S):** Continue to support AB 1244

**ATTACHMENT(S):** AB 1244 and Assembly Committee on Human Services analysis.

**PREPARED:** Karim Alipourfard, May 5, 2011

AMENDED IN ASSEMBLY APRIL 14, 2011  
AMENDED IN ASSEMBLY MARCH 31, 2011  
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1244**

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**Introduced by Assembly Member Chesbro  
(Coauthors: Assembly Members Ammiano and Beall)**

February 18, 2011

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*An act to add Section 4685.8 to amend Sections 4677 and 4678 of, repeal Section 4685.7 of, and to add Article 4.5 (commencing with Section 4689.90) to Chapter 6 of Division 4.5 of, the Welfare and Institutions Code, relating to developmental services, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1244, as amended, Chesbro. Developmental services: Self-Determination Program.

Under existing law, the Lanterman Developmental Disabilities Services Act, the State Department of Developmental Services is authorized to contract with regional centers to provide support and services to individuals with developmental disabilities. Under existing law, the regional centers purchase needed services and supports for individuals with developmental disabilities through approved service providers or arrange for their provision through other publicly funded agencies. The services and supports to be provided to a regional center consumer are contained in an individual program plan (IPP), developed in accordance with prescribed requirements. Existing law establishes, contingent upon approval of a federal waiver, the Self-Directed Services Program, and requires the program be available in every regional center

catchment area to provide participants, within an individual budget, and greater control over needed services and supports.

This bill would *repeal the provisions establishing the Self-Directed Services Program and would, instead, establish the Self-Determination Program to be available in every regional center catchment area to enable individuals with developmental disabilities to exercise their rights to make choices in their own lives and would make conforming changes*. This bill would require that program participants be provided with a capitated individual funding allocation, as prescribed, to be used for the purchase of services and supports necessary to implement the participant's individual program plan. *This bill would require the department to establish a risk pool fund to meet the unanticipated needs of participants in the program and would continuously appropriate the moneys in the fund to the department for this purpose*. This bill would require the department to take all steps necessary to ensure federal financial participation is available for all program services and supports by applying for amendments to a specified federal waiver or by applying for a new waiver.

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: ~~no~~<sup>yes</sup>. Fiscal committee: yes.  
State-mandated local program: no.

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

1     SECTION 1. Section 4677 of the Welfare and Institutions Code  
2     is amended to read:  
3     4677. (a) (1) All parental fees collected by or for regional  
4     centers shall be remitted to the State Treasury to be deposited in  
5     the Developmental Disabilities Program Development Fund, which  
6     is hereby created and hereinafter called the Program Development  
7     Fund. The purpose of the Program Development Fund shall be to  
8     provide resources needed to initiate new programs, and to expand  
9     or convert existing programs. Within the context of, and consistent  
10    with, approved priorities for program development in the state  
11    plan, program development funds shall promote integrated  
12    residential, work, instructional, social, civic, volunteer, and  
13    recreational services and supports that increase opportunities for  
14    self-determination and maximum independence of persons with  
15    developmental disabilities. Notwithstanding any other provision  
16    of law or regulation to the contrary, commencing July 1, 2009,

1 parental fees remitted to the State Treasury shall be deposited in  
2 accordance with Section 4784.

3 (2) In no event shall an allocation from the Program  
4 Development Fund be granted for more than 24 months.

5 (b) (1) The State Council on Developmental Disabilities shall,  
6 at least once every five years, request from all regional centers  
7 information on the types and amounts of services and supports  
8 needed, but currently unavailable.

9 (2) The state council shall work collaboratively with the  
10 department and the Association of Regional Center Agencies to  
11 develop standardized forms and protocols that shall be used by all  
12 regional centers and area boards in collecting and reporting this  
13 information. In addition to identifying services and supports that  
14 are needed, but currently unavailable, the forms and protocols shall  
15 also solicit input and suggestions on alternative and innovative  
16 service delivery models that would address consumer needs.

17 (3) In addition to the information provided pursuant to paragraph  
18 (2), the state council may utilize information from other sources,  
19 including, but not limited to, public hearings, quality assurance  
20 assessments conducted pursuant to Section 4571, regional center  
21 reports on alternative service delivery submitted to the department  
22 pursuant to Section 4669.2, and the annual report on ~~self-directed~~  
23 ~~services produced pursuant to Section 4685.7~~ *Self-Determination*  
24 *Program services produced pursuant to Section 4689.94.*

25 (4) The department shall provide additional information, as  
26 requested by the state council.

27 (5) Based on the information provided by the regional centers  
28 and other agencies, the state council shall develop an assessment  
29 of the need for new, expanded, or converted community services  
30 and support, and make that assessment available to the public. The  
31 assessment shall include a discussion of the type and amount of  
32 services and supports necessary but currently unavailable including  
33 the impact on consumers with common characteristics, including,  
34 but not limited to, disability, specified geographic regions, age,  
35 and ethnicity, face distinct challenges. The assessment shall  
36 highlight alternative and innovative service delivery models  
37 identified through their assessment process.

38 (6) This needs assessment shall be conducted at least once every  
39 five years and updated annually. The assessment shall be included  
40 in the state plan and shall be provided to the department and to the

1 appropriate committees of the Legislature. The assessment and  
2 annual updates shall be made available to the public. The State  
3 Council on Developmental Disabilities, in consultation with the  
4 department, shall make a recommendation to the Department of  
5 Finance as to the level of funding for program development to be  
6 included in the Governor's Budget, based upon this needs  
7 assessment.

8 (c) Parental fee schedules shall be evaluated pursuant to Section  
9 4784 and adjusted annually, as needed, by the department, with  
10 the approval of the state council. The July 1, 2009, parental fee  
11 adjustment shall be exempt from this approval requirement. Fees  
12 for out-of-home care shall bear an equitable relationship to the  
13 cost of the care and the ability of the family to pay.

14 (d) In addition to parental fees and General Fund appropriations,  
15 the Program Development Fund may be augmented by federal  
16 funds available to the state for program development purposes,  
17 when these funds are allotted to the Program Development Fund  
18 in the state plan. The Program Development Fund is hereby  
19 appropriated to the department, and subject to any allocations that  
20 may be made in the annual Budget Act. In no event shall any of  
21 these funds revert to the General Fund.

22 (e) The department may allocate funds from the Program  
23 Development Fund for any legal purpose, provided that requests  
24 for proposals and allocations are approved by the state council in  
25 consultation with the department, and are consistent with the  
26 priorities for program development in the state plan. Allocations  
27 from the Program Development Fund shall take into consideration  
28 the following factors:

29 (1) The future fiscal impact of the allocations on other state  
30 supported services and supports for persons with developmental  
31 disabilities.

32 (2) The information on priority services and supports needed,  
33 but currently unavailable, submitted by the regional centers.

34 Consistent with the level of need as determined in the state plan,  
35 excess parental fees may be used for purposes other than programs  
36 specified in subdivision (a) only when specifically appropriated  
37 to the State Department of Developmental Services for those  
38 purposes.

39 (f) Under no circumstances shall the deposit of federal moneys  
40 into the Program Development Fund be construed as requiring the

1 State Department of Developmental Services to comply with a  
2 definition of “developmental disabilities” and “services for persons  
3 with developmental disabilities” other than as specified in  
4 subdivisions (a) and (b) of Section 4512 for the purposes of  
5 determining eligibility for developmental services or for allocating  
6 parental fees and state general funds deposited in the Program  
7 Development Fund.

8 *SEC. 2. Section 4678 of the Welfare and Institutions Code is*  
9 *amended to read:*

10 4678. (a) The State Council on Developmental Disabilities,  
11 in implementing subdivision (b) of Section 4677, and with the  
12 support of the State Department of Developmental Services, shall  
13 convene a stakeholder workgroup on alternative and expanded  
14 options for nonresidential services and supports. The workgroup  
15 shall include persons with developmental disabilities, family  
16 members, providers, and other system stakeholders. The workgroup  
17 shall develop recommendations on how to best achieve all of the  
18 following:

19 (1) The development and expansion of community-based models  
20 that provide an array of nonresidential options, including, but not  
21 limited to, participation in integrated instructive, social, civic,  
22 volunteer, and recreational activities.

23 (2) The development and expansion of community-based work  
24 activities, including, but not limited to, customized employment  
25 development, integrated job training, and employer-provided job  
26 coaching.

27 (3) The expansion of work opportunities in the public sector.

28 (4) The increased utilization of existing models, including, but  
29 not limited to, ~~self-directed services~~ *Self-Determination Program*  
30 *services*, vouchers, family teaching models, existing habilitation,  
31 and supported work vendors to facilitate access to nontraditional  
32 community-based nonresidential activities.

33 (5) Strategies to promote and duplicate successful and innovative  
34 models developed in California and in other states.

35 (6) The identification of, and strategies to address, statutory,  
36 regulatory, licensing, vendor-related, funding and other types of  
37 barriers to achieving the goals identified in this act, including  
38 strategies to improve individualization of services and supports  
39 by increased flexibility in design, staffing, and compensation.

1 (b) By May 1, 2007, the State Council on Developmental  
2 Disabilities shall submit recommendations from the workgroup to  
3 the Governor and appropriate committees of the Legislature and  
4 may, thereafter, incorporate subsequent recommendations into its  
5 state plan developed pursuant to Section 4561.

6 *SEC. 3. Section 4685.7 of the Welfare and Institutions Code*  
7 *is repealed.*

8 ~~4685.7. (a) Contingent upon approval of a federal waiver, the~~  
9 ~~Self-Directed Services Program (SDS Program) is hereby~~  
10 ~~established and shall be available in every regional center~~  
11 ~~catchment area to provide participants, within an individual budget,~~  
12 ~~greater control over needed services and supports. The~~  
13 ~~Self-Directed Services Program shall be consistent with the~~  
14 ~~requirements set forth in this section. In order to provide~~  
15 ~~opportunities to participate in the program, the department shall~~  
16 ~~adopt regulations, consistent with federal law, to implement the~~  
17 ~~procedures set forth in this section.~~

18 (b) ~~For purposes of this section, the following definitions shall~~  
19 ~~apply:~~

20 (1) ~~“Financial management services” means a service or function~~  
21 ~~that assists the participant to manage and direct the distribution of~~  
22 ~~funds contained in the individual budget. This may include, but is~~  
23 ~~not limited to, bill paying services and activities that facilitate the~~  
24 ~~employment of service workers by the participant, including, but~~  
25 ~~not limited to, federal, state, and local tax withholding payments,~~  
26 ~~unemployment compensation fees, setting of wages and benefits,~~  
27 ~~wage settlements, fiscal accounting, and expenditure reports. The~~  
28 ~~department shall establish specific qualifications which shall be~~  
29 ~~required of a financial management services provider.~~

30 (2) ~~“Supports brokerage” means a service or function that assists~~  
31 ~~participants in making informed decisions about the individual~~  
32 ~~budget, and assists in locating, accessing and coordinating services~~  
33 ~~consistent with and reflecting a participant’s needs and preferences.~~  
34 ~~The service is available to assist in identifying immediate and~~  
35 ~~long-term needs, developing options to meet those needs,~~  
36 ~~participating in the person-centered planning process and~~  
37 ~~development of the individual program plan, and obtaining~~  
38 ~~identified supports and services.~~

39 (3) ~~“Supports broker” means a person, selected and directed by~~  
40 ~~the participant, who fulfills the supports brokerage service or~~

1 function and assists the participant in the SDS Program. Specific  
2 qualifications shall be established by the department and required  
3 of a supports broker provider.

4 (4) “Waiver” means a waiver of federal law pursuant to Section  
5 1396n of Title 42 of the United States Code.

6 (5) “Independence Plus Self-Directed (IPSD) Waiver Program”  
7 or “Self-Directed Waiver Program” means a federal waiver to the  
8 state’s Medicaid plan to allow a person with developmental  
9 disabilities who needs or requires long-term supports and services,  
10 and when appropriate, the person’s family, greater opportunity to  
11 control his or her own health and well-being by utilization of  
12 self-directed services.

13 (6) “Self-directed services” or “SDS” means a voluntary delivery  
14 system consisting of a defined and comprehensive mix of services  
15 and supports, selected and directed by a participant, in order to  
16 meet all or some of the objectives in his or her individual program  
17 plan. Self-directed services are designed to assist the participant  
18 to achieve personally defined outcomes in inclusive community  
19 settings.

20 Self-directed services shall include, but are not limited to, all of  
21 the following:

22 (A) Home health aide services.

23 (B) Supported employment and prevocational services.

24 (C) Respite services.

25 (D) Supports broker functions and services.

26 (E) Financial management services and functions.

27 (F) Environmental accessibility adaptations.

28 (G) Skilled nursing.

29 (H) Transportation.

30 (I) Specialized medical equipment and supplies.

31 (J) Personal emergency response system.

32 (K) Integrative therapies.

33 (L) Vehicle adaptations.

34 (M) Communication support.

35 (N) Crises intervention.

36 (O) Nutritional consultation.

37 (P) Behavior intervention services.

38 (Q) Specialized therapeutic services.

39 (R) Family assistance and support.

40 (S) Housing access supports.

1 ~~(T) Community living supports, including, but not limited to,~~  
2 ~~socialization, personal skill development, community participation,~~  
3 ~~recreation, leisure, home and personal care.~~

4 ~~(U) Advocacy services.~~

5 ~~(V) Individual training and education.~~

6 ~~(W) Participant-designated goods and services.~~

7 ~~(X) Training and education transition services.~~

8 The department shall include all of the services and supports  
9 listed in this paragraph in the IPSD Waiver Program application.  
10 Notwithstanding this paragraph, only services and supports  
11 included in an approved IPSD Waiver shall be funded through the  
12 SDS Program.

13 ~~(7) "Advocacy services" means services and supports that~~  
14 ~~facilitate the participant in exercising his or her legal, civil and~~  
15 ~~service rights to gain access to generic services and benefits that~~  
16 ~~the participant is entitled to receive. Advocacy services shall only~~  
17 ~~be provided when other sources of similar assistance are not~~  
18 ~~available to the participant, and when advocacy is directed towards~~  
19 ~~obtaining generic services.~~

20 ~~(8) "Individual budget" means the amount of funding available~~  
21 ~~to the participant for the purchase of services and supports~~  
22 ~~necessary to implement an individual program plan. The individual~~  
23 ~~budget shall be constructed using a fair, equitable, and transparent~~  
24 ~~methodology.~~

25 ~~(9) "Risk pool" means an account that is available for use in~~  
26 ~~addressing the unanticipated needs of participants in the SDS~~  
27 ~~Program.~~

28 ~~(10) "Participant" means an individual, and when appropriate,~~  
29 ~~his or her parents, legal guardian or conservator, or authorized~~  
30 ~~representative, who have been deemed eligible for, and have~~  
31 ~~voluntarily agreed to participate in, the SDS Program.~~

32 ~~(e) Participation in the SDS Program is fully voluntary. A~~  
33 ~~participant may choose to participate in, and may choose to leave,~~  
34 ~~the SDS Program at any time. A regional center may not require~~  
35 ~~participation in the SDS Program as a condition of eligibility for,~~  
36 ~~or the delivery of, services and supports otherwise available under~~  
37 ~~this Division.~~

38 ~~(d) The department shall develop informational materials about~~  
39 ~~the SDS Program. The department shall ensure that regional centers~~  
40 ~~are trained in the principles of SDS, the mechanics of the SDS~~

1 ~~Program and the rights of consumers and families as candidates~~  
2 ~~for, and participants, in the SDS Program. Regional centers shall~~  
3 ~~conduct local meetings or forums to provide regional center~~  
4 ~~consumers and families with information about the SDS Program.~~  
5 ~~All consumers and families who express an interest in participating~~  
6 ~~in the SDS program shall receive an in-depth orientation, conducted~~  
7 ~~by the regional center, prior to enrollment in the program.~~

8 ~~(c) Prior to enrollment in the SDS Program, and based on the~~  
9 ~~methodologies described below, an individual, and when~~  
10 ~~appropriate, his or her parents, legal guardian or conservator, or~~  
11 ~~authorized representative, shall be provided in writing two~~  
12 ~~individual budget amounts. If the individual, and when appropriate~~  
13 ~~his parents, legal guardian or conservator, or authorized~~  
14 ~~representative, elects to become a participant in the SDS Program,~~  
15 ~~he or she shall choose which of the two budget amounts provided~~  
16 ~~will be used to implement their individual program plan.~~

17 ~~(1) The methodologies and formulae for determining the two~~  
18 ~~individual budget amounts shall be detailed in departmental~~  
19 ~~regulations, as follows:~~

20 ~~(A) One individual budget amount shall equal 90 percent of the~~  
21 ~~annual purchase of services costs for the individual. The annual~~  
22 ~~costs shall reflect the average annual costs for the previous two~~  
23 ~~fiscal years for the individual.~~

24 ~~(B) One individual budget amount shall equal 90 percent of the~~  
25 ~~annual per capita purchase of service costs for the previous two~~  
26 ~~fiscal years for consumers with similar characteristics, who do not~~  
27 ~~receive services through the SDS Program, based on factors~~  
28 ~~including, but not limited to, age, type of residence, type of~~  
29 ~~disability and ability, functional skills, and whether the individual~~  
30 ~~is in transition. This budget methodology shall be constructed~~  
31 ~~using data available on the State Department of Developmental~~  
32 ~~Services information system.~~

33 ~~(2) Once a participant has selected an individual budget amount,~~  
34 ~~that individual budget amount shall be available to the participant~~  
35 ~~each year for the purchase of self-directed services until a new~~  
36 ~~individual budget amount has been determined. An individual~~  
37 ~~budget amount shall be calculated no more than once in a 12-month~~  
38 ~~period.~~

1 ~~(3) As determined by the participant, the individual budget shall~~  
2 ~~be distributed among the following budget categories in order to~~  
3 ~~implement the IPP:~~

4 ~~(A) Community Living.~~

5 ~~(B) Health and Clinical Services.~~

6 ~~(C) Employment.~~

7 ~~(D) Training and Education.~~

8 ~~(E) Environment and Medical Supports.~~

9 ~~(F) Transportation.~~

10 ~~(4) Annually, participants may transfer up to 10 percent of the~~  
11 ~~funds originally distributed to any budget category set forth in~~  
12 ~~paragraph (3), to another budget category or categories. Transfers~~  
13 ~~in excess of 10 percent of the original amount allocated to any~~  
14 ~~budget category may be made upon the approval of the regional~~  
15 ~~center. Regional centers may only deny a transfer if necessary to~~  
16 ~~protect the health and safety of the participant.~~

17 ~~(5) The regional center shall annually ascertain from the~~  
18 ~~participant whether there are any circumstances that require a~~  
19 ~~change to the annual individual budget amount. The department~~  
20 ~~shall detail in regulations the process by which this annual review~~  
21 ~~shall be achieved.~~

22 ~~(6) A regional center's calculation of an individual budget~~  
23 ~~amount may be appealed to the executive director of the regional~~  
24 ~~center, or his or her designee, within 30 days after receipt of the~~  
25 ~~budget amount. The executive director shall issue a written decision~~  
26 ~~within 10 working days. The decision of the executive director~~  
27 ~~may be appealed to the Director of Developmental Services, or~~  
28 ~~his or her designee, within 15 days of receipt of the written~~  
29 ~~decision. The decision of the department is final.~~

30 ~~(f) The department shall establish a risk pool fund to meet the~~  
31 ~~unanticipated needs of participants in the SDS Program. The fund~~  
32 ~~shall be administered by the department. Notwithstanding Section~~  
33 ~~13340 of the Government Code, all moneys in the fund shall be~~  
34 ~~continuously appropriated to the department, without regard to~~  
35 ~~fiscal years, for the purpose of funding services and supports~~  
36 ~~pursuant to this subdivision.~~

37 ~~(1) The risk pool shall be funded at the equivalent of 5 percent~~  
38 ~~of the historic annual purchase of service costs for consumers~~  
39 ~~participating in the SDS Program.~~

1 (2) The risk pool shall be allocated by the department to regional  
2 centers through a process specified by the department.

3 (3) The risk pool may be used only in the event of substantial  
4 change in a participant's service and support needs that were not  
5 known at the time the individual budget was set, including an  
6 urgent need to relocate a residence, and catastrophic injury or  
7 illness.

8 (4) The risk pool may be accessed by a participant more than  
9 once in a lifetime.

10 (g) In the first year of the SDS Program, the department shall  
11 provide for establishment of savings to the General Fund equivalent  
12 to 5 percent of the historic annual purchase of service costs for  
13 SDS program participants. In subsequent fiscal years, the  
14 department shall annually provide for establishment of savings to  
15 the General Fund equivalent to 5 percent of the annual purchase  
16 of services costs for SDS Program participants, averaged over the  
17 prior two fiscal years.

18 (h) A regional center may advance funds to a financial  
19 management services entity pursuant to SDS Program regulations  
20 to facilitate development of a participant's individual budget and  
21 transition into the SDS Program.

22 (i) Participation in the SDS Program shall be available to any  
23 regional center consumer who meets the following eligibility  
24 requirements:

25 (1) The participant is three years of age or older.

26 (2) The participant has a developmental disability, as defined  
27 in Section 4512.

28 (3) The participant does not live in a licensed long-term health  
29 care facility, as defined in paragraph (44) of subdivision (a) of  
30 Section 54302 of Title 17 of the California Code of Regulations,  
31 or a residential facility, as defined in paragraph (55) of subdivision  
32 (a) of Section 54302 of Title 17 of the California Code of  
33 Regulations, or receive day program or habilitation services, as  
34 defined in paragraph (16) or (34) of subdivision (a) of Section  
35 54302 of Title 17 of the California Code of Regulations,  
36 respectively. An individual, and when appropriate, his or her  
37 parent, legal guardian or conservator, or authorized representative,  
38 who is not eligible to participate in the SDS Program pursuant to  
39 this paragraph, may request that the regional center provide  
40 person-centered planning services in order to make arrangements

1 for transition to the SDS Program. In that case, the regional center  
2 shall initiate person-centered planning services within 60 days of  
3 a request.

4 (4) The participant agrees to all of the following terms and  
5 conditions:

6 (A) The participant shall undergo an in-depth orientation to the  
7 SDS Program prior to enrollment.

8 (B) The participant shall agree to utilize the services and  
9 supports available within the SDS Program only when generic  
10 services cannot be accessed, and except for Medi-Cal state plan  
11 benefits when applicable.

12 (C) The participant shall consent to use only services necessary  
13 to implement his or her individual program plan as described in  
14 the IPSP Waiver Program, and as defined in paragraph (6) of  
15 subdivision (b), as an available service in the SDS Program, and  
16 shall agree to comply with any and all other terms and conditions  
17 for participation in the SDS Program described in this section.

18 (D) The participant shall manage self-directed services within  
19 the individual budget amount, chosen pursuant to subdivision (c).

20 (E) The participant shall utilize the services of a financial  
21 management services entity of his or her own choosing. A financial  
22 management services provider may either be hired or designated  
23 by the participant. A designated financial management services  
24 provider shall perform services on a nonpaid basis. An individual  
25 or a parent of an individual in the SDS Program shall provide  
26 financial management services only as a designated provider and  
27 only if the capacity to fulfill the roles and responsibilities as  
28 described in the financial management services provider  
29 qualifications can be demonstrated to the regional center.

30 (F) The participant shall utilize the services of a supports broker  
31 of his or her own choosing for the purpose of providing services  
32 and functions as described in paragraphs (2) and (3) of subdivision  
33 (b). A supports broker may either be hired or designated by the  
34 participant. A designated supports broker shall perform support  
35 brokerage services on a nonpaid basis. An individual or a parent  
36 of an individual in the SDS Program shall provide supports  
37 brokerage services or his or her designated representative shall  
38 provide the services only as a designated provider and only if the  
39 capacity to fulfill the role and responsibilities as described in the

1 supports broker provider qualifications can be demonstrated to the  
2 financial management services entity.

3 ~~(j) A participant who is not Medi-Cal eligible may participate~~  
4 ~~in the SDS Program without IPSD Waiver Program enrollment~~  
5 ~~and receive self-directed services if all other IPSD Waiver Program~~  
6 ~~eligibility requirements are met.~~

7 ~~(k) The planning team, established pursuant to subdivision (j)~~  
8 ~~of Section 4512, shall utilize the person-centered planning process~~  
9 ~~to develop the Individual Program Plan (IPP) for an SDS~~  
10 ~~participant. The IPP shall detail the goals and objectives of the~~  
11 ~~participant that are to be met through the purchase of participant~~  
12 ~~selected services and supports.~~

13 ~~(l) The participant shall implement his or her IPP, including~~  
14 ~~choosing the services and supports allowable under this section~~  
15 ~~necessary to implement the plan. A regional center may not prohibit~~  
16 ~~the purchase of any service or support that is otherwise allowable~~  
17 ~~under this section.~~

18 ~~(m) An adult may designate an authorized representative to~~  
19 ~~effect the implementation. The representative shall meet all of the~~  
20 ~~following requirements:~~

21 ~~(1) He or she shall demonstrate knowledge and understanding~~  
22 ~~of the participant's needs and preferences.~~

23 ~~(2) He or she shall be willing and able to comply with SDS~~  
24 ~~Program requirements.~~

25 ~~(3) He or she shall be at least 18 years of age.~~

26 ~~(4) He or she shall be approved by the participant to act in the~~  
27 ~~capacity of a representative.~~

28 ~~(n) The participant, or his or her authorized representative and~~  
29 ~~the regional center case manager shall receive a monthly budget~~  
30 ~~statement that describes the amount of funds allocated by budget~~  
31 ~~category, the amount spent in the previous 30-day period, and the~~  
32 ~~amount of funding that remains available under the participant's~~  
33 ~~individual budget.~~

34 ~~(o) If at any time during participation in the SDS Program a~~  
35 ~~regional center determines that an individual is no longer eligible~~  
36 ~~to continue based on the criteria described in subdivision (i), or a~~  
37 ~~participant voluntarily chooses to exit the SDS Program, the~~  
38 ~~regional center shall provide for the participant's transition from~~  
39 ~~the SDS Program to other services and supports. This shall include~~  
40 ~~the development of a new individual program plan that reflects~~

1 the services and supports necessary to meet the individual's needs.  
2 The regional center shall ensure that there is no gap in services  
3 and supports during the transition period.

4 (1) Upon determination of ineligibility pursuant to this  
5 subdivision, the regional center shall inform the participant in  
6 writing of his or her ineligibility, the reason for the determination  
7 of ineligibility and shall provide a written notice of the fair hearing  
8 rights, as required by Section 4701.

9 (2) An individual determined ineligible, or who voluntarily exits  
10 the SDS Program, shall be permitted to return to the SDS Program  
11 upon meeting all applicable eligibility criteria and after a minimum  
12 of 12 months time has elapsed.

13 (p) A participant in the SDS Program shall have all the rights  
14 established in Chapter 7 (commencing with Section 4700), except  
15 as provided under paragraph (6) of subdivision (c).

16 (q) Only a financial management services provider is required  
17 to apply for vendorization in accordance with Subchapter 2  
18 (commencing with Section 54300) of Chapter 3 of Title 17 of the  
19 California Code of Regulations, for the SDS Program. All other  
20 service providers shall have applicable state licenses, certifications,  
21 or other state required documentation, but are exempt from the  
22 vendorization requirements set forth in Title 17 of the California  
23 Code of Regulations. The financial management services entity  
24 shall ensure and document that all service providers meet specified  
25 requirements for any service that may be delivered to the  
26 participant.

27 (r) A participant in the SDS Program may request, at no charge  
28 to the participant or the regional center, criminal history  
29 background checks for persons seeking employment as a service  
30 provider and providing direct care services to the participant.

31 (1) Criminal history records checks pursuant to this subdivision  
32 shall be performed and administered as described in subdivision  
33 (b) and subdivisions (d) to (h), inclusive, of Section 4689.2, and  
34 Sections 4689.4 to 4689.6, inclusive, and shall apply to  
35 vendorization of providers and hiring of employees to provide  
36 services for family home agencies and family homes.

37 (2) The department may enter into a written agreement with the  
38 Department of Justice to implement this subdivision.

39 (s) A participant enrolled in the SDS Program pursuant to this  
40 section and utilizing an individual budget for services and supports

1 is exempt from Section 4783 and from the Family Cost  
2 Participation Program.

3 ~~(t) Notwithstanding any provision of law, an individual receiving~~  
4 ~~services and supports under the self-determination projects~~  
5 ~~established pursuant to Section 4685.5 may elect to continue to~~  
6 ~~receive self-determination services within his or her current scope~~  
7 ~~and existing procedures and parameters. Participation in a~~  
8 ~~self-determination project pursuant to Section 4685.5 may only~~  
9 ~~be terminated upon a participant's voluntary election and~~  
10 ~~qualification to receive services under another delivery system.~~

11 ~~(u) Each regional center shall be responsible for implementing~~  
12 ~~an SDS Program as a term of its contract under Section 4629.~~

13 ~~(v) Commencing January 10, 2008, the department shall~~  
14 ~~annually provide the following information to the policy and fiscal~~  
15 ~~committees of the Legislature:~~

16 ~~(1) Number and characteristics of participants, by regional~~  
17 ~~center.~~

18 ~~(2) Types and ranking of services and supports purchased under~~  
19 ~~the SDS Program, by regional center.~~

20 ~~(3) Range and average of individual budgets, by regional center.~~

21 ~~(4) Utilization of the risk pool, including range and average~~  
22 ~~individual budget augmentations and type of service, by regional~~  
23 ~~centers.~~

24 ~~(5) Information regarding consumer satisfaction under the SDS~~  
25 ~~Program and, when data is available, the traditional service delivery~~  
26 ~~system, by regional center.~~

27 ~~(6) The proportion of participants who report that their choices~~  
28 ~~and decisions are respected and supported.~~

29 ~~(7) The proportion of participants who report they are able to~~  
30 ~~recruit and hire qualified service providers.~~

31 ~~(8) The number and outcome of individual budget appeals, by~~  
32 ~~regional center.~~

33 ~~(9) The number and outcome of fair hearing appeals, by regional~~  
34 ~~center.~~

35 ~~(10) The number of participants who voluntarily withdraw from~~  
36 ~~participation in the SDS Program and a summary of the reasons~~  
37 ~~why, by regional center.~~

38 ~~(11) The number of participants who are subsequently~~  
39 ~~determined to no longer be eligible for the SDS Program and a~~  
40 ~~summary of the reasons why, by regional center.~~

1 ~~(12) Identification of barriers to participation and~~  
2 ~~recommendations for program improvements.~~

3 ~~(13) A comparison of average annual expenditures for~~  
4 ~~individuals with similar characteristics not participating in the SDS~~  
5 ~~Program.~~

6 *SEC. 4. Article 4.5 (commencing with Section 4689.90) is added*  
7 *to Chapter 6 of Division 4.5 of the Welfare and Institutions Code,*  
8 *to read:*

9

10 *Article 4.5. Self-Determination Program*

11

12 *4689.90. For the purposes of this section, the following*  
13 *definitions shall apply:*

14 *(a) "Advocacy services" means services and supports that*  
15 *facilitate the participant in exercising his or her legal, civil, and*  
16 *service rights to gain access to generic services and benefits that*  
17 *the participant is entitled to receive. Advocacy services shall be*  
18 *provided only when other sources of similar assistance are not*  
19 *available to the participant, and when advocacy is directed towards*  
20 *obtaining generic services.*

21 *(b) "Financial management service" means a conflict of interest*  
22 *free service or function that assists the participant to manage and*  
23 *direct the distribution of funds contained in the individual*  
24 *allocation. This may include, but is not limited to, bill paying*  
25 *services and activities that facilitate the employment of service*  
26 *workers by the participant, including, but not limited to, federal,*  
27 *state, and local tax withholding payments, unemployment*  
28 *compensation fees, establishing benefits, fiscal accounting, and*  
29 *expenditure reports. The financial management service shall*  
30 *provide to the department workforce and expenditure information*  
31 *as required in this article. The department shall establish specific*  
32 *qualifications which shall be required of a financial management*  
33 *services provider and contract with one entity to provide financial*  
34 *management services statewide.*

35 *(c) "Individual allocation" means the amount of funding*  
36 *available to the participant for the purchase of services and*  
37 *supports necessary to implement an individual program plan (IPP).*  
38 *The individual allocation shall be constructed using a fair,*  
39 *equitable, and transparent methodology that includes, but is not*  
40 *limited to, consumer characteristics and needs.*

1 (d) "Individual budget" means an individually created and  
2 designed expenditure plan, developed by the participant, for  
3 purchases to be made within the individual allocation to achieve  
4 the core quality outcomes relevant to the participant and meet the  
5 participant's IPP goals.

6 (e) "Participant" means an individual, and when appropriate,  
7 his or her parents, legal guardian or conservator, or authorized  
8 representative, who has been deemed eligible for, and have  
9 voluntarily agreed to participate in, the Self-Determination  
10 Program.

11 (f) "Public Employment Relations Board" or "board" means  
12 the board established pursuant to Article 2 (commencing with  
13 Section 3541) of Chapter 10.7 of Division 4 of Title 1 of the  
14 Government Code.

15 (g) "Risk pool" means an account that is available for use in  
16 addressing the unanticipated needs of participants in the  
17 Self-Determination Program.

18 (h) "Self-Determination Program" or "SD Program" means  
19 a voluntary delivery system consisting of a defined and  
20 comprehensive mix of services and supports, selected and directed  
21 by a participant, in order to meet all or some of the objectives in  
22 his or her IPP. Self-determination services and supports are  
23 designed to assist the participant to achieve personally defined  
24 outcomes in inclusive community settings. Self-determination  
25 services and supports shall include, but are not limited to, all of  
26 the following:

27 (1) Home health aide services.

28 (2) Employment and self-employment supports including  
29 individual placement supported employment.

30 (3) Respite services.

31 (4) Supports broker functions and services.

32 (5) Financial management services and functions.

33 (6) Environmental accessibility adaptations.

34 (7) Skilled nursing.

35 (8) Transportation.

36 (9) Specialized medical equipment and supplies.

37 (10) Personal emergency response system.

38 (11) Integrative therapies.

39 (12) Vehicle adaptations.

- 1 (13) *Communication support including interpretive or*  
2 *translation services.*
- 3 (14) *Crises intervention.*
- 4 (15) *Nutritional consultation.*
- 5 (16) *Behavior intervention services.*
- 6 (17) *Specialized therapeutic services.*
- 7 (18) *Family assistance and support.*
- 8 (19) *Housing access supports.*
- 9 (20) *Community living supports, including, but not limited to,*  
10 *socialization, personal skill development, community participation,*  
11 *recreation, and leisure.*
- 12 (21) *In-home and personal care supports.*
- 13 (22) *Advocacy services.*
- 14 (23) *Individual training and education, including, but not limited*  
15 *to, adult education and support to attend community college.*
- 16 (24) *Participant-designated goods and services.*
- 17 (25) *Training and education transition services.*
- 18 (i) *“Self-Determination support worker” or “SD support*  
19 *worker” means a person who has been selected and employed by*  
20 *a participant for an average of at least 25 hours per month over*  
21 *a two-month period to provide the relevant SD services and*  
22 *supports described in subdivision (h), but does not include licensed*  
23 *professionals and workers providing services purchased from*  
24 *agencies or other organizations where the worker is solely under*  
25 *the employ of those organizations.*
- 26 (j) *“Supports broker” means a person, selected and directed*  
27 *by the participant, who fulfills the supports brokerage service or*  
28 *function and assists the participant in the SD Program.*
- 29 (k) *“Supports brokerage” means a conflict of interest free*  
30 *service or function that assists participants in making informed*  
31 *decisions about how to develop their budget from the individual*  
32 *allocation, assists in locating, accessing, and coordinating services*  
33 *consistent with and reflecting a participant’s needs and preferences*  
34 *and negotiating with providers. A supports brokerage service is*  
35 *available to assist in identifying immediate and long-term needs,*  
36 *developing options to meet those needs, participating in the*  
37 *person-centered planning process and development of the IPP,*  
38 *and obtaining identified services and supports.*
- 39 4689.91. (a) (1) *The Self-Determination Program is hereby*  
40 *established and shall be available in every regional center*

1 catchment area to enable individuals with developmental  
2 disabilities to exercise their rights to make choices in their own  
3 lives and access services and supports as described in subdivision  
4 (j) of Section 4502. The program shall give participants greater  
5 control over access to, and the flexibility to access, a wide range  
6 of needed and desired services and supports, including, but not  
7 limited to, hiring their own workers and purchasing needed items.  
8 The SD Program shall be consistent with the requirements set  
9 forth in this section.

10 (2) SD Program participants shall be provided with a capitated  
11 individual funding allocation computed in a fair, transparent, and  
12 equitable manner, based on consumer characteristics and needs.  
13 The allocation shall be used for the purchase of services and  
14 supports necessary to implement the participant's individual  
15 program plan (IPP).

16 (b) The SD Program shall be designed to promote, and shall  
17 be evaluated against, core quality outcomes for the participants,  
18 including, but not limited to, all of the following:

19 (1) Participants' welfare, health, and safety.

20 (2) Participants living in a place called home, including living  
21 with family, friends, or on one's own; adult participants' living  
22 arrangements are under their own control.

23 (3) Participants having meaningful participation and  
24 membership in their own community.

25 (4) Participants maintaining reciprocal long-term relationships,  
26 including relationships that assist the participant to live a healthy,  
27 included life.

28 (5) Participants of working age generating private income,  
29 through typical jobs in regular employment settings or through  
30 self-employment.

31 (6) Participants having access to or control over transportation.

32 (c) Participation in the SD Program is fully voluntary. A  
33 participant may choose to participate in, and may choose to leave,  
34 the SD Program at any time. A regional center may not require  
35 participation in the SD Program as a condition of eligibility for,  
36 or the delivery of, services and supports otherwise available under  
37 this division. Participation in the SD Program shall be available  
38 to any regional center consumer who meets the following eligibility  
39 requirements:

40 (1) The participant is three years of age or older.

- 1     (2) *The participant, and when appropriate his or her parents,*  
2 *legal guardian or conservator, or authorized representative, agrees*  
3 *to all of the following terms and conditions:*
- 4     (A) *The participant shall agree to utilize the services and*  
5 *supports available within the SD Program only when generic*  
6 *services cannot be accessed, and except for Medi-Cal state plan*  
7 *benefits when applicable.*
- 8     (B) *The participant shall consent to use only services necessary*  
9 *to implement his or her IPP, as an available service in the SD*  
10 *Program, and shall agree to comply with any and all other terms*  
11 *and conditions for participation in the SD Program described in*  
12 *this section.*
- 13     (C) *The participant shall manage SD Program services within*  
14 *the individual allocation amount.*
- 15     (D) *The participant shall utilize the services of the conflict of*  
16 *interest free financial management services entity.*
- 17     (E) *The participant shall utilize the services of supports broker*  
18 *of his or her own choosing for the purpose of providing services*  
19 *and functions as described in subdivisions (j) and (k) of Section*  
20 *4689.90. A supports broker may either be hired or designated by*  
21 *the participant. A designated supports broker shall perform support*  
22 *brokerage services on a nonpaid basis. An individual or a parent*  
23 *of an individual in the SD Program shall provide supports*  
24 *brokerage services only as an unpaid designated provider.*
- 25     (3) *A participant who is not Medi-Cal eligible may participate*  
26 *in the SD Program and receive SD Program services if all other*  
27 *program eligibility requirements are met.*
- 28     (d) *An adult may designate an authorized representative to*  
29 *participate in the program on his or her behalf. The representative*  
30 *shall meet all of the following requirements:*
- 31         (1) *He or she shall demonstrate knowledge and understanding*  
32 *of the participant's needs and preferences.*
- 33         (2) *He or she shall be willing and able to comply with SD*  
34 *Program requirements.*
- 35         (3) *He or she shall be at least 18 years of age.*
- 36         (4) *He or she shall be approved by the participant to act in the*  
37 *capacity of a representative.*
- 38     (e) *Notwithstanding any provision of law, an individual*  
39 *receiving services and supports under the self-determination pilot*  
40 *projects originally established pursuant to Section 13 of Chapter*

1 80 of the Statutes of 1998, as amended, may elect to continue to  
2 receive self-determination services within his or her current scope  
3 and existing procedures and parameters. Participation in  
4 self-determination projects originally authorized pursuant to  
5 Section 13 of Chapter 80 of the Statutes of 1998, as amended, may  
6 only be terminated upon a participant's voluntary election and  
7 qualification to receive services under another delivery system.

8 (f) The SD Program shall be phased in during the first year in  
9 the five regional centers with self-determination pilot projects that  
10 were originally authorized by Section 13 of Chapter 80 of the  
11 Statutes of 1998, as amended. In the second year, each regional  
12 center shall be responsible for implementing an SD Program as  
13 a term of its contract under Section 4629.

14 4689.92. (a) The department shall develop informational  
15 materials about the SD Program. The department shall ensure  
16 that regional centers are trained in the principles of the SD  
17 Program, the mechanics of the SD Program, and the rights of  
18 consumers and families as candidates for, and participants in, the  
19 SD Program. Regional centers shall conduct local meetings or  
20 forums to provide regional center consumers and families with  
21 information about the SD Program. Regional centers shall make  
22 available to consumers and families who express an interest in  
23 participating in the SD program a timely in-depth orientation;  
24 however, enrollment in the SD program shall not be delayed or  
25 conditioned on the orientation.

26 (b) Prior to enrollment in the SD Program, and based on the  
27 methodology described in this subdivision, an individual, and when  
28 appropriate, his or her parents, legal guardian or conservator, or  
29 authorized representative, shall be provided in writing with the  
30 individual allocation amount that would be provided for developing  
31 his or her individual budget to implement his or her IPP. The  
32 individual, and when appropriate his parents, legal guardian or  
33 conservator, or authorized representative, may then elect to  
34 participate in the SD Program.

35 (1) The methodology and formulae for determining the  
36 individual allocation amount shall be computed in a fair,  
37 transparent, and equitable manner, that includes, but is not be  
38 limited to, consumer characteristics and needs. The department  
39 shall meet with the Self-Determination Program Advisory

1 *Committee, established pursuant to Section 4689.94, to receive*  
2 *their input on developing the methodology.*

3 *(2) The individual allocation amount shall equal 90 percent of*  
4 *the annual per capita purchase of service costs for the previous*  
5 *fiscal year for consumers with similar characteristics, who do not*  
6 *receive services through the SD Program. The allocation*  
7 *methodology shall be constructed using data available on the State*  
8 *Department of Developmental Services' information system,*  
9 *including, but not limited to, age, type of residence, type of*  
10 *disability and ability, functional skills, support needs, and whether*  
11 *the individual is in transition. Until the first full year of historical*  
12 *data is available, the department shall adjust the allocation to*  
13 *estimate the impact of service reductions resulting from the Budget*  
14 *Act of 2011.*

15 *(3) The allocation methodology shall provide for additional*  
16 *necessary resources when a participant is transitioning from a*  
17 *family home or a congregate setting to living independently.*

18 *(4) Once an individual, and when appropriate his or her parents,*  
19 *legal guardian or conservator, or authorized representative, has*  
20 *elected to become an SD Program participant, his or her individual*  
21 *allocation amount shall be available to the participant each year*  
22 *for the purchase of SD Program services until a new individual*  
23 *allocation amount has been determined. An individual allocation*  
24 *amount shall be calculated no more than once in a 12-month*  
25 *period.*

26 *(5) A regional center's calculation of an individual allocation*  
27 *amount may be appealed to the executive director of the regional*  
28 *center, or his or her designee, within 30 days after receipt of the*  
29 *allocation amount. The executive director of the regional center*  
30 *shall issue a written decision within 10 working days. The decision*  
31 *of the executive director may be appealed to the Director of*  
32 *Developmental Services, or his or her designee, within 15 days of*  
33 *receipt of the written decision. The decision of the department is*  
34 *final.*

35 *(c) Once an individual, and when appropriate his parents, legal*  
36 *guardian or conservator, or authorized representative, has elected*  
37 *to become an SD Program participant and his or her individual*  
38 *allocation amount has been determined, the following shall occur:*

1     (1) *A regional center shall advance funds to the financial*  
2 *management services entity to support a participant's hiring of a*  
3 *supports broker.*

4     (2) *The participant, and when appropriate his parents, legal*  
5 *guardian or conservator, or authorized representative, with the*  
6 *assistance of the service broker and other members of his or her*  
7 *circle of support if appropriate, shall develop a person-centered*  
8 *plan and individual budget within the amount of the individual*  
9 *allocation. The plan and budget shall be designed to assist the*  
10 *participant to achieve the relevant core quality outcomes specified*  
11 *in subdivision (b) of Section 4689.91.*

12     (3) *The individual budget shall distribute the allocation,*  
13 *including expenditures for services and supports, among the*  
14 *following categories based on the core quality outcomes specified*  
15 *in subdivision (b) of Section 4689.91:*

16     (A) *Welfare, health, and safety.*

17     (B) *Supports for living in a place called home.*

18     (C) *Meaningful participation and membership in the community*  
19 *including, but not limited to, socialization, recreational, and*  
20 *educational opportunities.*

21     (D) *Developing and maintaining long-term relationships.*

22     (E) *Generating income, supports for employment or*  
23 *self-employment.*

24     (F) *Transportation.*

25     (4) *A participant may not use any portion of his or her individual*  
26 *allocation to purchase services from a licensed long-term health*  
27 *care facility, as defined in paragraph (44) of subdivision (a) of*  
28 *Section 54302 of Title 17 of the California Code of Regulations,*  
29 *or a residential facility, as defined in paragraph (55) of subdivision*  
30 *(a) of Section 54302 of Title 17 of the California Code of*  
31 *Regulations. A participant may not use his or her individual*  
32 *allocation to purchase complete day program or habilitation*  
33 *services, as defined in paragraph (16) or (34) of subdivision (a)*  
34 *of Section 54302 of Title 17 of the California Code of Regulations,*  
35 *respectively. However, a participant may use a portion of his or*  
36 *her individual allocation to negotiate for specific periodic or*  
37 *one-time services from a day program or habilitation services*  
38 *provider. A participant may also use a portion of his or her*  
39 *allocation to purchase job development and job coaching services*  
40 *for individual placement supported employment.*

1 (5) Consumers currently living in a licensed long-term health  
2 care facility, as defined in paragraph (44) of subdivision (a) of  
3 Section 54302 of Title 17 of the California Code of Regulations,  
4 or a residential facility, as defined in paragraph (55) of subdivision  
5 (a) of Section 54302 of Title 17 of the California Code of  
6 Regulations, or receiving day program or habilitation services,  
7 as defined in paragraph (16) or (34) of subdivision (a) of Section  
8 54302 of Title 17 of the California Code of Regulations,  
9 respectively, may request that the regional center provide  
10 person-centered planning services in order to make arrangements  
11 for transition to the SD Program. In that case, the regional center  
12 shall initiate person-centered planning services within 30 days of  
13 a request pursuant to paragraphs (1) and (2).

14 (6) The planning team, established pursuant to subdivision (j)  
15 of Section 4512, shall review and utilize the person-centered plan  
16 developed in paragraph (2) to develop the IPP for the participant.  
17 The IPP shall detail the goals and objectives of the participant  
18 that are to be met through the purchase of participant selected  
19 services and supports. The planning team shall also review the  
20 individual budget to ensure the budget assists the participant to  
21 achieve the core quality outcomes, assures his or her health and  
22 safety, and implements his or her IPP goals. The completed budget  
23 shall be attached to the IPP.

24 (7) The participant shall implement his or her IPP, including  
25 choosing the services and supports allowable under this section  
26 necessary to implement the plan. A regional center may not  
27 prohibit the purchase of any service or support that is otherwise  
28 allowable under this section.

29 (8) Annually, participants may transfer up to 20 percent of the  
30 funds originally distributed to any budget category set forth in  
31 paragraph (3), to another budget category or categories. Transfers  
32 in excess of 20 percent of the original amount allocated to any  
33 budget category may be made upon the approval of the regional  
34 center. Regional centers may only deny a transfer if necessary to  
35 protect the health and safety of the participant.

36 (9) Consistent with the implementation date of the IPP, the  
37 regional center shall annually ascertain from the participant  
38 whether there are any circumstances that require a change to the  
39 annual individual allocation amount as calculated pursuant to  
40 subdivision (b). Based on that review, the regional center shall

1 calculate a new budget amount based on the methodology  
2 described in subdivision (b). The participant may choose the new  
3 budget amount, or continue using the current amount. The IPP  
4 shall be amended to reflect any changes in the allocation.

5 (d) The department shall establish a risk pool fund to meet the  
6 unanticipated needs of participants in the SD Program. The fund  
7 are hereby administered by the department. Notwithstanding  
8 Section 13340 of the Government Code, all moneys in the fund are  
9 hereby continuously appropriated to the department, without  
10 regard to fiscal year, for the purpose of funding services and  
11 supports pursuant to this subdivision.

12 (1) The risk pool shall be funded at the equivalent of 2.5 percent  
13 of the historical annual purchase of service costs for consumers  
14 participating in the SD Program, as determined for consumers of  
15 similar characteristics pursuant to paragraph (2) of subdivision  
16 (b).

17 (2) The risk pool shall be allocated by the department to  
18 regional centers through a process specified by the department.

19 (3) The risk pool may be used only in the event of substantial  
20 change in a participant's service and support needs that were not  
21 known at the time the individual allocation was set including, but  
22 not limited to, an urgent need to relocate a residence or to prevent  
23 or respond to significant injury or illness.

24 (4) The risk pool may be accessed by a participant more than  
25 once in a lifetime.

26 (e) The department shall allocate 2.5 percent of the historical  
27 annual purchase of service costs for consumers participating in  
28 the SD Program, as determined for consumers of similar  
29 characteristics pursuant to paragraph (2) of subdivision (b),  
30 towards offsetting costs to the state of the SD Program, including,  
31 but not limited to, training, caseload ratio improvement, and  
32 service broker support for participants' initial person centered  
33 planning and budget plan development.

34 (f) The regional center service coordinator shall assist  
35 consumers and when appropriate his or her parents, legal guardian  
36 or conservator, or authorized representative, in understanding the  
37 SD Program service option, assist participants to understand their  
38 rights, responsibilities and opportunities under the SD Program,  
39 and provide information on locating service brokers. The regional  
40 center service coordinator shall, as required by this section,

1 determine the SD Program participant's individual allocation  
2 amount, participate in the IPP, approve the initial individual  
3 budget and amendments to the budget, ensure plans and services  
4 are adequate to ensure the participants health, welfare, and safety,  
5 address the goals of the IPP and the core quality outcomes  
6 specified in subdivision (b) of Section 4689.91, monitor for abuse,  
7 fraud, and exploitation, monitor the quarterly budget report for  
8 rate of expenditure and consistency with the budget plan, annually  
9 ascertain from the participant whether there are any circumstances  
10 that require a change to the annual individual allocation amount,  
11 conduct quarterly visits as required by the department, and assist  
12 the participant to access the risk pool in the event of a substantial  
13 change in a participant's service and support needs that were not  
14 known at the time the individual allocation was set. Regional  
15 centers, therefore, shall provide an average service  
16 coordinator-to-consumer ratio of 1 to 62 for all SD Program  
17 participants. To the maximum extent possible, regional centers  
18 shall assign SD Program participants to service coordinators with  
19 a designated SD Program caseload.

20 (g) The department shall annually provide for savings to the  
21 General Fund equivalent to 5 percent of the annual purchase of  
22 services costs for SD Program participants, as determined for  
23 consumers of similar characteristics pursuant to paragraph (2)  
24 of subdivision (b).

25 (h) The financial management service shall send to the  
26 participant and the regional center case manager a quarterly  
27 statement that describes the amount of allocation by budget  
28 category, the amount spent in the previous 90-day period, and the  
29 amount of funding that remains available under the participant's  
30 individual budget.

31 (i) If at any time during participation in the SD Program a  
32 regional center determines that an individual is no longer eligible  
33 to continue based on the eligibility criteria described in subdivision  
34 (c) of Section 4689.91, or a participant voluntarily chooses to exit  
35 the SD Program, the regional center shall provide for the  
36 participant's transition from the SD Program to other services  
37 and supports. This shall include the development of a new  
38 individual program plan that reflects the services and supports  
39 necessary to meet the individual's needs. The regional center shall

1 ensure that there is no gap in services and supports during the  
2 transition period.

3 (1) Upon determination of ineligibility pursuant to this  
4 subdivision, the regional center shall inform the participant in  
5 writing of his or her ineligibility, the reason for the determination  
6 of ineligibility and shall provide a written notice of the fair hearing  
7 rights, as required by Section 4701.

8 (2) An individual determined to be ineligible, or who voluntarily  
9 exits the SD Program, shall be permitted to return to the SD  
10 Program upon meeting all applicable eligibility criteria and after  
11 a minimum of 12 months time has elapsed.

12 (j) A participant in the SD Program shall have all the rights  
13 established in Chapter 7 (commencing with Section 4700), except  
14 as provided under paragraph (5) of subdivision (b).

15 (k) Only the financial management service provider is required  
16 to apply for vendorization in accordance with subchapter 2  
17 (commencing with Section 54300) of Chapter 3 of Title 17 of the  
18 California Code of Regulations, for the SD Program. All other  
19 service providers shall have applicable state licenses,  
20 certifications, or other state required documentation, but are  
21 exempt from the vendorization requirements set forth in Title 17  
22 of the California Code of Regulations. The financial management  
23 services entity shall ensure and document that all service providers  
24 meet specified requirements for any service that may be delivered  
25 to the participant.

26 (l) A participant enrolled in the SD Program pursuant to this  
27 section and utilizing an individual allocation for services and  
28 supports is exempt from Section 4783, the Family Cost  
29 Participation Program, and cost control restrictions, including,  
30 but not limited to purchases of services pursuant to Sections  
31 4648.35, 4648.5, and 4659, subparagraph (B) of paragraph (3)  
32 of subdivision (c) of Section 4685, Sections 4686.2, 4686.5, and  
33 4689, and purchase of service best practices enacted pursuant to  
34 4620.3.

35 4689.93. (a) The Legislature finds and declares that SD  
36 Program support workers are the foundation necessary for SD  
37 Program participants to access full community participation and  
38 employment opportunities and to pursue a life of meaning in the  
39 ways that they choose.

1 (b) Participants shall have the right to utilize their individual  
2 allocation to employ SD support workers of their choice, hire,  
3 supervise, direct, schedule, evaluate, train, and terminate  
4 employment of SD support workers. Except for the limited purposes  
5 set forth herein, the state shall not be deemed the employer of SD  
6 support workers for any purpose.

7 (c) The state shall support the quality, availability, and stability  
8 of direct support workers by establishing a base compensation  
9 package to ensure decent pay standards for workers in the  
10 program. Individuals may use their allocation and private sources  
11 of funds to pay SD support workers above the base established by  
12 the state, develop job descriptions, and otherwise organize and  
13 incentivize their SD support workers.

14 (d) SD support workers may form, join, and participate in the  
15 activities of labor organizations of their own choosing in order to  
16 engage in collective negotiations with the department with regard  
17 to all matters specified in paragraph (4).

18 (1) Within 10 days of receipt of a request from a labor  
19 organization that represents SD support workers, the department  
20 shall provide the following information concerning SD support  
21 workers:

22 (A) Name, address, telephone number, and any unique personal  
23 identification generated by the department.

24 (B) Wage rates earned by each SD support worker.

25 (C) Hours of services provided by each SD support worker. The  
26 department shall be required to collect the information on no less  
27 than a quarterly basis from any financial management services  
28 providers that process payments for SD support workers.

29 (2) A labor organization that represents SD support workers  
30 may petition the Board to be designated as the exclusive  
31 negotiating representative of SD support workers in the state.

32 (A) The only appropriate bargaining unit of SD support workers  
33 shall consist of all SD support workers in the state.

34 (B) If a labor organization that represents SD support workers  
35 petitions the Board to be designated as the negotiating  
36 representative for SD support workers and provides written  
37 authorization from a majority of the total number of workers in  
38 the unit as of January of the year in which the petition is made,  
39 the Board shall designate that organization as the exclusive  
40 negotiating representative for all SD support workers in the unit.

1 (C) *If a labor organization that represents SD support workers*  
2 *petitions to be designated as the negotiating representative for all*  
3 *SD support workers in the unit and provides written authorization*  
4 *to serve as the negotiating representative from at least 30 percent*  
5 *of the workers in the unit, an election shall be held pursuant to*  
6 *Board policies and procedures within 90 days after the day on*  
7 *which the petition is filed. The Board shall designate the labor*  
8 *organization that prevails in the election the exclusive negotiating*  
9 *representative for all SD support workers in the unit.*

10 (3) *The designated exclusive negotiating representative pursuant*  
11 *to paragraph (2) shall be the negotiating representative for all SD*  
12 *support workers in the unit for the purposes of this subdivision.*

13 (A) *An SD support worker may refuse to join or participate in*  
14 *the activities of the designated negotiating representative.*

15 (B) *The designated negotiating representative shall represent*  
16 *all SD support workers in the bargaining unit fairly and without*  
17 *discrimination and without regard to whether the workers are*  
18 *members of the labor organization designated as the negotiating*  
19 *representative.*

20 (C) *The designated negotiating representative may charge a*  
21 *reasonable fair share service fee to bargaining unit nonmembers,*  
22 *who meet the minimum hour criteria described in subdivision (i)*  
23 *of Section 4689.9, for representing them in negotiations, contract*  
24 *administration, and other activities. The costs covered by the fair*  
25 *share service fee pursuant to this section may include, but are not*  
26 *limited to, costs associated with representing SD support workers*  
27 *pursuant to paragraph (4). The fair share service fee shall not*  
28 *exceed the annual dues paid by members of the labor organization*  
29 *designated as the negotiating representative of SD support workers.*

30 (4) *The designated negotiating representative of SD support*  
31 *workers shall negotiate with the department concerning the terms*  
32 *and conditions of workers' participation in the SD Program*  
33 *including all of the following:*

34 (A) *The base compensation package mandated by this article.*

35 (B) *Access to benefits for SD support workers.*

36 (C) *Payment procedures.*

37 (D) *Training and career development opportunities.*

38 (E) *Deduction of membership dues and fair share service fees.*

39 (5) *The designated negotiating representative of SD support*  
40 *workers shall not negotiate over terms and conditions of*

1 *employment reserved for the participant pursuant to subdivisions*  
2 *(b) and (c).*

3 *(6) The designated negotiating representative of SD support*  
4 *workers shall not call or direct a strike or any other form of work*  
5 *stoppage.*

6 *(7) The Board's jurisdiction shall include all matters related*  
7 *to the representation of SD support workers.*

8 *(e) A participant in the SD Program may request, at no charge*  
9 *to the participant or the regional center, criminal history*  
10 *background checks for persons seeking employment as a service*  
11 *provider and providing direct care services to the participant.*

12 *(1) Criminal history records checks pursuant to this subdivision*  
13 *shall be performed and administered as described in subdivision*  
14 *(b) and subdivisions (d) to (h), inclusive, of Section 4689.2, and*  
15 *Sections 4689.4 to 4689.6, inclusive, and shall apply to*  
16 *vendorization of providers and hiring of employees to provide*  
17 *services for family home agencies and family homes.*

18 *(2) The department may enter into a written agreement with the*  
19 *Department of Justice to implement this subdivision.*

20 *4689.94. (a) The department shall establish a statewide*  
21 *Self-Determination Program Advisory Committee. Greater than*  
22 *50 percent of the committee shall be comprised of SD Program*  
23 *participants and their family members representing the geographic,*  
24 *ethnic, and language diversity of the state. Other committee*  
25 *members shall include representatives from the State Council on*  
26 *Developmental Disabilities, Disability Rights California, a*  
27 *University Center for Excellence in Developmental Disabilities,*  
28 *regional centers, and a labor representative of regional center*  
29 *employees. The committee shall meet at least semiannually and*  
30 *participate in system oversight and advise with respect to ongoing*  
31 *system design and implementation and SD support worker wages,*  
32 *benefits, training, and career development. In addition, the*  
33 *committee shall meet with the department at least twice during the*  
34 *initial development phase of the SD Program to provide input on*  
35 *the methodology for calculating individual allocations and other*  
36 *initial implementation issues.*

37 *(b) Notwithstanding Section 10231.5 of the Government Code,*  
38 *commencing January 10, 2013, the department shall annually*  
39 *provide the following information to the SD Program Advisory*

1 *Committee and to the policy and fiscal committees of the*  
2 *Legislature:*

3 *(1) The number and characteristics of participants, by regional*  
4 *center.*

5 *(2) The range and average of individual allocations, by regional*  
6 *center.*

7 *(3) Utilization of the risk pool, including range and average*  
8 *individual allocation augmentations and type of service, by*  
9 *regional center.*

10 *(4) The proportion of participants who report that their choices*  
11 *and decisions are respected and supported.*

12 *(5) Detailed workforce metrics for SD support workers including*  
13 *wages, hours worked, and length of time on the job.*

14 *(6) The number and outcome of individual allocation appeals,*  
15 *by regional center.*

16 *(7) The number and outcome of fair hearing appeals, by regional*  
17 *center.*

18 *(8) The number of participants who voluntarily withdraw from*  
19 *participation in the SD Program and a summary of the reasons*  
20 *why, by regional center.*

21 *(9) The number of participants who are subsequently determined*  
22 *to no longer be eligible for the SD Program and a summary of the*  
23 *reasons why, by regional center.*

24 *(10) Identification of barriers to participation and*  
25 *recommendations for program improvements.*

26 *(11) A comparison of average annual expenditures for*  
27 *individuals with similar characteristics not participating in the*  
28 *SD Program.*

29 *(c) Notwithstanding Section 10231.5 of the Government Code,*  
30 *commencing June 30, 2015, and at three year intervals, the*  
31 *department shall submit an SD program evaluation to the relevant*  
32 *policy committees of the Legislature and the SD Program Advisory*  
33 *Committee. The evaluation shall be developed in consultation with*  
34 *the advisory committee and shall be based on the core quality*  
35 *outcomes described in subdivision (b) of Section 4689.91 and also*  
36 *include a summary of all of the following:*

37 *(1) The types and ranking of services and supports purchased*  
38 *under the SD Program, by regional center.*

1 (2) Consumer satisfaction under the SD Program and, when  
2 data is available, the traditional service delivery system, by  
3 regional center.

4 (3) The proportion of participants who report they are able to  
5 recruit, hire, and retain qualified service providers.

6 4689.95. It is the intent of the Legislature that the purchase of  
7 services and supports through the SD Program be eligible for  
8 federal Medicaid match funding. The department shall take all  
9 steps necessary to ensure federal financial participation is  
10 available for all SD Program services and supports by applying  
11 for amendments to the current home and community-based waiver  
12 for individuals with developmental disabilities or for a new waiver  
13 pursuant to Section 1396n of Title 42 of the United States Code.  
14 The department shall seek to maximize federal financial  
15 participation by applying for an enhanced federal match through  
16 the federal Community First Choice Option pursuant to Section  
17 1396n(k) of Title 42 of the United States Code.

18 SECTION 1. ~~Section 4685.8 is added to the Welfare and~~  
19 ~~Institutions Code, to read:~~

20 4685.8. (a) ~~(1) The Self-Determination Program (SD Program)~~  
21 ~~is hereby established and shall be available in every regional center~~  
22 ~~catchment area to enable individuals with developmental~~  
23 ~~disabilities to exercise their rights to make choices in their own~~  
24 ~~lives, as described in subdivision (j) of Section 4502. The program~~  
25 ~~shall give participants greater control over access to, and the~~  
26 ~~flexibility to access, a wide range of needed and desired services~~  
27 ~~and supports, including, but not limited to, hiring their own workers~~  
28 ~~and purchasing needed items. The SD Program shall be consistent~~  
29 ~~with the requirements set forth in this section.~~

30 ~~(2) SD Program participants shall be provided with a capitated~~  
31 ~~individual funding allocation computed in a fair, transparent, and~~  
32 ~~equitable manner, based on consumer characteristics and needs.~~  
33 ~~The allocation shall be used for the purchase of services and~~  
34 ~~supports necessary to implement the participant's individual~~  
35 ~~program plan.~~

36 ~~(b) The Self-Determination Program shall be designed to~~  
37 ~~promote, and shall be evaluated against, core quality outcomes for~~  
38 ~~the participants, including, but not limited to, all of the following:~~

39 ~~(1) Participants' welfare, health, and safety.~~

- 1     ~~(2) Whether participants are living in a place called home, under~~  
2     ~~one's own control, including living with family, friends, or on~~  
3     ~~one's own.~~
- 4     ~~(3) Whether participants have meaningful participation and~~  
5     ~~membership in their own community.~~
- 6     ~~(4) Whether participants are maintaining reciprocal long-term~~  
7     ~~relationships, including relationships that assist the participant to~~  
8     ~~live a healthy, included life.~~
- 9     ~~(5) Whether participants are generating private income, through~~  
10    ~~typical jobs in regular employment settings or through~~  
11    ~~self-employment.~~
- 12    ~~(6) Whether participants have control over transportation.~~
- 13    ~~(e) It is the intent of the Legislature that the purchase of services~~  
14    ~~and supports through the SD Program be eligible for federal~~  
15    ~~Medicaid match funding. The department shall take all steps~~  
16    ~~necessary to ensure federal financial participation is available for~~  
17    ~~all SD Program services and supports by applying for amendments~~  
18    ~~to the current home and community-based waiver for individuals~~  
19    ~~with developmental disabilities or for a new waiver pursuant to~~  
20    ~~Section 1396n of Title 42 of the United States Code. The~~  
21    ~~department shall seek to maximize federal financial participation~~  
22    ~~by applying for an enhanced federal match through the federal~~  
23    ~~Community First Choice Option pursuant to Section 1396n(k) of~~  
24    ~~Title 42 of the United States Code.~~
- 25    ~~(d) Individuals shall have the right to utilize their allocation to~~  
26    ~~hire workers of their choice, and supervise, direct, schedule,~~  
27    ~~evaluate, train, and terminate employees. The state shall support~~  
28    ~~the quality, availability, and stability of direct support workers by~~  
29    ~~establishing a base compensation package to ensure decent pay~~  
30    ~~standards for workers in this program. Individuals may use their~~  
31    ~~allocation and private sources of funds to pay direct support~~  
32    ~~workers above the base established by the state, develop job~~  
33    ~~descriptions, and otherwise organize and incentivize their support~~  
34    ~~workers.~~

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## BILL ANALYSIS

AB 1244  
Page 1

Date of Hearing: April 26, 2011

ASSEMBLY COMMITTEE ON HUMAN SERVICES  
Jim Beall Jr., Chair  
AB 1244 (Chesbro) - As Amended: April 14, 2011

SUBJECT : Developmental services: Self-Determination Program

SUMMARY : Establishes the Self-Determination Program providing individuals with developmental disabilities with an individual funding allocation to give them greater control over the purchase of services and supports needed to implement their individual program plans. Specifically, this bill :

- 1) Strikes existing statutory provisions establishing the Self-Directed Services Program (SDS Program) (Welfare & Institutions (W&I) Code Section 4685.7) and, instead, provides for a Self-Determination Program (SD Program), which makes available to individuals with developmental disabilities receiving services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) a capitated individual funding allocation, computed in a fair, transparent, and equitable manner based on the individual's characteristics and need, to enable them to exercise their rights to make choices in their lives and access services and supports they choose to implement their individual program plans (IPPs).
- 2) Provides that the SD Program shall be designed to promote and be evaluated against core quality outcomes, including:
  - a) Participants' welfare, health, and safety;
  - b) Participants living in a place called home, including with family, friends, or on one's own, and, for adults, in a living arrangement under their own control;
  - c) Participants having meaningful participation and membership in the community;
  - d) Participants maintaining reciprocal long-term relationships, including relationships that assist the participant to live a health, included life;
  - e) Participants generating private income through typical

AB 1244  
Page 2

jobs in regular employment settings or through self-employment for participants of working age; and,

- f) Participants having access to or control over transportation.
- 3) Defines "advocacy services" as services and supports that facilitate the participant in exercising his or her legal, civil and service rights to access generic services and benefits that the individual is entitled to receive and provides that advocacy services are to be provided only when other advocacy assistance is not available.
- 4) Defines "financial management services" (FMS) to mean a conflict of interest free service or function that assists SD Program participants to manage and direct the distribution of funds in their individual allocation, and that provides required workforce and expenditure information to the Department of Developmental Services (DDS). Requires DDS to establish qualifications for an FMS provider and to contract with one FMS entity statewide.
- 5) Defines "individual allocation" as the funding available to a participant for services and supports necessary to implement his or her IPP, and provides that the individual allocation is to be determined using a fair, equitable, and transparent methodology that includes but is not limited to consumer characteristics and needs.
- 6) Defines "individual budget" to mean a participant's individualized plan for using his or her individual allocation for achieving the core quality outcomes relevant to the participant and meeting the participant's IPP goals.
- 7) Defines "participant" as an individual and, when appropriate, his or her parents, legal guardian or conservator, or authorized representative, who are eligible for, and have



transition;

- c) Until the first year of historical data is available, DDS shall adjust the allocation to estimate the impact of service reductions resulting from the Budget Act of 2011;
- d) The allocation methodology shall provide additional needed resources in the case of individuals transitioning from a family home or congregate setting to independent living;
- e) The individual allocation amount shall not be calculated more than once in a 12-month period and shall remain in effect each year until a new individual allocation amount has been determined; and,
- f) The RC's calculation of an individual allocation may be challenged through an administrative appeal process, as described.

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AB 1244  
Page 5

- 21) Provides that, once an individual or his or her legal representative elects to participate in the SD Program, the following shall occur:
- a) The RC shall advance funds to the FMS entity to support the hiring of a support broker;
  - b) The individual and, when appropriate, his or her legal representative, with the assistance of the service broker and others, as appropriate, shall develop a person-centered plan and individual budget within the individual allocation designed to assist the individual to achieve the relevant core quality outcomes; and,
  - c) The individual budget shall distribute the allocation, including expenditures for services and supports, among the following budget categories, based on the core quality outcomes:
    - i) Welfare, health, and safety;
    - ii) Supports for living in a place called home;
    - iii) Meaningful participation and membership in the community;
    - iv) Developing and maintaining long-term relationships;
    - v) Generating income through supports for employment or self-employment; and,
    - vi) Transportation.

- 22) Prohibits the use of individual allocations to purchase services from the following:
- a) A licensed long-term health facility, or a residential facility;
  - b) A day program or habilitation services program, except for:
    - i) Specific periodic or one time services; and,
    - ii) Job development and job coaching services for

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AB 1244  
Page 6

Individual Placement Supported Employment.

- 23) Provides that an RC must provide person-centered planning services, within 30 days of a request, to arrange for the transition to the SD Program of a person in a licensed long-term health facility, residential facility, day program, or habilitation program.
- 24) Requires the individual's IPP team to review and utilize the IPP to detail the goals and objectives to be met through the purchase of participant-selected services and supports, and requires that the completed budget be attached to the IPP.

- 25) Provides that an RC may not prohibit the purchase of any service or support otherwise allowable under the SD Program in order to implement an individual's IPP.
- 26) Authorizes participants to annually transfer up to 20% of the funds from one budget category to one or more other budget categories. Authorizes transfers greater than 20% with RC approval, which may be denied only when necessary to protect the individual's health and safety.
- 27) Requires RCs to annually ascertain from participants if a change to the individual allocation is needed and, if necessary, to calculate a new amount, which the participant may select instead of the current amount.
- 28) Requires DDS to establish and administer a risk pool, as defined, and requires that the money in the fund be continuously appropriated to DDS.
- 29) Requires the risk pool to be funded by an amount equivalent to 2.5% of the historical annual purchase of service costs for consumers in the SD Program, and that DDS specify a process to allocate the funds to RCs.
- 30) Provides that the risk pool be used only in the event of substantial unanticipated change in a participant's service and support needs, including urgent need to change residence or to prevent or respond to significant illness or injury.
- 31) Requires DDS to use 2.5% of the historical annual purchase of service costs for consumers in the SD Program toward offsetting SD Program state costs.

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AB 1244

Page 7

- 32) Describes the role and responsibilities of RC service coordinators under the SD Program, including providing information to participants and their legal representatives, determining individual allocation amounts and individual budgets, developing the IPP, monitoring budget expenditures, and determining the need to change the individual allocation or to access the risk pool.
- 33) Establishes an average service coordinator-to-consumer ratio of 1 to 62 for SD Program participants and requires, to the maximum extent possible, that SD Program participants be assigned to service coordinators with a designated SD Program caseload.
- 34) Requires DDS to annually provide for General Fund savings of 5% of the annual purchase of service costs for SD Program participants compared to consumers with similar characteristics.
- 35) Requires the FMS to send quarterly financial statements to the participant and the RC.
- 36) Requires RCs to provide for the transition of consumers no longer eligible for, or choosing to voluntarily exit the SD Program, with no gap in services and supports during the transition period.
- 37) Provides that the Lanterman Act appeal process is available to consumers found to be no longer eligible for the SD Program.
- 38) Provides that individuals voluntarily withdrawing from the SD Program, or individuals determined to be ineligible for the SD Program upon again meeting eligibility criteria, be permitted to return after a minimum of 12 months.
- 39) Requires service providers to meet applicable licensing or certification requirements, but exempts all service providers except the FMS from vendorization requirements.
- 40) Exempts SD Program participants from the Family Cost Participation Program, and recent cost savings measures placing restrictions on purchases of services enacted through the budget process.

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AB 1244

Page 8

- 41) Recognizes that SD Support Workers are foundational to the SD Program and, therefore, provides the following:
- a) Provides that SD Program participants have the right to employ, supervise, direct, schedule, evaluate, train and terminate SD Support Workers, who are with limited exceptions not deemed to be State employees, of their choice;
  - b) Requires the State to establish a base compensation package to ensure decent pay standards for SD Support Workers, and authorizes individuals to pay SD Support Workers above the base established by the state, to develop job descriptions, and otherwise organize and incentivize their SD Support Workers;
  - c) Authorizes SD Support Workers to form, join, and participate in labor organizations in order to engage in collective negotiations with DDS;
  - d) Requires DDS to collect SD Support Worker information from any FMS provider that processes payments for SD Support Workers, and provide specified information to a labor organization representing SD Support Workers upon request;
  - e) Authorizes a labor organization that represents SD Support Workers to be designated as the exclusive negotiating representative of SD Support Workers in the State under specified conditions;
  - f) Provides that an SD Support Worker may refuse to join or participate in the activities of the designated negotiating representative;
  - g) Requires that the designated negotiating representative represent SD Support Workers fairly and without discrimination, regardless of membership in the labor organization;
  - h) Authorizes the designated negotiating representative to charge a reasonable fair share service fee to bargaining unit nonmembers;

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AB 1244  
Page 9

- i) Specifies the terms and conditions of the SD Support Workers' participation subject to negotiation by the designated negotiating representative, and those terms and conditions reserved for the participant, which are not subject to negotiation by the designated negotiating representative; and
  - j) Prohibits the designated negotiating representative for SD Support Workers from calling or directing a strike or other form of work stoppage.
- 42) Authorizes SD Program participants to request, at no charge to the participant or RC, criminal background checks from persons seeking employment as providers and providers of direct care services, and authorizes DDS to enter into a written agreement with the Department of Justice to implement this provision.
- 43) Requires that DDS establish a statewide SD Program Advisory Committee, with more than 50% of the Committee comprised of SD Program participants and family members representing the geographic, ethnic and language diversity of the state. Further requires that the Advisory Committee include representatives from:
- a) The State Council on Developmental Disabilities;
  - b) Disability Rights California;
  - c) A University Center for Excellence in Developmental Disabilities;
  - d) Regional centers; and,
  - e) A labor representative of RC employees.
- 44) Establishes requirements for the Advisory Committee, including frequency of meetings, and delineates Committee responsibilities, including participating in system oversight, and advising on ongoing system design and implementation, as well as SD Support Worker wages, benefits, training and career development. Also requires the Advisory Committee to provide input on the methodology for calculating individual allocations and other initial implementation issues.

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AB 1244  
Page 10

- 45) Requires DDS, commencing January 10, 2013, to annually provide specified information and data on implementation of the SD Program to the Advisory Committee and to the policy and fiscal committees of the Legislature.
- 46) Requires DDS, commencing on June 30, 2015, and at 3-year intervals, to develop in consultation with the Advisory Committee and submit to the relevant policy committees the Legislature and the Advisory Committee an SD Program evaluation, as described, based on the core quality outcomes.
- 47) States the intent of the Legislature that the purchase of services and supports through the SD Program be eligible for federal Medicaid match funds, and requires that DDS:
- a) Take all steps necessary to ensure the availability of federal matching funds for the SD Program by applying for amendments to the current home and community-based waiver for people with developmental disabilities or for a new Medicaid waiver; and,
  - b) Apply for an enhanced federal match through the federal Community First Choice Option.

EXISTING LAW

- 1) Establishes the Lanterman Act, under which DDS contracts with 21 private non-profit RCs to provide case management services and arrange for, or purchase, services that meet the needs of individuals with developmental disabilities.
- 2) Requires an IPP to be developed for every individual who is determined to be eligible for regional center services under the Lanterman Act through a process of individualized needs determination, which identifies the services and supports to be purchased by the regional center or obtained from other agencies.
- 3) States the intent of the Legislature to ensure that the IPP and provision of services and supports by RCs is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and

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AB 1244  
Page 11

- healthy environments. States the further intent to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the IPP, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.
- 4) Establishes, contingent upon approval of a federal waiver, the SDS Program, which, when implemented, provides participants, within a set individual budget amount, greater control over needed services and supports, consistent with the requirements set forth in the statute. W&I Code Section 4685.7.
  - 5) Requires DDS, in consultation with stakeholders, to develop an alternative service delivery model that provides an Individual Choice Budget (ICB) for obtaining quality services and supports which provides choice and flexibility within a finite budget that in the aggregate reduces regional center purchase of service expenditures, reduces reliance on the state general fund, and maximizes federal financial participation in the delivery of services. Requires the individual budget to be determined using a fair, equitable, transparent standardized process. W&I Code Section 4648.6.
  - 6) Suspends RCs' authority to purchase specified services-including, social/recreation activities, camping services, educational services for minor, school-aged children, and non-medical therapies-pending implementation of the ICB service delivery model and certification by the director of DDS that the ICB has been implemented and will result in state budget savings sufficient to offset the costs of providing those services. W&I Code Section 4648.5.

FISCAL EFFECT : Unknown

COMMENTS : "Self-determination," or "self-directed services," represents an alternative model of service delivery, whereby individuals who are eligible for state developmental disabilities services are empowered to gain control over the selection of services and supports that meet their own needs. It is an alternative to the standard service model of the Lanterman Act in which regional centers purchase services directly from approved "vendors" or obtain services from other

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AB 1244  
Page 12

agencies. Self-determination is intended to enhance the ability of a consumer and his or her family to control the decisions and resources required to meet all or some of the objectives in the consumer's IPP. According to DDS' Web site, self-directed service programs are implemented nationwide and have garnered international and bi-partisan support.

The author of this bill notes that:

The [Lanterman Act] has led to tremendous advancements in deinstitutionalization, community integrated services, disability rights and family support. However, the long-term national trends away from congregate services and towards highly individualized options has led to the demand by people with disabilities for control over their services and lives. People seek homes of their own, where they control who comes in and who supports them. They seek real membership in their communities, participating as a valued member in community organizations and activities that they choose. They seek to develop and preserve long-term reciprocal relationships, with friends, family, neighbors, and others in their communities. And people want to earn income to begin to overcome the barriers inherent to a life of poverty.

Self-determination, the author says, "leads to those outcomes that people seek" and, "in an environment of fiscal constraint, and with more and more limits put on the availability of traditional [RC] services, Self-Determination offers an alternative to the cost pressures and increasing limits of the traditional developmental services system."

Prior California self-determination/self-directed services initiatives

Self-Determination Pilot Projects : SB 1038 (Thompson), Chapter 1043, Statutes of 1998, authorized the planning and implementation of self-determination pilot projects at three

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AB 1244  
Page 13

RCs: East Los Angeles Regional Center, Tri-Counties Regional Center, and Redwood Coast Regional Center. Two other regional centers (Kern Regional Center and San Diego Regional Center) also created independent self-determination pilots through approval of alternative service delivery models pursuant to W&I Code Section 4669.2. The pilot programs, which vary somewhat among the five participating RCs, were limited to a total of approximately 140 consumers. These self-determination pilot programs are ongoing and, reportedly, successful, with a high level of participant satisfaction.

Self-Directed Services Program (SDS Program) : AB 131 (Committee on Budget), Chapter 80, Statutes of 2005 (Budget Act 2005, omnibus health trailer bill), repealed the statutory section establishing the self-determination pilot projects and added Section 4685.7 of the W&I Code to establish, contingent upon approval of a federal waiver, self-directed services statewide. DDS filed an SDS Waiver application with the federal Centers for Medicare & Medicaid Services (CMS) on April 2, 2008; however, it has still not been approved. Therefore, the SDS Program has

never been implemented.

Individual Choice Budgets (ICB) : As part of the 2008-09 and 2009-10 budget process, DDS was charged with identifying \$334 million in General Fund savings in the developmental disabilities service system. Those cost savings measures included the suspension of RCs' authority to purchase certain services, including social/recreation activities, camping services, educational services for minor, school-aged children, and non-medical therapies. The services will be made available once DDS develops and implements an ICB service delivery model and the director of DDS certifies that the ICB has been implemented and will result in state budget savings sufficient to offset the costs of providing those services. AB 9 X4 (Evans), Chapter 9, Statutes of 2009 4th Extraordinary Session. The ICB service delivery model is to provide consumers and families with an "Individual Choice Budget" that gives them the 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. AB 9 X4 requires DDS to develop the ICB model in consultation with stakeholders. To date, no consensus among stakeholders has been reached on the ICB model and it has not been developed or

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implemented.

Cost savings : A key feature of the existing SDS Program statute, the ICB model, and the SD Program established by this bill, is that individual budget allocations are required to result in a cost savings compared to the current purchase of service model. Thus, for example, the existing SDS Program statute provides that the individual budget amount shall equal either "90% of the annual purchase of services costs for the individual" based on the average annual costs of providing services for the individual for the previous two fiscal years, or "90% of the annual per capita purchase of service costs for the previous two fiscal years for consumers with similar characteristics, who do not receive services through the SDS Program." W&I Code Section 4695.7. Similarly, this bill requires that the individual allocation amount "shall equal 90% of the annual per capita purchase of service costs for the previous fiscal year for consumers with similar characteristics who do not receive services through the SD Program." In exchange for the reduced expenditure, consumers would gain far more flexibility and control over the services and supports they receive.

The SD Program established by this bill is similar in many respects to the SDS Program in existing law that it would replace but has several key differences. For example, this bill:

- Directs DDS to contract with one EMS to provide services statewide, rather than leaving it up to individual participants to identify their own EMS;
- Establishes budget categories to enable participants to better plan for budget expenditures to achieve core quality outcomes;
- Provides greater flexibility to participants than the existing statute to transfer their individual allocations between budget categories without RC authorization;
- Specifies in greater detail the role of planning teams in reviewing the IPP and individual budget plan against the core quality outcomes, and requires a designated SD Program caseload for service coordinators, with an average caseload ratio of no more than 1:62;
- Sets the risk pool at 2.5%, with another 2.5% allocated to offset SD Program costs, whereas the existing statute

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- establishes a risk pool account of 5% of historic costs;
- Relaxes the prohibition on purchasing congregate services to allow purchases of innovative or periodic services from traditional congregate service vendors;
- Gives greater authority to participants to hire a service broker of their choice;
- Phases in the SD Program, with implementation limited to the existing five Self-Determination Pilot Program RCs in the first year;

Includes provisions related to the SD Program workforce, including requiring the state to set minimum compensation levels for workers and to obtain workforce data and report on workforce outcomes; establishing a means for SD Program workers hired directly by participants to form a union under the PERB to represent themselves to the state over base compensation; and, prohibiting strikes or other work stoppages, or collective bargaining that would infringe on the ability of participants to hire, supervise, train, schedule, incentivize, or fire their workers; and, Establishes an Advisory Committee to provide input on program design and implementation, including review of program outcomes and workforce issues.

Another key difference between this bill and the SDS Program in current law concerns funding. The existing SDS Program is contingent on approval of a federal waiver, which, as noted, has yet to be approved by CMS. This bill, while directing DDS to ensure federal financial participation, does not explicitly provide that implementation of the SD Program is contingent on federal matching funds. Additionally, this bill directs DDS to explore a wider variety of options for obtaining federal funds, including applying to amend the current Home and Community Based Services Waiver for People with Developmental Disabilities, and applying for an enhanced federal match through the federal Community First Choice Option.

The number of individuals who would choose to participate in the SD Program is undetermined. Under its provisions, once the program is available statewide, any RC consumer over the age of 3 years-who does not need or choose to live in a congregate health facility or other licensed congregate living arrangement, or does not, with specified exceptions, choose to participate in a congregate day or habilitation program-would be eligible. RCs serve approximately 215,000 consumers over the age of 3. The

AB 1244  
Page 16

author estimates that, perhaps, 200 people would participate in the first year from the 5 pilot program RCs and, then, perhaps as many as 10-15% of eligible consumers would choose to participate once the program goes statewide, starting in the second year.

Concerns : Disability Rights California (DRC) says that the policy goals of providing greater flexibility and autonomy about how consumers and their families can access RC services, and of ensuring that workers receive a livable wage, including appropriate benefits, "generally promote better quality care and the stability of the workforce in the community based service system." DRC has a Support-if-Amended position on this bill based on two concerns: 1) The risk pool of 2.5% of the budget savings to address unanticipated needs is insufficient; and 2) the requirement that workers be compensated at established rates may impact the amount of services consumers will be able to purchase with their individual allocations. To address these concerns, DRC proposes an amendment to increase the risk pool to 5% either by reducing the amount of the projected savings in the first two years of the program or by reducing the set-aside for training and other administrative functions, or by a combination of these measures. DRC also proposes that this bill be amended to require adjustments to individual allocations commensurate to any increases to the SD support workers' base compensation package.

The Legislature, in authorizing Self-Determination Pilot Programs in 1998, in enacting the SDS Program in 2005, and in directing DDS to develop an Individual Choice Budget model in 2009, has repeatedly endorsed the principles and values of the self-determination model of service delivery. The author of this bill states, in conclusion, that "ŷa}fter 12 years of 'piloting' Self-Determination in California, it is past time to make this extraordinary option available to all regional center clients."

REGISTERED SUPPORT / OPPOSITION :

Support

East Bay Innovations  
Service Employees International Union California (SEIU)  
3 individuals

AB 1244  
Page 17

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Opposition

None on file.

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

## LEGISLATIVE AGENDA ITEM DETAIL SHEET

**BILL NUMBER/ISSUE:** Senate Bill 177: Congregate Living Health Facilities

**BILL SUMMARY:** This bill would allow an increase in the number of beds (from 12 to 25 beds) in congregate living health facilities (CLHF.) Currently, the number of beds allowed in counties with a population in 400,000 or less is 12; however, in counties with a population of 500,000, the number of beds is raised to 25.

**BACKGROUND:** The impetus for this bill is a home that has already been built in Santa Barbara County. The County argues that its population of persons over 65 will increase dramatically in the coming 30-40 years and although the population limit has not been met to qualify for a larger facility, the need for one is clear.

**ANALYSIS/DISCUSSION:** CLHFs are residential-based care facilities that provide inpatient care, medical supervision, 24-hour skilled nursing and supportive care, and other services to one of three categories of persons: (1) persons who are mentally alert who have physical disabilities, who may be ventilator dependent; (2) persons who have a diagnosis of terminal illness, or life-threatening illness, or both; or (3) persons who are catastrophically and severely disabled.

Although the bill seems to be directed at a specific instance, it has the possibility of increasing the size of facilities for persons with disabilities in the future. An increase of more than double should be analyzed thoroughly instead of a short term quick fix.

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Shape public policy that positively impacts Californians with developmental disabilities and their families.

**PRIOR COUNCIL ACTIVITY:** None

**RECOMMENDATION(S):** Oppose SB 177 as being inconsistent with the direction of people being supported in their own homes and/or inclusive communities.

**ATTACHMENTS:** SB 177 and Senate Health Committee analysis.

**PREPARED:** Melissa C. Corral, May 3, 2011



**Introduced by Senator Strickland**  
(Principal coauthor: Assembly Member Williams)

February 7, 2011

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An act to amend Section 1250 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 177, as introduced, Strickland. Congregate living health facilities.

Existing law provides for the licensure and regulation by the State Department of Public Health of health facilities, including congregate living health facilities. A violation of these provisions is a misdemeanor. Under existing law, a congregate living health facility not operated by a city and county servicing persons who are terminally ill or persons who have been diagnosed with a life-threatening illness, or both, that is located in a county with a population of 500,000 or more persons is prohibited from having more than 25 beds for the purpose of serving persons who are terminally ill.

This bill would extend the above-described prohibition to a congregate living health facility that is located in a county with a population of 400,000 or more persons.

By applying this limitation to additional congregate living health facilities, and thus changing the definition of an existing crime, this bill would impose a state-mandated local program.

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

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

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

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

1 SECTION 1. Section 1250 of the Health and Safety Code is  
2 amended to read:

3 1250. As used in this chapter, "health facility" means any  
4 facility, place, or building that is organized, maintained, and  
5 operated for the diagnosis, care, prevention, and treatment of  
6 human illness, physical or mental, including convalescence and  
7 rehabilitation and including care during and after pregnancy, or  
8 for any one or more of these purposes, for one or more persons,  
9 to which the persons are admitted for a 24-hour stay or longer, and  
10 includes the following types:

11 (a) "General acute care hospital" means a health facility having  
12 a duly constituted governing body with overall administrative and  
13 professional responsibility and an organized medical staff that  
14 provides 24-hour inpatient care, including the following basic  
15 services: medical, nursing, surgical, anesthesia, laboratory,  
16 radiology, pharmacy, and dietary services. A general acute care  
17 hospital may include more than one physical plant maintained and  
18 operated on separate premises as provided in Section 1250.8. A  
19 general acute care hospital that exclusively provides acute medical  
20 rehabilitation center services, including at least physical therapy,  
21 occupational therapy, and speech therapy, may provide for the  
22 required surgical and anesthesia services through a contract with  
23 another acute care hospital. In addition, a general acute care  
24 hospital that, on July 1, 1983, provided required surgical and  
25 anesthesia services through a contract or agreement with another  
26 acute care hospital may continue to provide these surgical and  
27 anesthesia services through a contract or agreement with an acute  
28 care hospital. The general acute care hospital operated by the State  
29 Department of Developmental Services at Agnews Developmental  
30 Center may, until June 30, 2007, provide surgery and anesthesia  
31 services through a contract or agreement with another acute care  
32 hospital. Notwithstanding the requirements of this subdivision, a  
33 general acute care hospital operated by the Department of  
34 Corrections and Rehabilitation or the Department of Veterans  
35 Affairs may provide surgery and anesthesia services during normal

1 weekday working hours, and not provide these services during  
2 other hours of the weekday or on weekends or holidays, if the  
3 general acute care hospital otherwise meets the requirements of  
4 this section.

5 A “general acute care hospital” includes a “rural general acute  
6 care hospital.” However, a “rural general acute care hospital” shall  
7 not be required by the department to provide surgery and anesthesia  
8 services. A “rural general acute care hospital” shall meet either of  
9 the following conditions:

10 (1) The hospital meets criteria for designation within peer group  
11 six or eight, as defined in the report entitled Hospital Peer Grouping  
12 for Efficiency Comparison, dated December 20, 1982.

13 (2) The hospital meets the criteria for designation within peer  
14 group five or seven, as defined in the report entitled Hospital Peer  
15 Grouping for Efficiency Comparison, dated December 20, 1982,  
16 and has no more than 76 acute care beds and is located in a census  
17 dwelling place of 15,000 or less population according to the 1980  
18 federal census.

19 (b) “Acute psychiatric hospital” means a health facility having  
20 a duly constituted governing body with overall administrative and  
21 professional responsibility and an organized medical staff that  
22 provides 24-hour inpatient care for mentally disordered,  
23 incompetent, or other patients referred to in Division 5  
24 (commencing with Section 5000) or Division 6 (commencing with  
25 Section 6000) of the Welfare and Institutions Code, including the  
26 following basic services: medical, nursing, rehabilitative,  
27 pharmacy, and dietary services.

28 (c) “Skilled nursing facility” means a health facility that provides  
29 skilled nursing care and supportive care to patients whose primary  
30 need is for availability of skilled nursing care on an extended basis.

31 (d) “Intermediate care facility” means a health facility that  
32 provides inpatient care to ambulatory or nonambulatory patients  
33 who have recurring need for skilled nursing supervision and need  
34 supportive care, but who do not require availability of continuous  
35 skilled nursing care.

36 (e) “Intermediate care facility/developmentally disabled  
37 habilitative” means a facility with a capacity of 4 to 15 beds that  
38 provides 24-hour personal care, habilitation, developmental, and  
39 supportive health services to 15 or fewer persons with  
40 developmental disabilities who have intermittent recurring needs

1 for nursing services, but have been certified by a physician and  
2 surgeon as not requiring availability of continuous skilled nursing  
3 care.

4 (f) “Special hospital” means a health facility having a duly  
5 constituted governing body with overall administrative and  
6 professional responsibility and an organized medical or dental staff  
7 that provides inpatient or outpatient care in dentistry or maternity.

8 (g) “Intermediate care facility/developmentally disabled” means  
9 a facility that provides 24-hour personal care, habilitation,  
10 developmental, and supportive health services to persons with  
11 developmental disabilities whose primary need is for  
12 developmental services and who have a recurring but intermittent  
13 need for skilled nursing services.

14 (h) “Intermediate care facility/developmentally  
15 disabled-nursing” means a facility with a capacity of 4 to 15 beds  
16 that provides 24-hour personal care, developmental services, and  
17 nursing supervision for persons with developmental disabilities  
18 who have intermittent recurring needs for skilled nursing care but  
19 have been certified by a physician and surgeon as not requiring  
20 continuous skilled nursing care. The facility shall serve medically  
21 fragile persons with developmental disabilities or who demonstrate  
22 significant developmental delay that may lead to a developmental  
23 disability if not treated.

24 (i) (1) “Congregate living health facility” means a residential  
25 home with a capacity, except as provided in paragraph (4), of no  
26 more than 12 beds, that provides inpatient care, including the  
27 following basic services: medical supervision, 24-hour skilled  
28 nursing and supportive care, pharmacy, dietary, social, recreational,  
29 and at least one type of service specified in paragraph (2). The  
30 primary need of congregate living health facility residents shall  
31 be for availability of skilled nursing care on a recurring,  
32 intermittent, extended, or continuous basis. This care is generally  
33 less intense than that provided in general acute care hospitals but  
34 more intense than that provided in skilled nursing facilities.

35 (2) Congregate living health facilities shall provide one of the  
36 following services:

37 (A) Services for persons who are mentally alert, persons with  
38 physical disabilities, who may be ventilator dependent.

39 (B) Services for persons who have a diagnosis of terminal  
40 illness, a diagnosis of a life-threatening illness, or both. Terminal

1 illness means the individual has a life expectancy of six months  
2 or less as stated in writing by his or her attending physician and  
3 surgeon. A “life-threatening illness” means the individual has an  
4 illness that can lead to a possibility of a termination of life within  
5 five years or less as stated in writing by his or her attending  
6 physician and surgeon.

7 (C) Services for persons who are catastrophically and severely  
8 disabled. A person who is catastrophically and severely disabled  
9 means a person whose origin of disability was acquired through  
10 trauma or nondegenerative neurologic illness, for whom it has  
11 been determined that active rehabilitation would be beneficial and  
12 to whom these services are being provided. Services offered by a  
13 congregate living health facility to a person who is catastrophically  
14 disabled shall include, but not be limited to, speech, physical, and  
15 occupational therapy.

16 (3) A congregate living health facility license shall specify which  
17 of the types of persons described in paragraph (2) to whom a  
18 facility is licensed to provide services.

19 (4) (A) A facility operated by a city and county for the purposes  
20 of delivering services under this section may have a capacity of  
21 59 beds.

22 (B) A congregate living health facility not operated by a city  
23 and county servicing persons who are terminally ill, persons who  
24 have been diagnosed with a life-threatening illness, or both, that  
25 is located in a county with a population of ~~500,000~~ 400,000 or  
26 more persons may have not more than 25 beds for the purpose of  
27 serving persons who are terminally ill.

28 (C) A congregate living health facility not operated by a city  
29 and county serving persons who are catastrophically and severely  
30 disabled, as defined in subparagraph (C) of paragraph (2) that is  
31 located in a county of 500,000 or more persons may have not more  
32 than 12 beds for the purpose of serving persons who are  
33 catastrophically and severely disabled.

34 (5) A congregate living health facility shall have a  
35 noninstitutional, homelike environment.

36 (j) (1) “Correctional treatment center” means a health facility  
37 operated by the Department of Corrections and Rehabilitation, the  
38 Department of Corrections and Rehabilitation, Division of Juvenile  
39 Facilities, or a county, city, or city and county law enforcement  
40 agency that, as determined by the state department, provides

1 inpatient health services to that portion of the inmate population  
2 who do not require a general acute care level of basic services.  
3 This definition shall not apply to those areas of a law enforcement  
4 facility that houses inmates or wards that may be receiving  
5 outpatient services and are housed separately for reasons of  
6 improved access to health care, security, and protection. The health  
7 services provided by a correctional treatment center shall include,  
8 but are not limited to, all of the following basic services: physician  
9 and surgeon, psychiatrist, psychologist, nursing, pharmacy, and  
10 dietary. A correctional treatment center may provide the following  
11 services: laboratory, radiology, perinatal, and any other services  
12 approved by the state department.

13 (2) Outpatient surgical care with anesthesia may be provided,  
14 if the correctional treatment center meets the same requirements  
15 as a surgical clinic licensed pursuant to Section 1204, with the  
16 exception of the requirement that patients remain less than 24  
17 hours.

18 (3) Correctional treatment centers shall maintain written service  
19 agreements with general acute care hospitals to provide for those  
20 inmate physical health needs that cannot be met by the correctional  
21 treatment center.

22 (4) Physician and surgeon services shall be readily available in  
23 a correctional treatment center on a 24-hour basis.

24 (5) It is not the intent of the Legislature to have a correctional  
25 treatment center supplant the general acute care hospitals at the  
26 California Medical Facility, the California Men's Colony, and the  
27 California Institution for Men. This subdivision shall not be  
28 construed to prohibit the Department of Corrections and  
29 Rehabilitation from obtaining a correctional treatment center  
30 license at these sites.

31 (k) "Nursing facility" means a health facility licensed pursuant  
32 to this chapter that is certified to participate as a provider of care  
33 either as a skilled nursing facility in the federal Medicare Program  
34 under Title XVIII of the federal Social Security Act or as a nursing  
35 facility in the federal Medicaid Program under Title XIX of the  
36 federal Social Security Act, or as both.

37 (l) Regulations defining a correctional treatment center described  
38 in subdivision (j) that is operated by a county, city, or city and  
39 county, the Department of Corrections and Rehabilitation, or the  
40 Department of Corrections and Rehabilitation, Division of Juvenile

1 Facilities, shall not become effective prior to, or if effective, shall  
2 be inoperative until January 1, 1996, and until that time these  
3 correctional facilities are exempt from any licensing requirements.

4 (m) "Intermediate care facility/developmentally  
5 disabled-continuous nursing (ICF/DD-CN)" means a homelike  
6 facility with a capacity of four to eight, inclusive, beds that  
7 provides 24-hour personal care, developmental services, and  
8 nursing supervision for persons with developmental disabilities  
9 who have continuous needs for skilled nursing care and have been  
10 certified by a physician and surgeon as warranting continuous  
11 skilled nursing care. The facility shall serve medically fragile  
12 persons who have developmental disabilities or demonstrate  
13 significant developmental delay that may lead to a developmental  
14 disability if not treated. ICF/DD-CN facilities shall be subject to  
15 licensure under this chapter upon adoption of licensing regulations  
16 in accordance with Section 1275.3. A facility providing continuous  
17 skilled nursing services to persons with developmental disabilities  
18 pursuant to Section 14132.20 or 14495.10 of the Welfare and  
19 Institutions Code shall apply for licensure under this subdivision  
20 within 90 days after the regulations become effective, and may  
21 continue to operate pursuant to those sections until its licensure  
22 application is either approved or denied.

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

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## BILL ANALYSIS

SENATE HEALTH  
COMMITTEE ANALYSIS  
Senator Ed Hernandez, O.D., Chair

BILL NO: SB 177  
S  
AUTHOR: Strickland  
B  
AMENDED: As Introduced  
HEARING DATE: April 13, 2011  
1  
CONSULTANT:  
7  
Hansel  
7

SUBJECT

Congregate living health facilities

SUMMARY

Raises the bed limit for congregate living health facilities that serve terminally ill patients in counties that have populations of more than 400,000, but less than 500,000, persons.

CHANGES TO EXISTING LAW

Existing law:  
Provides for the licensure and regulation of health facilities, including hospitals, skilled nursing facilities, and congregate living health facilities (CLHFs).

Under current law, a CLHF is defined as a residential home with a capacity of no more than 12 beds, that provides inpatient care, medical supervision, 24-hour skilled nursing and supportive care, and other services to persons who meet one of the following:

Persons who are mentally alert who have physical disabilities, who may be ventilator dependent;

Continued---

STAFF ANALYSIS OF SENATE BILL 177 (Strickland) Page  
2

Persons who have a diagnosis of terminal illness, or life-threatening illness, or both, as defined; or

Persons who are catastrophically and severely disabled, as defined.

Notwithstanding the 12-bed limit, provides that a CLHF that is operated by a city and county may have 59 beds, and provides that a CLHF that is not operated by a city and county that serves persons who have a diagnosis of terminal illness or life-threatening illness, or both, that is located in a county of 500,000 or more persons, may have not more than 25 beds.

Provides that the primary need of CLHF residents shall be for skilled nursing care on a recurring, intermittent, extended, or continuous basis, and provides that this care is generally less intense than that provided in general acute care hospitals but more intense than that provided in skilled nursing facilities.

Provides for the licensure and regulation by the Department of Public Health (DPH) of persons or agencies that provide hospice services in a person's home or other care setting, defined as a specialized form of interdisciplinary health care that is designed to provide palliative care, alleviate the physical, emotional, social, and spiritual discomforts of an individual diagnosed with a terminal illness, and provide supportive care to the primary caregiver and the family.

This bill:

Provides that a CLHF that is not operated by a city and county, that serves persons who have a diagnosis of terminal illness, or life-threatening illness, or both, that is located in a county of 400,000 or more persons may have not more than 25 beds. This would allow counties that have population between 400,000 and 500,000 persons to site

CLHFs at the higher 25-bed limit. According to current population estimates, five counties currently fall into this category: Monterey, Santa Barbara, Solano, Sonoma, and Tulare.

FISCAL IMPACT

STAFF ANALYSIS OF SENATE BILL 177 (Strickland) Page  
3

This bill has not been analyzed by a fiscal committee.

BACKGROUND AND DISCUSSION

According to the author, SB 177 would extend the higher CLHF bed limits that apply to counties with populations of 500,000 or more persons, to counties with populations above 400,000. This change would increase the maximum number of patient beds allowable under the CLHF regulations for the purpose of serving persons who are terminally ill or have been diagnosed with a life-threatening illness.

The author states that Santa Barbara County currently has only one licensed CLHF facility, Serenity House, which is a six bed facility operated by the Visiting Nurse and Hospice Care of Santa Barbara (VNHC). It has become clear that additional end-of-life beds are required to satisfy the growing needs of the county's aging population. Between 2008 and 2009, Serenity House saw a 71 percent increase in the number of patients served, and has developed a growing waiting list due to a lack of available beds for end-of-life patients.

The author states that without the enactment of SB 177, a new Serenity House facility, which is scheduled for opening in May 2011, will have to operate as a 12-bed facility. Enactment of SB 177 will allow the six additional beds to become operative in January 2012 and thus provide more critical hospice bed capacity to the Santa Barbara region of the central coast.

CLHFs that serve terminally ill persons  
CLHFs are residential-based care facilities that provide inpatient care, medical supervision, 24-hour skilled nursing and supportive care, and other services to one of three categories of persons: (1) Persons who are mentally alert who have physical disabilities, who may be ventilator dependent; (2) Persons who have a diagnosis of terminal illness, or life-threatening illness, or both; or (3) Persons who are catastrophically and severely disabled.

According to DPH, 53 CLHFs are currently licensed in California to provide services to these populations. Of these, 12 serve terminally ill patients. CLHFs that serve

STAFF ANALYSIS OF SENATE BILL 177 (Strickland) Page  
4

terminally ill patients are sometimes referred to as CLHF-Bs, which denotes the subparagraph of the statute that refers to them.

Hospice services that are provided to terminally ill patients and their families generally fall into four categories or levels of care - routine home care, continuous home care, inpatient respite care, and general inpatient care. Routine home care and continuous home care services are generally provided in the patient's home, which can include a licensed health or residential care facility that they reside in. CLHF-Bs can provide this level of care, when it is not feasible for a patient to be cared for at home. When a hospice patient needs an inpatient level of care, either to provide respite to family members or due to a need for 24-hour pain control and symptom management, hospice service providers generally must arrange to place the patient in a licensed health facility, such as a hospital, skilled nursing facility or CLHF-B.

Several hospice service providers currently operate their own facilities to accommodate hospice patients with these higher levels of needs. One currently operates a special hospital in San Diego with 24 beds, which is operating under a pilot project that was established in 1980. Eleven hospice service providers operate CLHF-Bs to serve patients

who need inpatient care.

Bed limits and county size

In order to provide options for providing care to chronically ill patients outside of hospitals, CLHFs were established as a category of licensed health facilities in 1986. CLHFs were initially limited to having no more than six beds and were limited to serving mentally alert, physically disabled residents, who can be ventilator-dependent. In 1988, a second category of CLHFs was authorized to provide 24-hour inpatient care to terminally ill patients. These facilities were allowed to have 25 beds in counties which have a population of 500,000 or more persons. In 1989, a third category of CLHFs was established, to serve persons who are catastrophically and severely disabled, which were allowed to have 12 beds in counties with more than 500,000 persons. In 2005, legislation was enacted which raised the bed-size limit for

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STAFF ANALYSIS OF SENATE BILL 177 (Strickland) Page 5

CLHFs in all counties to 12 beds, while retaining the higher 25-bed limit for CLHFs serving terminally ill patients in counties with more than 500,000 persons.

The impetus for the 1988 legislation establishing the new CLHF category for terminally ill patients, with a bed limit of 25 in counties with over 500,000 persons, was to enable a proposed 25-bed hospice facility serving persons with AIDS, which was proposed to be operated by Barlow Hospital in Los Angeles, to be licensed as a CLHF.

Serenity House in Santa Barbara County

In 1994, Visiting Nurse and Hospice Care (VNHC), a nonprofit provider of hospice services, opened Serenity House, a six-bed, Medicare-certified CLHF-B serving Santa Barbara and Ventura counties. Because it is the only similar facility in Santa Barbara County, VNHC states that the facility generally has a waiting list of 8 to 12 patients. In 2004, VNHC initiated a community needs study to determine if the community needed more hospice facility beds. Based on that study, VNHC decided in 2005 to build a new 18-bed facility, which it began construction on in 2009. Serenity House representatives state that while they were aware of the 12 bed limit that applied to CLHF-Bs in counties with population below 500,000, which includes Santa Barbara, they believed that it would be possible to get a waiver from DPH to operate at the larger bed-size. While DPH does have authority to grant program flexibility to waive or modify certain requirements that apply to health facilities, including CLHFs, it cannot modify or waive the bed limits in statute. As a result, VNHC plans to serve 12 patients in the new facility, but will expand that to 18 if SB 177 or another bill is enacted that raises the bed limit. VNHC plans to transfer patients from its existing six-bed facility and to close the existing facility at the end of 2011.

VNHC could have built a second 12-bed facility, which in conjunction with its existing six-bed facility, would have provided the same total number of beds for the area as a single 18-bed facility. However, it concluded, based on research of hospice facilities across the country, that efficiently run facilities have 16 to 24 beds. Because of the need to maintain two staffs at two facilities, have two

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STAFF ANALYSIS OF SENATE BILL 177 (Strickland) Page 6

directors, and maintain two grounds, VNHC concluded that a single 18-bed facility would be more efficient to operate than two separate facilities.

The new facility was built to comply with I-1 building standards, as promulgated in the 2007 edition of the California Building Code. Those standards apply to buildings housing clients on a 24 hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides personal care services. This occupancy may contain more than six non-ambulatory and/or bedridden clients, and includes Residential Care Facilities, Residential Care Facilities for the Elderly (RCFEs), Congregate Living Health Facilities, Group homes, Residential Care Facilities for the Chronically Ill, and CLHF-Bs serving terminally ill patients. In October 2010, the Office of Statewide Health

Planning and Development (OSHPD) issued a letter to Senator Alquist, the previous chair of the Senate Health Committee, stating that the building came under its jurisdiction and needed to meet construction standards applicable to skilled nursing facilities or hospitals. After further review, OSHPD concluded in January 2011 that it did not have jurisdiction over the building and that it was subject to local building jurisdiction under the California Building Code.

Related bills

SB 135 (Hernandez) creates a new health facility licensing category, and requires DPH to develop regulations for, hospice facilities, as defined. Imposes various requirements on these facilities. Provides that DPH may use specified federal regulations as the basis for hospice facility licensure until it adopts regulations.

SB 804 (Corbett) requires the Department of Health Care Services to allow CLHFs, as defined, that solely provide pediatric subacute care services and do not provide Medicare services, to participate in the Medi-Cal subacute care program.

Prior legislation

AB 950 (Hernandez) of 2009-10 Session was substantially similar to SB 135. Held under submission in Senate Appropriations Committee.

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STAFF ANALYSIS OF SENATE BILL 177 (Strickland) Page 7

AB 2523 (Nava) of 2009-10 Session, in its final amended form would have made the same changes as SB 177. Died in Senate Rules Committee.

SB 1164 (Corbett) of 2009-10 would have required the definition of CLHF to include facilities that provide services to children who have a diagnosis of terminal illness or a diagnosis of life-threatening illness. Referred to Senate Health Committee, hearing canceled at the request of the author.

SB 666 (Aanestad), Chapter 443, Statutes of 2005, increases the capacity of a CLHF from no more than six beds to no more than 12 beds. Maintains an exception to allow CLHFs which serve terminally ill patients and which are located in counties with 500,000 or more persons to have 25 beds.

AB 3535 (Wright), Chapter 1459, Statutes of 1986, created the CLHF licensure category, and defined a CLHF as a residential home with a capacity of no more than six beds, which provides inpatient care to mentally alert, physically disabled residents, who may be ventilator dependent.

AB 4536 (Polanco), Chapter 1478, Statutes of 1988, created a second category of CLHFs, to provide 24-hour inpatient care to terminally ill patients. These facilities were allowed to have 25 beds in counties which have a population of 500,000 or more persons.

AB 68 (Polanco), Chapter 1393, Statutes of 1989, established a third category of CLHFs, to serve persons who are catastrophically and severely disabled, which were allowed to have 12 beds in counties with more than 500,000 persons.

Arguments in support

VNHC, the sponsor of SB 177, states that as the only licensed hospice inpatient facility in Santa Barbara County, Serenity House has struggled to meet demands for end-of-life beds. Between 2008 and 2009, Serenity House saw a 71 percent increase in the number of patients served and has a growing waiting list due to the lack of available beds for end of life patients. VNHC states that based on current population projections, the number of people over

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STAFF ANALYSIS OF SENATE BILL 177 (Strickland) Page 8

the age of 65 in Santa Barbara County will increase by 24 percent by 2050. While VNHC acknowledges that it made an error in assuming it would be able to build an 18-bed facility, because it believed that a waiver or exception process existed to allow it to operate at the higher bed-size, VNHC states that the need for additional end-of-life beds continues to be critical in Santa Barbara

County and SB 177 will enable it to meet these needs and continue providing compassionate care to persons at the end of life.

Numerous other entities and individuals, including the California Hospital Association, Santa Barbara Medical Society, Alzheimer's Association-Central Coast, and the Santa Barbara County Board of Supervisors strongly support SB 177 because it will increase the number of hospice facility beds in Santa Barbara county and meet the growing needs for these services.

Arguments in opposition

The California Nurses Association (CNA) objects to the fact that the one CLFH facility that would benefit from the bed limit change in SB 177 was built outside of existing bed limits that apply to CLFHs, and that the administrators of Serenity House did not abide by state law when planning and constructing the facility. CNA argues that it is not appropriate to make an accommodation for this one facility.

CNA further questions whether the building standards for the Serenity House facility have been correctly applied and would be sufficient to keep patients and staff safe. CNA notes that the type of patients that can reside in a CLFH include persons who are catastrophically and severely neurologically disabled, and urges the committee to gain a fuller understanding of why OSHPD reversed its claim of jurisdiction over the building standards for the facility.

POSITIONS

Support: Visiting Nurse & Hospice Care (sponsor)  
 All Saints-by-the Sea Episcopal Church  
 Alliance for Living and Dying Well  
 Alzheimer's Association, California Central Coast Chapter  
 American Dream Concepts

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STAFF ANALYSIS OF SENATE BILL 177 (Strickland) Page  
 9

The Beatitude Society  
 Brown & Brown Insurance  
 California Association for Health Services at Home  
 California Hospital Association  
 California Hospice and Palliative Care Association  
 California Transplant Donor Network  
 CenCal Health  
 City of Goleta  
 Community Hospice  
 Cottage Health System  
 Council on Alcoholism and Drug Abuse  
 County of Santa Barbara Board of Supervisors  
 Dream Foundation  
 Frank Schipper Construction Co.  
 Friendship Center  
 Grace House  
 Hospice of Santa Barbara, Inc.  
 Hospice of the East Bay  
 Hospice of the Foothills  
 Hutton Parker Foundation  
 Livingston Memorial Visiting Nurse Association  
 Maravilla  
 Orfalea Foundations  
 PMSM Architects  
 Santa Barbara Cancer Center  
 Santa Barbara County Medical Society  
 Santa Barbara Neighborhood Clinics  
 Santa Barbara Region Chamber of Commerce  
 Santa Barbara Village  
 Sharon Kennedy Estate Management  
 Sharp Hospice Care  
 St. Francis Foundation  
 United Way of Santa Barbara County  
 Visiting Nurse Association of the Inland Counties  
 Vista Del Monte Retirement Community  
 182 individuals

Oppose: California Nurses Association

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STAFF ANALYSIS OF SENATE BILL 177 (Strickland) Page  
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Bill	Author	of 4/22/11	of 3/17/11	Notes
AB 39	Beall	Support	Support	SpEd funding
AB 154	Beall	Support with amendments	Support with amendments	Mental health services insurance coverage
AB 170	Jeffries	Oppose	Oppose unless amended	Inland Regional Center
AB 171	Beall	Support	Support	Autism, insurance coverage
AB 181	Portantino	Support if amended	Support if amended	Mental health bill of rights
AB 254	Beall	Support		Employment First
AB 479	Nestande	Watch		IHSS reform, spot bill
AB 518	Wagner	Support		Abuse and neglect, mandated reporters
AB 519	(Hernandez, R.)	Support with amendments		Restraint and seclusion
AB 533	Yamada	Support with amendments		ILC Funding
AB 594	Yamada	Watch		Department of Aging and Adult Services
AB 862	Silva	Support if amended		Regional centers posting requirements
AB 876	Valadao	Support with amendments		IHSS waiver form
AB 1205	Berryhill	Oppose		Licensed behavior analysts
AB 1244	Chesbro	Support concept, work with bill author		Self-Determination Program
AB 1375	Huber	Watch		Autism, evidence based tx
SB 121	Liu	Watch	Watch	Foster children and SpEd
SB 161	Huff	Support with amendments		Emergency administration seizure medication
SB 166	Steinberg	Support intent		Autism, insurance coverage
SB 176	Emmerson	Dead		IHSS, spot bill
SB 309	Liu	Watch		Child care facilities
SB 382	Liu	Support in concept		Regional center complaints
SB 462	Blakeslee	Oppose		Certified SpEd advocates
SB 764	Steinberg	Watch		Autism TelHealth
SB 889	Emmerson	Dead		Protection and advocacy, spot bill

Bill	Author	LPRC Position as of 4/22/11	SCUD Position as of 3/17/11	Notes
AB 39	Beall	Support	Support	SpEd funding
AB 154	Beall	Support with amendments	Support with amendments	Mental health services insurance coverage
AB 170	Jeffries	Oppose	Oppose unless amended	Inland Regional Center
AB 171	Beall	Support	Support	Autism, insurance coverage
AB 181	Portantino	Support if amended	Support if amended	Mental health bill of rights
AB 254	Beall	Support		Employment First
AB 479	Nestande	Watch		IHSS reform, spot bill
AB 518	Wagner	Support		Abuse and neglect, mandated reporters
AB 519	(Hernandez, R.)	Support with amendments		Restraint and seclusion
AB 533	Yamada	Support with amendments		ILC Funding
AB 594	Yamada	Watch		Department of Aging and Adult Services
AB 862	Silva	Support if amended		Regional centers posting requirements
AB 876	Valadao	Support with amendments		IHSS waiver form
AB 1205	Berryhill	Oppose		Licensed behavior analysts
AB 1244	Chesbro	Support concept, work with bill author		Self-Determination Program
AB 1375	Huber	Watch		Autism, evidence based tx
SB 121	Liu	Watch	Watch	Foster children and SpEd
SB 161	Huff	Support with amendments		Emergency administration seizure medication
SB 166	Steinberg	Support intent		Autism, insurance coverage
SB 176	Emmerson	Dead		IHSS, spot bill
SB 309	Liu	Watch		Child care facilities
SB 382	Liu	Support in concept		Regional center complaints
SB 462	Blakeslee	Oppose		Certified SpEd advocates
SB 764	Steinberg	Watch		Autism TeleHealth

## LEGISLATIVE AGENDA ITEM DETAIL SHEET

**Bill NUMBER/ISSUE:** Department of Developmental Services Proposals to Achieve \$174 Million General Fund Savings; and May Revision of Proposed 2011-12 State Budget

**BILL SUMMARY:** Not applicable

**BACKGROUND:** According to DDS, "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 primarily serving infants and toddlers at risk of a developmental 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 by May 15, 2011. These proposals must be adopted by the Legislature before they can be implemented." Public forums are being conducted in early May 2011 to allow input to the proposals prior to their submittal to the Legislature.

In addition to this action, the Governor is expected to release his May Revision (aka May Revise) to the proposed 2011-12 State budget by May 14, 2011. This revision normally addresses updated caseload information and, in this instance, may contain

additional cost savings proposals. The Legislature historically conducts budget hearings on the May revise and these will likely include DDS' proposals.

**ANALYSIS/DISCUSSION:** While information on the content of the May Revise is not available at the time of this writing; DDS proposals were issued on May 3, 2011. A copy of the document is attached and was distributed to all Council and LPPC members as well as local area boards upon receipt. Preliminary staff comments on the proposals addressed the following:

- Thank DDS for the opportunity to participate and provide input into the development of their proposals
- Request that a plain language version of the document be developed for ease of understanding by individuals with developmental disabilities and others who might benefit from such information.
- Commend and support the proposals designed to increased federal financial participation, thus reduce general funds costs for services and supports. **Recommend immediately implementing the “benefits card” submittal on a voluntary basis.**
- What is the anticipated impact of the level funding for the Office of Administrative Hearings contract to the conduct fair hearings?
- Support the examination of a consolidated electronic billing system to reduce duplicative administrative costs.
- Without seeing the exact language and exemption criteria, the Annual Family Program Fee proposal is another way to apply an income factor to the system, thus further eroding the entitlement. Assuming the savings by generating income, one could suspect that the language will say, no pay-no services beyond eligibility, needs assessment and case management. While the amount is small and once annually, the Legislature may see the potential impact to generate even more money and savings, thus increase the costs while also reducing the services.
- Prior to the ARM rate system, people with varying needs could live together in residential homes because the rate was assigned to their needs; then ARM assigned the rate to the facility and some residents were forced to remain more dependent because providers did not want to lose the income, or the resident lost their home. This proposal appears to be a way to protect the resident's home while adjusting for their change in service level needs. However since the proposal has a savings target, it is clear that some people will be reassessed and destined for a lower level of care. Will the providers agree? What is the

protection for the consumer? Appears there is no statutory language contemplated to protect the consumer in the process.

- For those consumers who would naturally remain in school between ages 18-21, this proposal makes sense and places the responsibility where it belongs, but there are two possible scenarios- regional centers will advocate to keep people in school whether they need or would benefit from it, thus reducing potential employment opportunities for youth, and/or schools will lower standards even more and move people out at 18. The change would be made in the regional center IPP, but what about the IEP at education?
- The assumption that because two or more people live together means they do things together is faulty on many fronts. For those who, on the natural, operate as a partnership, this proposal has merit, however its' beginning to look like a "group home setting". An independent evaluation of level of need for SLS services is warranted as currently the evaluations are done by providers.
- All new day service options are a way to reduce the level of services currently available without any data to indicate the potential outcomes for people to achieve more independence, inclusion, productivity and or self-determination. Are these really options if you live in a residential facility? How will the SLS maximizing proposal be implemented? And, what is the availability transportation to accommodate these options. Options are always desirable, but should come as enhancements to achieve outcomes, not just as cost-savings proposals.
- Developing a transportation component to an IPP is a good idea, but there is a big difference between a plan and actual implementation based upon transit availability and the proposal fails to mention the safety of consumers. What about mobility training?

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Shape public policy that positively impacts Californians with developmental disabilities and their families.

**PRIOR COUNCIL ACTIVITY:** The Council participated on the DDS workgroups that discussed ideas to address the budget reductions; and previously adopted positions on specific 2011-12 budget proposals.

**RECOMMENDATION(S):** Pending receipt of the May Revise.

**ATTACHMENT(S):** Department of Developmental Services Proposals to Achieve \$174 Million in General Fund Savings.

**PREPARED:** Carol J. Risley, May 5, 2011

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

**INTRODUCTION**

The Department of Developmental Services (the Department) is responsible under the Lanterman Developmental Disabilities Services Act (Lanterman Act) for ensuring that more than 246,000 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 251,702. The number of consumers living in state-operated residential facilities will 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 4.25 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 primarily serving infants and toddlers at risk of a developmental 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 by May 15, 2011. 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 \$30 million of one-time savings in the current year that will bridge the costs associated with implementation delays of the various proposals to be 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 remains 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 technology 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 services<sup>1</sup>, the Association of Regional Center Agencies<sup>2</sup>, statewide organizations who represent service providers in the specific topic areas<sup>3</sup>, and three organizations

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<sup>1</sup> 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.

<sup>2</sup> 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.

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

representing other aspects of our system<sup>4</sup>. 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 services 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 13 savings proposals based on the discussions in the topic area workgroups, survey results, and other input received from the community. The Department will present these proposals at three public forums to be held in Los Angeles on May 5, 2011; Sacramento on May 6, 2011; and Oakland on May 9, 2011. Additional input from the community will be received and considered, especially regarding the impacts of the proposals. Accessibility by teleconference will be provided at each of the forums for those individuals interested in providing input, but who are unable to attend the meetings in person.

## **NEXT STEPS**

Following the public forum meetings, the Department will finalize the proposals and provide them to the Legislature by May 15, 2011, for their consideration. The Department is still drafting the associated statutory language necessary to implement some of the proposals which will be made available before or on May 15, 2011. For any proposals impacting consumer services in their IPP, the Department's proposed legislation will include language regarding exemption

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<sup>4</sup> 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)

processes, where appropriate. The proposals will not be implemented until approved by the Legislature.

## **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 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 receives federal funding through the Money Follows the Person (MFP) Grant related to Lanterman Developmental Center Closure. MFP funding is available to assist individuals in transitioning out of institutions as federally defined, and provides 12 months of service funding upon relocation into a community setting, at an enhanced federal share.

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, 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 subacute facilities to integrated community living arrangements, 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, receiving federal matching funds for the purchase of infant development programs for Early Start consumers with Medi-Cal and obtaining additional federal funding based on updated expenditures for the 1915 (i) SPA.

**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.

**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. In FY 2011-12, the Department's budget includes \$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 two 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 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. In FY 2009-10, the Department achieved GF savings of \$2.287 million by consolidating the 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: In order 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.

**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 246,000 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, nearly \$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 positions<sup>5</sup>; 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 associated with the eligibility changes in the Early Start Program and implementation of the Prevention Program was eliminated. 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 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

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<sup>5</sup> 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.

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

**Implementation:**

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

**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, 66 consumers were admitted to developmental centers. Thirty-four consumers were 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 savings**<sup>6</sup>

TF: \$9,685,000

GF: \$6,966,000

**FY 2012-13 savings**<sup>6</sup>

TF: \$9,685,000

GF: \$6,966,000

**Implementation:**

This proposal will be effective upon approval of the Legislature.

**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

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

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 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

The savings associated with the 4.25 percent payment reduction was calculated by reviewing service codes that included providers who will no longer be exempted from this payment reduction.

To estimate the savings associated with updating the median rates, the Department used existing rate data and recalculated the median rates for a sample of service codes.

**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.

**6. ANNUAL FAMILY PROGRAM FEE**

**Summary:**

An annual family program fee in the amount of \$150 or \$200, depending on family income, 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.
- 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).

**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

It is estimated that there will be 35,000 families eligible for the Annual Family Program Fee.

There will be an exemption process outlined in statute for families with special circumstances.

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

**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 contract 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 \$852.7 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

This estimate assumes approximately 450 consumers residing in service level 4 ARM facilities are determined through their IPP to no longer need the level of service provided by that facility through its assessed rate, want to remain in their home, and a lower level of payment (within the existing ARM rate structure) would be negotiated and established in contract. Assumptions were made regarding the reduction levels of payment dependent on the ARM service level in which the consumer resided.

**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.

## **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 ages 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, 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

The savings estimate uses actual 2009-10 data for consumers 18 to 22 years of age who are receiving services corresponding to this proposal. The assumption was made that 50 percent of consumers aged 18 to 22 will not have a certificate of completion or diploma and will receive needed services through the generic

resource - public education system. 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.

**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. Changes to existing plans will be done through the IPP process.

**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. One proposed strategy is to apply a feature used for IHSS services. Consumers who share a household with other adults likely also share common tasks. Savings for SLS could be accomplished through identifying shared tasks that can be provided at the same time and by the same direct support professional, provided each person's needs is 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, similar to what is done in IHSS, require regional centers to assess during IPP meetings whether there are tasks that can be shared by consumers who live with roommates. Secondly, to minimize the possibility of 'over' supporting a person, an independent needs assessment will be required for all consumers who have SLS costs that exceed the statewide or regional center mean, whichever is lower. 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

For shared tasks, it is estimated that 40 percent of the total costs of SLS are for consumers who share housing with at least one other adult and, among those house mates, approximately 10 percent of tasks can be shared. Since any changes will be made through the IPP process, it is estimated that 50 percent of savings will be realized in FY 2011-12, with full savings achieved in FY 2012-13.

For assessments, 33.4 percent of SLS population is over the statewide or regional center annual average SLS cost and these 33.4 percent SLS consumers share 80.9 percent of the total SLS costs. It is estimated that 5 percent of the total SLS cost for those above the SLS annual average mean would be saved by requiring an independent assessment of existing SLS consumers. Since any changes will be made through the IPP process, it is estimated that 50 percent of

savings for existing SLS consumers will be realized in FY 2011-12 with full year savings in FY 2012-13.

**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.

**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 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. 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. In this option, a consumer can choose to attend fewer program days or choose the hours of participation. The consumer can also choose how to participate in the program. 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. Vendors will have service designs to meet the needs of the consumers. Staffing may be adjusted but must meet all health and safety requirements for the consumer and meet the consumer's tailored needs. The TDS is in lieu of any other day program service. Regional centers will be able to pay the provider a higher rate for customized services as long as the required savings are achieved and the vendor will no longer be prohibited from backfilling the day program slot. TDS will replace the Senior and CEO Options currently in statute.

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, employment or participation in volunteer activities. A Financial Management Services entity will be available to assist the consumer and/or parent in payroll activities. Consumers who choose this option will have up to 150 hours of services each quarter. The VCTS is in lieu of any other day program service.

Modified Full and Half-Day Program Attendance Billing: To ensure maximization of existing resources and to address concerns of residential providers, the proposal would modify the current billing for day programs that bill a daily rate to be consistent with the Work Activity Program (WAP) full and half-day billing requirements. WAP billing requires a minimum of two hours attendance and provides for half-day billing. Currently, California regulations governing the provision of day programs are silent on what constitutes a full or half-day for billing purposes. Programs could shorten their service day to less than four hours and still receive payment for a full day. 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 consumer choice day program 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.

Tailored Day Program (TDP) Service Option: This proposal assumes 5 percent of consumers will choose this option in lieu of their current day program. It also assumes the regional center can negotiate the program service but not pay a rate that exceeds the regular rate associated with four days per week if the vendor has a daily day program rate or the equivalent of 4/5 of the hours for a consumer who is utilizing a vendor with an hourly rate prior to entering into a TDP.

Vouchered Community-Based Training Service Option: This proposal assumes 2 percent of consumers in day programs, look alike day programs, and work activity programs will choose this option in lieu of their current day program. This proposal establishes a rate of \$13.47 per hour, including employer related taxes, and a maximum of 50 hours per month of service. The rate assumes a \$12 per hour wage to the support worker. The rate includes transportation needed to provide the service. The estimated savings assumes a cost associated with a financial management services entity to assist the consumer and/or parent in payroll activities.

Modified Full and Half-Day Program Attendance Billing: This proposal assumes that 15 percent of consumers in daily rate day programs would be reduced by a half day each month based on their attendance.

**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.

## **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 allow regional centers to contract with paraprofessionals, with certain educational or experiential qualifications and acting under professional supervision, to provide behavioral intervention services.

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, 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

It is estimated that total expenditures for Behavioral Services would be reduced by 1 percent through parental verification.

It is estimated that 25 percent of the existing service costs will be associated with the paraprofessional service. The paraprofessional rate will be established at 75 percent of the regional center's median rate for Behavior Management Assistant.

**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.

**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 all infants and toddlers with intake, assessment, and evaluation for the Early Start Program. Infants and toddlers ineligible for the Early Start Program would be referred 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.

**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

Savings assumes 1.5 percent of consumers will access more inclusive forms of transportation. Transportation Access Plans will be developed during the IPP process, as applicable. The estimate assumes the IPPs are staggered evenly over the FY commencing July 1, 2011.

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.



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

	2011-12		Annual	
	TF	GF	TF	GF
<b>Reduced Expenditure Savings that Allow Reduction in Savings Required through Proposals</b>	\$ 55,603,000	\$ 55,603,000	\$ 55,603,000	\$ 55,603,000
<b>1. Increasing Federal Funding for Regional Center Purchased Consumer Services</b>	\$ -	\$ 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
<b>2. Decreasing Department of Developmental Services Headquarters Contracts</b>	\$ 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
<b>3. Reduction and Efficiency in Regional Center Operations Funding</b>	\$ 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
<b>Proposals Associated with Purchase of Consumer Services</b>	\$ 71,897,000	\$ 53,115,000	\$ 107,772,000	\$ 79,137,000
<b>4. Community Placement Plan Funding</b>	\$ 9,685,000	\$ 6,966,000	\$ 9,685,000	\$ 6,966,000
<b>5. Rate Equity and Negotiated Rate Control</b>	\$ 6,008,000	\$ 3,432,000	\$ 14,312,000	\$ 9,568,000
<b>6. Annual Family Program Fee</b>	\$ 3,600,000	\$ 3,600,000	\$ 7,200,000	\$ 7,200,000
<b>7. Maintaining the Consumer's Home of Choice - Mixed Payment Rates in Residential Facilities with Alternative Residential Model (ARM) Rates</b>	\$ 2,255,000	\$ 1,364,000	\$ 4,176,000	\$ 2,526,000
<b>8. Maximize Utilization of Generic Resources - Education Services</b>	\$ 13,696,000	\$ 10,236,000	\$ 18,188,000	\$ 13,593,000
<b>9. Supported Living Services: Maximize Resources</b>	\$ 9,948,000	\$ 5,461,000	\$ 19,896,000	\$ 10,924,000
<b>10. Individual Choice Day Services</b>	\$ 12,839,000	\$ 9,629,000	\$ 16,477,000	\$ 12,358,000
<b>11. Maximizing Resources for Behavioral Services</b>	\$ 4,893,000	\$ 3,852,000	\$ 4,893,000	\$ 3,852,000
<b>12. Transfer Reduced Scope Prevention Program to the Family Resource Centers</b>	\$ 7,500,000	\$ 7,500,000	\$ 10,000,000	\$ 10,000,000
<b>13. Enhancing Community Integration and Participation - Development of Transportation Access Plans</b>	\$ 1,473,000	\$ 1,075,000	\$ 2,945,000	\$ 2,150,000
<b>Total Reductions</b>	\$ 144,080,000	\$ 145,536,000	\$ 181,271,000	\$ 174,024,000



## LEGISLATIVE AGENDA ITEM DETAIL SHEET

**Bill NUMBER/ISSUE:** 2011-12 Policy and Legislative Platform Brochure

**BILL SUMMARY:** Not applicable.

**BACKGROUND:** The Legislative and Public Policy Committee (LPPC) has developed various public policy papers on issues of interest to and impact on individuals with developmental disabilities and their families. The Council also developed and submitted a policy briefing paper to Governor Jerry Brown addressing these same policy issues and others. LPPC noted that in order to make these materials more accessible to the public as well as more readily guide the work of the Council and LPPC, it would be useful to condense the information into a brochure format.

**ANALYSIS/DISCUSSION:** LPPC members used the current policy papers and Governor's briefing paper to develop a scaled down format that could be printed in brochure form including a brief description of the Council and area boards and contact information for all. The draft was vetted at the March LPPC meeting with suggested changes. Those changes were distributed via email for LPPC review, comments were received and incorporated best possible.

The draft language (not yet formatted to a brochure) is being return for final LPPC review and approval prior to being presented to the Executive Committee for approval in June 2011 and printing.

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Shape public policy that positively impacts Californians with developmental disabilities and their families.

**PRIOR COUNCIL ACTIVITY:** None

**RECOMMENDATION(S):** Review and approve the draft brochure for submittal to the Council for approval.

**ATTACHMENT:** Draft SCDD 2011-12 Policy and Legislative Platform

**PREPARED:** Carol J. Risley, May 3, 2011



## **STATE COUNCIL ON DEVELOPMENTAL DISABILITIES**

### **2011-12 POLICY AND LEGISLATIVE PLATFORM**

#### **INTRODUCTION**

The State Council on Developmental Disabilities (Council) is established by state (Lanterman Act at Welfare and Institutions Code, sections 4520) and federal law (Developmental Disabilities and Bill of Rights Act) to ensure that individuals with developmental disabilities and their families participate in the planning, design and receipt of the services and supports they need which allow increased independence, productivity, inclusion and self-determination. To that end, the Council develops and implements goals, objectives, strategies designed to improve and enhance the availability and quality of services and supports to individuals with developmental disabilities and their families.

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

In addition to headquarters in Sacramento, the Council supports 13 area boards that provide services to individuals with developmental disabilities and their families including, but not limited to, advocacy assistance, training, monitoring and public information. By providing these services, area boards ensure that appropriate laws, regulations and policies pertaining to the rights of individuals are observed and protected. Each board participates in the development and implementation of the Council's goals and objectives.

The Council is active in promoting and responding to policy developments and changes that impact people with developmental disabilities. This document conveys the Council's position on mayor policy issues that impact individuals with developmental disabilities and their families.

#### **CONSUMER/FAMILY DIRECTED OPTIONS**

Individuals with developmental disabilities and their families are best suited to identify and understand their unique needs and how best to address those needs. Options for self-determination/individual choice budgeting that provide resources for consumers and families to use in securing the services and supports that best meet their needs and reduce reliance on public social services must developed and supported.

#### **EMPLOYMENT**

Individuals with developmental disabilities are significantly under or not employed. Opportunities for integrated competitive employment must be promoted and developed in the public and private sectors.

## **HOUSING**

Increased and enhanced community integrated living options for individuals with developmental disabilities through access to housing subsidy programs, neighborhood education to reduced discrimination and development of affordable, accessible, and sustained housing options must be continually developed.

## **HEALTH CARE**

California has an obligation to assure that individuals with disabilities being transitioned into MediCal managed care have 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 requiring routine preventative care as well as mental health treatment and attention to women's health issues.

## **EDUCATION**

The federal Individuals with Disabilities Education Act (IDEA) requires children with disabilities be provided with free appropriate public education to prepare them for advanced education, employment, and independent living. IDEA states that to the "maximum extent possible" students with disabilities should be educated alongside their non-disabled peers. School districts/educational authorities need to be held accountable for implementing the letter and the intent of IDEA.

## **SELF-ADVOCACY**

Individuals with developmental disabilities must be provided the opportunity and support to assume their rightful leadership in the system and society. Enhanced training, the use of plain language materials and inclusion in public-policy making activities must be developed and supported.

## **INCLUSION**

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

## **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 experience a greater rate of victimization and lower rates of prosecutions than 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 financial commitment from the State of California must come with assurances 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 pursue individual and systemic change.

## **CONTACT INFORMATION**

### **State Council**

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Sacramento, CA 95811  
(916) 322-8481  
[www.sccd.ca.gov](http://www.sccd.ca.gov)

### **Area Board 1**

Del Norte, Humboldt, Lake, Mendocino  
Counties  
505 S. State Street  
Ukiah, CA 95482  
(707)463-4700

### **Area Board 2**

Butte, Shasta, Glenn, Siskiyou, Lassen,  
Tehama, Plumas, Modoc, Trinity  
Counties  
1367 E. Lassen Ave, #B3  
Chico, CA 95973  
(530) 895-4027

### **Area Board 3**

Alpine, Sacramento, Colusa, El Dorado,  
Sutter, Nevada, Yolo, Placer, Yuba,  
Sierra Counties  
2033 Howe Avenue, Suite 160  
Sacramento, CA 95825  
(916) 263-3085

### **Area Board 4**

Napa, Solano, Sonoma Counties  
236 Georgia St., Suite 201  
Vallejo, CA 94590  
(707) 648-4073

### **Area Board 5**

Alameda, Contra Costa, Marin, San  
Francisco, San Mateo Counties  
1515 Clay Street, Suite 300  
Oakland, CA 94612  
(510) 286-0439

**Area Board 6**

Amador, Calaveras, Tuolumne,  
San Joaquin, Stanislaus Counties  
2529 March Lane, Suite 105  
Stockton, CA 95207-8270  
(209) 473-6930

**Area Board 7**

Monterey, San Benito, Santa Cruz, Santa  
Clara Counties  
2580 North First Street, Suite 240  
San Jose, CA 95131  
(408) 324-2106

**Area Board 8**

Mariposa, Madera, Merced, Fresno,  
Kings, Tulare, Kern Counties  
770 East Shaw Ave., Suite 123  
Fresno, CA 93710  
(559) 222-2496

**Area Board 9**

San Luis Obispo, Santa Barbara, Ventura  
Counties  
200 East Santa Clara Street, Suite 210  
Ventura, CA 93001  
(805) 648-0220

**Area Board 10**

Los Angeles County  
411 North Central Ave., Suite 620  
Glendale, CA 91203-2020  
(818) 543-4631

**Area Board 11**

Orange County  
2000 E. Fourth Street, Suite 115  
Santa Ana, CA 92705  
(714) 558-4404

**Area Board 12**

Mono, Riverside, San Bernardino  
Counties  
650 E Hospitality Lane, Suite 280  
San Bernardino, CA 92408-3584  
(909) 890-1259

**Area Board 13**

San Diego, Imperial Counties  
8880 Rio San Diego Dr., Suite 250  
San Diego, CA 92108-1634  
(619) 688-3323