

**DEPARTMENT OF DEVELOPMENTAL SERVICES**

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**DATE:** July 10, 2012

**TO:** REGIONAL CENTER DIRECTORS AND BOARD PRESIDENTS

**SUBJECT:** JUNE 2012 TRAILER BILL LANGUAGE AFFECTING REGIONAL CENTERS

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

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

**Early Intervention Services**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TBL Section 5: Section 4418.25 of the Welfare and Institutions Code<sup>1</sup> was amended, requiring the Department to establish a SSRS that does all of the following:

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

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

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

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<sup>1</sup> All citations are to the Welfare and Institutions Code unless otherwise stated.

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

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

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

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

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

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

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

### **Purchase of Out-of-state Services**

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

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

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

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

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

#### **Admissions to Developmental Centers Due to an Acute Crisis**

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Porterville Developmental Center Secure Treatment Facility**

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

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

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

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

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

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

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

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

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

### **Large Residential Facilities and Institutions for Mental Disease**

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

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

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

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

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

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

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

### **SLS Assessment**

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

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

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

### **Disparities Data Collection**

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

### **Developmental Services System Trigger**

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

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

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

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

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

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

Sincerely,

*Original Signed By*

NANCY BARGMANN  
Deputy Director  
Community Services Division

cc: Eileen Richey, ARCA  
Mark Hutchinson, DDS