

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE APRIL 4, 2011

SENATE BILL

No. 368

Introduced by Senator Liu

February 15, 2011

An act to amend Sections 319, 361, 706.5, 726, 4514, 4646, 4646.5, 4648, and 4701.6 of the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

SB 368, as amended, Liu. 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.~~

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 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,

1 and whether there are any relatives who are able and willing to
2 take temporary physical custody of the child. The court shall order
3 the release of the child from custody unless a prima facie showing
4 has been made that the child comes within Section 300, the court
5 finds that continuance in the parent's or guardian's home is
6 contrary to the child's welfare, and any of the following
7 circumstances exist:

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

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

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

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

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

25 (d) (1) The court shall also make a determination on the record,
26 referencing the social worker's report or other evidence relied
27 upon, as to whether reasonable efforts were made to prevent or
28 eliminate the need for removal of the child from his or her home,
29 pursuant to subdivision (b) of Section 306, and whether there are
30 available services that would prevent the need for further detention.
31 Services to be considered for purposes of making this determination
32 are case management, counseling, emergency shelter care,
33 emergency in-home caretakers, out-of-home respite care, teaching
34 and demonstrating homemakers, parenting training, transportation,
35 and any other child welfare services authorized by the State
36 Department of Social Services pursuant to Chapter 5 (commencing
37 with Section 16500) of Part 4 of Division 9. The court shall also
38 review whether the social worker has considered whether a referral
39 to public assistance services pursuant to Chapter 2 (commencing
40 with Section 11200) and Chapter 7 (commencing with Section

1 14000) of Part 3, Chapter 1 (commencing with Section 17000) of
2 Part 5, and Chapter 10 (commencing with Section 18900) of Part
3 6 of Division 9 would have eliminated the need to take temporary
4 custody of the child or would prevent the need for further detention.

5 (2) If the child can be returned to the custody of his or her parent
6 or guardian through the provision of those services, the court shall
7 place the child with his or her parent or guardian and order that
8 the services shall be provided. If the child cannot be returned to
9 the physical custody of his or her parent or guardian, the court
10 shall determine if there is a relative who is able and willing to care
11 for the child, and has been assessed pursuant to paragraph (1) of
12 subdivision (d) of Section 309.

13 (e) If a court orders a child detained, the court shall state the
14 facts on which the decision is based, specify why the initial removal
15 was necessary, reference the social worker's report or other
16 evidence relied upon to make its determination whether
17 continuance in the home of the parent or legal guardian is contrary
18 to the child's welfare, order temporary placement and care of the
19 child to be vested with the county child welfare department pending
20 the hearing held pursuant to Section 355 or further order of the
21 court, and order services to be provided as soon as possible to
22 reunify the child and his or her family if appropriate.

23 (f) (1) If the child is not released from custody, the court may
24 order that the child shall be placed in the assessed home of a
25 relative, in an emergency shelter or other suitable licensed place,
26 in a place exempt from licensure designated by the juvenile court,
27 or in the assessed home of a nonrelative extended family member
28 as defined in Section 362.7 for a period not to exceed 15 judicial
29 days.

30 (2) As used in this section, "relative" means an adult who is
31 related to the child by blood, adoption, or affinity within the fifth
32 degree of kinship, including stepparents, stepsiblings, and all
33 relatives whose status is preceded by the words "great,"
34 "great-great," or "grand," or the spouse of any of these persons,
35 even if the marriage was terminated by death or dissolution.
36 However, only the following relatives shall be given preferential
37 consideration for placement of the child: an adult who is a
38 grandparent, aunt, uncle, or sibling of the child.

39 (3) The court shall consider the recommendations of the social
40 worker based on the assessment pursuant to paragraph (1) of

1 subdivision (d) of Section 309 of the relative's home, including
2 the results of a criminal records check and prior child abuse
3 allegations, if any, prior to ordering that the child be placed with
4 a relative. The court shall order the parent to disclose to the social
5 worker the names, residences, and any known identifying
6 information of any maternal or paternal relatives of the child. The
7 social worker shall initiate the assessment pursuant to Section
8 361.3 of any relative to be considered for continuing placement.

9 (g) (1) At the initial hearing upon the petition filed in
10 accordance with subdivision (c) of Rule 5.520 of the California
11 Rules of Court or anytime thereafter up until the time that the
12 minor is adjudged a dependent child of the court or a finding is
13 made dismissing the petition, the court may temporarily limit the
14 right of the parent or guardian to make educational or
15 developmental services decisions for the child and temporarily
16 appoint a responsible adult to make educational or developmental
17 services decisions for the child if all of the following conditions
18 are found:

19 (A) The parent or guardian is unavailable, unable, or unwilling
20 to exercise educational or developmental services rights for the
21 child.

22 (B) The county placing agency has made diligent efforts to
23 locate and secure the participation of the parent or guardian in
24 educational or developmental services decisionmaking.

25 (C) The child's educational and developmental services needs
26 cannot be met without the temporary appointment of a responsible
27 adult.

28 (2) If the court cannot identify a responsible adult to make
29 educational decisions for the child and the appointment of a
30 surrogate parent, as defined in subdivision (a) of Section 56050
31 of the Education Code, is not warranted, the court may, with the
32 input of any interested person, make educational decisions for the
33 child. If the court cannot identify a responsible adult to make
34 developmental services decisions for the child, the court may, with
35 the input of the any interested person, make developmental services
36 decisions for the child. If the court makes educational or
37 developmental services decisions for the child, the court shall also
38 issue appropriate orders to ensure that every effort is made to
39 identify a responsible adult to make future educational or
40 developmental services decisions for the child.

1 (3) Any temporary appointment of a responsible adult and
2 temporary limitation on the right of the parent or guardian to make
3 educational or developmental services decisions for the child shall
4 be specifically addressed in the court order. Any order made under
5 this section shall expire at the conclusion of the hearing held
6 pursuant to Section 361 or upon dismissal of the petition. Upon
7 the entering of disposition orders, any additional needed limitation
8 on the parent's or guardian's educational or developmental services
9 rights shall be addressed pursuant to Section 361.

10 SEC. 2. Section 361 of the Welfare and Institutions Code is
11 amended to read:

12 361. (a) In all cases in which a minor is adjudged a dependent
13 child of the court on the ground that the minor is a person described
14 by Section 300, the court may limit the control to be exercised
15 over the dependent child by any parent or guardian and shall by
16 its order clearly and specifically set forth all those limitations. Any
17 limitation on the right of the parent or guardian to make educational
18 or developmental services decisions for the child shall be
19 specifically addressed in the court order. The limitations may not
20 exceed those necessary to protect the child. If the court specifically
21 limits the right of the parent or guardian to make educational or
22 developmental services decisions for the child, the court shall at
23 the same time appoint a responsible adult to make educational or
24 developmental services decisions for the child until one of the
25 following occurs:

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

29 (2) Another responsible adult is appointed to make educational
30 or developmental services decisions for the minor pursuant to this
31 section.

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

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

35 (5) The child is placed into a planned permanent living
36 arrangement pursuant to paragraph (3) of subdivision (g) of Section
37 366.21, Section 366.22, or Section 366.26, at which time, for
38 educational decisionmaking, the foster parent, relative caretaker,
39 or nonrelative extended family member as defined in Section 362.7,
40 has the right to represent the child in educational matters pursuant

1 to Section 56055 of the Education Code, and for decisions relating
2 to developmental services, the foster parent, relative caregiver, or
3 nonrelative extended family member of the planned permanent
4 living arrangement shall become the authorized representative for
5 the child pursuant to Section 4701.6 unless the court specifies
6 otherwise in a court order.

7 An individual who would have a conflict of interest in
8 representing the child may not be appointed to make educational
9 or developmental services decisions. For purposes of this section,
10 “an individual who would have a conflict of interest,” means a
11 person having any interests that might restrict or bias his or her
12 ability to make educational or developmental services decisions,
13 including, but not limited to, those conflicts of interest prohibited
14 by Section 1126 of the Government Code, and the receipt of
15 compensation or attorneys’ fees for the provision of services
16 pursuant to this section. A foster parent may not be deemed to
17 have a conflict of interest solely because he or she receives
18 compensation for the provision of services pursuant to this section.

19 If the court is unable to appoint a responsible adult to make
20 educational decisions for the child and paragraphs (1) to (5),
21 inclusive, do not apply, and the child has either been referred to
22 the local educational agency for special education and related
23 services, or has a valid individualized education program, the court
24 shall refer the child to the local educational agency for appointment
25 of a surrogate parent pursuant to Section 7579.5 of the Government
26 Code.

27 If the court cannot identify a responsible adult to make
28 educational decisions for the child, the appointment of a surrogate
29 parent as defined in subdivision (a) of Section 56050 of the
30 Education Code is not warranted, and there is no foster parent to
31 exercise the authority granted by Section 56055 of the Education
32 Code, the court may, with the input of any interested person, make
33 educational decisions for the child.

34 If the court cannot identify a responsible adult to make
35 developmental services decisions for the child, the court may, with
36 the input of any interested person, make developmental services
37 decisions for the child.

38 All educational and school placement decisions shall seek to
39 ensure that the child is in the least restrictive educational programs
40 and has access to the academic resources, services, and

1 extracurricular and enrichment activities that are available to all
2 pupils. In all instances, educational and school placement decisions
3 shall be based on the best interests of the child.

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

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

15 (1) There is or would be a substantial danger to the physical
16 health, safety, protection, or physical or emotional well-being of
17 the minor if the minor were returned home, and there are no
18 reasonable means by which the minor's physical health can be
19 protected without removing the minor from the minor's parent's
20 or guardian's physical custody. The fact that a minor has been
21 adjudicated a dependent child of the court pursuant to subdivision
22 (e) of Section 300 shall constitute prima facie evidence that the
23 minor cannot be safely left in the physical custody of the parent
24 or guardian with whom the minor resided at the time of injury.
25 The court shall consider, as a reasonable means to protect the
26 minor, the option of removing an offending parent or guardian
27 from the home. The court shall also consider, as a reasonable means
28 to protect the minor, allowing a nonoffending parent or guardian
29 to retain physical custody as long as that parent or guardian
30 presents a plan acceptable to the court demonstrating that he or
31 she will be able to protect the child from future harm.

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

37 (3) The minor is suffering severe emotional damage, as indicated
38 by extreme anxiety, depression, withdrawal, or untoward aggressive
39 behavior toward himself or herself or others, and there are no
40 reasonable means by which the minor's emotional health may be

1 protected without removing the minor from the physical custody
2 of his or her parent or guardian.

3 (4) The minor or a sibling of the minor has been sexually abused,
4 or is deemed to be at substantial risk of being sexually abused, by
5 a parent, guardian, or member of his or her household, or other
6 person known to his or her parent, and there are no reasonable
7 means by which the minor can be protected from further sexual
8 abuse or a substantial risk of sexual abuse without removing the
9 minor from his or her parent or guardian, or the minor does not
10 wish to return to his or her parent or guardian.

11 (5) The minor has been left without any provision for his or her
12 support, or a parent who has been incarcerated or institutionalized
13 cannot arrange for the care of the minor, or a relative or other adult
14 custodian with whom the child has been left by the parent is
15 unwilling or unable to provide care or support for the child and
16 the whereabouts of the parent is unknown and reasonable efforts
17 to locate him or her have been unsuccessful.

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

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

30 (B) Failure to meet non-Indian family and child-rearing
31 community standards, or the existence of other behavior or
32 conditions that meet the removal standards of this section, will not
33 support an order for placement in the absence of the finding in this
34 paragraph.

35 (d) The court shall make a determination as to whether
36 reasonable efforts were made to prevent or to eliminate the need
37 for removal of the minor from his or her home or, if the minor is
38 removed for one of the reasons stated in paragraph (5) of
39 subdivision (c), whether it was reasonable under the circumstances
40 not to make any of those efforts, or, in the case of an Indian child

1 custody proceeding, whether active efforts as required in Section
2 361.7 were made and that these efforts have proved unsuccessful.
3 The court shall state the facts on which the decision to remove the
4 minor is based.

5 (e) The court shall make all of the findings required by
6 subdivision (a) of Section 366 in either of the following
7 circumstances:

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

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

13 SEC. 3. Section 706.5 of the Welfare and Institutions Code is
14 amended to read:

15 706.5. (a) If placement in foster care is recommended by the
16 probation officer, or where the minor is already in foster care
17 placement or pending placement pursuant to an earlier order, the
18 social study prepared by the probation officer that is received into
19 evidence at disposition pursuant to Section 706 shall include a
20 case plan, as described in Section 706.6. If the court elects to hold
21 the first status review at the disposition hearing, the social study
22 shall also include, but not be limited to, the factual material
23 described in subdivision (c).

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

29 (c) At each status review hearing, the social study shall include,
30 but not be limited to, an updated case plan as described in Section
31 706.6 and the following information:

32 (1) The continuing necessity for and appropriateness of the
33 placement.

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

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

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

7 (5) Whether the minor has been or will be referred to educational
8 services and what services the minor is receiving, including special
9 education and related services if the minor has exceptional needs
10 as described in Part 30 (commencing with Section 56000) of
11 Division 4 of Title 2 of the Education Code or accommodations
12 if the child has disabilities as described in Chapter 16 (commencing
13 with Section 701) of Title 29 of the United States Code Annotated.
14 The probation officer or child advocate shall solicit comments
15 from the appropriate local education agency prior to completion
16 of the social study.

17 (6) If the parent or guardian is unwilling or unable to participate
18 in making an educational or developmental services decision for
19 his or her child, or if other circumstances exist that compromise
20 the ability of the parent or guardian to make educational or
21 developmental services decisions for the child, the probation
22 department shall consider whether the right of the parent or
23 guardian to make educational or developmental services decisions
24 for the minor should be limited. If the study makes that
25 recommendation, it shall identify whether there is a responsible
26 adult available to make educational or developmental services
27 decisions for the minor pursuant to Section 726.

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

32 SEC. 4. Section 726 of the Welfare and Institutions Code is
33 amended to read:

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

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

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

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

8 (b) Whenever the court specifically limits the right of the parent
9 or guardian to make educational or developmental services
10 decisions for the minor, the court shall at the same time appoint a
11 responsible adult to make educational or developmental services
12 decisions for the child until one of the following occurs:

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

16 (2) Another responsible adult is appointed to make educational
17 or developmental services decisions for the minor pursuant to this
18 section.

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

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

22 (5) The child is placed into a planned permanent living
23 arrangement pursuant to paragraph (5) or (6) of subdivision (b) of
24 Section 727.3, at which time, for educational decisionmaking, the
25 foster parent, relative caretaker, or nonrelative extended family
26 member as defined in Section 362.7 has the right to represent the
27 child in educational matters pursuant to Section 56055 of the
28 Education Code, and for decisions relating to developmental
29 services, the foster parent, relative caregiver, or nonrelative
30 extended family member of the planned permanent living
31 arrangement shall become the authorized representative for the
32 child pursuant to Section 4701.6 unless the court specifies
33 otherwise in a court order.

34 An individual who would have a conflict of interest in
35 representing the child, as specified under federal regulations, may
36 not be appointed to make educational decisions. The limitations
37 applicable to conflicts of interest for educational rights holders
38 shall also apply to authorized representatives for developmental
39 services decisions pursuant to Section 4701.6. For purposes of this
40 section, "an individual who would have a conflict of interest,"

1 means a person having any interests that might restrict or bias his
2 or her ability to make educational or developmental services
3 decisions, including, but not limited to, those conflicts of interest
4 prohibited by Section 1126 of the Government Code, and the
5 receipt of compensation or attorneys' fees for the provision of
6 services pursuant to this section. A foster parent may not be deemed
7 to have a conflict of interest solely because he or she receives
8 compensation for the provision of services pursuant to this section.

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

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

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

30 As used in this section and in Section 731, "maximum term of
31 imprisonment" means the longest of the three time periods set
32 forth in paragraph (2) of subdivision (a) of Section 1170 of the
33 Penal Code, but without the need to follow the provisions of
34 subdivision (b) of Section 1170 of the Penal Code or to consider
35 time for good behavior or participation pursuant to Sections 2930,
36 2931, and 2932 of the Penal Code, plus enhancements which must
37 be proven if pled.

38 If the court elects to aggregate the period of physical confinement
39 on multiple counts or multiple petitions, including previously
40 sustained petitions adjudging the minor a ward within Section 602,

1 the “maximum term of imprisonment” shall be the aggregate term
2 of imprisonment specified in subdivision (a) of Section 1170.1 of
3 the Penal Code, which includes any additional term imposed
4 pursuant to Section 667, 667.5, 667.6, or 12022.1 of the Penal
5 Code, and Section 11370.2 of the Health and Safety Code.

6 If the charged offense is a misdemeanor or a felony not included
7 within the scope of Section 1170 of the Penal Code, the “maximum
8 term of imprisonment” is the longest term of imprisonment
9 prescribed by law.

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

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

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

19 4514. All information and records obtained in the course of
20 providing intake, assessment, and services under Division 4.1
21 (commencing with Section 4400), Division 4.5 (commencing with
22 Section 4500), Division 6 (commencing with Section 6000), or
23 Division 7 (commencing with Section 7100) to persons with
24 developmental disabilities shall be confidential. Information and
25 records obtained in the course of providing similar services to
26 either voluntary or involuntary recipients prior to 1969 shall also
27 be confidential. Information and records shall be disclosed only
28 in any of the following cases:

29 (a) In communications between qualified professional persons,
30 whether employed by a regional center or state developmental
31 center, or not, in the provision of intake, assessment, and services
32 or appropriate referrals. The consent of the person with a
33 developmental disability, or his or her guardian or conservator,
34 shall be obtained before information or records may be disclosed
35 by regional center or state developmental center personnel to a
36 professional not employed by the regional center or state
37 developmental center, or a program not vendored by a regional
38 center or state developmental center.

39 (b) When the person with a developmental disability, who has
40 the capacity to give informed consent, designates individuals to

1 whom information or records may be released, except that nothing
 2 in this chapter shall be construed to compel a physician,
 3 psychologist, social worker, marriage and family therapist, nurse,
 4 attorney, or other professional to reveal information that has been
 5 given to him or her in confidence by a family member of the person
 6 unless a valid release has been executed by that family member.

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

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

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

27
 28 “ _____
 29 Date
 30

31 As a condition of doing research concerning persons with
 32 developmental disabilities who have received services from ____
 33 (fill in the facility, agency or person), I, ____, agree to obtain the
 34 prior informed consent of persons who have received services to
 35 the maximum degree possible as determined by the appropriate
 36 institutional review board or boards for protection of human
 37 subjects reviewing my research, or the person’s parent, guardian,
 38 or conservator, and I further agree not to divulge any information
 39 obtained in the course of the research to unauthorized persons, and
 40 not to publish or otherwise make public any information regarding

1 persons who have received services so those persons who received
2 services are identifiable.

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

6
7 _____”
8 Signed
9

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

11 (g) To governmental law enforcement agencies as needed for
12 the protection of federal and state elective constitutional officers
13 and their families.

14 (h) To the Senate Committee on Rules or the Assembly
15 Committee on Rules for the purposes of legislative investigation
16 authorized by the committee.

17 (i) To the courts and designated parties as part of a regional
18 center report or assessment in compliance with a statutory or
19 regulatory requirement, including, but not limited to, Section
20 1827.5 of the Probate Code, Sections 1001.22 and 1370.1 of the
21 Penal Code, Section 6502 of the Welfare and Institutions Code,
22 and Section 56557 of Title 17 of the California Code of
23 Regulations.

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

37 (k) Upon written consent by a person with a developmental
38 disability previously or presently receiving services from a regional
39 center or state developmental center, the director of the regional
40 center or state developmental center, or his or her designee, may

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

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

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

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

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

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

1 possession of the board shall not contain the name of the person
2 with a developmental disability.

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

14 This subdivision shall be limited solely to information directly
15 relating to the factual circumstances of the commission of the
16 enumerated offenses and shall not include any information relating
17 to the mental state of the patient or the circumstances of his or her
18 treatment unless relevant to the crime involved.

19 This subdivision shall not be construed as an exception to, or in
20 any other way affecting, the provisions of Article 7 (commencing
21 with Section 1010) of Chapter 4 of Division 8 of the Evidence
22 Code, or Chapter 11 (commencing with Section 15600) and
23 Chapter 13 (commencing with Section 15750) of Part 3 of Division
24 9.

25 (q) To the Youth Authority and Adult Correctional Agency or
26 any component thereof, as necessary to the administration of
27 justice.

28 (r) To an agency mandated to investigate a report of abuse filed
29 pursuant to either Section 11164 of the Penal Code or Section
30 15630 of the Welfare and Institutions Code for the purposes of
31 either a mandated or voluntary report or when those agencies
32 request information in the course of conducting their investigation.

33 (s) When a person with developmental disabilities, or the parent,
34 guardian, or conservator of a person with developmental disabilities
35 who lacks capacity to consent, fails to grant or deny a request by
36 a regional center or state developmental center to release
37 information or records relating to the person with developmental
38 disabilities within a reasonable period of time, the director of the
39 regional or developmental center, or his or her designee, may

1 release information or records on behalf of that person provided
2 both of the following conditions are met:

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

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

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

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

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

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

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

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

38 (I) Prohibits the parties from disclosing or using the information
39 or records for any purpose other than the proceedings for which
40 the information or records were requested or provided.

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

12 (III) Requires the parties to submit the stipulation to the
13 administrative tribunal with jurisdiction over the adverse action
14 at the earliest possible opportunity.

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

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

36 (4) All records, documents, or other materials containing
37 confidential information protected by this section that have been
38 submitted or otherwise disclosed to the administrative agency or
39 other person as a component of an appeal from an adverse action
40 shall, upon proper motion by the appointing authority to the

1 administrative tribunal, be placed under administrative seal and
2 shall not, thereafter, be subject to disclosure to any person or entity
3 except upon the issuance of an order of a court of competent
4 jurisdiction.

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

11 SEC. 6. Section 4646 of the Welfare and Institutions Code is
12 amended to read:

13 4646. (a) It is the intent of the Legislature to ensure that the
14 individual program plan and provision of services and supports
15 by the regional center system is centered on the individual and the
16 family of the individual with developmental disabilities and takes
17 into account the needs and preferences of the individual and the
18 family, where appropriate, as well as promoting community
19 integration, independent, productive, and normal lives, and stable
20 and healthy environments. It is the further intent of the Legislature
21 to ensure that the provision of services to consumers and their
22 families be effective in meeting the goals stated in the individual
23 program plan, reflect the preferences and choices of the consumer,
24 and reflect the cost-effective use of public resources.

25 (b) The individual program plan is developed through a process
26 of individualized needs determination. The individual with
27 developmental disabilities and, where appropriate, his or her
28 parents, legal guardian or conservator, or authorized representative,
29 shall have the opportunity to actively participate in the development
30 of the plan.

31 (c) An individual program plan shall be developed for any
32 person who, following intake and assessment, is found to be
33 eligible for regional center services. These plans shall be completed
34 within 60 days of the completion of the assessment. At the time
35 of intake, the regional center shall inform the consumer and, where
36 appropriate, his or her parents, legal guardian or conservator, or
37 authorized representative, of the services available through the
38 local area board and the protection and advocacy agency designated
39 by the Governor pursuant to federal law, and shall provide the
40 address and telephone numbers of those agencies.

1 (d) Individual program plans shall be prepared jointly by the
2 planning team. Decisions concerning the consumer's goals,
3 objectives, and services and supports that will be included in the
4 consumer's individual program plan and purchased by the regional
5 center or obtained from generic agencies shall be made by
6 agreement between the regional center representative and the
7 consumer or, where appropriate, the parents, legal guardian,
8 conservator, or authorized representative at the program plan
9 meeting.

10 (e) Regional centers shall comply with the request of a
11 consumer, or where appropriate, the request of his or her parents,
12 legal guardian, conservator, or authorized representative, that a
13 designated representative receive written notice of all meetings to
14 develop or revise his or her individual program plan and of all
15 notices sent to the consumer pursuant to Section 4710. The
16 designated representative may be a parent or family member.

17 (f) If a final agreement regarding the services and supports to
18 be provided to the consumer cannot be reached at a program plan
19 meeting, then a subsequent program plan meeting shall be
20 convened within 15 days, or later at the request of the consumer
21 or, when appropriate, the parents, legal guardian, conservator, or
22 authorized representative or when agreed to by the planning team.
23 Additional program plan meetings may be held with the agreement
24 of the regional center representative and the consumer or, where
25 appropriate, the parents, legal guardian, conservator, or authorized
26 representative.

27 (g) An authorized representative of the regional center and the
28 consumer or, where appropriate, his or her parents, legal guardian,
29 conservator, or authorized representative shall sign the individual
30 program plan prior to its implementation. If the consumer or, where
31 appropriate, his or her parents, legal guardian, conservator, or
32 authorized representative, does not agree with all components of
33 the plan, he or she may indicate that disagreement on the plan.
34 Disagreement with specific plan components shall not prohibit the
35 implementation of services and supports agreed to by the consumer
36 or, where appropriate, his or her parents, legal guardian,
37 conservator, or authorized representative. If the consumer or, where
38 appropriate, his or her parents, legal guardian, conservator, or
39 authorized representative, does not agree with the plan in whole

1 or in part, he or she shall be sent written notice of the fair hearing
2 rights, as required by Section 4701.

3 SEC. 7. Section 4646.5 of the Welfare and Institutions Code
4 is amended to read:

5 4646.5. (a) The planning process for the individual program
6 plan described in Section 4646 shall include all of the following:

7 (1) Gathering information and conducting assessments to
8 determine the life goals, capabilities and strengths, preferences,
9 barriers, and concerns or problems of the person with
10 developmental disabilities. For children with developmental
11 disabilities, this process should include a review of the strengths,
12 preferences, and needs of the child and the family unit as a whole.
13 Assessments shall be conducted by qualified individuals and
14 performed in natural environments whenever possible. Information
15 shall be taken from the consumer, his or her parents and other
16 family members, his or her friends, advocates, authorized
17 representative if applicable, providers of services and supports,
18 and other agencies. The assessment process shall reflect awareness
19 of, and sensitivity to, the lifestyle and cultural background of the
20 consumer and the family.

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

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

35 (4) A schedule of the type and amount of services and supports
36 to be purchased by the regional center or obtained from generic
37 agencies or other resources in order to achieve the individual
38 program plan goals and objectives, and identification of the
39 provider or providers of service responsible for attaining each
40 objective, including, but not limited to, vendors, contracted

1 providers, generic service agencies, and natural supports. The plan
2 shall specify the approximate scheduled start date for services and
3 supports and shall contain timelines for actions necessary to begin
4 services and supports, including generic services.

5 (5) When agreed to by the consumer, the parents, legally
6 appointed guardian, or authorized representative of a minor
7 consumer, or the legally appointed conservator of an adult
8 consumer or the authorized representative, including those
9 appointed pursuant to subdivision (d) of Section 4548 and
10 subdivision (e) of Section 4705, a review of the general health
11 status of the adult or child including a medical, dental, and mental
12 health needs shall be conducted. This review shall include a
13 discussion of current medications, any observed side effects, and
14 the date of last review of the medication. Service providers shall
15 cooperate with the planning team to provide any information
16 necessary to complete the health status review. If any concerns
17 are noted during the review, referrals shall be made to regional
18 center clinicians or to the consumer's physician, as appropriate.
19 Documentation of health status and referrals shall be made in the
20 consumer's record by the service coordinator.

21 (6) A schedule of regular periodic review and reevaluation to
22 ascertain that planned services have been provided, that objectives
23 have been fulfilled within the times specified, and that consumers
24 and families are satisfied with the individual program plan and its
25 implementation.

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

34 (c) (1) The department, with the participation of representatives
35 of a statewide consumer organization, the Association of Regional
36 Center Agencies, an organized labor organization representing
37 service coordination staff, and the Organization of Area Boards
38 shall prepare training material and a standard format and
39 instructions for the preparation of individual program plans, which
40 embodies an approach centered on the person and family.

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

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

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

9 4648. In order to achieve the stated objectives of a consumer's
10 individual program plan, the regional center shall conduct activities,
11 including, but not limited to, all of the following:

12 (a) Securing needed services and supports.

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

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

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

37 (A) Vendorization or contracting is the process for identification,
38 selection, and utilization of service vendors or contractors, based
39 on the qualifications and other requirements necessary in order to
40 provide the service.

1 (B) A regional center may reimburse an individual or agency
2 for services or supports provided to a regional center consumer if
3 the individual or agency has a rate of payment for vendored or
4 contracted services established by the department, pursuant to this
5 division, and is providing services pursuant to an emergency
6 vendorization or has completed the vendorization procedures or
7 has entered into a contract with the regional center and continues
8 to comply with the vendorization or contracting requirements. The
9 director shall adopt regulations governing the vendorization process
10 to be utilized by the department, regional centers, vendors and the
11 individual or agency requesting vendorization.

12 (C) Regulations shall include, but not be limited to: the vendor
13 application process, and the basis for accepting or denying an
14 application; the qualification and requirements for each category
15 of services that may be provided to a regional center consumer
16 through a vendor; requirements for emergency vendorization;
17 procedures for termination of vendorization; the procedure for an
18 individual or an agency to appeal any vendorization decision made
19 by the department or regional center.

20 (D) A regional center may vendorize a licensed facility for
21 exclusive services to persons with developmental disabilities at a
22 capacity equal to or less than the facility's licensed capacity. A
23 facility already licensed on January 1, 1999, shall continue to be
24 vendorized at their full licensed capacity until the facility agrees
25 to vendorization at a reduced capacity.

26 (E) Effective July 1, 2009, notwithstanding any other provision
27 of law or regulation to the contrary, a regional center shall not
28 newly vendor a State Department of Social Services licensed
29 24-hour residential care facility with a licensed capacity of 16 or
30 more beds, unless the facility qualifies for receipt of federal funds
31 under the Medicaid Program.

32 (4) Notwithstanding subparagraph (B), a regional center may
33 contract or issue a voucher for services and supports provided to
34 a consumer or family at a cost not to exceed the maximum rate of
35 payment for that service or support established by the department.
36 If a rate has not been established by the department, the regional
37 center may, for an interim period, contract for a specified service
38 or support with, and establish a rate of payment for, any provider
39 of the service or support necessary to implement a consumer's
40 individual program plan. Contracts may be negotiated for a period

1 of up to three years, with annual review and subject to the
2 availability of funds.

3 (5) In order to ensure the maximum flexibility and availability
4 of appropriate services and supports for persons with
5 developmental disabilities, the department shall establish and
6 maintain an equitable system of payment to providers of services
7 and supports identified as necessary to the implementation of a
8 consumers' individual program plan. The system of payment shall
9 include provision for a rate to ensure that the provider can meet
10 the special needs of consumers and provide quality services and
11 supports in the least restrictive setting as required by law.

12 (6) The regional center and the consumer, or where appropriate,
13 his or her parents, legal guardian, conservator, or authorized
14 representative, including those appointed pursuant to subdivision
15 (d) of Section 4548 or subdivision (e) of Section 4705, shall,
16 pursuant to the individual program plan, consider all of the
17 following when selecting a provider of consumer services and
18 supports:

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

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

24 (C) Where appropriate, the existence of licensing, accreditation,
25 or professional certification.

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

38 (E) The consumer's choice of providers, or, where appropriate,
39 the consumer's parent's, legal guardian's, authorized
40 representative's, or conservator's choice of providers.

1 (7) No service or support provided by any agency or individual
2 shall be continued unless the consumer or, where appropriate, his
3 or her parents, legal guardian, or conservator, or authorized
4 representative, including those appointed pursuant to subdivision
5 (d) of Section 4548, subdivision (b) of Section 4701.6, or
6 subdivision (e) of Section 4705, is satisfied and the regional center
7 and the consumer or, when appropriate, the person's parents or
8 legal guardian or conservator agree that planned services and
9 supports have been provided, and reasonable progress toward
10 objectives have been made.

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

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

25 (B) Effective July 1, 2012, notwithstanding any other provision
26 of law or regulation to the contrary, a regional center shall not
27 purchase residential services from a State Department of Social
28 Services licensed 24-hour residential care facility with a licensed
29 capacity of 16 or more beds. This prohibition on regional center
30 purchase of residential services shall not apply to either of the
31 following:

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

36 (ii) A residential facility service provider that has a written
37 agreement and specific plan prior to July 1, 2012, with the
38 vendoring regional center to downsize the existing facility by
39 transitioning its residential services to living arrangements of 15

1 beds or less or restructure the large facility to meet federal
2 Medicaid eligibility requirements on or before June 30, 2013.

3 (C) Each person with developmental disabilities placed by the
4 regional center in a community living arrangement shall have the
5 rights specified in this division. These rights shall be brought to
6 the person’s attention by any means necessary to reasonably
7 communicate these rights to each resident, provided that, at a
8 minimum, the Director of Developmental Services prepare,
9 provide, and require to be clearly posted in all residential facilities
10 and day programs a poster using simplified language and pictures
11 that is designed to be more understandable by persons with
12 cognitive disabilities and that the rights information shall also be
13 available through the regional center to each residential facility
14 and day program in alternative formats, including, but not limited
15 to, other languages, braille, and audio tapes, when necessary to
16 meet the communication needs of consumers.

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

32 (10) Emergency and crisis intervention services including, but
33 not limited to, mental health services and behavior modification
34 services, may be provided, as needed, to maintain persons with
35 developmental disabilities in the living arrangement of their own
36 choice. Crisis services shall first be provided without disrupting a
37 person’s living arrangement. If crisis intervention services are
38 unsuccessful, emergency housing shall be available in the person’s
39 home community. If dislocation cannot be avoided, every effort

1 shall be made to return the person to his or her living arrangement
2 of choice, with all necessary supports, as soon as possible.

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

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

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

17 (A) Outreach and education to programs and services within
18 the community.

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

21 (C) Developing unpaid natural supports when possible.

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

24 (15) Notwithstanding any other provision of law or regulation
25 to the contrary, effective July 1, 2009, regional centers shall not
26 purchase experimental treatments, therapeutic services, or devices
27 that have not been clinically determined or scientifically proven
28 to be effective or safe or for which risks and complications are
29 unknown. Experimental treatments or therapeutic services include
30 experimental medical or nutritional therapy when the use of the
31 product for that purpose is not a general physician practice. For
32 regional center consumers receiving these services as part of their
33 individual program plan (IPP) or individualized family service
34 plan (IFSP) on July 1, 2009, this prohibition shall apply on August
35 1, 2009.

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

39 (2) Whenever the advocacy efforts of a regional center to secure
40 or protect the civil, legal, or service rights of any of its consumers

1 prove ineffective, the regional center or the person with
2 developmental disabilities or his or her parents, legal guardian, or
3 other representative may request the area board to initiate action
4 under the provisions defining area board advocacy functions
5 established in this division.

6 (c) The regional center may assist consumers and families
7 directly, or through a provider, in identifying and building circles
8 of support within the community.

9 (d) In order to increase the quality of community services and
10 protect consumers, the regional center shall, when appropriate,
11 take either of the following actions:

12 (1) Identify services and supports that are ineffective or of poor
13 quality and provide or secure consultation, training, or technical
14 assistance services for any agency or individual provider to assist
15 that agency or individual provider in upgrading the quality of
16 services or supports.

17 (2) Identify providers of services or supports that may not be
18 in compliance with local, state, and federal statutes and regulations
19 and notify the appropriate licensing or regulatory authority, or
20 request the area board to investigate the possible noncompliance.

21 (e) When necessary to expand the availability of needed services
22 of good quality, a regional center may take actions that include,
23 but are not limited to, the following:

24 (1) Soliciting an individual or agency by requests for proposals
25 or other means, to provide needed services or supports not presently
26 available.

27 (2) Requesting funds from the Program Development Fund,
28 pursuant to Section 4677, or community placement plan funds
29 designated from that fund, to reimburse the startup costs needed
30 to initiate a new program of services and supports.

31 (3) Using creative and innovative service delivery models,
32 including, but not limited to, natural supports.

33 (f) Except in emergency situations, a regional center shall not
34 provide direct treatment and therapeutic services, but shall utilize
35 appropriate public and private community agencies and service
36 providers to obtain those services for its consumers.

37 (g) Where there are identified gaps in the system of services
38 and supports or where there are identified consumers for whom
39 no provider will provide services and supports contained in his or

1 her individual program plan, the department may provide the
2 services and supports directly.

3 (h) At least annually, regional centers shall provide the
4 consumer, his or her parents, legal guardian, conservator, or
5 authorized representative a statement of services and supports the
6 regional center purchased for the purpose of ensuring that they are
7 delivered. The statement shall include the type, unit, month, and
8 cost of services and supports purchased.

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

11 4701.6. (a) “Authorized representative” means the conservator
12 of an adult, the guardian, conservator, or parent or person having
13 legal custody of a minor claimant, or a person or agency appointed
14 pursuant to subdivision (d) of Section 4548 or subdivision (e) of
15 Section 4705 and authorized in writing by the claimant or by the
16 legal guardian, conservator, or parent or person having legal
17 custody of a minor claimant to act for or represent the claimant
18 under this chapter.

19 (b) ~~(1)~~ “Authorized representative” also means a responsible
20 adult appointed by a court order made pursuant to subdivision (g)
21 of Section 319, subdivision (a) of Section 361, or subdivision (b)
22 of Section 726, who the court determines is an appropriate
23 representative for the minor, and who does not have a conflict of
24 interest, as defined in subdivision (i) of Section 7579.5 of the
25 Government Code, including, but not limited to, a foster parent,
26 caregiver, or court appointed special advocate.

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

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