

ASSEMBLY BILL

No. 1753

Introduced by Assembly Member Holden

February 14, 2014

An act to amend Sections 4629.5 and 4648 of the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1753, as introduced, Holden. Developmental services: regional centers: vendorization.

Under existing law, the Lanterman Developmental Disabilities Services Act, the State Department of Developmental Services is required to contract with regional centers to provide services and supports to individuals with developmental disabilities and their families. The services and supports to be provided by a regional center to a consumer are contained in an individual program plan (IPP) or individual family service plan (IFSP), developed in accordance with prescribed requirements. Existing law authorizes a regional center to purchase, pursuant to vendorization or a contract, services or supports for a consumer from an individual or agency that the regional center and consumer, or when appropriate, other specified persons, determines will best accomplish all or any part of that consumer's program plan.

This bill would, if a consumer, or his or her parents, legal guardian, conservator, or authorized representative, requests that a service specified in the consumer's individual program plan be provided by a service vendor that has been vendored by another regional center, authorize the service vendor to provide services to the consumer under the same contractual terms as the vendoring regional center if certain requirements are satisfied, including that the service vendor is in good

standing with the vendoring regional center and that the service provider provides services at no additional costs to the consumer or the consumer’s regional center.

Existing law requires a regional center to include specified information on its Internet Web site for the purpose of promoting transparency and access to public information.

This bill would require that information to include a list of the services that are provided directly to consumers by the regional center or through service vendors or contractors. The bill would require the list to be in a standardized form, as prescribed by the department, and to be updated at least quarterly.

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 4629.5 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 4629.5. (a) In addition to the requirements set forth in Section
- 4 4629, the department’s contract with a regional center shall require
- 5 the regional center to adopt, maintain, and post on its Internet Web
- 6 site a board-approved policy regarding transparency and access to
- 7 public information. The transparency and public information policy
- 8 shall provide for timely public access to information, including,
- 9 but not limited to, information regarding requests for proposals
- 10 and contract awards, service provider rates, documentation related
- 11 to establishment of negotiated rates, audits, and IRS Form 990.
- 12 The transparency and public information policy shall be in
- 13 compliance with applicable law relating to the confidentiality of
- 14 consumer service information and records, including, but not
- 15 limited to, Section 4514.
- 16 (b) To promote transparency, each regional center shall include
- 17 on its Internet Web site, as expeditiously as possible, at least all
- 18 of the following:
- 19 (1) Regional center annual independent audits.
- 20 (2) Biannual fiscal audits conducted by the department.
- 21 (3) Regional center annual reports pursuant to Section 4639.5.
- 22 (4) Contract awards, including the organization or entity
- 23 awarded the contract, and the amount and purpose of the award.
- 24 (5) Purchase of service policies.

- 1 (6) The names, types of service, and contact information of all
2 vendors, except consumers or family members of consumers.
- 3 (7) Board meeting agendas and approved minutes of open
4 meetings of the board and all committees of the board.
- 5 (8) Bylaws of the regional center governing board.
- 6 (9) The annual performance contract and year-end performance
7 contract entered into with the department pursuant to this division.
- 8 (10) The biannual Home and Community-based Services Waiver
9 program review conducted by the department and the State
10 Department of Health Care Services.
- 11 (11) The board-approved transparency and public information
12 policy.
- 13 (12) The board-approved conflict-of-interest policy.
- 14 ~~(13) Reports required pursuant to Section 4639.5.~~
- 15 *(13) A list of the services that are provided directly to consumers*
16 *by the regional center or through service vendors or contractors.*
17 *The list shall be in a standardized format prescribed by the*
18 *department and shall be updated at least quarterly.*
- 19 (c) The department shall establish and maintain a transparency
20 portal on its Internet Web site that allows consumers, families,
21 advocates, and others to access provider and regional center
22 information. Posted information on the department's Internet Web
23 site transparency portal shall include, but need not be limited to,
24 all of the following:
- 25 (1) A link to each regional center's Internet Web site information
26 referenced in subdivision (b).
- 27 (2) Biannual fiscal audits conducted by the department.
- 28 (3) Vendor audits.
- 29 (4) Biannual Home and Community-based Services Waiver
30 program reviews conducted by the department and the State
31 Department of Health Care Services.
- 32 (5) Biannual targeted case management program and federal
33 nursing home reform program reviews conducted by the
34 department.
- 35 (6) Early Start Program reviews conducted by the department.
- 36 (7) Annual performance contract and year-end performance
37 contract reports.
- 38 SEC. 2. Section 4648 of the Welfare and Institutions Code is
39 amended to read:

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

4 (a) Securing needed services and supports.

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

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

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

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

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

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

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

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

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

24 (F) (i) *If a consumer, or his or her parents, legal guardian,*
25 *conservator, or authorized representative, requests that a service*
26 *specified in the consumer's individual program plan be provided*
27 *by a service vendor that has been vendored by another regional*
28 *center, the service vendor is authorized to provide services to the*
29 *consumer in accordance with paragraph (6) of this subdivision,*
30 *and under the same contractual terms as the vendoring regional*
31 *center, if all of the following requirements are satisfied:*

32 (I) *The service vendor is in good standing with the vendoring*
33 *regional center.*

34 (II) *The service vendor provides services at no additional cost*
35 *to the consumer or the consumer's regional center.*

36 (III) *The services provided by the service vendor are consistent*
37 *with, and provided at the same level of care and professionalism*
38 *as, the vendoring regional center's vendorization.*

1 (ii) For purposes of this subparagraph, “vending regional
 2 center” means the regional center that has vendored the service
 3 vendor.

4 (4) Notwithstanding subparagraph (B) of paragraph (3), a
 5 regional center may contract or issue a voucher for services and
 6 supports provided to a consumer or family at a cost not to exceed
 7 the maximum rate of payment for that service or support
 8 established by the department. If a rate has not been established
 9 by the department, the regional center may, for an interim period,
 10 contract for a specified service or support with, and establish a
 11 rate of payment for, any provider of the service or support
 12 necessary to implement a consumer’s individual program plan.
 13 Contracts may be negotiated for a period of up to three years, with
 14 annual review and subject to the availability of funds.

15 (5) In order to ensure the maximum flexibility and availability
 16 of appropriate services and supports for persons with
 17 developmental disabilities, the department shall establish and
 18 maintain an equitable system of payment to providers of services
 19 and supports identified as necessary to the implementation of a
 20 consumers’ individual program plan. The system of payment shall
 21 include provision for a rate to ensure that the provider can meet
 22 the special needs of consumers and provide quality services and
 23 supports in the least restrictive setting as required by law.

24 (6) The regional center and the consumer, or ~~where~~ when
 25 appropriate, his or her parents, legal guardian, conservator, or
 26 authorized representative, including those appointed pursuant to
 27 subdivision (d) of Section 4548, subdivision (b) of Section 4701.6,
 28 or subdivision (e) of Section 4705, shall, pursuant to the individual
 29 program plan, consider all of the following when selecting a
 30 provider of consumer services and supports:

31 (A) A provider’s ability to deliver quality services or supports
 32 ~~which~~ that can accomplish all or part of the consumer’s individual
 33 program plan.

34 (B) A provider’s success in achieving the objectives set forth
 35 in the individual program plan.

36 (C) ~~Where~~ When appropriate, the existence of licensing,
 37 accreditation, or professional certification.

38 (D) The cost of providing services or supports of comparable
 39 quality by different providers, if available, shall be reviewed, and
 40 the least costly available provider of comparable service, including

1 the cost of transportation, who is able to accomplish all or part of
2 the consumer's individual program plan, consistent with the
3 particular needs of the consumer and family as identified in the
4 individual program plan, shall be selected. In determining the least
5 costly provider, the availability of federal financial participation
6 shall be considered. The consumer shall not be required to use the
7 least costly provider if it will result in the consumer moving from
8 an existing provider of services or supports to more restrictive or
9 less integrated services or supports.

10 (E) The consumer's choice of providers, or, ~~where~~ *when*
11 appropriate, the consumer's parent's, legal guardian's, authorized
12 representative's, or conservator's choice of providers.

13 (7) No service or support provided by any agency or individual
14 shall be continued unless the consumer or, ~~where~~ *when* appropriate,
15 his or her parents, legal guardian, or conservator, or authorized
16 representative, including those appointed pursuant to subdivision
17 (d) of Section 4548, subdivision (b) of Section 4701.6, or
18 subdivision (e) of Section 4705, is satisfied and the regional center
19 and the consumer or, when appropriate, the person's parents or
20 legal guardian or conservator agree that planned services and
21 supports have been provided, and reasonable progress toward
22 objectives have been made.

23 (8) Regional center funds shall not be used to supplant the
24 budget of any agency that has a legal responsibility to serve all
25 members of the general public and is receiving public funds for
26 providing those services.

27 (9) (A) A regional center may, directly or through an agency
28 acting on behalf of the center, provide placement in, purchase of,
29 or follow-along services to persons with developmental disabilities
30 in, appropriate community living arrangements, including, but not
31 limited to, support service for consumers in homes they own or
32 lease, foster family placements, health care facilities, and licensed
33 community care facilities. In considering appropriate placement
34 alternatives for children with developmental disabilities, approval
35 by the child's parent or guardian shall be obtained before placement
36 is made.

37 (B) Effective July 1, 2012, notwithstanding any other law or
38 regulation ~~to the contrary~~, a regional center shall not purchase
39 residential services from a State Department of Social Services
40 licensed 24-hour residential care facility with a licensed capacity

1 of 16 or more beds. This prohibition on regional center purchase
2 of residential services shall not apply to any of the following:

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

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

13 (iii) A residential facility licensed as a mental health
14 rehabilitation center by the State Department of Mental Health or
15 successor agency under any of the following circumstances:

16 (I) The facility is eligible for Medicaid reimbursement.

17 (II) The facility has a department-approved plan in place by
18 June 30, 2013, to transition to a program structure eligible for
19 federal Medicaid funding, and this transition will be completed by
20 June 30, 2014. The department may grant an extension for the date
21 by which the transition will be completed if the facility
22 demonstrates that it has made significant progress toward transition,
23 and states with specificity the timeframe by which the transition
24 will be completed and the specified steps that will be taken to
25 accomplish the transition. A regional center may pay for the costs
26 of care and treatment of a consumer residing in the facility on June
27 30, 2012, until June 30, 2013, inclusive, and, if the facility has a
28 department-approved plan in place by June 30, 2013, may continue
29 to pay the costs under this subparagraph until June 30, 2014, or
30 until the end of any period during which the department has granted
31 an extension.

32 (III) There is an emergency circumstance in which the regional
33 center determines that it cannot locate alternate federally eligible
34 services to meet the consumer's needs. Under such an emergency
35 circumstance, an assessment shall be completed by the regional
36 center as soon as possible and within 30 days of admission. An
37 individual program plan meeting shall be convened immediately
38 following the assessment to determine the services and supports
39 needed for stabilization and to develop a plan to transition the
40 consumer from the facility into the community. If transition is not

1 expected within 90 days of admission, an individual program plan
2 meeting shall be held to discuss the status of transition and to
3 determine if the consumer is still in need of placement in the
4 facility. Commencing October 1, 2012, this determination shall
5 be made after also considering resource options identified by the
6 statewide specialized resource service. If it is determined that
7 emergency services continue to be necessary, the regional center
8 shall submit an updated transition plan that can cover a period of
9 up to 90 days. In no event shall placements under these emergency
10 circumstances exceed 180 days.

11 (C) (i) Effective July 1, 2012, notwithstanding any other law
12 or regulation ~~to the contrary~~, a regional center shall not purchase
13 new residential services from, or place a consumer in, institutions
14 for mental disease, as described in Part 5 (commencing with
15 Section 5900) of Division 5, for which federal Medicaid funding
16 is not available. Effective July 1, 2013, this prohibition applies
17 regardless of the availability of federal funding.

18 (ii) The prohibition described in clause (i) shall not apply to
19 emergencies, as determined by the regional center, when a regional
20 center cannot locate alternate services to meet the consumer's
21 needs. As soon as possible within 30 days of admission due to an
22 emergency, an assessment shall be completed by the regional
23 center. An individual program plan meeting shall be convened
24 immediately following the assessment, to determine the services
25 and supports needed for stabilization and to develop a plan to
26 transition the consumer from the facility to the community. If
27 transition is not expected within 90 days of admission, an
28 emergency program plan meeting shall be held to discuss the status
29 of the transition and to determine if the consumer is still in need
30 of placement in the facility. If emergency services continue to be
31 necessary, the regional center shall submit an updated transition
32 plan to the department for an extension of up to 90 days. Placement
33 shall not exceed 180 days.

34 (iii) To the extent feasible, prior to any admission, the regional
35 center shall consider resource options identified by the statewide
36 specialized resource service established pursuant to subdivision
37 (b) of Section 4418.25.

38 (iv) The clients' rights advocate shall be notified of each
39 admission and individual program planning meeting pursuant to
40 this subparagraph and may participate in all individual program

1 planning meetings unless the consumer objects on his or her own
 2 behalf.

3 (v) Regional centers shall complete a comprehensive assessment
 4 of any consumer residing in an institution for mental disease as of
 5 July 1, 2012, for which federal Medicaid funding is not available,
 6 and for any consumer residing in an institution for mental disease
 7 as of July 1, 2013, without regard to federal funding. The
 8 comprehensive assessment shall be completed prior to the
 9 consumer’s next scheduled individual program plan meeting and
 10 shall include identification of the services and supports needed
 11 and the timeline for identifying or developing those services needed
 12 to transition the consumer back to the community. Effective
 13 October 1, 2012, the regional center shall also consider resource
 14 options identified by the statewide specialized resource service.
 15 For each individual program plan meeting convened pursuant to
 16 this subparagraph, the clients’ rights advocate for the regional
 17 center shall be notified of the meeting and may participate in the
 18 meeting unless the consumer objects on his or her own behalf.

19 (D) ~~Each~~ A person with developmental disabilities placed by
 20 the regional center in a community living arrangement shall have
 21 the rights specified in this division. These rights shall be brought
 22 to the person’s attention by any means necessary to reasonably
 23 communicate these rights to each resident, provided that, at a
 24 minimum, the Director of Developmental Services prepare,
 25 provide, and require to be clearly posted in all residential facilities
 26 and day programs a poster using simplified language and pictures
 27 that is designed to be more understandable by persons with
 28 cognitive disabilities and that the rights information shall also be
 29 available through the regional center to each residential facility
 30 and day program in alternative formats, including, but not limited
 31 to, other languages, braille, and audio tapes, when necessary to
 32 meet the communication needs of consumers.

33 (E) Consumers are eligible to receive supplemental services
 34 including, but not limited to, additional staffing, pursuant to the
 35 process described in subdivision (d) of Section 4646. Necessary
 36 additional staffing that is not specifically included in the rates paid
 37 to the service provider may be purchased by the regional center if
 38 the additional staff are in excess of the amount required by
 39 regulation and the individual’s planning team determines the
 40 additional services are consistent with the provisions of the

1 individual program plan. Additional staff should be periodically
2 reviewed by the planning team for consistency with the individual
3 program plan objectives in order to determine if continued use of
4 the additional staff is necessary and appropriate and if the service
5 is producing outcomes consistent with the individual program plan.
6 Regional centers shall monitor programs to ensure that the
7 additional staff is being provided and utilized appropriately.

8 (10) Emergency and crisis intervention services including, but
9 not limited to, mental health services and behavior modification
10 services, may be provided, as needed, to maintain persons with
11 developmental disabilities in the living arrangement of their own
12 choice. Crisis services shall first be provided without disrupting a
13 person's living arrangement. If crisis intervention services are
14 unsuccessful, emergency housing shall be available in the person's
15 home community. If dislocation cannot be avoided, every effort
16 shall be made to return the person to his or her living arrangement
17 of choice, with all necessary supports, as soon as possible.

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

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

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

32 (A) Outreach and education to programs and services within
33 the community.

34 (B) Direct support to individuals ~~which~~ *that* would enable them
35 to more fully participate in their community.

36 (C) Developing unpaid natural supports when possible.

37 (14) When feasible and recommended by the individual program
38 planning team, for purposes of facilitating better and cost-effective
39 services for consumers or family members, technology, including
40 telecommunication technology, may be used in conjunction with

1 other services and supports. Technology in lieu of a consumer's
2 in-person appearances at judicial proceedings or administrative
3 due process hearings may be used only if the consumer or, when
4 appropriate, the consumer's parent, legal guardian, conservator,
5 or authorized representative, gives informed consent. Technology
6 may be used in lieu of, or in conjunction with, in-person training
7 for providers, as appropriate.

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

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

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

25 (2) Whenever the advocacy efforts of a regional center to secure
26 or protect the civil, legal, or service rights of any of its consumers
27 prove ineffective, the regional center or the person with
28 developmental disabilities or his or her parents, legal guardian, or
29 other representative may request the area board to initiate action
30 under the provisions defining area board advocacy functions
31 established in this division.

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

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

38 (1) Identify services and supports that are ineffective or of poor
39 quality and provide or secure consultation, training, or technical
40 assistance services for any agency or individual provider to assist

1 that agency or individual provider in upgrading the quality of
2 services or supports.

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

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

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

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

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

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

23 (g) ~~Where~~ *When* there are identified gaps in the system of
24 services and supports or ~~where~~ *when* there are identified consumers
25 for whom no provider will provide services and supports contained
26 in his or her individual program plan, the department may provide
27 the services and supports directly.

28 (h) At least annually, regional centers shall provide the
29 consumer, his or her parents, legal guardian, conservator, or
30 authorized representative a statement of services and supports the
31 regional center purchased for the purpose of ensuring that they are
32 delivered. The statement shall include the type, unit, month, and
33 cost of services and supports purchased.