

AMENDED IN SENATE APRIL 25, 2013

AMENDED IN SENATE APRIL 15, 2013

SENATE BILL

No. 468

Introduced by Senators Emmerson and Beall
(Coauthor: Assembly Member Blumenfield)

February 21, 2013

An act to add Section 4685.8 to the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

SB 468, as amended, Emmerson. Developmental services: statewide Self-Determination Program.

Under existing law, the Lanterman Developmental Disabilities Services Act, the State Department of Developmental Services contracts with regional centers to provide support and services to individuals with developmental disabilities. Under existing law, the regional centers purchase needed services and supports for individuals with developmental disabilities through approved service providers, or arrange for their provision through other publicly funded agencies. The services and supports to be provided to a regional center consumer are contained in an individual program plan (IPP), developed in accordance with prescribed requirements. Existing law establishes, contingent upon approval of a federal waiver, the Self-Directed Services Program, and requires the program to be available in every regional center catchment area to provide participants, within an individual budget, greater control over needed services and supports.

This bill would require the department, contingent upon approval of federal funding, to establish and implement a state Self-Determination Program, as defined, that would be available in every regional center

catchment area to provide participants and their families, within an individual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPP, in accordance with prescribed requirements. The statewide program would be phased in over 3 years, initially serving up to 2,500 regional center consumers, and thereafter would be available on a voluntary basis to all regional center consumers. The bill would require the department to, among other things, apply for federal funding for the program by March 1, 2014.

Under the bill, program participants would receive an individual budget, as prescribed, to be used for the purchase of services and supports necessary to implement the participant's IPP. The bill would require program participants to agree to, among other things, manage self-determination services within the individual budget amount. Under the bill, the individual budget amount would be available to the participant each year for the purchase of services and supports under the program until a new individual budget has been determined. The bill would, among other things, require each regional center to be responsible for implementing the program as a term of its contract, and to establish a local advisory committee to provide oversight of the project. The bill would require the State Council on Developmental Disabilities to issue to the Legislature a report regarding the status of the program and recommendations to the program, as specified, and would require the department, beginning January 10, 2016, to provide to the appropriate policy and fiscal committees of the Legislature prescribed information relating to the program.

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) In 1998, the Legislature expanded the Lanterman
- 4 Developmental Disabilities Services Act to include a
- 5 self-determination pilot program. That pilot program was continued
- 6 by the Legislature in 2002 and 2003. However, the pilot program
- 7 was only available at five regional centers and the number of
- 8 individuals served by the self-determination pilot program remains
- 9 small, about 200 regional center consumers.

1 (b) As reflected in the State Department of Developmental
2 Services 2002 Report to the Legislature, the pilot program remains
3 an innovative, cost effective and successful way of providing
4 services to regional center consumers and their families. The
5 findings in the report show that self-determination pilot program
6 participants were happy and experienced more freedom and
7 responsibility in controlling the direction of their services and life
8 choices, and the program was cost neutral in the aggregate. The
9 report also found that good self-determination requires intensive
10 person-centered planning, collaboration, and follow-along services
11 and supports.

12 (c) Most other states have self-directed or self-determination
13 services as a model for providing services. Many California
14 consumers and families have asked for a statewide expansion of
15 the pilot program believing it will do the following: increase
16 innovative and effective services, eliminate bureaucracy, and
17 increase choices for consumers and parents, thereby allowing them
18 to increase their control of services and supports by easily
19 navigating increasingly complex service systems.

20 (d) The intent of this act is to allow for voluntary participation
21 in the Self-Determination Program while ensuring that the program
22 is available to all consumers regardless of geographic location,
23 economic or educational background, or race or ethnicity, and
24 ensuring a consistent statewide method of administration and
25 comparable services. To ensure these outcomes are achieved, it is
26 the intent of the Legislature that the State Department of
27 Developmental Services and local advisory boards be responsible
28 for oversight and monitoring of funds used for the
29 Self-Determination Program and the achievement of consumer
30 outcomes.

31 (e) In addition, the intent of this act is that the
32 Self-Determination Program be phased in over a three-year period
33 and that the program will continue to be available to all consumers
34 as an option after the initial phase-in period ends.

35 SEC. 2. Section 4685.8 is added to the Welfare and Institutions
36 Code, to read:

37 4685.8. (a) The department shall implement a statewide
38 Self-Determination Program. The Self-Determination Program
39 shall be available in every regional center catchment area to provide
40 participants and their families, within an individual budget,

1 increased flexibility and choice, and greater control over decisions,
2 resources, and needed and desired services and supports to
3 implement their IPP. The statewide Self-Determination Program
4 shall be phased in over three years, initially serving up to 2,500
5 regional center consumers, and thereafter shall be available on a
6 voluntary basis to all regional center consumers.

7 (b) The department in establishing the statewide program shall
8 ensure the following:

9 ~~(1) That self-determination is available as a choice for up to~~
10 ~~2500 regional center consumers.~~

11 (1) Participants in the program reflect the disability, ethnic, and
12 geographic diversity of the state.

13 (2) The program is cost neutral in the aggregate.

14 (3) A statewide method of administration and determining
15 comparable services.

16 (4) Oversight of expenditure of self-determined funds and the
17 achievement of consumer outcomes over time.

18 (5) Increased consumer and family control over which services
19 best meet their needs and the IPP objectives.

20 (6) Comprehensive person-centered planning, including an
21 individual budget and services that are outcome based.

22 (7) Consumer and family training to ensure understanding of
23 the planning process and management of budgets, services, and
24 staff.

25 (8) Choice of independent facilitators who can assist with the
26 person-centered planning process and financial management
27 services providers who can assist with payments and provide
28 employee-related services.

29 (9) Innovation that will more effectively allow consumers to
30 achieve their goals.

31 (c) For purposes of this section, the following definitions shall
32 apply:

33 (1) “Financial management services” means services or
34 functions that ~~assists~~ *assist* the participant to manage and direct
35 the distribution of funds contained in the individual ~~budget~~ *budget*,
36 *and ensure that the participant has the financial resources to*
37 *implement his or her IPP throughout the year.* These may include,
38 but are not limited to, bill paying services and activities that
39 facilitate the employment of service and support workers by the
40 participant, including, but not limited to, fiscal accounting, tax

1 withholding, and expenditure reports. The department shall
2 establish specific qualifications that shall be required of a financial
3 management services provider.

4 (2) “Independent facilitator” means a person, selected and
5 directed by the participant, who may assist the participant in
6 making informed decisions about the individual budget, and in
7 locating, accessing, and coordinating services consistent with the
8 participant’s IPP. He or she is available to assist in identifying
9 immediate and long-term needs, developing options to meet those
10 needs, leading or participating in the person-centered planning
11 process and development of the IPP, and obtaining identified
12 services and supports.

13 (3) “Individual budget” means the amount of funding available
14 to the participant for the purchase of services and supports
15 necessary to implement the IPP. The individual budget shall be
16 constructed using a fair, equitable, and transparent methodology.

17 (4) “IPP” means individual program plan.

18 (5) “Participant” means an individual, and when appropriate,
19 his or her parents, legal guardian or conservator, or authorized
20 representative, who has been deemed eligible for, and has
21 voluntarily agreed to participate in, the Self-Determination
22 Program.

23 (6) “Self-determination” means a voluntary delivery system
24 consisting of a defined and comprehensive mix of services and
25 supports, selected and directed by a participant through
26 person-centered planning, in order to meet all or some of the
27 objectives in his or her IPP. Self-determination services and
28 supports are designed to assist the participant to achieve personally
29 defined outcomes in community settings that promote inclusion.
30 The Self-Determination Program shall only fund services and
31 supports that are approved by the federal Center for Medicare and
32 Medicaid Services.

33 (d) Participation in the Self-Determination Program is fully
34 voluntary. A consumer may choose to participate in, and may
35 choose to leave, the Self-Determination Program at any time. A
36 regional center may not require or prohibit participation in the
37 Self-Determination Program as a condition of eligibility for, or
38 the delivery of, services and supports otherwise available under
39 this division. Participation in the Self-Determination Program shall

1 be available to any regional center consumer who meets the
2 following eligibility requirements:

3 (1) The participant is three years of age or older.

4 (2) The participant has a developmental disability, as defined
5 in Section 4512.

6 (3) The participant does not live in a licensed long-term health
7 care facility, as defined in paragraph (44) of subdivision (a) of
8 Section 54302 of Title 17 of the California Code of Regulations.
9 An individual, and when appropriate his or her parent, legal
10 guardian or conservator, or authorized representative, who is not
11 eligible to participate in the Self-Determination Program pursuant
12 to this paragraph may request that the regional center provide
13 person-centered planning services in order to make arrangements
14 for transition to the Self-Determination Program. In that case, the
15 regional center shall initiate person-centered planning services
16 within 60 days of that request.

17 (4) The participant agrees to all of the following terms and
18 conditions:

19 (A) The participant shall receive an orientation to the
20 Self-Determination Program prior to enrollment.

21 (B) The participant shall agree to utilize the services and
22 supports available within the Self-Determination Program only
23 when generic services and supports cannot be accessed.

24 (C) The participant shall only use services and supports
25 necessary to implement his or her IPP and shall agree to comply
26 with any and all other terms and conditions for participation in the
27 Self-Determination Program described in this section.

28 (D) The participant shall manage Self-Determination Program
29 services and supports within the individual budget amount.

30 (E) The participant shall utilize the services of the
31 conflict-of-interest-free financial management services provider
32 of his or her own choosing.

33 (F) The participant may utilize the services of a
34 conflict-of-interest-free independent facilitator of his or her own
35 choosing for the purpose of providing services and functions as
36 described in paragraph (2) of subdivision (c). The financial
37 management services provider shall determine that the independent
38 facilitator is adequately trained and otherwise qualified.

39 (e) A participant who is not Medi-Cal eligible may participate
40 in the Self-Determination Program and receive self-determination

1 services and supports if all other program eligibility requirements
2 are met.

3 (f) An individual receiving services and supports under the
4 self-determination projects authorized pursuant to Section 13 of
5 Chapter 80 of the Statutes of 1998, as amended, may elect to
6 continue to receive self-determination services and supports
7 pursuant to this section. An individual who participates in the
8 Self-Determination Program may elect to continue to receive
9 self-determination services and supports if he or she transfers to
10 another regional center catchment area.

11 (g) If at any time during participation in the Self-Determination
12 Program a regional center determines that a participant is no longer
13 eligible to continue in, or a participant voluntarily chooses to exit,
14 the Self-Determination Program, the regional center shall provide
15 for the participant's transition from the Self-Determination Program
16 to other services and supports. This transition shall include the
17 development of a new IPP that reflects the services and supports
18 necessary to meet the individual's needs. The regional center shall
19 ensure that there is no gap in services and supports during the
20 transition period.

21 (h) An individual determined to be ineligible for or who
22 voluntarily exits the Self-Determination Program shall be permitted
23 to return to the Self-Determination Program upon meeting all
24 applicable eligibility criteria and upon approval of the participant's
25 IPP team, as described in subdivision (j) of Section 4512.

26 (i) The IPP team shall utilize the person-centered planning
27 process to develop the IPP for a participant. The IPP shall detail
28 the goals and objectives of the participant that are to be met through
29 the purchase of participant-selected services and supports. The
30 IPP team shall determine the individual budget to ensure the budget
31 assists the participant to achieve the outcomes set forth in his or
32 her IPP and ensures his or her health and safety. The completed
33 individual budget shall be attached to the IPP.

34 (j) The participant shall implement his or her IPP, including
35 choosing the services and supports allowable under this section
36 necessary to implement the plan. A participant is exempt from
37 Section 4783, the Family Cost Participation Program, and cost
38 control restrictions, including, but not limited to, purchases of
39 services and supports pursuant to Sections 4648.35, 4648.5, and
40 4659, subparagraph (B) of paragraph (3) of subdivision (c) of

1 Section 4685, Sections 4648.55, 4686.2, 4686.5, and 4689, and
2 purchase of services best practices enacted pursuant to Section
3 4620.3. A regional center shall not prohibit the purchase of any
4 service or support that is otherwise allowable under this section.

5 (k) A participant shall have all the rights established in Chapter
6 7 (commencing with Section 4700).

7 (l) The department, in consultation with stakeholders, shall
8 develop a methodology for individual budgets that ensures the
9 budgets are computed in a fair, transparent, and equitable manner
10 and are based on consumer characteristics and needs, and a method
11 for adjusting individual budgets to address a participant's
12 unanticipated needs. In developing this methodology, the
13 department shall ensure that budgets of all participants are cost
14 neutral in the aggregate *within each regional center*.

15 (m) The IPP team, using the methodology developed in
16 subdivision (l), shall determine the individual budget for the
17 participant. That individual budget amount shall be available to
18 the participant each year for the purchase of program services and
19 supports until a new individual budget has been determined. An
20 individual budget shall be calculated no more than once in a
21 12-month period, unless revised to reflect the unanticipated needs
22 of the participant. The individual budget shall be distributed among
23 uniform budget categories developed by the department in
24 consultation with stakeholders.

25 (n) Annually, participants may transfer up to 20 percent of the
26 funds originally distributed to any budget category set forth in
27 subdivision (m), to another budget category or categories. Transfers
28 in excess of 20 percent of the original amount allocated to any
29 budget category may be made upon the approval of the regional
30 center or the participant's IPP team. Regional centers or the IPP
31 team may only deny a transfer if necessary to protect the health
32 and safety of the participant.

33 (o) Consistent with the implementation date of the IPP, the IPP
34 team shall annually ascertain from the participant whether there
35 are any circumstances that require a change to the annual individual
36 budget. Based on that review, the IPP team shall calculate a new
37 individual budget consistent with the methodology identified in
38 subdivision (l).

39 (p) On or before March 1, 2014, the department shall apply for
40 federal Medicaid funding for the Self-Determination Program by

1 applying for a state plan amendment, an amendment to a current
2 home- and community-based waiver for individuals with
3 developmental disabilities, for a new waiver, or by seeking to
4 maximize federal financial participation through other means.
5 Contingent upon approval of federal funding, the
6 Self-Determination Program shall be established. The department
7 shall adopt regulations to implement the procedures set forth in
8 this section.

9 (q) The department, in consultation with stakeholders, shall
10 develop informational materials about the Self-Determination
11 Program. The department shall ensure that regional centers are
12 trained in the principles of self-determination, the mechanics of
13 the Self-Determination Program, and the rights of consumers and
14 families as candidates for, and participants in, the
15 Self-Determination Program.

16 (r) Each regional center shall be responsible for implementing
17 the Self-Determination Program as a term of its contract under
18 Section 4629. As part of implementing the program, the regional
19 center shall do all of the following:

20 (1) Contract with local or family-run consumer organizations
21 to conduct outreach and training through local meetings or forums
22 to provide regional center consumers and their families with
23 information about the Self-Determination Program and to help
24 ensure that the program is available to a diverse group of
25 participants, with special outreach to underserved communities.

26 (2) Advance funds to a financial management services provider
27 to facilitate participation in the Self-Determination Program, as
28 determined necessary by a participant's IPP team.

29 (s) The financial management services provider shall provide
30 the participant, or his or her authorized representative, and the
31 regional center service coordinator with a monthly individual
32 budget statement that describes the amount of funds allocated by
33 budget category, the amount spent in the previous 30-day period,
34 and the amount of funding that remains available under the
35 participant's individual budget.

36 (t) Only the financial management services provider is required
37 to apply for vendorization in accordance with Subchapter 2
38 (commencing with Section 54300) of Chapter 3 of Title 17 of the
39 California Code of Regulations, for the Self-Determination
40 Program. All other service providers shall have applicable state

1 licenses, certifications, or other state required documentation, but
2 are exempt from the vendorization requirements set forth in Title
3 17 of the California Code of Regulations. The financial
4 management services provider shall ensure and document that all
5 service providers meet specified requirements for any service that
6 may be delivered to the participant.

7 (u) A participant may request, at no charge to the participant or
8 the regional center, criminal history background checks for persons
9 seeking employment as a provider of services and supports and
10 providing direct care services and supports to the participant.

11 (1) Criminal history record checks pursuant to this subdivision
12 shall be performed and administered as described in subdivision
13 (b) and subdivisions (d) to (h), inclusive, of Section 4689.2, and
14 Sections 4689.4 to 4689.6, inclusive, and shall apply to
15 vendorization of providers and hiring of employees to provide
16 services and supports for family home agencies and family homes.

17 (2) The department may enter into a written agreement with the
18 Department of Justice to implement this subdivision.

19 (v) Each regional center shall establish a local advisory
20 committee to provide oversight of the Self-Determination Program.
21 The regional center, area board, and the Office of Clients' Rights
22 Advocacy of Disability Rights California shall each appoint
23 one-third of the membership of the committee, which shall consist
24 of consumers, family members, clients' rights advocates and other
25 advocates, and community leaders. A majority of the committee
26 shall be consumers and their family members. The committee shall
27 reflect the multicultural diversity and geographic profile of the
28 catchment area. The committee shall review the development and
29 ongoing progress of the Self-Determination Program, including
30 whether the program is operating consistent with the requirements
31 of this section, and may make ongoing recommendations for
32 improvement to the regional center and the department.

33 (w) Commencing January 10, 2016, the department shall
34 annually provide the following information to the appropriate
35 policy and fiscal committees of the Legislature:

36 (1) Number and characteristics of participants, by regional
37 center.

38 (2) Types and ranking of services and supports purchased under
39 the Self-Determination Program, by regional center.

1 (3) Range and average of individual budgets, by regional center,
2 including adjustments to the budget to address unanticipated need.

3 (4) Information regarding participant satisfaction under the
4 Self-Determination Program and, when data is available, the
5 traditional service delivery system, by regional center.

6 (5) The proportion of participants who report that their choices
7 and decisions are respected and supported.

8 (6) The proportion of participants who report that they are able
9 to recruit and hire qualified service providers.

10 (7) The number and outcome of individual budget appeals, by
11 regional center.

12 (8) The number and outcome of fair hearing appeals, by regional
13 center.

14 (9) The number of participants who voluntarily withdraw from
15 the Self-Determination Program and a summary of the reasons
16 why, by regional center.

17 (10) The number of participants who are subsequently
18 determined to no longer be eligible for the Self-Determination
19 Program and a summary of the reasons why, by regional center.

20 (11) Identification of barriers to participation and
21 recommendations for program improvements.

22 (12) A comparison of average annual expenditures for
23 individuals with similar characteristics not participating in the
24 Self-Determination Program.

25 (x) The State Council on Developmental Disabilities, in
26 collaboration with the protection and advocacy agency identified
27 in Section 4900 and the federally funded University Centers for
28 Excellence in Developmental Disabilities Education, Research,
29 and Service, shall issue a report to the Legislature no later than
30 three years following the approval of the federal funding on the
31 status of the Self-Determination Program authorized by this section,
32 and provide recommendations to enhance the effectiveness of the
33 program.