

**ASSEMBLY BILL**

**No. 3**

---

---

**Introduced by Assembly Member Chu  
(Coauthor: Assembly Member Roger Hernández)**

July 16, 2015

---

---

An act to amend Sections 4681.6, 4691.6, and 4691.9 of the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

AB 3, as introduced, Chu. Developmental services: provider rates: minimum wage.

Existing law, the Lanterman Developmental Disabilities Services Act, requires the State Department of Developmental Services to contract with regional centers to provide services and supports to individuals with developmental disabilities and their families. Existing law requires the department to enter into contracts with private nonprofit corporations to operate regional centers that provide community services and support for consumers and their families, including, but not limited to, residential placement.

Existing law sets forth the department's and the regional center's authority to negotiate and set provider rates, and sets forth certain limitations. Existing law authorizes prescribed provider rate increases and prohibits others. Existing law, commencing July 1, 2014, increases the state minimum wage to no less than \$9 per hour, and commencing January 1, 2016, increases the state minimum wage to no less than \$10 per hour. Existing law authorizes an adjustment in prescribed provider rates commencing July 1, 2014, as necessary to adjust employee wages to meet that state minimum wage.

This bill would instead authorize an adjustment in prescribed provider rates as necessary to adjust employee wages to meet the state minimum wage law.

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 4681.6 of the Welfare and Institutions  
2 Code is amended to read:

3 4681.6. (a) Notwithstanding any other law or regulation,  
4 commencing July 1, 2008:

5 (1) A regional center shall not pay an existing residential service  
6 provider, for services where rates are determined through a  
7 negotiation between the regional center and the provider, a rate  
8 higher than the rate in effect on June 30, 2008, unless the increase  
9 is required by a contract between the regional center and the vendor  
10 that is in effect on June 30, 2008, or the regional center  
11 demonstrates that the approval is necessary to protect the  
12 consumer’s health or safety and the department has granted prior  
13 written authorization.

14 (2) A regional center shall not negotiate a rate with a new  
15 residential service provider, for services where rates are determined  
16 through a negotiation between the regional center and the provider,  
17 that is higher than the regional center’s median rate for the same  
18 service code and unit of service, or the statewide median rate for  
19 the same service code and unit of service, whichever is lower. The  
20 unit of service designation shall conform with an existing regional  
21 center designation or, if none exists, a designation used to calculate  
22 the statewide median rate for the same service. The regional center  
23 shall annually certify to the department its median rate for each  
24 negotiated rate service code, by designated unit of service. This  
25 certification shall be subject to verification through the  
26 department’s biennial fiscal audit of the regional center.

27 (b) Notwithstanding subdivision (a), commencing July 1, 2014,  
28 regional centers may negotiate a rate adjustment with residential  
29 service providers regarding rates that are otherwise restricted  
30 pursuant to subdivision (a), if the adjustment is necessary in order  
31 to pay employees no less than the minimum wage as established  
32 by Section 1182.12 of the Labor Code, ~~as amended by Chapter~~

1 351 of the Statutes of 2013, and only for the purpose of adjusting  
2 payroll costs associated with the minimum wage increase. The  
3 rate adjustment shall be specific to the unit of service designation  
4 that is affected by the increased minimum wage, shall be specific  
5 to payroll costs associated with any increase necessary to adjust  
6 employee pay only to the extent necessary to bring pay into  
7 compliance with the increased state minimum wage, and shall not  
8 be used as a general wage enhancement for employees paid above  
9 the minimum wage. Regional centers shall maintain documentation  
10 on the process to determine, and the rationale for granting, any  
11 rate adjustment associated with the minimum wage increase.

12 (c) Notwithstanding subdivision (a), commencing July 1, 2015,  
13 regional centers may negotiate a rate adjustment with residential  
14 service providers regarding rates that are otherwise restricted  
15 pursuant to subdivision (a), if the adjustment is necessary to  
16 implement Article 1.5 (commencing with Section 245) of Chapter  
17 1 of Part 1 of Division 2 of the Labor Code, as added by Chapter  
18 317 of the Statutes of 2014. The rate adjustment may be applied  
19 only if a minimum of 24 hours or three days of paid sick leave per  
20 year was not a benefit provided to employees as of June 30, 2015,  
21 and shall be specific to payroll costs associated with any increase  
22 necessary to compensate an employee up to a maximum of 24  
23 hours or three days of paid sick leave in each year of employment.

24 (d) For purposes of this section, “residential service provider”  
25 includes Adult Residential Facilities for Persons with Special  
26 Health Care Needs, as described in Section 4684.50.

27 (e) This section shall not apply to those services for which rates  
28 are determined by the State Department of Health Care Services,  
29 or the State Department of Developmental Services, or are usual  
30 and customary.

31 SEC. 2. Section 4691.6 of the Welfare and Institutions Code  
32 is amended to read:

33 4691.6. (a) Notwithstanding any other law or regulation,  
34 commencing July 1, 2006, the community-based day program,  
35 work activity program, and in-home respite service agency rate  
36 schedules authorized by the department and in operation June 30,  
37 2006, shall be increased by 3 percent, subject to funds specifically  
38 appropriated for this increase in the Budget Act of 2006. The  
39 increase shall be applied as a percentage, and the percentage shall  
40 be the same for all providers. Any subsequent increase shall be

1 governed by subdivisions (b), (c), (d), (e), (f), (g), (h), (i), and (j),  
2 and Section 4691.9.

3 (b) Notwithstanding any other law or regulation, the department  
4 shall not establish any permanent payment rate for a  
5 community-based day program or in-home respite service agency  
6 provider that has a temporary payment rate in effect on June 30,  
7 2008, if the permanent payment rate would be greater than the  
8 temporary payment rate in effect on or after June 30, 2008, unless  
9 the regional center demonstrates to the department that the  
10 permanent payment rate is necessary to protect the consumers'  
11 health or safety.

12 (c) Notwithstanding any other law or regulation, neither the  
13 department nor any regional center shall approve any program  
14 design modification or revendorization for a community-based  
15 day program or in-home respite service agency provider that would  
16 result in an increase in the rate to be paid to the vendor from the  
17 rate that is in effect on or after June 30, 2008, unless the regional  
18 center demonstrates that the program design modification or  
19 revendorization is necessary to protect the consumers' health or  
20 safety and the department has granted prior written authorization.

21 (d) Notwithstanding any other law or regulation, the department  
22 shall not approve an anticipated rate adjustment for a  
23 community-based day program or in-home respite service agency  
24 provider that would result in an increase in the rate to be paid to  
25 the vendor from the rate that is in effect on or after June 30, 2008,  
26 unless the regional center demonstrates that the anticipated rate  
27 adjustment is necessary to protect the consumers' health or safety.

28 (e) Notwithstanding any other law or regulation, except as set  
29 forth in subdivisions (f) and (i), the department shall not approve  
30 any rate adjustment for a work activity program that would result  
31 in an increase in the rate to be paid to the vendor from the rate that  
32 is in effect on or after June 30, 2008, unless the regional center  
33 demonstrates that the rate adjustment is necessary to protect the  
34 consumers' health and safety and the department has granted prior  
35 written authorization.

36 (f) Notwithstanding any other law or regulation, commencing  
37 July 1, 2014, the department may approve rate adjustments for a  
38 work activity program that demonstrates to the department that  
39 the rate adjustment is necessary in order to pay employees who,  
40 prior to July 1, 2014, were being compensated at a wage that is

1 less than the minimum wage established on and after July 1, 2014,  
2 by Section 1182.12 of the Labor Code, as amended by Chapter  
3 351 of the Statutes of 2013: Code. The rate adjustment pursuant  
4 to this subdivision shall be specific to payroll costs associated with  
5 any increase necessary to adjust employee pay only to the extent  
6 necessary to bring pay into compliance with the increased state  
7 minimum wage, and shall not constitute a general wage  
8 enhancement for employees paid above the increased minimum  
9 wage.

10 (g) Notwithstanding any other law or regulation, commencing  
11 July 1, 2014, community-based day program and in-home respite  
12 services agency providers with temporary payment rates set by  
13 the department may seek unanticipated rate adjustments from the  
14 department due to the impacts of the increased minimum wage as  
15 established by Section 1182.12 of the Labor Code, as amended by  
16 Chapter 351 of the Statutes of 2013: Code. The rate adjustment  
17 shall be specific to payroll costs associated with any increase  
18 necessary to adjust employee pay only to the extent necessary to  
19 bring pay into compliance with the increased state minimum wage,  
20 and shall not constitute a general wage enhancement for employees  
21 paid above the increased minimum wage.

22 (h) Notwithstanding any other law or regulation, commencing  
23 January 1, 2015, the in-home respite service agency rate schedule  
24 authorized by the department and in operation December 31, 2014,  
25 shall be increased by 5.82 percent, subject to funds specifically  
26 appropriated for this increase for costs due to changes in federal  
27 regulations implementing the federal Fair Labor Standards Act of  
28 1938 (29 U.S.C. Sec. 201 et seq.). The increase shall be applied  
29 as a percentage, and the percentage shall be the same for all  
30 applicable providers.

31 (i) Notwithstanding any other law or regulation, commencing  
32 July 1, 2015, the department may approve rate adjustments for a  
33 work activity program that demonstrates to the department that  
34 the rate adjustment is necessary to implement Article 1.5  
35 (commencing with Section 245) of Chapter 1 of Part 1 of Division  
36 2 of the Labor Code, as added by Chapter 317 of the Statutes of  
37 2014. The rate adjustment may be applied only if a minimum of  
38 24 hours or three days of paid sick leave per year was not a benefit  
39 provided to employees as of June 30, 2015, and shall be specific  
40 to payroll costs associated with any increase necessary to

1 compensate an employee up to a maximum of 24 hours or three  
2 days of paid sick leave in each year of employment.

3 (j) Notwithstanding any other law or regulation, commencing  
4 July 1, 2015, community-based day program and in-home respite  
5 services agency providers with temporary payment rates set by  
6 the department may seek unanticipated rate adjustments from the  
7 department if the adjustment is necessary to implement Article 1.5  
8 (commencing with Section 245) of Chapter 1 of Part 1 of Division  
9 2 of the Labor Code, as added by Chapter 317 of the Statutes of  
10 2014. The rate adjustment may be applied only if a minimum of  
11 24 hours or three days of paid sick leave per year was not a benefit  
12 provided to employees as of June 30, 2015, and shall be specific  
13 to payroll costs associated with any increase necessary to  
14 compensate an employee up to a maximum of 24 hours or three  
15 days of paid sick leave in each year of employment.

16 SEC. 3. Section 4691.9 of the Welfare and Institutions Code  
17 is amended to read:

18 4691.9. (a) Notwithstanding any other law or regulation,  
19 commencing July 1, 2008:

20 (1) A regional center shall not pay an existing service provider,  
21 for services where rates are determined through a negotiation  
22 between the regional center and the provider, a rate higher than  
23 the rate in effect on June 30, 2008, unless the increase is required  
24 by a contract between the regional center and the vendor that is in  
25 effect on June 30, 2008, or the regional center demonstrates that  
26 the approval is necessary to protect the consumer’s health or safety  
27 and the department has granted prior written authorization.

28 (2) A regional center shall not negotiate a rate with a new service  
29 provider, for services where rates are determined through a  
30 negotiation between the regional center and the provider, that is  
31 higher than the regional center’s median rate for the same service  
32 code and unit of service, or the statewide median rate for the same  
33 service code and unit of service, whichever is lower. The unit of  
34 service designation shall conform with an existing regional center  
35 designation or, if none exists, a designation used to calculate the  
36 statewide median rate for the same service. The regional center  
37 shall annually certify to the State Department of Developmental  
38 Services its median rate for each negotiated rate service code, by  
39 designated unit of service. This certification shall be subject to

1 verification through the department’s biennial fiscal audit of the  
2 regional center.

3 (b) Notwithstanding subdivision (a), commencing July 1, 2014,  
4 regional centers may negotiate a rate adjustment with providers  
5 regarding rates if the adjustment is necessary in order to pay  
6 employees no less than the minimum wage as established by  
7 Section 1182.12 of the Labor Code, ~~as amended by Chapter 351~~  
8 ~~of the Statutes of 2013~~; and only for the purpose of adjusting  
9 payroll costs associated with the minimum wage increase. The  
10 rate adjustment shall be specific to the unit of service designation  
11 that is affected by the increased minimum wage, shall be specific  
12 to payroll costs associated with any increase necessary to adjust  
13 employee pay only to the extent necessary to bring pay into  
14 compliance with the increased state minimum wage, and shall not  
15 be used as a general wage enhancement for employees paid above  
16 the increased minimum wage. Regional centers shall maintain  
17 documentation on the process to determine, and the rationale for  
18 granting, any rate adjustment associated with the minimum wage  
19 increase.

20 (c) Notwithstanding any other law or regulation, commencing  
21 January 1, 2015, rates for personal assistance and supported living  
22 services in effect on December 31, 2014, shall be increased by  
23 5.82 percent, subject to funds specifically appropriated for this  
24 increase for costs due to changes in federal regulations  
25 implementing the federal Fair Labor Standards Act of 1938 (29  
26 U.S.C. Sec. 201 et seq.). The increase shall be applied as a  
27 percentage, and the percentage shall be the same for all applicable  
28 providers. As used in this subdivision, both of the following  
29 definitions shall apply:

30 (1) “Personal assistance” is limited only to those services  
31 provided by vendors classified by the regional center as personal  
32 assistance providers, pursuant to the miscellaneous services  
33 provisions contained in Title 17 of the California Code of  
34 Regulations.

35 (2) “Supported living services” are limited only to those services  
36 defined as supported living services in Title 17 of the California  
37 Code of Regulations.

38 (d) Notwithstanding subdivision (a), commencing July 1, 2015,  
39 regional centers may negotiate a rate adjustment with existing  
40 service providers for services for which rates are determined

1 through negotiation between the regional center and the provider,  
2 if the adjustment is necessary to implement Article 1.5  
3 (commencing with Section 245) of Chapter 1 of Part 1 of Division  
4 2 of the Labor Code, as added by Chapter 317 of the Statutes of  
5 2014. The rate adjustment may be applied only if a minimum of  
6 24 hours or three days of paid sick leave per year was not a benefit  
7 provided to employees as of June 30, 2015, and shall be specific  
8 to payroll costs associated with any increase necessary to  
9 compensate an employee up to a maximum of 24 hours or three  
10 days of paid sick leave in each year of employment.

11 (e) This section shall not apply to those services for which rates  
12 are determined by the State Department of Health Care Services,  
13 or the State Department of Developmental Services, or are usual  
14 and customary.

O