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CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 398

Introduced by Assembly Members Monning and Chesbro

February 23, 2009

An act to amend Sections 4354, 4354.5, 4357, 4357.1, 4358.5, 4359, and 14132.992 of, to repeal ~~Sections 4357.2 and 4359~~ *Section 4357.2* of, and to repeal and add Sections 4355 and 4356 of, the Welfare and Institutions Code, relating to acquired brain trauma.

LEGISLATIVE COUNSEL'S DIGEST

AB 398, as amended, Monning. Acquired brain trauma: administration.

(1) Existing law establishes the State Department of Mental Health and sets forth its powers and duties relating to the administration of programs for the delivery of mental health services, including, but not limited to, establishing the department as the agency responsible for administering a program of services for persons with acquired traumatic brain injury, as defined. This program provides for a demonstration project for postacute care for adults 18 years of age and older with an acquired traumatic brain injury, including the funding of demonstration project sites, as specified.

Existing law establishes the Department of Rehabilitation and sets forth its powers and duties relating to rehabilitation services, including, but not limited to, duties related to the delivery of services for persons with acquired traumatic brain injury.

This bill would remove the State Department of Mental Health as the agency responsible for administering the program of services for persons with acquired traumatic brain injury and would, instead, establish the Department of Rehabilitation as the responsible agency and would ~~delete~~ *extend* the existing July 1, 2012, repeal date for these provisions *until July 1, 2019*.

This bill would delete references to the program as a demonstration project. It would, instead, dependent upon securing sources of funding for the provision of services, require the Department of Rehabilitation to fund an array of services for adults 18 years of age and older with acquired traumatic brain injury and would require the department to determine the requirements for service delivery, uniform data collection, and other aspects of program administration that service providers participating in the program must meet and to monitor and evaluate the performance of those service providers, as specified.

The bill would require service providers to furnish data to the department and would require service providers wishing to continue to participate in the program after July 1, 2013, to comply with additional eligibility requirements specified by the department.

Existing law establishes the Traumatic Brain Injury Fund in the State Treasury, with this fund being available for purposes of the program, upon appropriation by the Legislature. The fund receives moneys from specified fines and penalties.

This bill would allow the department to use the funds in the Traumatic Brain Injury Fund to make grants to service providers for the provision of services, as specified. It would also modify requirements relating to the securing of matching funds.

(2) Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, pursuant to which medical benefits are provided to public assistance recipients and certain other low-income persons. The Medi-Cal program is partially governed and funded by federal Medicaid provisions.

Existing law requires the department, by March 15, 2009, to submit to the federal Centers for Medicare and Medicaid Services a home- and community-based services waiver application or an amendment of the state plan for home- and community-based services, to serve at least

100 adults with acquired traumatic brain injuries who otherwise would require care in a Medi-Cal funded nursing facility or an intermediate care facility for persons with developmental disabilities.

This bill would, instead, require this waiver to be submitted by March, 1, 2011.

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 4354 of the Welfare and Institutions Code
2 is amended to read:

3 4354. For purposes of this chapter, the following definitions
4 shall apply:

5 (a) "Acquired traumatic brain injury" is an injury that is
6 sustained after birth from an external force to the brain or any of
7 its parts, resulting in cognitive, psychological, neurological, or
8 anatomical changes in brain functions.

9 (b) "Department" means the State Department of Rehabilitation.

10 (c) "Director" means the Director of Rehabilitation.

11 (d) (1) "Vocational supportive services" means a method of
12 providing vocational rehabilitation and related services that may
13 include prevocational and educational services to individuals who
14 are unserved or underserved by existing vocational rehabilitation
15 services.

16 (2) "Extended supported employment services" means ongoing
17 support services and other appropriate services that are needed to
18 support and maintain an individual with an acquired traumatic
19 brain injury in supported employment following that individual's
20 transition from support provided as a vocational rehabilitation
21 service, including job coaching, by the department, as defined in
22 paragraphs (1) and (5) of subdivision (a) of Section 19150.

23 (e) The following four characteristics distinguish "vocational
24 supportive services" from traditional methods of providing
25 vocational rehabilitation and day activity services:

26 (1) Service recipients appear to lack the potential for unassisted
27 competitive employment.

28 (2) Ongoing training, supervision, and support services must
29 be provided.

1 (3) The opportunity is designed to provide the same benefits
2 that other persons receive from work, including an adequate income
3 level, quality of working life, security, and mobility.

4 (4) There is flexibility in the provision of support which is
5 necessary to enable the person to function effectively at the
6 worksite.

7 (f) “Community reintegration services” means services as
8 needed by consumers, designed to develop, maintain, increase, or
9 maximize independent functioning, with the goal of living in the
10 community and participating in community life. These services
11 may include, but are not limited to, providing, or arranging for
12 access to, housing, transportation, medical care, rehabilitative
13 therapies, day programs, chemical dependency recovery programs,
14 personal assistance, and education.

15 (g) “Fund” means the Traumatic Brain Injury Fund.

16 (h) “Supported living services” means a range of appropriate
17 supervision, support, and training in the consumer’s place of
18 residence, designed to maximize independence.

19 (i) “Functional assessment” means measuring the level or degree
20 of independence, amount of assistance required, and speed and
21 safety considerations for a variety of categories, including activities
22 of daily living, mobility, communication skills, psychosocial
23 adjustment, and cognitive function.

24 (j) “Residence” means the place where a consumer makes his
25 or her home, that may include, but is not limited to, a house or
26 apartment where the consumer lives independently, assistive living
27 arrangements, congregate housing, group homes, residential care
28 facilities, transitional living programs, and nursing facilities.

29 (k) “Community rehabilitation program” shall have the same
30 meaning as contained in subdivision (5) of Section 705 of Title
31 29 of the United States Code.

32 SEC. 2. Section 4354.5 of the Welfare and Institutions Code
33 is amended to read:

34 4354.5. The Legislature finds and declares all of the following:

35 (a) Traumatic brain injuries have a long-term impact on the
36 survivors, their families, caregivers, and support systems.

37 (b) Long-term care consumers experience great differences in
38 service levels, eligibility criteria, and service availability, resulting
39 in inappropriate and expensive care that fails to be responsive to
40 their needs.

1 (c) To the maximum extent feasible, the department shall pursue
2 all available sources of federal financial participation, including,
3 but not limited to, the Medicaid home and community-based
4 services waiver program (42 U.S.C. Sec. 1396n(c)) and Part J of
5 Subchapter II of the Public Health Service Act (42 U.S.C. Sec.
6 280b et seq.).

7 (d) If new sources of funding are secured which will permit
8 expanding the existing Traumatic Brain Injury Program, the
9 department shall fund an array of appropriate services and
10 assistance to adults 18 years of age and older with traumatic brain
11 injuries in those areas of the state with the greatest need.

12 (e) Implementation of this chapter shall be consistent with the
13 state's public policy strategy to design a coordinated services
14 delivery system pursuant to Article 4.05 (commencing with Section
15 14139.05) of Chapter 7 of Part 3 of Division 9.

16 SEC. 3. Section 4355 of the Welfare and Institutions Code is
17 repealed.

18 SEC. 4. Section 4355 is added to the Welfare and Institutions
19 Code, to read:

20 4355. (a) On or before January 1, 2012, the department shall
21 determine requirements related to service delivery, uniform data
22 collection, and other aspects of program administration, in addition
23 to those specified in Section 4357, that service providers
24 participating in the traumatic brain injury program must meet. This
25 may include, but is not limited to, the following:

26 (1) The department may require that service providers be
27 approved as community rehabilitation programs eligible to serve
28 consumers.

29 (2) Upon approval of the Medicaid waiver sought pursuant to
30 Section 14132.992, the department may require that all service
31 providers do both of the following:

32 (A) Satisfy all applicable eligibility requirements for provision
33 of services under the waiver.

34 (B) Participate in the waiver and provide extended supported
35 employment services, as defined in paragraph (2) of subdivision
36 (d) of Section 4354.

37 (b) On or before January 1, 2013, the department shall do all of
38 the following:

1 (1) Determine the level of funding necessary to permit a service
2 provider to meet all applicable requirements and adequately serve
3 its designated service area.

4 (2) Determine the number of sites that can be supported with
5 available funding.

6 (3) Solicit applications from organizations interested in and
7 qualified to provide services pursuant to this chapter, and select
8 those best qualified to do so, with priority given to applicants that
9 have proven experience in providing effective services to persons
10 with acquired traumatic brain injuries, including, but not limited
11 to, supported living services, caregiver support, and family and
12 community education.

13 (c) The department shall meet periodically with traumatic brain
14 injury service providers for discussion of topics, including, but not
15 limited to, the development and implementation of performance
16 standards and data collection processes, eligibility requirements,
17 program administration, pursuit of funding, implementation of the
18 Medicaid waiver, if approved by the federal government, and
19 refinement of the traumatic brain injury continuum of care.

20 SEC. 5. Section 4356 of the Welfare and Institutions Code is
21 repealed.

22 SEC. 6. Section 4356 is added to the Welfare and Institutions
23 Code, to read:

24 4356. Using data collected consistent with requirements
25 established pursuant to subdivision (a) of Section 4355, the
26 department shall monitor and evaluate the performance of service
27 providers.

28 SEC. 7. Section 4357 of the Welfare and Institutions Code is
29 amended to read:

30 4357. (a) Service providers shall identify the needs of
31 consumers and deliver services designed to meet those needs.

32 (b) Service providers shall match not less than 20 percent of the
33 amount granted, with the exception of funds used for mentoring.
34 The required match may be cash or in-kind contributions, or a
35 combination of both, from the sites or any cooperating agency.
36 In-kind contributions may include, but shall not be limited to, staff
37 and volunteer services.

38 (c) Service providers shall provide at least 51 percent of their
39 services under the grant to individuals who are Medi-Cal eligible
40 or who have no other identified third-party funding source.

1 (d) (1) Service providers shall provide, directly or by
2 arrangement, a coordinated service model to include all of the
3 following:

4 (A) Supported living services.

5 (B) Community reintegration services.

6 (C) Vocational supportive services.

7 (D) Information, referral, and, as needed, assistance in
8 identifying, accessing, utilizing, and coordinating all services
9 needed by individuals with traumatic brain injury and their families.

10 (E) Public and professional education designed to facilitate early
11 identification of persons with brain injury, prompt referral of these
12 persons to appropriate services, and improvement of the system
13 of services available to them.

14 (2) The model shall be designed and modified with advice from
15 consumers and their families, and shall be accessible to the
16 population in need, taking into account transportation, linguistic,
17 and cultural factors.

18 (e) Service providers shall develop and utilize an individual
19 service plan which will allow consumers to move from intensive
20 medical rehabilitation or highly structured living arrangements to
21 increased levels of independence and employment. The goals and
22 priorities of each consumer shall be an integral part of his or her
23 service plan.

24 (f) Service providers shall seek all third-party reimbursements
25 for which consumers are eligible and shall utilize all services
26 otherwise available to consumers at no cost, including vocational
27 rehabilitation services provided by the department. However,
28 grantees may utilize grant dollars for the purchase of
29 nonreimbursed services or services otherwise unavailable to
30 consumers.

31 (g) Service providers shall endeavor to serve a population that
32 is broadly representative with regard to race and ethnicity of the
33 population with traumatic brain injury in their geographical service
34 area, undertaking outreach activities as needed to achieve this goal.

35 (h) Service providers shall maintain a broad network of
36 relationships with local groups of brain injury survivors and
37 families of survivors, as well as local providers of health, social,
38 and vocational services to individuals with traumatic brain injury
39 and their families. The sites shall work cooperatively with these
40 groups and providers to improve and develop needed services and

1 to promote a well-coordinated service system, taking a leadership
2 role as necessary.

3 (i) Service providers shall furnish uniform data to the department
4 pursuant to subdivision (a) of Section 4355 as necessary to monitor
5 and evaluate the program.

6 (j) Service providers wishing to continue to participate in the
7 program after July 1, 2013, shall, by that date, be in compliance
8 with additional eligibility requirements established by the
9 department pursuant to Section 4355.

10 SEC. 8. Section 4357.1 of the Welfare and Institutions Code
11 is amended to read:

12 4357.1. (a) The department may make grants from the funds
13 in the Traumatic Brain Injury Fund, established in Section 4358,
14 to service providers for the purpose of carrying out the programs
15 detailed in this chapter.

16 (b) Contracts or grants awarded pursuant to this chapter,
17 including contracts required for administration or ancillary services
18 in support of programs, shall be exempt from the requirements of
19 the Public Contract Code and the State Administrative Manual,
20 and from approval by the Department of General Services.

21 (c) Grants awarded to service providers pursuant to this chapter
22 shall be subject to open competition every three years, unless the
23 department elects to extend one or more grants and delay
24 competition for those grants by a maximum of two additional
25 years.

26 SEC. 9. Section 4357.2 of the Welfare and Institutions Code
27 is repealed.

28 SEC. 10. Section 4358.5 of the Welfare and Institutions Code
29 is amended to read:

30 4358.5. Funds deposited into the Traumatic Brain Injury Fund
31 pursuant to paragraph (8) of subdivision (f) of Section 1464 of the
32 Penal Code may be matched by federal vocational rehabilitation
33 services funds for implementation of the Traumatic Brain Injury
34 program pursuant to this chapter. However, this matching of funds
35 shall occur only to the extent it is permitted by other state and
36 federal law, and to the extent the matching of funds would be
37 consistent with the policies and priorities of the department.

38 ~~SEC. 11. Section 4359 of the Welfare and Institutions Code is~~
39 ~~repealed.~~

1 *SEC. 11. Section 4359 of the Welfare and Institutions Code is*
2 *amended to read:*

3 4359. This chapter shall remain in effect until July 1, ~~2012,~~
4 2019, and as of that date is repealed, unless a later enacted statute
5 enacted prior to July 1, ~~2012,~~ 2019, extends or deletes that date.

6 SEC. 12. Section 14132.992 of the Welfare and Institutions
7 Code is amended to read:

8 14132.992. (a) (1) By March 15, 2011, the department shall
9 submit to the federal Centers for Medicare and Medicaid Services
10 a home- and community-based services waiver application pursuant
11 to Section 1396n(c) of Title 42 of the United States Code, or an
12 amendment of the state plan for home- and community-based
13 services pursuant to Section 1396n(i) of Title 42 of the United
14 States Code, to serve at least 100 adults with acquired traumatic
15 brain injuries who otherwise would require care in a Medi-Cal
16 funded nursing facility or an intermediate care facility for persons
17 with developmental disabilities or, for the amendment of the state
18 plan, who would meet the eligibility criteria in Section 1396n(i).

19 (2) As authorized by Section 1396n(c)(3) and 1396n(i)(3) of
20 Title 42 of the United States Code, the waiver or amendment of
21 the state plan shall waive the statewide application of this section
22 as well as comparability of services so that waiver services may
23 be provided by one or more service providers designated to provide
24 services to persons with acquired traumatic brain injury pursuant
25 to Chapter 5 (commencing with Section 4353) of Part 3 of Division
26 4.

27 (3) The waiver services to be provided to eligible Medi-Cal
28 recipients shall include case management services, community
29 reintegration and supported living services, vocational supportive
30 services including prevocational services, neuropsychological
31 assessments, and rehabilitative services provided by service
32 providers currently serving persons with acquired traumatic brain
33 injuries pursuant to Chapter 5 (commencing with Section 4353).

34 (4) The waiver services to be provided shall include as a
35 habilitation service pursuant to Section 1396n(c)(5) of Title 42 of
36 the United States Code “extended supported employment services”
37 to support and maintain an individual with an acquired traumatic
38 brain injury in supported employment following that individual’s
39 transition from support provided as a vocational rehabilitation
40 service, including job coaching, by the State Department of

1 Rehabilitation pursuant to paragraphs (1) and (5) of subdivision
2 (a) of Section 19150.

3 (5) The waiver services to be provided shall include
4 rehabilitative therapies, including, but not limited to, occupational
5 therapy, physical therapy, speech therapy, and cognitive therapy,
6 that are different in kind and scope from state plan services.

7 (6) The waiver shall require an aggregate cost-effectiveness
8 formula be used.

9 (b) The development process of the home- and community-based
10 services waiver application or state plan amendment shall include
11 the solicitation of the opinions and help of the affected
12 communities, including representatives of service providers
13 currently serving persons with acquired traumatic brain injuries
14 pursuant to Chapter 5 (commencing with Section 4353) of Part 3
15 of Division 4.

16 (c) The waiver or state plan amendment shall be implemented
17 only if the following conditions are met:

18 (1) Federal financial participation is available for the services
19 under the waiver or state plan amendment.

20 (2) Cost neutrality is achieved in accordance with the terms and
21 conditions of the waiver or state plan amendment and the
22 requirements of the federal Centers for Medicare and Medicaid
23 Services.

24 (3) State funds are appropriated, otherwise made available, or
25 both, for this waiver or state plan amendment, including funds for
26 staff to develop, implement, administer, monitor, and oversee the
27 waiver or state plan amendment.

28 (d) It is the intent of the Legislature that the home- and
29 community-based services waiver or state plan amendment
30 augment funds available to meet the needs of persons with acquired
31 traumatic brain injuries served by the participating service
32 providers in accordance with Chapter 5 (commencing with Section
33 4353) of Part 3 of Division 4.