

Assembly Bill No. 398

Passed the Assembly September 2, 2009

Chief Clerk of the Assembly

Passed the Senate August 31, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 4354, 4354.5, 4357, 4357.1, 4358.5, 4359, and 14132.992 of, to repeal 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, 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 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.

The people of the State of California do enact as follows:

SECTION 1. Section 4354 of the Welfare and Institutions Code is amended to read:

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

(a) “Acquired traumatic brain injury” is an injury that is sustained after birth from an external force to the brain or any of

its parts, resulting in cognitive, psychological, neurological, or anatomical changes in brain functions.

(b) “Department” means the State Department of Rehabilitation.

(c) “Director” means the Director of Rehabilitation.

(d) (1) “Vocational supportive services” means a method of providing vocational rehabilitation and related services that may include prevocational and educational services to individuals who are unserved or underserved by existing vocational rehabilitation services.

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

(e) The following four characteristics distinguish “vocational supportive services” from traditional methods of providing vocational rehabilitation and day activity services:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The department shall meet periodically with traumatic brain injury service providers for discussion of topics, including, but not limited to, the development and implementation of performance standards and data collection processes, eligibility requirements, program administration, pursuit of funding, implementation of the

Medicaid waiver, if approved by the federal government, and refinement of the traumatic brain injury continuum of care.

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

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

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

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

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

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

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

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

(A) Supported living services.

(B) Community reintegration services.

(C) Vocational supportive services.

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

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

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

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

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

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

(h) Service providers shall maintain a broad network of relationships with local groups of brain injury survivors and families of survivors, as well as local providers of health, social, and vocational services to individuals with traumatic brain injury and their families. The sites shall work cooperatively with these groups and providers to improve and develop needed services and to promote a well-coordinated service system, taking a leadership role as necessary.

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

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

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

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

(b) Contracts or grants awarded pursuant to this chapter, including contracts required for administration or ancillary services

in support of programs, shall be exempt from the requirements of the Public Contract Code and the State Administrative Manual, and from approval by the Department of General Services.

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

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

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

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

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

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

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

14132.992. (a) (1) By March 15, 2011, the department shall submit to the federal Centers for Medicare and Medicaid Services a home- and community-based services waiver application pursuant to Section 1396n(c) of Title 42 of the United States Code, or an amendment of the state plan for home- and community-based services pursuant to Section 1396n(i) of Title 42 of the United States Code, 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 or, for the amendment of the state plan, who would meet the eligibility criteria in Section 1396n(i).

(2) As authorized by Section 1396n(c)(3) and 1396n(i)(3) of Title 42 of the United States Code, the waiver or amendment of

the state plan shall waive the statewide application of this section as well as comparability of services so that waiver services may be provided by one or more service providers designated to provide services to persons with acquired traumatic brain injury pursuant to Chapter 5 (commencing with Section 4353) of Part 3 of Division 4.

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

(4) The waiver services to be provided shall include as a habilitation service pursuant to Section 1396n(c)(5) of Title 42 of the United States Code “extended supported employment services” to support and maintain an individual with an acquired traumatic brain injury in supported employment following that individual’s transition from support provided as a vocational rehabilitation service, including job coaching, by the State Department of Rehabilitation pursuant to paragraphs (1) and (5) of subdivision (a) of Section 19150.

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

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

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

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

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

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

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

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

Approved _____, 2009

Governor