

**Introduced by Senator Liu
(Principal coauthor: Senator Emmerson)**

February 15, 2011

An act to amend Sections 4629 and 4648 of, and to add Sections 4639.1, 4639.2, 4639.3, and 4639.4 to, the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

SB 382, as introduced, Liu. Developmental services: regional centers: complaints.

The Lanterman Developmental Disabilities Services Act authorizes the State Department of Developmental Services to contract with regional centers to provide support and services to individuals with developmental disabilities. That law authorizes the department to enter into 5-year contracts with regional centers, subject to an annual appropriation of funds by the Legislature. The act requires the contracts to specify that each regional center include annual performance objectives that will meet certain standards and allow the department to specify additional areas of support that require development or enhancement. The act requires corrective action if a regional center fails to meet the performance standards.

This bill would require the department to specify additional areas of support requiring development or enhancement, as specified. The bill would also require the department to make available on its Internet Web site each regional center's current contract, as well as the annual assessment of the regional center's success in achieving the previous year's objectives.

This bill would prohibit a regional center from retaliating against a regional center vendor, applicant for vendorization, or a regional center

employee for filing a complaint with the regional center, the department, or any other governmental entity about the regional center, its board members, or its employees. The bill would establish a process for the reporting and investigation of claims of retaliation and would require the regional center to report allegations of retaliation to the department.

This bill would require a regional center to report annually to the department the total number of complaints it has received within a fiscal year and would require the department to report the information to the Legislature, as specified. The bill would require the department, in addition to all other audits and reviews, at least once every 36 months, to conduct a review of each regional center's compliance with the procedures for developing individual program plans, as specified, and to utilize the results of the review to develop annual performance objectives. The bill would also, beginning July 1, 2013, require each regional center to post on its Internet Web site a directory of vendorized service providers, and negotiated rates, if applicable, and to update that list every 6 months.

The act provides that the regional centers purchase needed services for individuals with developmental disabilities through approved service providers that are identified through a process of vendorization. The act requires services and supports of comparable quality that are offered at different costs by different providers to be assessed and the lower cost provider used unless specified determinations are made.

This bill would require the determination of comparability to be made by the program planning team and to include specified criteria.

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 of the Welfare and Institutions Code
- 2 is amended to read:
- 3 4629. (a) The state shall enter into five-year contracts with
- 4 regional centers, subject to the annual appropriation of funds by
- 5 the Legislature.
- 6 (b) The contracts shall include a provision requiring each
- 7 regional center to render services in accordance with applicable
- 8 ~~provision of~~ state laws and regulations.
- 9 (c) (1) The contracts shall include annual performance
- 10 objectives that shall do both of the following:

1 (A) Be specific, measurable, and designed to do all of the
2 following:

- 3 (i) Assist consumers to achieve life quality outcomes.
- 4 (ii) Achieve meaningful progress above the current baselines.
- 5 (iii) Develop services and supports identified as necessary to
6 meet identified needs.

7 (B) Be developed through a public process as described in the
8 department's guidelines that includes, but is not limited to, all of
9 the following:

10 (i) Providing information, in an understandable form, to the
11 community about regional center services and supports, including
12 budget information and baseline data on services and supports and
13 regional center operations.

14 (ii) Conducting a public meeting where participants can provide
15 input on performance objectives and using focus groups or surveys
16 to collect information from the community.

17 (iii) Circulating a draft of the performance objectives to the
18 community for input prior to presentation at a regional center board
19 meeting where additional public input will be taken and considered
20 before adoption of the objectives.

21 (2) In addition to the performance objectives developed pursuant
22 to this section, the department ~~may~~ *shall* specify in the performance
23 contract additional areas of service and support that require
24 development or enhancement by the regional center, *including,*
25 *but not limited to, the requirements of subdivision (c) of Section*
26 *4639.7 and subdivision (d) of Section 4639.8.* In determining those
27 areas, the department shall consider public comments from
28 individuals and organizations within the regional center catchment
29 area, *the subject and results of fair hearing decisions,* the
30 distribution of services and supports within the regional center
31 catchment area, and review how the availability of services and
32 supports in the regional area catchment area compares with other
33 regional center catchment areas.

34 (d) Each contract with a regional center shall specify steps to
35 be taken to ensure contract compliance, including, but not limited
36 to, all of the following:

37 (1) Incentives that encourage regional centers to meet or exceed
38 performance standards.

39 (2) Levels of probationary status for regional centers that do
40 not meet, or are at risk of not meeting, performance standards. The

1 department shall require that corrective action be taken by any
2 regional center which is placed on probation. Corrective action
3 may include, but is not limited to, mandated consultation with
4 designated representatives of the Association of Regional Center
5 Agencies or a management team designated by the department, or
6 both. The department shall establish the specific timeline for the
7 implementation of corrective action and monitor its
8 implementation. When a regional center is placed on probation,
9 the department shall provide the appropriate area board with a
10 copy of the correction plan, timeline, and any other action taken
11 by the department relating to the probationary status of the regional
12 center.

13 (e) In order to evaluate the regional center's compliance with
14 its contract performance objectives and legal obligations related
15 to those objectives, the department shall do both of the following:

16 (1) Annually assess each regional center's achievement of its
17 previous year's objectives and make the assessment, including
18 baseline data and performance objectives of the individual regional
19 centers, available to the public. The department may make a special
20 commendation of the regional centers that have best engaged the
21 community in the development of contract performance objectives
22 and have made the most meaningful progress in meeting or
23 exceeding contract performance objectives.

24 (2) Monitor the activities of the regional center to ensure
25 compliance with the provisions of its contracts, including, but not
26 limited to, reviewing all of the following:

27 (A) The regional center's public process for compliance with
28 the procedures sets forth in paragraph (2) of subdivision (c).

29 (B) Each regional center's performance objectives for
30 compliance with the criteria set forth in paragraph (1) of
31 subdivision (c).

32 (C) Any public comments on regional center performance
33 objectives sent to the department or to the regional centers, and
34 soliciting public input on the public process and final performance
35 standards.

36 (f) The renewal of each contract shall be contingent upon
37 compliance with the contract including, but not limited to, the
38 performance objectives, as determined through the department's
39 evaluation.

1 (g) *The department shall make available on its Internet Web*
2 *site each regional center's current contract, as well as the annual*
3 *assessment of the regional center's success in achieving the*
4 *previous year's objectives.*

5 SEC. 2. Section 4639.1 is added to the Welfare and Institutions
6 Code, to read:

7 4639.1. (a) A regional center shall not retaliate against a
8 regional center vendor, applicant for vendorization, or a regional
9 center employee for filing a complaint with the regional center,
10 the department, or any other governmental entity about the regional
11 center, its board members, or its employees.

12 (b) A regional center shall report all allegations of retaliation
13 to the department.

14 (c) A regional center vendor, applicant for vendorization, or a
15 regional center employee may report retaliation directly to the
16 department. Upon receiving the allegation of retaliation, the
17 department shall investigate. If, after investigating, the department
18 finds that retaliation has occurred, the department shall send a copy
19 of its investigative report to the regional center and may place the
20 regional center on probationary status, pursuant to Section 4629.
21 If more than one instance of retaliation is found within a five-year
22 contract period, the department shall place the regional center on
23 probationary status. Failure to comply with corrective actions shall
24 be considered a violation of the contract and grounds for contract
25 termination, at the department's discretion. The department shall
26 identify and communicate to regional centers through a directive
27 as to what constitutes a single instance of retaliation.

28 (d) The department shall report the outcome of investigations
29 undertaken pursuant to subdivision (c) to the Legislature. If the
30 department reasonably believes that the investigative report may
31 involve criminal actions, the department shall also report this
32 information to the Attorney General.

33 (e) This section shall not be deemed to diminish the rights,
34 privileges, or remedies of an employee under any other federal or
35 state law, or under any employment contract or collective
36 bargaining agreement. This section shall not allow the release of
37 information protected under Section 4514.

38 SEC. 3. Section 4639.2 is added to the Welfare and Institutions
39 Code, to read:

1 4639.2. (a) A regional center shall report to annually the
2 department the total number of complaints it has received within
3 a fiscal year, including the method in which the complaint was
4 received, the type of complaint, the number of days pending to
5 resolution, and the disposition of each complaint.

6 (b) The department shall report annually to the Legislature the
7 total volume, method, type of complaint, days pending, and
8 disposition of complaints for each regional center that the regional
9 center has received in a fiscal year. The department shall also
10 provide to the Legislature the total volume, method, type of
11 complaint, days pending, and disposition of complaints for each
12 regional center that the department has directly received in a fiscal
13 year. The department shall ascertain to the best of its ability which
14 complaints have been filed with both the regional center and the
15 department to avoid duplicate counting of complaints.

16 (c) The department shall use the complaint data gathered pursuant
17 to this subdivision, accounting for population size, service needs,
18 and availability, to develop annual performance objectives for each
19 regional center that will improve each regional center's resolution
20 of complaints, where necessary.

21 SEC. 4. Section 4639.3 is added to the Welfare and Institutions
22 Code, to read:

23 4639.3. (a) In addition to all other audits and reviews the
24 department conducts of regional centers, the department shall
25 conduct a review of each regional center's compliance with the
26 procedures for developing individual program plans required by
27 law and regulation. The review shall consist of an evaluation of
28 whether the regional center has appropriate individual program
29 plan procedures in place, as well as a sampling of individual
30 program plans to determine whether procedures are being followed.
31 The regional center shall have the duty of demonstrating
32 compliance with respect to the development and ongoing
33 requirements of individual program plans. The department shall
34 issue necessary guidance to aid regional centers in retaining or
35 producing documentation that constitutes demonstration of
36 compliance.

37 (b) The department shall include this review in any fiscal audit,
38 Medicaid waiver review, or the follow up to an audit or review,
39 but the department shall conduct the review no less than once every
40 36 months. If a regional center has been found to be noncompliant

with state law or regulation, with respect to the development or ongoing requirements of individual program plans, the department shall monitor the regional center as necessary to ensure that corrective actions are taken by the regional center.

(c) The department shall utilize the results of this review to develop annual performance objectives for each regional center that will improve each regional center's compliance with state law and regulation with respect to the development and ongoing requirements of individual program plans.

(d) The department shall include the results of this review in its published annual review, pursuant to subdivision (g) of Section 4629.

SEC. 5. Section 4639.4 is added to the Welfare and Institutions Code, to read:

4639.4. In order to provide consumers and their families with information about service providers, and to provide greater transparency in the rates paid to service providers, beginning July 1, 2013, each regional center shall publish a directory of vendorized service providers on its Internet Web site, listing them by category of service. For vendors who have negotiated rates, the negotiated rate shall be published. The directory of service providers and their rates shall be updated every six months.

SEC. 6. Section 4648 of the Welfare and Institutions Code is amended to read:

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

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all

1 consumers to interact with persons without disabilities in positive,
2 meaningful ways.

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

8 (3) A regional center may, pursuant to vendorization or a
9 contract, purchase services or supports for a consumer from any
10 individual or agency which the regional center and consumer or,
11 where appropriate, his or her parents, legal guardian, or
12 conservator, or authorized representatives, determines will best
13 accomplish all or any part of that consumer's program plan.

14 (A) Vendorization or contracting is the process for identification,
15 selection, and utilization of service vendors or contractors, based
16 on the qualifications and other requirements necessary in order to
17 provide the service.

18 (B) A regional center may reimburse an individual or agency
19 for services or supports provided to a regional center consumer if
20 the individual or agency has a rate of payment for vendored or
21 contracted services established by the department, pursuant to this
22 division, and is providing services pursuant to an emergency
23 vendorization or has completed the vendorization procedures or
24 has entered into a contract with the regional center and continues
25 to comply with the vendorization or contracting requirements. The
26 director shall adopt regulations governing the vendorization process
27 to be utilized by the department, regional centers, vendors and the
28 individual or agency requesting vendorization.

29 (C) Regulations shall include, but not be limited to: the vendor
30 application process, and the basis for accepting or denying an
31 application; the qualification and requirements for each category
32 of services that may be provided to a regional center consumer
33 through a vendor; requirements for emergency vendorization;
34 procedures for termination of vendorization; the procedure for an
35 individual or an agency to appeal any vendorization decision made
36 by the department or regional center.

37 (D) A regional center may vendorize a licensed facility for
38 exclusive services to persons with developmental disabilities at a
39 capacity equal to or less than the facility's licensed capacity. A
40 facility already licensed on January 1, 1999, shall continue to be

1 vendorized at their full licensed capacity until the facility agrees
2 to vendorization at a reduced capacity.

3 (E) Effective July 1, 2009, notwithstanding any other provision
4 of law or regulation to the contrary, a regional center shall not
5 newly vendor a State Department of Social Services licensed
6 24-hour residential care facility with a licensed capacity of 16 or
7 more beds, unless the facility qualifies for receipt of federal funds
8 under the Medicaid Program.

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

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

29 (6) The regional center and the consumer, or where appropriate,
30 his or her parents, legal guardian, conservator, or authorized
31 representative, including those appointed pursuant to subdivision
32 (d) of Section 4548 or subdivision (e) of Section 4705, shall,
33 pursuant to the individual program plan, consider all of the
34 following when selecting a provider of consumer services and
35 supports:

36 (A) A provider's ability to deliver quality services or supports
37 which can accomplish all or part of the consumer's individual
38 program plan.

39 (B) A provider's success in achieving the objectives set forth
40 in the individual program plan.

1 (C) Where appropriate, the existence of licensing, accreditation,
2 or professional certification.

3 (D) (i) The cost of providing services or supports of comparable
4 quality by different providers, if available, shall be reviewed, and
5 the least costly available provider of comparable service, including
6 the cost of transportation, who is able to accomplish all or part of
7 the consumer's individual program plan, consistent with the
8 particular needs of the consumer and family as identified in the
9 individual program plan, shall be selected. In determining the least
10 costly provider, the availability of federal financial participation
11 shall be considered. ~~The~~

12 (ii) The consumer shall not be required to use the least costly
13 provider if it will result in the consumer moving from an existing
14 provider of services or supports to more restrictive or less
15 integrated services or supports. *The determination of comparability*
16 *shall be made by the individual program plan planning team and*
17 *shall include, but not be limited to, the criteria in subparagraphs*
18 *(A), (B), (C), and (E).*

19 (E) The consumer's or, where appropriate, the parents, legal
20 guardian, or conservator of a consumer's choice of providers.

21 (7) No service or support provided by any agency or individual
22 shall be continued unless the consumer or, where appropriate, his
23 or her parents, legal guardian, or conservator, or authorized
24 representative, including those appointed pursuant to subdivision
25 (d) of Section 4548 or subdivision (e) of Section 4705, is satisfied
26 and the regional center and the consumer or, when appropriate,
27 the person's parents or legal guardian or conservator agree that
28 planned services and supports have been provided, and reasonable
29 progress toward objectives have been made.

30 (8) Regional center funds shall not be used to supplant the
31 budget of any agency which has a legal responsibility to serve all
32 members of the general public and is receiving public funds for
33 providing those services.

34 (9) (A) A regional center may, directly or through an agency
35 acting on behalf of the center, provide placement in, purchase of,
36 or follow-along services to persons with developmental disabilities
37 in, appropriate community living arrangements, including, but not
38 limited to, support service for consumers in homes they own or
39 lease, foster family placements, health care facilities, and licensed
40 community care facilities. In considering appropriate placement

1 alternatives for children with developmental disabilities, approval
2 by the child's parent or guardian shall be obtained before placement
3 is made.

4 (B) Effective July 1, 2012, notwithstanding any other provision
5 of law or regulation to the contrary, a regional center shall not
6 purchase residential services from a State Department of Social
7 Services licensed 24-hour residential care facility with a licensed
8 capacity of 16 or more beds. This prohibition on regional center
9 purchase of residential services shall not apply to either of the
10 following:

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

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

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

35 (D) Consumers are eligible to receive supplemental services
36 including, but not limited to, additional staffing, pursuant to the
37 process described in subdivision (d) of Section 4646. Necessary
38 additional staffing that is not specifically included in the rates paid
39 to the service provider may be purchased by the regional center if
40 the additional staff are in excess of the amount required by

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

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

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

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

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

34 (A) Outreach and education to programs and services within
35 the community.

36 (B) Direct support to individuals which would enable them to
37 more fully participate in their community.

38 (C) Developing unpaid natural supports when possible.

39 (14) Other services and supports may be provided as set forth
40 in Sections 4685, 4686, 4687, 4688, and 4689, when necessary.

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

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

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

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

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

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

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

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

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

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

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

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

14 (g) Where there are identified gaps in the system of services
15 and supports or where there are identified consumers for whom
16 no provider will provide services and supports contained in his or
17 her individual program plan, the department may provide the
18 services and supports directly.

19 (h) At least annually, regional centers shall provide the
20 consumer, his or her parents, legal guardian, conservator, or
21 authorized representative a statement of services and supports the
22 regional center purchased for the purpose of ensuring that they are
23 delivered. The statement shall include the type, unit, month, and
24 cost of services and supports purchased.