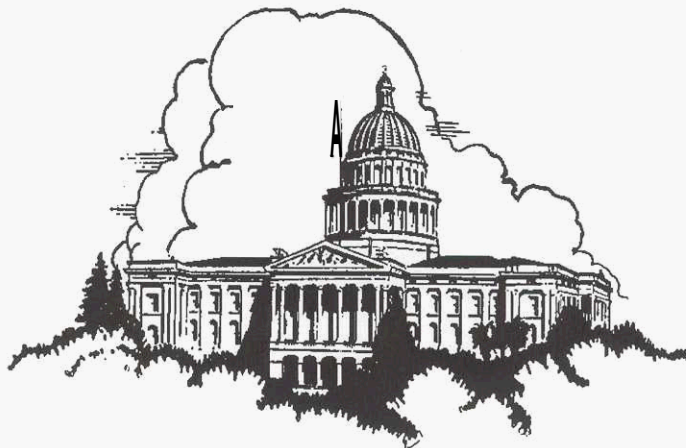


1998 LEGISLATIVE SESSION

IMPACT
OF

*SB 1038, AB 2780, AND AB 2494
ON SERVICES FOR PEOPLE WITH
DEVELOPMENTAL DISABILITIES*



INTRODUCTION

During the 1998 Legislative session, provisions of the Welfare and Institutions Code were deleted, amended, or added by several key pieces of legislation as follows:

- SB 1038 (Thompson) effective January 1, 1999.
- AB 2780 (Gallegos-Trailer Bill), an emergency statute effective August 19, 1998.
- AB 2494 (Aguiar) effective January 1, 1999.

This document was prepared to identify and enhance understanding of the significant statutory changes that occurred in 1998, focusing on those changes that affect services to persons with developmental disabilities.

The text is presented in strike out and underline form. Underlined text is new or revised. Strikeout indicates previous language which is now omitted. Comments in the right-hand column highlight and summarize the impact of the corresponding changes. The document is not an official legislative publication.

Prepared by:

State of California
Department of Developmental Services
Community Services Division
1600 Ninth Street, MS 3-9
Sacramento, CA 95814

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TABLE OF CONTENTS

SECTION	PAGE
Developmental Center Clients' Rights Advocacy Contractor (Section 4433.5)	4
Departmental Review of Regional Center POS Policies (Section 4434)	4
Lanterman Act Training (Section 45 11)	6
Definition of Planning Team (Section 45 12)	6
Regional Center Request for Proposal Requirements (Section 45 13).....	9
Life Quality Assessment (Section 4596.5).	10
Performance Contracts (Section 4629)	12
Report of Regional Center Financial Status (Section 463 1).....	14
Regional Center Contract Noncompliance (Section 4635)	15
Case Management Staff Ratios (Section 4640.6).	17
Individual Program Planning (Section 4646)	18
Review of General Health Status of Consumers (Section 4646.5)	19
Vendorization and Notification of Consumer Rights (Section 4648).....	21
Unannounced Visits and <i>Looking at Service Quality Provider's Handbook</i> (Section 4648.1) ..	26
Community Care Facility Rate Setting (Sections 4681.1, 4681.3 and 4681.4)	28
Community Care Facility Direct Care Staff Training (Section 4681.5)	35
Services to Families with Children (Section 4685)	35
Out-of-Home Placement for Children (Section 4685.1)	37
Self-Determination Pilot Projects (Section 4685.5)	38
Supported Living Services Assessment (Section 4689)	39
Supported Living Service Providers Payment Increase (Section 4689.7)	41

In-Home Respite Services Rate Increase (Sections 4690.2 and 4690.3)	42
In-Home Respite Services and Day Programs Rate Setting (Section 4690.4)	44
Day Programs Rate Increase (Section 4691.5)	45
Regional Center/County Mental Health Memorandum of Understanding (Section 4696.1) ...	50
Review of Service Delivery System (Section 4697)	52
Definition of Adequate Notice (Section 4701)	53
Definition of Hearing Request Form (Section 4702.6)	54
Service Agency Mediation and Fair Hearing Requirements (Section 4705)	54
Home-and-Community-Based-Services Waiver (Section 4706)	55
Departmental Mediation Process (Section 4707)	56
Fair Hearings, Mediation, and Informal Meetings (Sections 4710.5 , 4710.6 , 4710.7 , 4710.8 , 4710.9 , 4711 , 4711.5 , 4711.7 , 4712 , 4712.5 , 4712.7 , 4714 , and 4715)	56
Consumer Complaint Process (Section 4731)	68
Regional Center Privileged Communications (Section 4742.1)	69
Written Notification of Substantial Inadequacy (Section 4745)	70
Individual Program Plan for Relocation Requests (Section 4747)	70
Annual Meeting Regarding Licensed Health Facilities (Section 4847)	71

The following is a compilation of the amendments made by:

SB 1038, Chapter 1043, Statutes of 1998

AB 2494, Chapter 859, Statutes of 1998

AB 2780, Chapter 310, Statutes of 1998

DEVELOPMENTAL SERVICES

Welfare and Institutions Code

Division 4.1

General Administration, Powers and Duties of the Department

4433.5. Notwithstanding Section 4433, the department may contract with the Organization of Area Boards for the purpose of providing clients' rights advocacy services to individuals with developmental disabilities who reside in developmental centers and state hospitals.

This section was added by AB 2780 to permit this specified state entity to provide CRA services.

4434. (a) Notwithstanding preexisting rights to enforce the Lanterman Developmental Disabilities Services Act (Division 4.5) (commencing with Section 4500)), it is the intent of the Legislature that the department ensure that the regional centers operate in compliance with federal and state law and regulation and provide services and supports to consumers in compliance with the principles and specifics of this division.

This section was amended by AB 2780 to require the Department to review regional centers' (RCs) new and amended purchase-of-service policies prior to implementation.

(b) The department shall take all necessary actions to support regional centers to successfully achieve compliance with this section and provide high quality services and supports to consumers and their families.

(c) The contract between the department and individual regional centers required by Chapter 5 (commencing with Section 4620) of Division 4.5 shall include a provision requiring each regional center to render services in accordance with applicable provisions of state laws and regulations. In the event that the department finds a regional center has violated this requirement, or whenever it appears that any regional center has engaged in or is about to engage in any act or practice constituting a violation of any provision of Division 4.5 (commencing with Section 4500) or any regulation adopted thereunder, the department shall promptly take the appropriate steps necessary to ensure compliance with the law, including actions authorized under Section 4632 or 4635. The department, as the director deems appropriate, may pursue other legal or equitable remedies for enforcement of the obligations of regional centers including, but not limited to, seeking specific performance of the contract between the department and the regional center or otherwise act to enforce compliance with Division 4.5 (commencing with Section 4500) or any regulation adopted thereunder.

(d) As part of its responsibility to monitor regional centers, the department shall collect and review printed materials issued by the regional centers, including, but not limited to, purchase of service policies and other policies and guidelines utilized by regional centers when determining the services needs of a consumer, instructions and training materials for regional center staff, board meeting agendas and minutes, and general policy and notifications provided to all providers and consumers and families. Within a reasonable period of time, the department shall review new or amended purchase-of-service policies prior to implementation by the regional center to ensure compliance with statute and regulation. The department shall take appropriate and necessary steps to prevent regional centers from utilizing a policy or guideline that violates any provision of Division **4.5** (commencing with Section **4500**) or any regulation adopted thereunder.

LANTERMAN DEVELOPMENTAL DISABILITIES
SERVICE ACT

Welfare and Institutions Code
Division 4.5
Services for the Developmentally Disabled

CHAPTER 1. GENERAL PROVISIONS

4511. (a) The Legislature finds and declares that meeting the needs and honoring the choices of persons with developmental disabilities and their families requires information, skills and coordination and collaboration between consumers, families, regional centers, advocates and service and support providers.

(b) The Legislature further finds and declares the innovative and ongoing training opportunities can enhance the information and skills necessary and foster improved coordination and cooperation between system participants.

(c) The department shall be responsible, subject to the availability of fiscal and personnel resources, for securing, providing, and coordinating training to assist consumers and their families, regional centers, and services and support providers in acquiring the skills, knowledge, and competencies to achieve the purposes of this division.

(d) This training may include health and safety issues; person-centered planning; consumer and family rights; building circles of support; training and review protocols for the use of psychotropic and other medications; crime prevention; life quality assessment and outcomes; maximizing inclusive opportunities in the community; how to communicate effectively with consumers; and developing opportunities for decisionmaking.

(e) Whenever possible, the department shall utilize existing training tools and expertise.

(f) Each training module shall include an evaluation component.

(g) The department shall establish an advisory group, consisting of consumers, family members, regional centers, service providers, advocates, and legislative representatives. The advisory group shall make recommendations for training subjects, review the design of training modules, and assess training outcomes.

4512. As used in this part:

(a) "Developmental disability" means a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. **As** defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this

This section was added by AB 2780 to require the Department, subject to availability of fiscal and personnel resources, to secure, provide and coordinate training to assist consumers, families, regional centers, and service and support providers in acquiring skills and knowledge necessary to achieve the purposes of this division. The Department will establish an advisory group to make recommendations for the training, review the design of the training, and assess the training.

This section was amended by SB 1038 to clarify who the authorized representative is on the "planning team."

term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for ~~mentally-retarded~~ individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

(b) "Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of his or her family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies; advocacy assistance, including self-advocacy training, facilitation and peer advocates; assessment; assistance in locating a home; child care; behavior training and behavior modification programs; camping; community integration services; community support; daily living skills training; emergency and crisis intervention; facilitating circles of support; habilitation; homemaker services; infant stimulation programs; paid roommates; paid neighbors; respite; short term out-of-home care; social skills training; specialized medical and dental care; supported living arrangements; technical and financial assistance; travel training; training for parents of children with developmental disabilities; training for parents with developmental disabilities; vouchers; and transportation services necessary to ensure delivery of services to persons with developmental disabilities. Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her

individual program plan.

(c) Notwithstanding subdivision (a) and (b), for any organization or agency receiving federal financial participation under the federal Developmental Disabilities Assistance and Bill of Rights Act, as amended "developmental disability" and "services for persons with developmental disabilities" means such terms as defined in the federal act to the extent required by federal law.

(d) "Consumer" means a person who has a disability that meets the definition of developmental disability set forth in subdivision (a).

(e) "Natural supports" means personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships; friendships reflecting the diversity of the neighborhood and the community; associations with fellow students or employees in regular classrooms and workplaces; and associations developed through participation in clubs, organizations, and other civic activities.

(f) "Circle of support" means a committed group of community members, which may include family members, meeting regularly with an individual with developmental disabilities in order to share experiences, promote autonomy and community involvement, and assist the individual in establishing and maintaining natural supports. Such a circle of support generally includes a plurality of members who neither provide nor receive services or supports for persons with developmental disabilities and who do not receive payment for participation in the circle of support.

(g) "Facilitation" means the use of modified or adapted materials, special instructions, equipment, or personal assistance by an individual, such as assistance with communications, which will enable a consumer to understand and participate to the maximum extent possible in the decisions and choices which effect his or her life.

(h) "Family support services" means services and supports that are provided to a child with developmental disabilities or his or her family and that contribute to the ability of the family to reside together.

(i) "Voucher" means any authorized alternative form of service delivery in which the consumer or family member is provided with a payment, coupon, chit, or other form of authorization which enables the consumer or family member to choose his or her own service provider.

(j) "Planning team" means the individual with developmental disabilities, the parents or legally appointed guardian of a minor consumer, or the legally appointed conservator of an adult consumer, the authorized representative, including those appointed pursuant to Section 4590 and subdivision (e) of Section 4705, one

or more regional center representatives, including the designated regional center service coordinator pursuant to subdivision (b) of Section **4640.7**, and any individual, including a service provider, invited by the consumer, the parents or legally appointed guardian of a minor consumer, or the legally appointed conservator of an adult consumer, or the authorized representative. including those appointed pursuant to Section 4590 and subdivision(e) of Section 4705.

(k) “Stakeholder organizations” means statewide organizations representing the interests of consumers, family members, service providers, and statewide advocacy organizations.

4513. (a) Whenever the department allocates funds to a regional center through a reauquest for proposal process to implement special projects funded through the Budget Act. the department shall reauire that the regional center demonstrate community support for the proposal.

(b) In awarding funds to regional centers to implement such proposals. the department shall consider, among other indicators, the following:

(1) The demonstrated commitment of the regional center in establishing or expanding the service or support.

(2) The demonstrated ability of the regional center to implement the proposal.

(3) The success or failure of previous efforts to establish or expand the service or support.

(4) The need for the establishment or expansion of the service and support in the regional center catchment area as compared to other geographic areas.

(c) The department may reauire periodic progress reports from the regional center in implementing a proposal.

(d) The department shall ensure that each funded and implemented proposal be evaluated and that the evaluation process include the input of consumers, families, providers and advocates. as appropriate.

(e) The department shall make these evaluations available to the public, upon request.

(f) The department shall develop and implement strategies for fostering the duplication of successful projects.

~~4541. (a) The Legislature finds and declares that assurance of high quality services to persons with developmental disabilities is adversely affected by the lack of clear standards, the lack of a method for setting rates of reimbursement based upon these standards, and the lack of effective enforcement of these standards:~~

~~(b) The State Council on Developmental Disabilities, in~~

SB 1038 continued.

This section was added by AB 2780 to require the Department to conduct specified activities whenever it allocates funds to RCs through a request for proposal process to implement special projects funded through the Budget Act.

This section was deleted by SB 1038.

~~consultation with the Health and Welfare Agency, shall conduct a study to determine the most feasible method of establishing and enforcing quality assurance standards and the most feasible method of setting rates based upon these standards:~~

~~Participants in this study shall include, but not be limited to, the State Department of Developmental Services, the California Association of Rehabilitation Facilities, the Association for Retarded Citizens--California, The Association of Regional Center Agencies, and other interested community and provider groups.~~

~~The study shall include, but not be limited to, the following:~~

~~(1) The feasibility of creating a standards and rates commission:~~

~~(2) The feasibility of providing an existing state agency with the authority to set standards and rates as an alternative to paragraph (1):~~

~~(3) The results of the state council's study of alternative reimbursement mechanisms for day programs as required by Chapter 168 of the Statutes of 1982:~~

~~(c) On or before September 1, 1983, the State Council on Developmental Disabilities shall submit the results of the study pursuant to subdivision (b) to the Legislature together with a detailed plan, based upon the results of the study, to implement standards for quality assurance, rates based upon the standards, a method to enforce the standards, and processes for the vendorization or accreditation of service providers. The report shall include recommendations for specific legislation necessary to implement the proposed plan:~~

~~(d) For the purpose of the study required by this section, the Health and Welfare Agency and all departments under its jurisdiction shall make available personnel, equipment, and information required for completion of the study:~~

4596.5. (a) In order to remain informed about the quality of services in the area and protect the legal, civil, and service rights of persons with developmental disabilities pursuant to Section **4590**, the Legislature finds that it is necessary to conduct life quality assessments with consumers served by the regional centers.

(b) It is the intent of the Legislature that life quality assessments described in this section be conducted by area boards, unless an independent evaluation of the life quality assessment process, that shall be completed by April 30, 1998, identifies compelling reasons why this function should not be conducted by area boards.

(c) By July 1, 1998, the department shall enter into an interagency agreement with the Organization of Area Boards, on behalf of the area boards, to conduct the life quality assessments described in this section.

(d) Consistent with the responsibilities described in this chapter, the

This section was amended by SB 1038 to allow the use of any subsequent revisions of the "Looking at Life Quality Handbook" developed by the Department. when conducting life quality assessments.

The effective date for the annual report by the Organization of Area Boards was changed to September 1, 1999.

area board, with the consent of the consumer and, when appropriate, a family member, shall conduct life quality assessments with consumers living in out-of-home placements, supported living arrangements, or independent living arrangements no less than once every three years or more frequently **upon** the request of a consumer, or, when appropriate, a family member. A regional center or the department shall annually provide the local area board with a list, including, but not limited to, the name, address, and telephone number of each consumer, and, when appropriate, a family member, the consumer's date of birth, and the consumer's case manager, for all consumers living in out-of-home placements, supported living arrangements, or independent living arrangements, in order to facilitate area board contact with consumers and, when appropriate, family members, for the purpose of conducting life quality assessments.

(e) The life quality assessments shall be conducted by utilizing the ~~State Department of Developmental Services~~² "Looking at Life Quality Handbook" or subsequent revisions developed by the department.

(f) The assessments shall be conducted by consumers, families, providers, and others, including volunteer surveyors. Each area board shall recruit, train, supervise, and coordinate surveyors. Upon request, and if feasible, the area board shall respect the request of a consumer and, when appropriate, family member, for a specific surveyor to conduct the life quality assessment. **An** area board may provide stipends to surveyors.

(g) **A** life quality assessment shall be conducted within 90 days prior to a consumer's triennial individual program plan meeting, so that the consumer and regional center may use this information **as** part of the planning process.

(h) Prior to conducting a life quality assessment, the area board shall meet with the regional center to coordinate the exchange of appropriate information necessary to conduct the assessment and ensure timely followup to identified violations of any legal, civil, or service rights.

(i) Following the conduct of each life quality assessment, the area board shall develop a report of its findings and provide a copy of the report to the consumer, when appropriate, family members, and the regional center providing case management services to the consumer. In the event that a report identifies alleged violations of any legal, civil, or service right, the area board shall notify the regional center and the department of the alleged violation. The department shall monitor the regional center to ensure that violations are addressed and resolved in a timely manner.

(j) Regional centers shall review information from the life quality assessments on a systemic basis in order to identify training and

This section was also amended by AB 2780 to allow the Department to directly provide the annual list to the area boards of all consumers eligible for a life quality assessment.

resource development needs.

(k) Effective ~~August~~ September 1, 1999, and annually thereafter, the Organization of Area Boards shall prepare and submit a report to the Governor, the Legislature, and the department describing the activities and accomplishments related to the implementation of this section. The report shall include, but not be limited to, the number of life quality assessments conducted, the number of surveyors, including those provided stipends, a description of the surveyor recruitment process and training program, including any barriers to recruitment, the number, nature, and outcome of any identified violations of legal, civil, or service rights reported to regional centers, and recommendations for improvement in the life quality assessment process.

(l) Implementation of this section shall be subject to an annual appropriation of funds in the state Budget Act for this purpose.

(m) If the department finds, based on the results of the independent study described in subdivision (b), that there is a compelling reason why the area boards should not conduct the life quality assessments, it may select an alternative governmental agency or contract with a nonprofit agency to conduct the life quality assessments as described in this section. The department shall **notify** the Governor and the Legislature of such a finding, including the reasons for the finding and a description of the alternative method by which the department will ensure the life quality assessment process is completed.

4629. (a) The state shall enter into five-year contracts with regional centers, subject to the annual appropriation of funds by the Legislature.

(b) The contracts shall include a provision requiring each regional center to render services in accordance with applicable provision of state laws and regulations.

(c) (1) The contracts shall include annual performance objectives that shall do both of the following:

~~(+)~~ **(A)** Be specific, measurable, and designed to do all of the following:

~~(A)~~ **(i)** Assist consumers to achieve life quality outcomes.

~~(B)~~ **(ii)** Achieve meaningful progress above the current baselines.

~~(C)~~ **(iii)** Develop services and supports identified as necessary to meet identified needs.

~~(2)~~ **(B)** Be developed through a public process as described in the department's guidelines that includes, but is not limited to, all of the following:

~~(A)~~ **(i)** Providing information, in an understandable form, to the community about regional center services and supports, including budget information and baseline data on services and supports and

**SB 1038 and AB 2780
continued.**

This section was amended by AB 2780 to allow the Department to specify in the RCs' performance contracts additional areas of service and support that require development or enhancement. The Department is to consider public comments, and distribution and availability of services and supports within the RCs' catchment areas in determining these additional areas.

regional center operations.

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

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

(2) In addition to the performance objectives developed pursuant to this section, the department may specify in the performance contract additional areas of service and support that require development or enhancement by the regional center. In determining those areas, the department shall consider public comments from individuals and organizations within the regional center catchment area, the distribution of services and supports within the regional center catchment area, and review how the availability of services and supports in the regional center catchment area compares with other regional center catchment areas.

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

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

(2) Levels of probationary status for regional centers that do not meet, or are at risk of not meeting, performance standards. The department shall require that corrective action be taken by any regional center which is placed on probation. Corrective action may include, but is not limited to, mandated consultation with designated representatives of the Association of Regional Center Agencies or a management team designated by the department, or both. The department shall establish the specific timeline for the implementation of corrective action and monitor its implementation. When a regional center is placed on probation, the department shall provide the appropriate area board with a copy of the correction plan, timeline, and any other action taken by the department relating to the probationary status of the regional center. The implementation of corrective action shall occur in a timely manner and shall be monitored by the department.

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

(1) Annually assess each regional center's achievement of its previous year's objectives and make the assessment, including baseline data and performance objectives of the individual regional centers, available to the public. The department may make a special commendation of the regional centers that have best engaged the

This section was amended by AB 2780 to require the Department to establish specific timelines for implementation of corrective action plans and monitor the plans implementation for RCs that are on probationary status. The Department is required to provide copies of the corrective action plans, timelines, and any other actions taken relating to the probationary status to the appropriate area board.

community in the development of contract performance objectives and have made the most meaningful progress in meeting or exceeding contract performance objectives.

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

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

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

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

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

4631. (a) In order to provide to the greatest extent practicable a larger degree of uniformity and consistency in the services, funding, and administrative practices of regional centers throughout the state, the State Department of Developmental Services shall, in consultation with the regional centers, adopt regulations prescribing a uniform accounting system, a uniform budgeting and encumbrancing system, a systematic approach to administrative practices and procedures, and a uniform reporting system which shall include:

(1) Number and costs of diagnostic services provided by each regional center.

(2) Number and costs of services by service category purchased by each regional center.

(3) **All** other administrative costs of each regional center.

(b) The department's contract with a regional center shall require strict accountability and reporting of all revenues and expenditures, and strict accountability and reporting ~~as~~ to the effectiveness of the regional center in carrying out its program and fiscal responsibilities as established herein.

(c) The Director of Developmental Services shall, ~~within 30 days after the end of each quarter,~~ publish a report of the financial status of all regional centers and their operations by December 31 of each year. At a minimum, the report shall include each regional center's budget and actual expenditures for the previous fiscal year and each center's budget and projected expenditures for the current fiscal year.

AB 2780 continued.

This section was amended by AB 2780 to require the Department to publish a report of financial status of all RCs by December 31 of each year. The report will include each RC's budget and actual expenditures for the previous fiscal year and each RC's budget and projected expenditures for the current fiscal year.

4635. (a) If any regional center finds that it is unable to comply with the requirements of this division or its contract with the state, the regional center shall be responsible for informing the department immediately that it does not expect to fulfill its contractual obligations. Failure to provide the notification to the department in a timely manner shall constitute grounds for possible revocation or nonrenewal of the contract. If any regional center makes a decision to cancel or not renew its contract with the department, the regional center shall give a minimum of **90 days' written notice** of its decision.

(b)(1) If the department finds that any regional center is not fulfilling its contractual obligations, the department shall make reasonable efforts to resolve the problem within a reasonable period of time with the cooperation of the regional center, including the action described in paragraph (2) of subdivision (b) of Section **4629** or renegotiation of the contract.

(2) If the department's efforts to resolve the problem are not successful, the department shall issue a letter of noncompliance. The letter of noncompliance shall state the noncompliant activities and establish a specific timeline for the development and implementation of a corrective action plan. The department shall approve the plan and monitor its implementation. Letters of noncompliance shall be made available to the public upon request. The letter of noncompliance shall not include privileged or confidential consumer information or information that would violate the privacy rights of regional center board members or employees. The department shall notify the appropriate area board and shall provide the area board with a copy of the corrective action plan, the timeline, and any other action taken by the department relating to the requirements for corrective action.

(c) If the department finds that any regional center continues to fail in fulfilling its contractual obligations after reasonable efforts have been made, and finds that other regional centers are able to fulfill similar obligations under similar contracts, and finds &at it will be in the best interest of the persons being served by the regional center, the department shall take steps to terminate the contract **and** to negotiate with another governing board to provide regional center services in the area. These findings may also constitute grounds for possible nonrenewal of the contract in addition to, or in lieu **of**, other grounds.

(d) If the department makes a decision to cancel or not renew its contract with the regional center, the department shall give a minimum of 90 days' written notice of its decision, unless it has determined that the 90 days' notice would jeopardize the health or safety of the regional center's consumers, or constitutes willful misuse of state funds, as determined by the Attorney General.

This section was amended by AB 2780 to require the Department to issue a letter of noncompliance to a RC that is unable to resolve its problems and fulfill its contractual obligations. The letter will state the noncompliant activity and establish a specific timeline for development and implementation of a corrective action plan. The Department is required to approve and monitor the plan. The letter will be made available to the public upon request. The Department will notify the appropriate area board and provide the area board with copies of the corrective action plan, timeline, and any other action taken relating to the corrective action.

Within 14 days after receipt of the notice, the regional center may make a written protest to the department of the decision to terminate or not renew the contract. In that case, the department shall: (1) arrange to meet with the regional center and the appropriate area board within 30 days after receipt of the protest to discuss the decision and to provide its rationale for the termination or nonrenewal of the contract, and to discuss any feasible alternatives to termination or nonrenewal, including the possibility of offering a limited term contract of less than one fiscal year, and (2) initiate the procedures for resolving disputes contained in Section 4632. To the extent allowable under state and federal law, any outstanding audit exceptions or other deficiency reports, appeals, or protests shall be made available and subject to discussion at the meeting arranged under clause (1).

(e) When terminating or not renewing a regional center contract and negotiating with another governing board for a regional center contract, the department shall do all of the following:

(1) Notify the area board, State Council on Developmental Disabilities, all personnel employed by the regional center, all service providers to the regional center, and all consumers of the regional center informing them that it proposes to terminate or not renew the contract with the regional center, and that the state will continue to fulfill its obligations to ensure a continuity of services, as required by state law, through a contract with a new governing board.

(2) Issue a request for proposals prior to selecting and negotiating with another governing board for a regional center contract. The local area board shall review all proposals and make recommendations to the department.

(3) Request the area board and any other community agencies to assist the state by locating or organizing a new governing board to contract with the department to operate the regional center in the area. Area boards shall cooperate with the department when that assistance is requested.

(4) Provide any assistance which may be required to ensure that the transfer of responsibility to a new regional center will be accomplished with minimum disruption to the clients of the service program.

(f) In no event shall the procedures for termination or nonrenewal of a regional center contract limit or abridge the state's authority to contract with any duly authorized organization for the purpose of service delivery, nor shall these procedures be interpreted to represent a continued contractual obligation beyond the limits of any fiscal year contract.

~~(g) The amendments made to this section by the Statutes of 1982 shall apply to all contracts that were operative as of July 1, 1982.~~

4640. (a) Contracts between the department and regional centers shall specify the service area and the categories of persons that regional centers shall be expected to serve and the services and supports to be provided.

(b) In order to ensure uniformity in the application of the definition of developmental disability contained in this division, the Director of Developmental Services shall, by March 1, 1977, issue regulations that delineate, by diagnostic category and degree of disability, those persons who are eligible for services and supports by regional centers. In issuing the regulations, the director shall invite and consider the views of regional center contracting agencies, the state council, and persons with a demonstrated and direct interest in developmental disabilities.

4640.6. (a) In approving regional center contracts, the department shall ensure that regional center staffing patterns demonstrate that direct service coordination are the highest priority.

(b) Contracts between the department and regional centers shall require that regional centers implement an emergency response system that ensures that a regional center staff person will respond to a consumer, or individual acting on behalf of a consumer, within two hours of the time an emergency call is placed. This emergency response system shall be operational 24 hours per day, 365 days per year.

(c) Contracts between the department and regional centers ~~may include any staffing requirements and requirements related to the delivery of services which the department determines are necessary to ensure maximum cost-effectiveness and to ensure that the service needs of consumers and families are met~~ shall require regional centers to have case management consumer-to-staff ratios that reflect an overall average of 62 consumers to each staff member, and shall require regional centers to have, or contract for, all of the following areas:

- (1) Criminal justice expertise to assist the regional center in providing services and support to consumers involved in the criminal justice system as a victim, defendant, inmate, or parolee.
- (2) Special education expertise to assist the regional center in providing advocacy and support to families seeking appropriate educational services from a school district.
- (3) Family support expertise to assist the regional center in maximizing the effectiveness of support and services provided to families.
- (4) Housing expertise to assist the regional center in accessing affordable housing for consumers in independent or supportive living arrangements.
- (5) Community integration expertise to assist consumers and

This section was amended by SB 1038 to include “and supports” to conform with the new definition of “services and supports?”

This section was amended by AB 2780 to require RCs to have overall case management consumer-to-staff ratios that reflect an overall average of 62 consumers to each staff member, unless otherwise approved by the Department. Additionally, RCs are required to have, or contract for, expertise in specified areas.

This section was also amended to require RCs to employ at least one consumer advocate who is an individual with a developmental disability.

families in accessing integrated services and supports and improved opportunities to participate in community life.

(6) Quality assurance expertise, to assist the regional center to provide the necessary coordination and cooperation with the area board in conducting quality-of-life assessments and coordinate the regional center quality assurance efforts.

(7) Each regional center shall employ at least one consumer advocate who is a person with developmental disabilities.

(8) Other staffing arrangements related to the delivery of services that the department determines are necessary to ensure maximum cost-effectiveness and to ensure that the service needs of consumers and families are met.

(d) Any regional center proposing a staffing arrangement that substantially deviates from an overall average of 62 consumers to each staff member, shall submit the proposal to the department for approval prior to implementation. In requesting departmental approval, the regional center shall describe, in detail, its proposed staffing arrangement and the reasons why the staffing arrangement is in the best interest of consumers and families served by the regional center, and shall demonstrate public support for the proposed staffing arrangement.

4646. (a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

(b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, shall have the opportunity to actively participate in the development of the plan.

(c) An individual program plan shall be developed for any person who, following intake and assessment, is found to be eligible for regional center services. These plans shall be completed within 60 days of the completion of the assessment. At the time of intake, the regional center shall inform the consumer and, where appropriate, his or her parents, legal guardian or conservator, of the services

AB 2780 continued.

This section was amended by SB 1038 to add the “authorized representative” as a participant in the development of the IPP.

available through the local area board and the protection and advocacy agency designated by the Governor pursuant to federal law, and shall provide the address and telephone numbers of those agencies.

(d) Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

(e) Regional centers shall comply with the request of a consumer, or where appropriate, the request of his or her parents, legal guardian, or conservator, that a designated representative receive written notice of all meetings to develop or revise his or her individual program plan and **of** all notices sent to the consumer pursuant to Section 4710. The designated representative may be a parent or family member.

(f) If a final agreement regarding the services and supports to be provided to the consumer cannot be reached at a program plan meeting, then a subsequent program plan meeting shall be convened within **15** days, or later at the request of the consumer or, when appropriate, the parents, legal guardian, conservator, or authorized representative or when agreed to by the planning team. Additional program plan meetings may be held with the agreement of the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative.

(g) An authorized representative of the regional center and the consumer or, where appropriate, his or her parents, legal guardian, or conservator, shall sign the individual program plan prior to its implementation. If the consumer or, where appropriate, his or her parents, legal guardian, or conservator, does not agree with all components of the plan, they may indicate that disagreement on the plan. Disagreement with specific plan components shall not prohibit the implementation of services and supports agreed to by the consumer or, where appropriate, his or her parents, legal guardian, or conservator. If the consumer or, where appropriate, his or her parents, legal guardian, or conservator, does not agree with the plan in whole or in part, he or she shall be sent written notice of the fair hearing rights, as required by Section 4701.

4646.5. (a) The planning process for the individual program plan described in Section **4646** shall include all of the following:

This section was amended by SB 1038 to require the

(1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. For children with developmental disabilities, this process should include a review of the strengths, preferences, and needs of the child and the family unit as a whole. Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies. The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals.

(3) When developing individual program plans for children, regional centers shall be guided by the principles, process, and services and support parameters set forth in Section 4685.

(4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services.

(5) When agreed to by the consumer, the parents or legally appointed guardian of a minor consumer, or the legally appointed conservator of an adult consumer or the authorized representative, including those appointed pursuant to Section 4590 and subdivision (e) of Section 4705, a review of the general health status of the adult or child including a medical, dental, and mental health needs shall be conducted. This review shall include a discussion of current medications, any observed side effects, and the date of last review of the medication. Service providers shall cooperate with the

RCs, when agreed to by the consumer, and, when appropriate, parents, guardian, conservator, or authorized representative, to review the general health status of all consumers. If any concerns are noted during the review, referral shall be made to a RC clinician or the consumer's physician. Documentation of the health status review shall be maintained in the consumer's record.

planning team to provide any information necessary to complete the health status review. If any concerns are noted during the review, referrals shall be made to regional center clinicians or to the consumer's physician, as appropriate. Documentation of health status and referrals shall be made in the consumer's record by the service coordinator.

SB 1038 continued.

(6) A schedule of regular periodic review and reevaluation to ascertain that planned services have been provided, that objectives have been fulfilled within the times specified, and that consumers and families are satisfied with the individual program plan and its implementation.

(b) For all active cases, individual program plans shall be reviewed and modified by the planning team, through the process described in Section 4646, as necessary, in response to the person's achievement or changing needs, and no less often than once every three years. If the consumer or, where appropriate, the consumer's parents, legal guardian, or conservator requests an individual program plan review, the individual program shall be reviewed within 30 days after the request is submitted.

(c) (1) The department, with the participation of representatives of a statewide consumer organization, the Association of Regional Center Agencies, an organized labor organization representing service coordination staff, and the Organization of Area Boards shall prepare training material and a standard format and instructions for the preparation of individual program plans, which embodies an approach centered on the person and family.

(2) Each regional center shall use the training materials and format prepared by the department pursuant to paragraph (1).

(3) The department shall annually review a random sample of individual program plans at each regional center to assure that these plans are being developed and modified in compliance with Section 4646 and this section.

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

This section was amended by SB 1038 to add "authorized representative" as one who must be satisfied with a service or support in order for the service or support to continue.

with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

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

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

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

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

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

(D) A regional center may vendorize a licensed facility for exclusive services to persons with developmental disabilities at a capacity equal to or less than the facility's licensed capacity. A facility already licensed on January 1, 1999, shall continue to be vendorized at their full licensed capacity until the facility agrees to vendorization at a reduced capacity.

(4) Notwithstanding subparagraph (B), a regional center may contract or issue a voucher for services and supports provided to a consumer or family at a cost not to exceed the maximum rate of

This section was amended by SB 1038 to allow RCs to vendor a licensed facility for exclusive services to individuals with developmental disabilities at a capacity equal to or less than the facility's licensed capacity. Facilities licensed as of January 1, 1999 shall continue to be vendorized at their full licensed capacity until the facility agrees to vendorization at a reduced capacity.

payment for that service or support established by the department. If a rate has not been established by the department, the regional center may, for an interim period, contract ~~for~~ a specified service or support with, and establish a rate of payment for, any provider of the service or support necessary to implement a consumer's individual program plan. Contracts may be negotiated for a period of up to three years, with annual review and subject to the availability of funds.

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

(6) The regional center and the consumer, or where appropriate, his or her parents, legal guardian, conservator, or authorized representative shall, pursuant to the individual program plan, consider all of the following when selecting a provider of consumer services and supports:

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

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

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

(D) The cost of providing services or supports of comparable quality by different providers, if available.

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

(7) No service or support provided by any agency or individual shall be continued unless the consumer or, where appropriate, his or her parents, legal guardian, or conservator, or authorized representative, including those appointed pursuant to Section 4590 or subdivision (e) of Section 4705, is satisfied and the regional center and the consumer or, when appropriate, the person's parents or legal guardian or conservator, agree that planned services and supports have been provided, and reasonable progress toward objectives have been made.

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

(9) (A) A regional center may, directly or through an agency acting on behalf of the center, provide placement in, purchase of, or follow-along services to persons with developmental disabilities in, appropriate community living arrangements, including, but not limited to, support service for consumers in homes they own or lease, foster family placements, health care facilities, and licensed community care facilities. In considering appropriate placement alternatives for children with developmental disabilities, approval by the child's parent or guardian shall be obtained before placement is made.

(B) Each person with developmental disabilities placed by the regional center in a community living arrangement shall have the rights specified in this division. These rights shall be brought to the person's attention by any means ~~the director may designate by regulation~~ necessary to reasonably communicate these rights to each resident. provided that, at a minimum, the Director of Developmental Services prepare, provide, and require to be clearly posted in all residential facilities and day programs a poster using simplified language and uictures that is designed to be more understandable by persons with cognitive disabilities and that the rights information shall also be available through the regional center to each residential facility and day program in alternative formats, including, but not limited to, other languages, braille, and audio taues, when necessary to meet the communication needs of consumers.

(C) Consumers are eligible to receive supplemental services including, but not limited to, additional staffing, pursuant to the process described in subdivision (d) of Section 4646. Necessary additional staffing that is not specifically included in the rates paid to the service provider may be purchased by the regional center if the additional staff are in excess of the amount required by regulation and the individual's planning team determines the additional services are consistent with the provisions of the individual program plan. Additional staff should be periodically reviewed by the planning team for consistency with the individual program plan objectives in order to determine if continued use of the additional staff is necessary and appropriate and **if** the service is producing outcomes consistent with the individual program plan. Regional centers shall monitor programs to ensure that the additional staff is being provided and utilized appropriately.

(10) Emergency and crisis intervention services including, but not limited to, mental health services and behavior modification services, may be provided, as needed, to maintain persons with developmental disabilities in the living arrangement of their **own** choice. Crisis services shall first be provided without disrupting a person's living arrangement. If crisis intervention services are

The Department is required to notify consumers in community living arrangements of their rights specified in this division by any means necessary to reasonably communicate these rights to each resident. At a minimum, the Department is to prepare, provide and require to be clearly posted in all residential facilities and day programs a poster using simplified language and pictures. Additionally, the Department is to make the rights information available through the RCs to each residential facility and day program in alternative formats, including other languages, braille and audio tapes, when necessary.

unsuccessful, emergency housing shall be available in the person's home community. If dislocation cannot be avoided, every effort shall be made to return the person to his or her living arrangement of choice, with all necessary supports, as soon as possible.

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

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

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

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

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

(C) Developing unpaid natural supports when possible.

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

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

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

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

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

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

4648.1. (a) The State Department of Developmental Services and regional centers may monitor services purchased for regional center consumers with or without prior notice. ~~Monitoring without prior notice shall be limited to situations where the department or regional center determines that the purpose of the visit would be thwarted if advance notice were given.~~ Not less than two monitoring visits to a licensed long-term health care or community care facility or family home agency home each year shall be unannounced. The department may conduct fiscal reviews and audits of the service providers' records.

(b) Department and regional center staff involved in monitoring or auditing services provided to the regional centers' consumers by a service provider shall have access to the provider's grounds, buildings, and service program, and to all related records, including books, papers, computerized data, accounting records, and related documentation. All persons connected with the service provider's program, including, but not limited to, program administrators, **staff**, consultants, and accountants, shall provide information and access to facilities as required by the department or regional center.

(c) The department, in cooperation with regional centers, shall

This section was amended by SB 1038 to require RCs to conduct at least two unannounced monitoring visits to licensed health and community care facilities and homes approved by family home agencies each year.

ensure that all providers of services and supports purchased by regional centers for their consumers are informed of all of the following:

- (1) The provisions of this section.
- (2) The responsibility of providers to comply with laws and regulations governing both their service program and the provision of services and supports to people with developmental disabilities.
- (3) The responsibility of providers to comply with conditions of any contract or agreement between the regional center and the provider, and between the provider and the department.
- (4) The rights of providers established in regulations adopted pursuant to Sections **4647, 4647.2, 4647.5, 4647.7, 4648.2, 4748** and **4780.5**, to appeal actions taken by regional centers or the department as a result of their monitoring and auditing findings.
- (d) **A** regional center may terminate payments for services, and may terminate its contract or authorization for the purchase of consumer services if it determines that the provider has not complied with provisions of its contract or authorization with the regional center or with applicable state laws and regulations. When terminating payments for services or its contract or authorization for the purchase of consumer services, a regional center shall make reasonable efforts to avoid unnecessary disruptions of consumer services.
- (e) **A** regional center or the department may recover from the provider funds paid for services when the department or the regional center determines that either of the following has occurred:
 - (1) The services were not provided in accordance with the regional center's contract or authorization with the provider, or with applicable state laws or regulations.
 - (2) The rate paid is based on inaccurate data submitted by the provider on a provider cost statement.Any funds so recovered shall be remitted to the department.
- (f) Any evidence of suspected licensing violations found by department or regional center personnel shall be reported immediately to the appropriate state licensing agency.
- (g) Regional centers may establish volunteer teams, made up of consumers, parents, other family members, and advocates to conduct the monitoring activities described in this section.
- (h) In meeting its responsibility to provide technical assistance to providers of community living arrangements for persons with developmental disabilities, including, but not limited to, licensed residential facilities, family home agencies, and supported or independent living arrangements, a regional center shall utilize the "Looking at Service Quality-Provider's Handbook" developed by the department or subsequent revisions developed by the department.

This section was amended by SB 1038 to require RCs, in meeting their responsibility to provide technical assistance to licensed residential facilities, family home agencies, and supported or independent living arrangements, to use the "Looking at Service Quality Provider's Handbook."

~~4681.1. By July 1 each year, the department shall establish rates, that shall be reviewed by the state council. Payment of these rates shall be subject to the appropriation of sufficient funds for that purpose in the Budget Act. In reviewing the sufficiency of these rates that is required by March 1, 1989, the department shall take into account the findings and recommendations of the study conducted by the State Council on Developmental Disabilities pursuant to Section 4541.~~

~~(b) In establishing rates to be paid for out-of-home care, the department shall include each of the cost elements in this section as follows:~~

~~(1) Rates established for all facilities shall include an adequate amount to care for "basic living needs" of a person with developmental disabilities. "Basic living needs" shall include housing, shelter, utilities, furnishings, food, incidental transportation, housekeeping, and personal care items. The amount required for basic living needs shall be calculated each year as the average cost of these items in community care facilities. The department shall annually publish a listing of the allowable cost components of these cost items and the methodology used to determine the amounts of each item. The amount for basic living needs shall be adjusted depending on the extent to which there is a demonstrated variation based on the size of the out-of-home facility. These amounts shall be adjusted annually to reflect cost-of-living changes. A redetermination of basic living costs shall be undertaken every three years by the State Department of Developmental Services, using the best available estimating methods. The first report shall be made on March 1, 2001. The department shall convene an advisory committee and develop a plan, including a proposal for an appropriate study methodology, for the redetermination of basic living costs. The advisory committee shall include, but not be limited to, service consumers, family members, residential service providers, and advocacy groups.~~

~~(2) Rates established for all facilities that provide direct supervision for persons with developmental disabilities shall include an amount for "direct supervision." The cost of "direct supervision" shall vary with the person's functioning in the areas of self-care and daily living skills, physical coordination and mobility, and behavioral self-control and shall reflect one of the following:~~

~~(A) Basic self-help and daily living skills, no significant limitations in physical coordination and mobility, and behavioral self-control.~~

~~(B) Poor self-help and daily living skills, some limitations in physical coordination and mobility, or some disruptive or self-injurious behavior.~~

~~(C) Severe deficits in self-care and daily living skills, severe impairments in physical coordination and mobility, or severely~~

This section was amended by SB 1038 to delete existing ratesetting processes and require the Department to adopt regulations, by January 1, 2001, that specify rates for community care facilities (CCFs) serving individuals with developmental disabilities. Implementation of the regulations will be contingent upon an appropriation in the annual Budget Act for this purpose. The rates will be calculated on the basis of a cost model designed by the Department.

By May 15, 2001, and each year thereafter, the Department is to provide the Legislature with annual CCF rates, including any draft amendments to the regulations as required.

By July 1, 2001, and each year thereafter, contingent upon an appropriation in the annual Budget Act for this purpose, the Department is to adopt emergency regulations which establish the annual rates for CCFs serving individuals with developmental disabilities.

~~disruptive or self-injurious behavior.~~

~~The individual program plan developed pursuant to Section 4646 shall determine the amount of direct supervision required for each individual. The cost of direct supervision shall be calculated as the wage and benefit costs of caregiving staff depending on the level of service being provided to meet the functional needs of the person with developmental disabilities. These rates shall be adjusted annually to reflect wage changes and shall comply with all federal regulations for hospitals and residential care establishments under the federal Fair Labor Standards Act.~~

~~(3) Rates established for all facilities that provide "special services" for persons with developmental disabilities shall include an amount to pay for such "special services" for each person receiving special services. "Special services" include specialized training, treatment, supervision, or other services which the individual program plan of each person requires to be provided by the residential facility in addition to the direct supervision provided pursuant to the person's individual program plan in subdivision (b). Facilities shall be paid for providing special services for each individual to the extent that such services are specified in the person's individual program plan and the facility is a designated provider of such special services. Rates of payment for special services shall be the same as prevailing rates paid for similar services in the area.~~

~~(4) To the extent applicable, rates established for facilities shall include a reasonable amount for "unallocated services." These costs shall be determined using generally accepted accounting principles. "Unallocated services" means the indirect costs of managing a facility and includes costs of managerial personnel, facility operation, maintenance and repair, employee benefits, taxes, interest, insurance, depreciation, and general and administrative support. If a facility serves other persons in addition to developmentally disabled persons, unallocated services expenses shall be reimbursed under this section, only for the proportion of the costs associated with the care of developmentally disabled persons. The amount for unallocated services shall be adjusted depending on the extent to which there is a demonstrated variation due to such factors as facility size or administrative structure.~~

~~(5) Rates established for facilities shall include an amount to reimburse facilities for the depreciation of "mandated capital improvements and equipment" as established in the state's uniform accounting manual. For purposes of this section, "mandated capital improvements and equipment" are only those remodeling and equipment costs incurred by a facility because an agency of government has required such remodeling or equipment as a condition for the use of the facility as a provider of out-of-home care to persons with developmental disabilities.~~

~~(6) When applicable, rates established for proprietary facilities shall include a reasonable "proprietary fee."~~

~~(7) Rates established for all facilities shall include as a "factor" an amount to reflect differences in the cost of living for different geographic areas in the state.~~

~~(8) Rates established for developmentally disabled persons who are also mentally disordered may be fixed at a higher rate. The State Department of Mental Health shall establish criteria upon which higher rates may be fixed pursuant to this subdivision. The higher rate for developmentally disabled persons who are also mentally disordered may be paid when requested by the director of the regional center and approved by the Director of Developmental Services.~~

~~(c) This section shall apply to facility rates paid under the alternative residential model originally authorized in Item 4300-101-001 of the Budget Act of 1985 and as identified in the department's report of April 1987 entitled Alternative Residential Model (ARM).~~

~~(d) The department shall approve additional facilities to receive rates pursuant to this section upon the appropriation of funds for that purpose.~~

~~(e) It is the intent of the Legislature that the department phase in implementation of the alternative residential model during the fiscal years 1987-88, 1988-89, 1989-90, and 1990-91. The department shall include all facilities providing services pursuant to this article in the alternative residential model by January 1, 1991.~~

~~(f) By April 1, 1989, the State Department of Developmental Services shall prepare draft regulations establishing quality service standards for facilities and procedures for administering the alternative residential model. The department shall confer with interested parties concerning the draft regulations by July 1, 1989. By July 1, 1990, the department shall submit to the Office of Administrative Law regulations establishing quality service standards for facilities, procedures for administering the Alternative Residential Model, and ratesetting methodology. Full statewide implementation of the Alternative Residential Model shall not occur until the department has submitted these regulations.~~

~~(g) In addition to establishing rates as required by this section, the State Department of Developmental Services shall detail obstacles to ensuring sufficient numbers of living arrangements for persons served by the department, and to providing an adequate quality of care and services to persons served by the department who reside in residential facilities, and make recommendations for overcoming these obstacles.~~

(a) The department shall adopt regulations that specify rates for community care facilities serving persons with developmental

disabilities. The implementation of the regulations shall be contingent upon an appropriation in the annual Budget Act for this purpose. These rates shall be calculated on the basis of a cost model designed by the department which ensures that aggregate facility payments support the provision of services to each person in accordance with his or her individual program plan and applicable program requirements. The cost model shall reflect cost elements that shall include, but are not limited to, all of the following:

(1) "Basic living needs" include utilities, furnishings, food, supplies, incidental transportation, housekeeping, personal care items, and other items necessary to ensure a quality environment for persons with developmental disabilities. The amount identified for the basic living needs element of the rate shall be calculated as the average projected cost of these items in an economically and efficiently operated community care facility.

(2) "Direct care" includes salaries, wages, benefits, and other expenses necessary to supervise or support the person's functioning in the areas of self-care and daily living skills, physical coordination, mobility, and behavioral self-control, choice making, and integration. The amount identified for direct care shall be calculated as the average projected cost of providing the level of service required to meet each person's functional needs in an economically and efficiently operated community care facility. The direct care portion of the rate shall reflect specific service levels defined by the department on the basis of relative resident need and the individual program plan.

(3) "Special services" include specialized training, treatment, supervision, or other services which a person's individual program plan requires to be provided by the residential facility in addition to the direct care provided under paragraph (2). The amount identified for special services shall be calculated for each individual based on the additional services specified in the person's individual program plan and the prevailing rates paid for similar services in the area. The special services portion of the rate shall reflect a negotiated agreement between the facility and the regional center in accordance with Section 4648.

(4) "Indirect costs" include managerial personnel, facility operation, maintenance and repair, other nondirect care, employee benefits, contracts, training, travel, licenses, taxes, interest, insurance, depreciation, and general administrative expenses. The amount identified for indirect costs shall be calculated as the average projected cost for these expenses in an economically and efficiently operated community care facility.

(5) "Property costs" include mortgages, leases, rent, taxes, capital or leasehold improvements, depreciation, and other expenses related to the physical structure. The amount identified for property costs

shall be based on the fair rental value of a model facility which is adequately designed, constructed, and maintained to meet the needs of persons with developmental disabilities. The amount identified for property costs shall be calculated as the average projected fair rental value of an economically and efficiently operated community care facility.

(b) The cost model shall take into account factors which include, but are not limited to, all of the following:

(1) Facility size, as defined by the department on the basis of the number of facility beds licensed by the State Department of Social Services and vendorized by the regional center.

(2) Specific geographic areas, as defined by the department on the basis of cost of living and other pertinent economic indicators.

(3) Common levels of direct care, as defined by the department on the basis of services specific to an identifiable group of persons as determined through the individual program plan.

(4) Positive outcomes, as defined by the department on the basis of increased interaction, independence, and productivity at the aggregate facility and individual consumer level.

(5) Owner-operated and staff-operated reimbursement which shall not differ for facilities that are required to comply with the same program requirements.

(c) The rates established for individual community care facilities serving persons with developmental disabilities shall reflect all of the model cost elements and rate development factors described in this section. The cost model design shall include a process for updating the cost model elements that address variables, including, but not limited to, all of the following:

(1) Economic trends in California.

(2) New state or federal program requirements.

(3) Changes in the state or federal minimum wage.

(4) Increases in fees, taxes, or other business costs.

(5) Increases in federal supplemental security income/state supplementary program for the aged, blind, and disabled payments.

(d) Rates established for developmentally disabled persons who are also dually diagnosed with a mental disorder may be fixed at a higher rate. The department shall work with the State Department of Mental Health to establish criteria upon which higher rates may be fixed pursuant to this subdivision. The higher rate for developmentally disabled persons who are also dually diagnosed with a mental disorder may be used when requested by the director of the regional center and approved by the Director of Developmental Services.

(e) By January 1, 2001, the department shall prepare proposed regulations to implement the changes outlined in this section. The department may use a Private firm to assist in the development of

these changes and shall confer with consumers, providers, and other interested parties concerning the proposed regulations. By May 15, 2001, and each year thereafter, the department shall provide the Legislature with annual community care facility rates, including any draft amendments to the regulations as required. By July 1, 2001, and each year thereafter, contingent upon an appropriation in the annual Budget Act for this purpose, the department shall adopt emergency regulations which establish the annual rates for community care facilities serving persons with developmental disabilities for each fiscal year.

(f) During the first year of operation under the revised rate model, individual facilities shall be held harmless for any reduction in aggregate facility payments caused solely by the change in reimbursement methodology.

4681.3. (a) Notwithstanding any other provision of this article, for the 1996-97 fiscal year, the rate schedule authorized by the department in operation June 30, 1996, shall be increased based upon the amount appropriated in the Budget Act of 1996 for that purpose. The increase shall be applied as a percentage, and the percentage shall be the same for all providers.

(b) Notwithstanding any other provision of this article, for the 1997-98 fiscal year, the rate schedule authorized by the department in operation on June 30, 1997, shall be increased based upon the amount appropriated in the Budget Act of 1997 for that purpose. The increase shall be applied as a percentage, and the percentage shall be the same for all providers.

(c) Notwithstanding any other provision of this article, for the 1998-99 fiscal year, the rate schedule authorized by the department in operation on June 30, 1998, shall be increased commencing July 1, 1998, based upon the amount appropriated in the Budget Act of 1998 for that purpose. The increase shall be applied as a percentage, and the percentage shall be the same for all providers.

(d) Notwithstanding any other provision of this article, for the 1998-99 fiscal year, the rate schedule authorized by the department in operation on December 31, 1998, shall be increased January 1, 1999, based upon the cost-of-living adjustments in the Supplemental Security Income/State Supplementary Program for the Aged, Blind, and Disabled appropriated in the Budget Act of 1998 for that purpose. The increase shall be applied as a percentage and the percentage shall be the same for all providers.

4681.4. (a) Notwithstanding any other provision of this article, for the 1998-99 fiscal year, the rate schedule increased pursuant to subdivision (d) of Section 4681.3 shall be increased by an additional amount on January 1, 1999, based upon the amount appropriated in

SB 1038 continued.

This section was amended by AB 2780 to require that, for the 1998-99 fiscal year, the rate schedule authorized by the Department as of June 30, 1998, shall be increased effective July 1, 1998, based upon the amount appropriated in the Budget Act for 1998. For the 1998-99 fiscal year, the rate schedule authorized by the Department as of December 31, 1998, shall be increased January 1, 1999, based upon the cost-of-living adjustments for SSI/SSP appropriated in the Budget Act of 1998. The increases will be a percentage and will be the same for all providers.

This section was added by SB 2780 to require that, for the 1998-99 fiscal year, the rate schedule

the Budget Act of 1998 for that purpose. The rate increase permitted by this section shall be applied as a percentage, and the percentage shall be the same for all providers.

(b) Notwithstanding any other provision of this article, for the 1999-2000 fiscal year, the rate schedule authorized by the department in operation on December 31, 1999, shall be increased on January 1, 2000, based upon the amount appropriated in the Budget Act of 1999 for that purpose. The rate increase permitted by this section shall be applied as a percentage and the Percentage shall be the same for all providers.

(c) In order to help reduce direct care staff turnover and improve overall quality of care in Alternative Residential Model (ARM) facilities, funds appropriated by the Budget Act of 1998 and the Budget Act of 1999 to increase facility rates effective January 1, 1999, excluding any additional funds appropriated due to increases in benefits under Article 5 (commencing with Section 12200) of Chapter 3 of Part 3 of Division 9, and January 1, 2000, respectively, shall be used only for any of the following:

(1) Increasing direct care staff salaries, wages, and benefits.

(2) Providing coverage while direct care staff are in training classes or taking a training or competency test pursuant to Section 4681.5.

(3) Other purposes approved by the director.

(d) ARM providers shall report to regional centers, in a format and frequency determined by the department, information necessary for the department to determine, through the regional center, compliance with subdivision (c), including, but not limited to, direct care staff salaries, wages, benefits, and staff turnover.

(e) The department shall adopt emergency regulations in order to implement this section, which shall include, but are not limited to, the following:

(1) A process for enforcing the requirements of subdivisions (c) and (d).

(2) Consequences to an ARM provider for failing to comply with the requirements of subdivisions (c) and (d), including a process for obtaining approval from the director for the expenditure of funds for other purposes, as permitted by paragraph (3) of subdivision (c).

(3) A process for adjudicating provider appeals.

increase pursuant to Section 4681.3(d) shall be increased by an additional amount on January 1, 1999, based upon the amount appropriated in the Budget Act of 1998. For the 1999-2000 fiscal year, the rate schedule authorized by the Department as of December 31, 1999, shall be increased on January 1, 2000, based upon the amount appropriated in the Budget Act of 1999. The increases will be a percentage and will be the same for all providers.

The increases in rates identified in this section shall be used to increase ARM facilities' direct care staff (DCS) salaries, wages and benefits; provide staff coverage while DCS are in training classes or taking a training or competency test pursuant to Section 4681.5; or other purposes approved by the Director.

ARM providers will report to the RCs information regarding their compliance with this section.

The Department will adopt emergency regulations to implement this section.

4681.5. (a) Each direct care staff person employed in an Alternative Residential Model (ARM) facility shall be required to satisfactorily complete two 35-hour competency-based training courses approved, after consultation with the Community Care Facility Direct Care Training Work Group, by the department or pass a department-approved competency test for each of the 35-hour training segments. Each direct care staff person to whom this subdivision applies shall demonstrate satisfactory completion of the competency-based training by passing a competency test applicable to that training segment.

(b) Each direct care staff person employed in an ARM facility prior to January 1, 1999, shall satisfactorily complete the first required competency-based training course or pass a department-approved competency test applicable to that training segment by March 31, 2000, and satisfactorily complete the second competency-based training course or pass a department-approved competency test applicable to that training segment by March 31, 2001.

(c) Each direct care staff person whose employment in an ARM facility commences on or after January 1, 1999, shall satisfactorily complete the first required competency-based training course or pass a department-approved competency test applicable to that training segment within one year from the date the staff person was hired, and satisfactorily complete the second competency-based training course or pass a department-approved competency test applicable to that training segment within two years from the date the person was hired.

(d) A direct care staff person who does not comply with the requirements of this section may not continue to provide direct care to consumers in ARM facilities, unless otherwise approved by the department pursuant to conditions for a waiver specified in regulations adopted pursuant to subdivision (e).

(e) The department shall adopt emergency regulations in order to implement this section. These regulations may include, but are not limited to, all of the following:

(1) Requirements for satisfactory completion of the 70 hours of direct care staff training.

(2) Provisions for enforcement of training requirements.

(3) Continuing education requirements beyond the initial 70 hours of required training.

(4) Provisions for waiving staff training and competency testing requirements, provided that waivers shall not adversely impact the health and safety of ARM facility consumers.

4685. (a) Consistent with state and federal law, the Legislature finds and declares that children with developmental disabilities most often have greater opportunities for educational and social growth

This section was added by AB 2780 to require direct care staff employed in community care facilities (CCFs) to satisfactorily complete two 35-hour competency-based training courses approved by the Department or pass a Department-approved competency test for each of the 35-hour training segments.

This section was amended by SB 1038 to require the RC, when it first becomes

when they live with their families. The Legislature further finds and declares that the cost of providing necessary services and supports which enable a child with developmental disabilities to live at home is typically equal to or lower than the cost of providing out-of-home placement. The Legislature places a high priority on providing opportunities for children with developmental disabilities to live with their families, when living at home is the preferred objective in the child's individual program plan.

(b) It is the intent of the Legislature that regional-centers provide or secure family support services that do all of the following:

(1) Respect and support the decision making authority of the family.

(2) Be flexible and creative in meeting the unique and individual needs of families as they evolve over time.

(3) Recognize and build on family strengths, natural supports, and existing community resources.

(4) Be designed to meet the cultural preferences, values, and lifestyles of families.

(5) Focus on the entire family and promote the inclusion of children with disabilities in all aspects of school and community.

(c) In order to provide opportunities for children to live with their families, the following procedures shall be adopted:

(1) The department and regional centers shall give a very high priority to the development and expansion of services and supports designed to assist families that are caring for their children at home, when that is the preferred objective in the individual program plan. This assistance may include, but is not limited to specialized medical and dental care, special training for parents, infant stimulation programs, respite for parents, homemaker services, camping, day care, short-term out-of-home care, child care, counseling, mental health services, behavior modification programs, special adaptive equipment such as wheelchairs, hospital beds, communication devices, and other necessary appliances and supplies, and advocacy to assist persons in securing income maintenance, educational services, and other benefits to which they are entitled.

(2) When children with developmental disabilities live with their families, the individual program plan shall include a family plan component which describes those services and supports necessary to successfully maintain the child at home. Regional centers shall consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interest of the child, before considering out-of-home placement alternatives. When the regional center first becomes aware that **a family is considering** may consider an out-of-home placement, or is in need of additional specialized services to assist in caring for the child in the home, the regional center shall meet with the family to discuss

aware that a family may be considering an out-of-home placement for a child or is in need of additional specialized services to assist in caring for the child in the home, to meet with the family and discuss the situation and the family's current needs to maintain the child in the home.

This section was also amended to indicate that a family is not required to start a placement process or to commit to placing a child in order to receive requested services.

the situation and the family's current needs, solicit from the family what supports would be necessary to maintain the child in the home, and utilize creative and innovative ways of meeting the family's needs and providing adequate supports to keep the family together, if possible.

(3) To ensure that these services and supports are provided in the most cost-effective and beneficial manner, regional centers may utilize innovative service-delivery mechanisms, including, but not limited to, vouchers; alternative respite options such as foster families, vacant community facility beds, crisis child care facilities; and alternative child care options such as supplemental support to generic child care facilities and parent child care cooperatives.

(4) If the parent of any child receiving services and supports from a regional center believes that the regional center is not offering adequate assistance to enable the family to keep the child at home, the parent may initiate a request for fair hearing as established in this division. A family shall not be required to start a placement process or to commit to placing a child in order to receive requested services.

(5) Nothing in this section shall be construed to encourage the continued residency of adult children in the home of their parents when that residency is not in the best interests of the person. (6) When purchasing or providing a voucher for day care services for parents who are caring for children at home, the regional center may pay only the cost of the day care service that exceeds the cost of providing day care services to a child without disabilities. The regional center may pay in excess of this amount when a family can demonstrate a financial need and when doing so will enable the child to remain in the family home.

(7) A regional center may purchase or provide a voucher for diapers for children three years of age or older. A regional center may purchase or provide vouchers for diapers under three years of age when a family can demonstrate a financial need and when doing so will enable the child to remain in the family home.

4685.1 (a) When a minor child requires a living arrangement outside of the family home, as determined in the individual program plan developed pursuant to Section 4646 and Section 4648, the regional center shall make every effort to secure a living arrangement, consistent with the individual program plan, in reasonably close proximity to the family home.

(b) When the parents or guardian of a minor child requests that an out-of-home living arrangement for a minor child be in close proximity to the family home, and when such a living arrangement cannot be secured by the regional center, the regional center shall include with the individual program plan a written statement of its

This section was added by SB 1038 to require the RC to make every effort to secure a living arrangement, consistent with the IPP, in reasonably close proximity to the family home when a minor child requires an out-of-home living arrangement.

efforts to locate, develop, or adapt appropriate services and supports in a living arrangement within close proximity to the family home and what steps will be taken by the regional center to develop the services and supports necessary to return the child to the family home or within close proximity of the family home. This statement shall be updated every six months, or as agreed to by the parents or guardians, and a copy shall be forwarded to the parents or guardians of the minor and to the director of the department.

(c) This section shall not be construed to impede the movement of consumers to other geographic areas or the preference of the parent or guardian for the placement of their minor child.

4685.5 (a) Notwithstanding any other provision of law, commencing January 1, 1999, the department shall conduct a three-year pilot project under which funds shall be allocated for local self-determination pilot programs that will enhance the ability of a consumer and his or her family to control the decisions and resources required to meet all or some of the objectives in his or her individual program plan.

(b) Local self-determination pilot programs funded pursuant to this section may include, but not be limited to, all of the following:

(1) Programs that provide for consumer and family control over which services best meet their needs and the objectives in the individual program plan.

(2) Programs that provide allowances or subsidies to consumers and their families.

(3) Programs providing for the use of debit cards.

(4) Programs that provide for the utilization of parent vendors, direct pay options, individual budgets for the procurement of services and supports, alternative case management, and vouchers.

(5) Wraparound programs.

(c) The department shall allocate funds for pilot programs in three regional center catchment areas and shall, to the extent possible, test a variety of mechanisms outlined in subdivision (b).

(d) Funds allocated to implement this section may be used for administrative and evaluation costs. Purchase-of-service costs shall be based on the estimated annual service costs associated with each participating consumer and family. Each proposal shall include a budget outlining administrative, service, and evaluation components.

(e) Pilot projects shall be conducted in the following regional center catchment areas:

(1) Tri-Counties Regional Center.

(2) Eastern Los Angeles Regional Center.

(3) Redwood Coast Regional Center.

(f) If any of the regional centers specified in subdivision (e) do not

This section also added related documentation and reporting requirements.

This section was added by SB 1038 to require the Department, commencing January 1, 1999, to conduct a three-year pilot project for local self-determination programs. The Department will allocate funds for pilot programs in three RC catchment areas - Tri-Counties, Eastern Los Angeles, and Redwood Coast.

The Department will issue a report to the Legislature no later than January 1, 2001, on the status of each pilot program with respect to continuation or expansion.

submit a proposal meeting the requirements set forth in this section or by the department, the department may select another regional center to conduct a pilot project.

(g) The department shall develop and issue a request for proposals soliciting regional center participation in the pilot program. Consumers, families, regional centers, advocates, and service providers shall be consulted during the development of the request for proposal and selection of the pilot areas.

(h) Each area receiving funding under this section shall demonstrate joint regional center and area board support for the local self-determination pilot program, and shall establish a local advisory committee, appointed jointly by the regional center and area board, made up of consumers, family members, advocates, and community leaders and that shall reflect the multicultural diversity and geographic profile of the catchment area. The local advisory committee shall review the development and ongoing progress of the local self-determination pilot program and may make ongoing recommendations for improvement to the regional center. By September 1, 2000, the local advisory committee shall submit to the department recommendations for the continuation and expansion of the program.

(i) The department shall issue a report to the Legislature no later than January 1, 2001, on the status of each pilot program funded by this section and recommendations with respect to continuation and expansion.

(j) Notwithstanding any other provision of law, as of January 1, 1999, of the balances available pursuant to Item 4300-490 of the Budget Act of 1998 for regional centers, the first seven hundred fifty thousand dollars (\$750,000) is reappropriated for the purposes of implementing this section, and shall be available for expenditure until January 1, 2002.

(k) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2002, extends or deletes that date.

4689. Consistent with state and federal law, the Legislature places a high priority on providing opportunities for adults with developmental disabilities, regardless of the degree of disability, to live in homes that they own or lease with support available as often and for as long as it is needed, when that is the preferred objective in the individual program plan. In order to provide opportunities for adults to live in their own homes, the following procedures shall be adopted:

(a) The department and regional centers shall ensure that supported living arrangements adhere to the following principles:

This section was amended by SB 1038 to allow assessment of consumer needs for supported living services (SLS) to begin before 18 years of age to enable the consumer to move to his or her own home upon attaining 18 years of age.

(1) Consumers shall be supported in living arrangements which are typical of those in which persons without disabilities reside.

(2) The services or supports that a consumer receives shall change as his or her needs change without the consumer having to move elsewhere.

(3) The consumer's preference shall guide decisions concerning where and with whom he or she lives.

(4) Consumers shall have control over the environment within their own home.

(5) The purpose of furnishing services and supports to a consumer shall be to assist that individual to exercise choice in his or her life while building critical and durable relationships with other individuals.

(6) The services or supports shall be flexible and tailored to a consumer's needs and preferences.

(7) Services and supports are most effective when furnished where a person lives and within the context of his or her day-to-day activities.

(8) Consumers shall not be excluded from supported living arrangements based solely on the nature and severity of their disabilities.

(b) Regional centers may contract with agencies or individuals to assist consumers in securing their own homes and to provide consumers with the supports needed to live in their own homes.

(c) The range of supported living services and supports available include, but are not limited to, assessment of consumer needs; assistance in finding, modifying and maintaining a home; facilitating circles of support to encourage the development of unpaid and natural supports in the community; advocacy and self-advocacy facilitation; development of employment goals; social, behavioral, and daily living skills training and support; development and provision of 24-hour emergency response systems; securing and maintaining adaptive equipment and supplies; recruiting, training, and hiring individuals to provide personal care and other assistance, including in-home supportive services workers, paid neighbors, and paid roommates; providing respite and emergency relief for personal care attendants; and facilitating community participation. Assessment of consumer needs may begin before 18 years of age to enable the consumer to move to his or her own home when he or she reaches 18 years of age.

(d) Regional centers shall provide information **and** education to consumers and their families about supported living principles and services.

(e) Regional centers shall monitor and ensure the quality **of** services and supports provided to individuals living in homes that they own or lease. Monitoring shall take into account **all of the**

following:

- (1) Adherence to the principles set forth in this section.
- (2) Whether the services and supports outlined in the consumer's individual program plan are congruent with the choices and needs of the individual.
- (3) Whether services and supports described in the consumer's individual program plan are being delivered.
- (4) Whether services and supports are having the desired effects.
- (5) Whether the consumer is satisfied with the services and supports.

4689.7. (a) For the 1998-99 fiscal year, levels of payment for supported living service providers that are vendored pursuant to Section 4689 shall be increased based on the amount appropriated in this section for the purpose of increasing the salary, wage, and benefits for direct care workers providing supported living services.
 (b) The sum of five million fifty-seven thousand dollars (\$5,057,000) is hereby appropriated in augmentation of the appropriations made in the Budget Act of 1998 to implement this section as follows:

- (1) The sum of two million four hundred five thousand dollars (\$2,405,000) is hereby appropriated from the General Fund to the State Department of Health Services in augmentation of the appropriation made in Item 4260-101-0001.
- (2) The sum of two million five hundred fifty-one thousand dollars (\$2,551,000) is hereby appropriated from the Federal Trust Fund to the State Department of Health Services in augmentation of the appropriation made in Item 4260-101-0890.
- (3) The sum of one hundred one thousand dollars (\$101,000) is hereby appropriated from the General Fund to the Department of Developmental Services in augmentation of the appropriation made in Item 4300-101-0001, scheduled as follows:

10.10 Regional Centers

(b) 10.10.020 Purchase of Services

\$5,057,000

(e) Reimbursements

\$4,956,000

(c) By January 1, 2000, in consultation with stakeholder organizations, the department shall establish by regulation, an equitable and cost-effective methodology for the determination of supported living costs and a methodology of payment for providers of supported living services. The methodology shall consider the special needs of persons with developmental disabilities and the

SB 1038 continued.

This section was added by SB 1038 to increase, for fiscal year 1998-99, the levels of payment for vendored SLS providers by the sum of \$5,057,000 for the purpose of increasing the salary, wage and benefits for direct care workers providing SLS. Also, by January 1, 2000, the Department will establish by regulation an equitable and cost-effective methodology for determining SLS costs and payments.

quality of services to be provided.

(d) Following the allocation of funding appropriated in this section, and until these regulations are implemented, no new funds shall be allocated by the deoartment for the purpose of increasing the level of payment for supported living service providers.

4690.2. (a) The Director of Developmental Services shall develop program standards and establish, maintain, and revise, as necessary, an equitable process for setting rates of state payment, based upon those standards, for in-home respite services purchased by regional centers from agencies vendored to provide these services. The Director of Developmental Services may promulgate regulations establishing these standards and the process to be used for setting rates. "In-home respite services" means intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, for a regional center client who resides with a family member. These services are designed to do all of the following:

- (1) Assist family members in maintaining the client at home.
- (2) Provide appropriate care and supervision to ensure the client's safety in the absence of family members.
- (3) Relieve family members from the constantly demanding responsibility of caring for the client.
- (4) Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members.

(b) The provisions of subdivisions (b) to (f), inclusive, of Section 4691 and subdivisions (a) to (f), inclusive, and subdivision (h) of Section 4691.5 applicable to community-based day programs, shall also apply to in-home respite service vendors for the purpose of establishing standards and an equitable process for setting rates, except:

- (1) The process specified in paragraph **(4) of** subdivision (a) of Section 4691.5 for increasing rates for fiscal year 1990-91 shall apply only to the administrative portion of the rate for eligible in-home respite service vendors, and the amount of funds available for this increase shall not exceed three hundred thousand dollars (\$300,000) of the total amount appropriated for rate increases. The administrative portion of the rate shall consist of the in-home respite service vendor's allowable costs, other than those for respite worker's salary, wage, benefits, and travel. Vendors eligible for this rate increase shall include only those in-home respite service vendors which received a deficiency adjustment in their permanent or provisional rate for fiscal year 1989-90, as specified in paragraph (4) of subdivision (a) of Section 4691.5.

SB 1038 continued.

This section was amended by AB 2780 to allow, for fiscal year 1998-99, in-home respite service vendors to receive rate increases pursuant to subdivision (e) of Section 4691.5.

- (2) In addition, a rate increase shall also be provided for fiscal year 1990-91, for the salary, wage, and benefit portion of the rate for in-home respite service vendors eligible for the increase. The amount of funds available for this rate increase is limited to the remaining funds appropriated for this paragraph and paragraph (1) for fiscal year 1990-91. The amount of increase which each eligible in-home respite service vendor shall receive shall be limited to the amount necessary to increase the salary, wage, and benefit portion of the rate for respite workers to five dollars and six cents (\$5.06) per hour in salary and wages plus ninety-five cents (\$0.95) in benefits. Vendors eligible for this increase shall include only those in-home respite service vendors whose salary, wage, and benefit portion of their existing provisional or permanent rate, as established by the department for respite workers is below the amounts specified in this paragraph, and the vendor agrees to reimburse its respite workers at no less than these amounts during fiscal year 1990-91 and thereafter. In order to establish rates pursuant to this paragraph, existing programs receiving a permanent or provisional rate shall submit to the department, the program, cost, and other information specified by the department for either the 1988 calendar year, or for the 1988-89 fiscal year. The specified information shall be submitted on forms developed by the department, not later than 45 days following receipt of the required forms from the department, after the effective date of this section. Programs which fail to submit the required information within the time specified shall have payment of their permanent or provisional rate suspended until the required information has been submitted.
- (3) Effective July 1, 1990, and pursuant to the rate methodology developed by the department, the administrative portion and the salary, wage, and benefit portion of the rates for in-home respite service vendors currently receiving a provisional or permanent rate shall be combined and paid as a single rate.
- (4) Rate increases for fiscal year 1990-91 shall be limited to those specified in paragraphs (1) and (2). For fiscal year 1991-92 and all succeeding fiscal years, the provisions of subdivision (c) of Section 4691, which specify that any rate increases shall be subject to the appropriation of sufficient funds in the Budget Act, shall also apply to rates for in-home respite service vendors.
- (5) For the 1998-99 fiscal year, an in-home respite service vendor shall receive rate increases pursuant to subdivision (e) of Section 4691.5. Any rate increase shall be subject to the appropriation of funds pursuant to the Budget Act.
- ~~(5)~~(6) The rate methodology developed by the department may include a supplemental amount of reimbursement for travel costs of

respite workers using their private vehicles to and from and between respite sites. The supplemental amount shall be the minimum rate for travel reimbursement for state employees.

4690.3. (a) For the 1998-99 fiscal year, rates for in-home respite services agencies that are vendored pursuant to Section 4690.2 and the department's regulations to provide in-home respite services shall be increased based on the amount appropriated in the Budget Act of 1998 for the purpose of increasing the salary, wage, and benefit portion of the rate for in-home respite services workers. Agencies shall reimburse their respite workers at no less than the increased amount in their rate for the 1998-99 fiscal year and thereafter.

(b) For the 1998-99 fiscal year an individual who provides in-home respite services, pursuant to vendorization pursuant to the department's regulations, shall also receive a rate increase pursuant to subdivision (a).

4690.4. (a) Sections 4690.2, 4691, and 4691.5, which relate to in-home respite service agencies and community-based day programs, shall apply in the 1998-99 fiscal year with the following exceptions:
(1) The 1997-98 fiscal year allowable costs and consumer attendance data submitted to the department by September 30, 1998, shall not be utilized by the department to determine a new mean rate and allowable range of rates, pursuant to regulations, but may be used only in developing a new rate system.

(2) The allowable range of rates and mean rate established for the 1997-98 fiscal year shall be continued.

(3) The rate for new programs shall be the mean rate determined for the same type of program and staff-to-consumer ratio for the 1997-98 fiscal year.

(b) The department shall, in consultation with stakeholder organizations, develop performance based consumer outcome rate systems for community-based day programs and in-home respite services. If rates for community-based day programs are increased in the 1998-99 fiscal year pursuant to paragraphs (1) to (3), inclusive, of subdivision (e) of Section 4691.5, and rates for in-home respite services are increased in the 1998-99 fiscal year pursuant to paragraph (5) of subdivision (b) of Section 4690.2, as added by the act adding this section to the Welfare and Institutions Code, then effective September 1, 1998, and until such time as the new rate systems are implemented, or unless funds are otherwise appropriated for rate adjustments, rates shall be frozen.

AB 2780 continued.

This section was added by AB 2780 to allow rates for vendored in-home respite services agencies to be increased based on the amount appropriated in the Budget Act of 1998 for the purpose of increasing the salary, wage and benefit portion of the rate for in-home respite services workers. Agencies are to reimburse respite workers at no less than the increased amount in their rate.

This section was added by AB 2780 to limit the use of 1997-98 fiscal year allowable costs and consumer attendance data submitted to the Department. It may be used in developing a new rate system, but may not be used to determine a new mean rate and allowable range of rates. The allowable range of rates and mean rate established for 1997-98 fiscal year will continue.

This section was also added to require the Department to develop performance based consumer outcome rate systems for community-based day programs and in-home respite services.

4691.5. The ratesetting methodology, to be established pursuant to subparagraph (C) of paragraph (3) of subdivision (b) of Section 4691 shall include, but need not be limited to, all of the following: (a) A process for establishing rates during fiscal year 1990-91 for new programs and existing programs receiving a provisional or permanent rate.

(1) The rate for new programs shall be the mean rate determined for the same type of day program and staff-to-client ratio. This rate shall be a temporary rate. Determination of the mean rate for new programs shall be based on the program, cost, and other information of existing programs receiving a permanent rate, using allowable costs and client attendance information of those existing programs. In order to establish rates pursuant to this paragraph existing programs receiving a permanent rate shall submit to the department, the program, cost, and other information specified by the department for either calendar year 1988 or fiscal year 1988-89. The specified information shall be submitted on forms developed by the department, not later than 45 days following receipt of the required forms from the department, after the effective date of this section. Programs which fail to submit the required information within the time specified shall have payment of their permanent rate suspended until the required information has been submitted.

(2) Except as provided in paragraph (4) the rate for existing programs receiving a provisional rate, whose rate would otherwise expire during fiscal year 1990-91, shall be extended at the provisional rate until September 1, 1991.

(3) Except as provided in paragraph (4) below, the rate for existing programs receiving a permanent rate shall be reestablished at the permanent rate until June 30, 1991.

(4) The rate for existing programs receiving a provisional or permanent rate as specified in paragraph (2) and paragraph (3) shall be increased for all programs eligible for the increase. Eligible programs shall include only those programs which received a deficiency adjustment in their permanent or provisional rate for fiscal year 1989-90, based on calendar year 1988 program and cost information submitted to the department, pursuant to the stipulated order in the case of California Association of Rehabilitation Facilities et al. v. State of California, Sacramento County Superior Court Case No. 355326, and the adjustment was insufficient to fund the entire deficiency. The amount of funds available for the increase is limited to the one million dollars (\$1,000,000) appropriated for that purpose for fiscal year 1990-91, and it shall be distributed proportionately among all eligible programs. The amount of increase which each eligible program shall receive **toward its**

This section was amended by AB 2780 to allow, for fiscal year 1998-99, the rates for existing community-based day programs receiving a permanent rate to be increased under specified conditions.

remaining deficiency, based on calendar year 1988 program and cost information, shall be equal to the percentage that one million dollars (\$1,000,000) represents of the total deficiency, based on calendar year 1988 program and cost information, for all eligible programs.

(b) **A** process for establishing rates during fiscal year 1991-92 for new programs and existing programs receiving a temporary, provisional, or permanent rate.

(1) The rate for existing programs receiving a permanent rate, shall be determined based on fiscal year 1989-90 program, cost, and other information submitted to the department and regional center. The ratesetting process shall include, but shall not be limited to, all of the following:

(A) A process for determination of a mean rate and an allowable range of rates for the same type of day program and staff-to-client ratio. The mean rate shall be determined using those programs' allowable costs and client attendance and the allowable range of rates shall be defined as the rates of those programs included between the 10th and 90th percentiles.

(B) The rates for existing programs receiving a permanent rate shall be increased or decreased to their allowable costs for fiscal year 1991-92, as follows:

(i) The rate shall be decreased if the program's allowable costs and client attendance, for fiscal year 1989-90, determined pursuant to the regulations, would result in a rate that is lower than its existing permanent rate.

(ii) The rate shall be increased if the program's allowable costs and client attendance for fiscal year 1989-90, determined pursuant to the regulations, would result in a rate that is higher than its existing permanent rate and its existing permanent rate is below or within the allowable range of rates.

(iii) No rate increase shall be provided that would result in the rate exceeding the allowable range of rates. No increase shall be provided for programs whose existing permanent rate is above the allowable range of rates. The amount of funds appropriated for that purpose for fiscal year 1991-92 shall be distributed only to those programs eligible for the increase.

(C) A process for the reduction or increase in the rate of any program whose existing permanent rate is not within the allowable range of rates. This process shall be based upon all of the following:

(i) For programs whose existing permanent rates are above the allowable range of rates, their existing permanent rate shall be reduced by 5 percent or to the allowable range, whichever is less.

(ii) For programs whose existing permanent rates are below the allowable range of rates, after the increase specified in clause (ii) of subparagraph (B) their rate shall be increased, up to **the allowable**

range, in proportion to the amount of funds obtained from reducing the rate of programs whose rates are above the range.

(2) The rate for new programs shall be the mean rate determined pursuant to the process in paragraph (1) for the same type of day program and staff-to-client ratio using the program, cost, and other information submitted by providers receiving a permanent rate.

(3) The rate for existing programs receiving a provisional rate, whose rate expired during fiscal year 1990-91 and was extended until September 1, 1991, shall be determined pursuant to the process specified in paragraph (1) for permanent rates, except that the determination shall be based upon 12 consecutive months of representative costs incurred by the program during the period it was receiving its provisional rate. The program shall submit these costs and other program information, designated by the department, to the department within the time frames specified in the regulations. If the program has not incurred or cannot provide 12 consecutive months of representative costs, the department may determine the rate based on less than 12 consecutive months of representative costs.

(4) The rate for existing programs receiving a provisional rate, whose rate will expire in July or August of 1991, shall be extended until September 1, 1991, and then determined pursuant to the process specified in paragraph (3).

(c) A process for establishing rates during fiscal year 1992-93 for new programs and existing programs receiving a temporary or permanent rate:

(1) The rate for new programs shall be the mean rate, determined pursuant to the process in paragraph (2) of subdivision (b) for fiscal year 1991-92, for the same type of day program and staff-to-client ratio.

(2) The rate for existing programs receiving a temporary rate shall be continued at the rate established for fiscal year 1991-92, until the rate expires or a permanent rate is established pursuant to the process in paragraph (4) of subdivision (b) for fiscal year 1991-92.

(3) The rate for existing programs receiving a permanent rate shall be reestablished at the rate established for fiscal year 1991-92, except for programs whose rates are not within the allowable range of rates. For those programs whose rates are not within the allowable range, their rates shall be reduced or increased pursuant to the process in subparagraph (C) of paragraph (1) of subdivision (b) for fiscal year 1991-92.

(d) A process for establishing rates during fiscal year 1993-94 for new programs and existing programs receiving a temporary or permanent rate:

(1) The rate for existing programs receiving a permanent rate shall be determined based on fiscal year 1991-92 program, cost, and other

information submitted to the department and regional center. The ratesetting process shall include the process specified in paragraph (1) of subdivision (b) for fiscal year 1991-92, except that the allowable range of rates shall be determined by computing 50 percent of the mean rate for fiscal year 1993-94 and converting that amount into a range of rates, distributed equally above and below the mean. This process shall compare the range of rates computed for fiscal year 1993-94 with the range of rates calculated for fiscal year 1999-92 based on 80 percent of the programs, and shall use the lesser of the two ranges in the comparison as the allowable range of rates. Once established, this range shall be permanent.

(2) The rate for new programs shall be the mean rate determined pursuant to the process in paragraph (1) for the same type of day program and staff-to-client ratio using the program, cost, and other information submitted by providers receiving a permanent rate.

(3) The rate for existing programs receiving a temporary rate shall be continued at the established rate until the program has incurred 12 consecutive months of representative costs within the timeframes specified in the regulations. Once the representative costs have been incurred, the rate shall be determined pursuant to the process specified in paragraph (1) for permanent rates.

(e) A process for establishing rates, during fiscal year 1994-95 and each alternative fiscal year thereafter, for new programs and existing programs receiving a temporary or permanent rate. The process shall be the same as that specified in subdivision (c) for determining, continuing, and reestablishing rates, but shall be based on the program, cost, and other information submitted to the department and regional center for establishment of rates for fiscal year 1993-94 and each alternative fiscal year thereafter, except for the following:

(1) For the 1998-99 fiscal year, the rates for existing community-based day programs receiving a permanent rate shall be increased if the program's allowable costs and client attendance, for the 1995-96 fiscal year, determined pursuant to the regulations, would result in a rate that is higher than its existing permanent rate and its existing permanent rate is below or within the allowable range of rates. The rate shall not be decreased if the program's allowable costs and client attendance for the 1995-96 fiscal year, determined pursuant to the regulations, would result in a rate that is lower than its existing permanent rate.

(2) For the 1998-99 fiscal year, existing community-based day programs receiving a permanent rate, and whose permanent rate is still below the lower limit of the allowable range of rates for like programs after receiving an increase pursuant to paragraph (1), shall receive an increase in their permanent rate up to the lower limit of the allowable range of rates.

(3) The requirements of subdivision (c) of Section 4691, which specify that any rate increases shall be subject to the appropriation of sufficient funds in the Budget Act, shall also apply to rates governed by paragraphs (1) and (2).

(f) A process for establishing rates, during fiscal year 1995-96 and each alternative fiscal year thereafter, for new programs and existing programs receiving a temporary or permanent rate. The process shall be the same as that specified in subdivision (d) except for the following:

(1) The rate for programs receiving a permanent rate shall be based on program, cost, and other information submitted to the department and regional center for fiscal year 1993-94 and each alternative fiscal year thereafter.

(2) The allowable range of rates, permanently established during fiscal year 1993-94, shall be applied to the mean rate determined for fiscal year 1995-96 and each alternative fiscal year thereafter.

(3) Existing programs receiving a permanent rate whose rates are not within the allowable range of rates shall, by September 1, 1995, have their rates reduced or increased as follows:

(A) For programs whose existing permanent rates are above the allowable range of rates, their rate shall be reduced to the allowable range.

(B) For programs whose existing rates are below the allowable range of rates, their rate shall be increased up to the allowable range in proportion to the amount of funds obtained from reducing the rate of programs whose rates are above the range.

(g) A process for establishing a uniform supplemental rate of reimbursement for programs serving nonambulatory clients, as determined by the department.

(h) A process for notifying the program of the established rate.

~~4696.1. The State Department of Developmental Services, in consultation with the State Department of Mental Health, shall submit a report to the Legislature no later than March 15, 1987, which shall include, but not be limited to, all of the following:~~

~~(a) Recommendations on client evaluation and referral procedures for regional center clients needing mental health services;~~

~~(b) Recommendations for professional training and curriculum, which should be made available in order to ensure that regional centers and local mental health programs have the necessary, qualified personnel to meet the needs of clients who may require the services as specified in the individual program plan pursuant to Sections 4646 and 4648;~~

~~(c) Recommendations for the level and type of professional services necessary for each regional center to provide 24-hour crisis intervention services;~~

This section was deleted by SB 1038.

~~(d) Options for effectively delivering the services required in subdivision (c):~~

~~(e) Recommendations for amendments to the Lanterman-Petris-Short Act, Part 1 (commencing with Section 5000) of Division 5, in order to ensure that regional center clients receive necessary mental health services:~~

~~(f) Costs of providing services recommended in the report:~~

4696.1 (a) The Legislature finds and declares that improved cooperative efforts between regional centers and county mental health agencies are necessary in order to achieve each of the following:

(1) Increased leadership, communication, and organizational effectiveness between regional centers and county mental health agencies.

(2) Decreased costs and minimized fiscal risk in serving persons who are dually diagnosed with mental illness and developmental disabilities.

(3) Continuity of services.

(4) Improved quality of mental health outcomes for persons who are dually diagnosed.

(5) Optimized utilization of agency resources by building on the strengths of each organization.

(6) Timely resolution of conflicts.

(b) In order to achieve the outcomes specified in subdivision (a), by July 1, 1999, each regional center and county mental health agency shall develop a memorandum of understanding to do all of the following:

(1) Identify staff who will be responsible for all of the following:

(A) Coordinate service activity between the two agencies.

(B) Identify dually diagnosed consumers of mutual concern.

(C) Conduct problem resolution for those consumers serviced by both systems.

(2) Develop a general plan for crisis intervention for persons served by both systems. The plan shall include after-hours emergency response systems, interagency notification guidelines, and followup protocols.

(3) Develop a procedure by which each dually diagnosed consumer shall be the subject of a case conference conducted jointly by both regional center staff and county mental health as soon as **possible** after admission into a county operated or contracted acute, inpatient mental health facility. The case conference shall confirm the diagnosis and the treatment plan.

(4) Develop a procedure by which planning for dually diagnosed consumers admitted to a mental health inpatient facility **shall** be conducted collaboratively by both the regional center and the **local**

SB 1038 continued.

This section was added by SB 1038 to require, by July 1, 1999, each RC and county mental health agency to develop a memorandum of understanding (MOU) to improve cooperative efforts between the two agencies.

By May 15 of each year, the Department shall provide to the Legislature information on the status of the MOUs and identify any barriers to meeting the outcomes specified; the availability of mobile crisis intervention services; and a description of each RC's funded emergency housing options.

mental health agency and shall commence as soon as possible or as deemed appropriate by the treatment staff. The discharge plan shall include subsequent treatment needs and the agency responsible for those services.

(5) Develop a procedure by which regional center staff and county mental health staff shall collaborate to plan and provide training to community service providers, including day programs, residential facilities, and intermediate care facilities, regarding effective services to persons who are dually diagnosed. This training shall include crisis prevention with a focus on proactively recognizing crisis and intervening effectively with consumers who are dually diagnosed.

(6) Develop a procedure by which the regional center and the county mental health agency shall work toward agreement on a consumer-by-consumer basis on the presenting diagnosis and medical necessity, as defined by regulations of the State Department of Mental Health.

(c) The department and the State Department of Mental Health shall collaborate to provide a statewide perspective and technical assistance to local service regions when local problem resolution mechanisms have been exhausted and state level participation has been requested by both local agencies.

(d) The director of the local regional center and the director of the county mental health agency or their designees shall meet as needed but no less than annually to do all of the following:

(1) Review the effectiveness of the interagency collaboration.

(2) Address any outstanding policy issues between the two agencies.

(3) Establish the direction and priorities for ongoing collaboration efforts between the two agencies.

(e) Copies of each memorandum of understanding shall be forwarded to the State Department of Developmental Services upon completion or whenever amended. The department shall make copies of the memorandum of understanding available to the public upon request.

(f) By May 15 of each year, the department shall provide all of the following information to the Legislature:

(1) The status of the memorandums of understanding developed jointly by each regional center and the county mental health agency and identify any barriers to meeting the outcomes specified in this section.

(2) The availability of mobile crisis intervention services, including generic services, by regional center catchment area, including the names of vendors and rates used.

(3) A description of each regional center's funded emergency housing options, including the names and types of vendors, the number of beds and rates, including, but not limited to, crisis

emergency group homes, crisis beds in a regular group home, crisis foster homes, motel or hotel or psychiatric facility beds, and whether each emergency housing option serves minors or adults and whether it is physically accessible.

4697. (a) The Legislature finds and declares all of the following:

(1) The methods of establishing rates of payment for providers of services and supports to persons with developmental disabilities in the community should reflect the actual costs of ensuring high quality and stable services.

(2) State law and regulations should reflect the type and design of community-based services and supports necessary to best meet the needs and choices of individuals with developmental disabilities and their families.

(3) The licensing, vendoring, and monitoring of service and support providers is necessary to ensure the safety and satisfaction of consumers and should be achieved in a manner that is respectful of consumer privacy and choices, responsive to consumers and families, minimizes complexity and duplication, fosters partnership between state agencies and regional centers and provider in the delivery of high-quality services and supports, and respond swiftly to protect the rights and health of consumers.

(4) System stakeholders must work collaboratively and continuously to ensure that the design, funding methodology, and monitoring of the service and support delivery system reflects the values and goals of those served.

(b) It is the intent of the Legislature that the State Department of Developmental Services facilitate joint meetings between system stakeholders, as appropriate, to review the service delivery system and make recommendations for change when desirable. The efforts may include, but are not limited to:

(1) The process by which regional centers vendor providers of services and supports and make recommendations for changes to improve the quality of services and supports and choices of consumers and families in selecting providers.

(2) Ratesetting methodologies and recommendations to maximize cost-effectiveness while emphasizing quality, variety, and flexibility in the delivery of services and supports.

(3) The various monitoring and oversight functions of state and local agencies and recommendations for improving effectiveness and minimizing duplication.

SB 1038 continued.

This section was added by SB 1038 to express Legislative intent that the Department facilitate joint meetings between system stakeholders to review the service delivery system and make recommendations for change when desirable. The areas that may be reviewed are: (1) the process by which RCs vendor providers; (2) ratesetting methodologies; and (3) various monitoring and oversight functions of state and local agencies.

(Sections 4701 through 4715 that follow were amended by both SB 1038 and AB 2780 throughout to establish procedures for voluntary mediation; to make the informal hearing voluntary; to satisfy issues raised by HCFA regarding consumers receiving HCBW services; to establish training and evaluation requirements for mediators and hearing officers; to establish related procedural requirements; and to make technical and conforming changes.)

4701. "Adequate notice" means a written notice informing the applicant, recipient, and authorized representative of at least all of the following:

- (a) The action that the service agency proposes to take, including a statement of the basic facts upon which the service agency is relying.
- (b) The reason or reasons for that action.
- (c) The effective date of that action.
- (d) The specific law, regulation, or policy supporting the action.
- (e) The responsible state agency with whom a state appeal may be filed, including the address of the state agency director.
- (f) Information on availability of advocacy assistance, including referral to the state hospital or regional center clients' rights advocate, area board, publicly funded legal services corporations, and other publicly or privately funded advocacy organizations, including the protection and advocacy system required under federal Public Law 95-602, the Developmental Disabilities Assistance and Bill of Rights Act.
- (g) The fair hearing appeal procedure, including deadlines and access to service agency records under Article 5 (commencing with Section 4725), and the availability of mediation which shall be voluntary for both the claimant and the service agency.
- (h) An explanation that a request for mediation may constitute a waiver of the rights of a medicaid home and community-based waiver participant to receive a fair hearing decision within 90 days of the date the hearing request form is postmarked or received by

This section was amended by AB 2780 to add requirements as to what constitutes adequate notice.

the service agency, whichever is earlier, as specified in subdivision (c) of Section 471.1.5.

~~(h)~~(i) That if a request for a fair hearing by a recipient is postmarked or received by a service agency no later than 10 days after receipt of the notice of the proposed action mailed pursuant to subdivision (a) of Section 4710, current services shall continue as provided in Section 4715. The notice shall be in clear, nontechnical language in English. If the claimant or authorized representative does not comprehend English, the notice shall be provided in such other language as the claimant or authorized representative comprehends.

(j) A statement indicating whether the recipient is a participant in the home and community-based services waiver.

4702.6. "Hearing request form" means a document ~~which that~~ shall include ~~the name and address of the persons requesting a hearing,~~ name, ~~and address, and birth date of the claimant of applicant or recipient,~~ date of request, reason for the request, and name, ~~and address, and relationship to the claimant~~ of the authorized representative, if any, ~~and whether the claimant is a participant in the medicaid home and community-based waiver.~~ The hearing request form shall also indicate whether the claimant or his or her authorized representative is requesting mediation. A copy of the appointment of the authorized representative, by the claimant or the area board if any, shall also be included.

4704. "Service agency" means any ~~state hospital~~ developmental center or regional center that receives state funds to provide services to persons with developmental disabilities.

4704.5. For purposes of Sections ~~4710.9, 4711, 471.1.5, 471.7, and 4712,~~ and 4712.5, the director of the responsible state agency includes a designee thereof, which may, but need not, be a public or private agency that contracts with the State Department of Developmental Services for the provision of hearing officers pursuant to ~~Section 4712~~ or mediators.

4705. (a) Every service agency shall, as a condition of continued receipt of state funds, have an agency fair hearing procedure for resolving conflicts between the service agency and recipients of, or applicants for, service. The State Department of Developmental Services shall promulgate regulations to implement this chapter by ~~October 1, 1983~~ July 1, 1999, which shall be binding on every service agency.

Any public or private agency receiving state funds for the purpose of serving persons with developmental disabilities not otherwise

AB 2780 continued.

This section was amended by AB 2780 to add required information on the hearing request form.

This section was amended by AB 2780 to require the Department, by July 1, 1999, to promulgate regulations to require every service agency to have a fair hearing procedure for resolving conflicts between the

subject to the provisions of this chapter shall, as a condition of continued receipt of state funds, adopt and periodically review a written internal grievance procedure.

(b) An agency that employs a fair hearing procedure mandated by any other statute shall be considered to have an approved procedure for purposes of this chapter.

(c) The service agency's ~~mediation and~~ fair hearing procedure shall be stated in writing, in English and any other language that may be appropriate to the needs of the consumers of the agency's service. A copy of the procedure and a copy of the provisions of this chapter shall be prominently displayed on the premises of the service agency.

(d) All recipients and applicants, and persons having legal responsibility for recipients or applicants, shall be informed verbally of, and shall be notified in writing in a language which they comprehend of, the service agency's mediation and fair hearing procedure when they apply for service, when they are denied service, and when notice of service modification is given pursuant to Section 4710.

(e) If, in the opinion of any person, the rights or interests of a claimant who has not personally authorized a representative will not be properly protected or advocated, the local area board and the clients' right advocate assigned to the regional center shall be notified, and the area board may appoint a person or agency as representative, pursuant to Section 4590, to assist the claimant in the ~~appeals~~ ~~mediation and fair hearing~~ procedure. The appointment shall be in writing to the authorized representative and a copy of the appointment shall be immediately mailed to the service agency director.

4706. (a) Except as provided in subdivision (b) to the extent permitted by federal law, all issues concerning the rights of persons with developmental disabilities to receive services under this division shall be decided under this chapter, including those issues related to fair hearings, provided under the medicaid home- and community-services waiver granted to the State Department of Health Services.

(b) Whenever a fair hearing under this chapter involves services provided under the medicaid home- and community-based services waiver, the State Department of Health Services shall retain the right, as provided in Section 4712.5, to review and modify any decision reached under this chapter.

agency and recipients of, or applicants for, service.

This section was also amended to require service agencies to have mediation procedures as well as fair hearing procedures.

This section was added by AB 2780 to require all issues concerning consumers' rights to receive services provided under the HCBS waiver, including issues related to fair hearings, to be decided pursuant to this statute.

Whenever a fair hearing involves services provided under the HCBS waiver, DHS will retain the right to review and modify any decision reached.

4707. By July 1, 1999, the State Department of Developmental Services shall implement a mediation process for resolving conflicts between regional centers and recipients of services specified in this chapter. Regulations implementing the mediation process shall be adopted by July 1, 2000.

This section was added by AB 2780 to require the Department to implement a mediation process through regulations adopted by July 1, 2000.

4710.5. (a) Any applicant for or recipient of services, or authorized representative of the applicant or recipient, who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's or applicant's best interests, shall, upon filing a request within 30 days after notification of the decision or action complained of, be afforded an opportunity for a fair hearing. An opportunity for mediation shall also be offered at this time.

This section was amended by AB 2780 to include mediation as an option, as well as a fair hearing, when an applicant for or recipient of services is dissatisfied.

(b) The request for a fair hearing and for mediation shall be stated in writing on a hearing request form provided by the service agency, ~~or in other written form~~

(c) If any person makes a ~~verbal~~ request for mediation or a fair hearing other than on the hearing forms, the employee of the service agency who hears or receives the request shall provide the person with a hearing request form and shall assist the person in filling out the form if the person requires or requests assistance. Any employee who willfully fails to comply with this requirement shall be guilty of a misdemeanor.

(d) The hearing request form shall be directed to the director of the service agency responsible for the action complained of under subdivision (a). The service agency director shall simultaneously send a copy of the hearing request form to the department and the director of the responsible state agency or his or her designee pursuant to Section 4704.5 within five days of the service agency director's receipt of the request. The department shall keep a file of all hearing request forms.

4710.6. (a) Upon receipt by the service agency director of the ~~appeal~~ hearing request form, the service agency director shall immediately notify in writing the claimant, the claimant's guardian or conservator, parent of a minor, and authorized representative of the claimant's fair hearing rights; in connection with the fair hearing, and, if mediation or an informal meeting has been requested, with those procedures, including:

This section was amended by AB 2780 to include information about the availability of an informal voluntary meeting and mediation prior to a fair hearing and related procedural requirements.

(1) The opportunity to be present in all proceedings and to present written and oral evidence.

(2) The opportunity to confront and cross-examine witnesses.

(3) The right to appear in person with counsel or other representatives of his or her own choosing.

(4) The right to access to records pursuant to Article 5 (commencing with Section 4725).

(5) The right to an interpreter.

(b) The written notification of rights pursuant to subdivision (a) shall also include the following:

(1) Information on availability of advocacy assistance, including referral to the state hospital or regional center clients' rights advocate, area board, publicly funded legal services corporations, and other publicly or privately funded advocacy organizations, including the protection and advocacy system required under federal Public Law 95-602, the Developmental Disabilities Assistance and Bill of Rights Act.

(2) The proposed date, time and place for ~~the~~ a voluntary informal meeting, if desired by the claimant or his or her authorized representative, with the service agency director or the director's designee.

(3) Information that if a ~~the~~ voluntary informal meeting is requested by the claimant, it shall be held within 10 days of the ~~receipt of the hearing request form specified in subdivision (a)~~ if a date the hearing request form is postmarked or received by the service agency, whichever is earlier.

(4) The option of requesting mediation prior to a fair hearing, as provided in Section 471 1.5. Nothing in this section shall preclude the claimant or his or her authorized representative from proceeding directly to a fair hearing in the event that mediation is unsuccessful.

(c) The fair hearing shall be completed and a final administrative decision rendered within 90 days of the date the hearing request form is postmarked or received by the service agency, whichever is earlier, unless the fair hearing request has been withdrawn or the time period has been extended in accordance with this chapter.

(d) Prior to a voluntary informal meeting, voluntary mediation or a fair hearing, the claimant or his or her authorized representative shall have the right to examine any or all documents contained in the individual's service agency file. Access to records shall be provided pursuant to Article 5 (commencing with Section 4725).

~~4710.7. (a) Within 10 days of the receipt of the request for a fair hearing, Immediately upon receipt of the hearing request form, the service agency director, or his or her designee shall offer in writing to meet informally with the claimant and his or her authorized representative to resolve the issue or issues that are the subject of the appeal fair hearing, as follows. The written notice shall state that the claimant or his or her authorized representative may decline an informal meeting.~~

~~(a) The informal meeting may not be waived by either party. It shall be conducted by the service agency director or his or her designee.~~

This section was amended by AB 2780 to make the informal hearing voluntary.

~~The service agency director or his or her designee shall notify the applicant or recipient and his or her authorized representative of the decision of the informal meeting in writing within five days of the meeting.~~

(b) If an informal meeting is held, it shall be conducted by the service agency director or his or her designee. The service agency director or his or her designee shall notify the applicant or recipient and his or her authorized representative of the decision of the informal meeting in writing within five days of the meeting.

~~(b)(c)~~ The written decision of the service agency director or his or her designee shall:

- (1) Identify the issues presented by the appeal.
- (2) Rule on each issue identified.
- (3) State the facts supporting each ruling.
- (4) Identify the laws, regulations, and policies upon which each ruling is based.
- (5) Explain the procedure for appealing the service agency director's decision to the responsible state agency director.

~~(c)(d)~~ Prior to the meeting, the claimant or his or her authorized representative shall have the right to examine any documents contained in the individual's service agency file. Access to records shall be provided pursuant to Article 5 (commencing with Section 4725).

4710.8. (a) At the informal meeting, the claimant shall have the rights stated pursuant to subdivision (a) of Section 4710.6.

(b) ~~The~~ An informal meeting shall be held at a time and place reasonably convenient to the claimant and the authorized representative.

(c) ~~The~~ An informal meeting shall be conducted in the English language. However, if the claimant, the claimant's guardian or conservator, the parent of a minor claimant, or the authorized representative does not understand English, an interpreter shall be provided who is competent **and** acceptable to both the person requiring the interpreter and the service agency director or the director's designee. Any cost of an interpreter shall be borne by the service agency.

~~(d) The notification of the decision shall state that the decision shall go into effect 10 days after receipt of the decision by the claimant or authorized representative and that it shall be the final administrative decision unless the claimant appeals to the responsible state agency. The notification shall state that if the claimant or the authorized representative disagrees with the decision of the service agency director or designee, he or she may appeal the decision by submitting a written request for a fair hearing to the service agency within 10 days of the receipt of the decision of the service agency~~

This section was amended by AB 2780 to delete requirements regarding the notification of decision of an informal meeting, including the need to submit a written request for fair hearing if the claimant or authorized representative disagrees with the results of the informal meeting. It also deleted language regarding mediation from this section.

director.

~~(c) Nothing in this section shall preclude a process of mediation mutually agreed to by both parties. That mediation shall not affect the time limitations set forth in this chapter.~~

~~4710.9. (a) If the claimant or the authorized representative disagrees with the decision of the service agency director or the director's designee, he or she may appeal that decision by submitting a written request for a fair hearing to the service agency within 10 days of receipt of the service agency director's decision.~~

~~(b) Upon receipt of a request for a fair hearing, the service agency shall immediately forward the request with copies of the service agency director's decision and the appointment of an authorized representative by a claimant or an area board, if any, to the director of the responsible state agency.~~

~~(c) The request for a fair hearing shall include the name, address, and birth date of the claimant, the name, address, and relationship to the claimant of the authorized representative, date of request, the grounds of the appeal, and any recommendation for consolidation pursuant to Section 4712.2.~~

4710.9. (a) If the claimant or his or her authorized representative is satisfied with the decision of the service agency following an informal meeting, he or she shall withdraw the request for a hearing on the matter decided. The decision of the service agency shall go into effect 10 days after the receipt of the withdrawal of the request for a fair hearing by the service agency. The service agency shall immediately forward a copy of the withdrawal to the department and to the director of the responsible state agency or his or her designee pursuant to Section 4704.5.

(b) If the claimant or his or her authorized representative has declined an informal meeting or is dissatisfied with the decision of the service agency and does not request mediation, the matter shall proceed to a fair hearing. The service agency shall immediately notify the director of the responsible state agency that the fair hearing request has not been withdrawn. A recommendation for consolidation pursuant to Section 4712.2 to the director of the responsible state agency may be made at this time.

~~4711. Upon receipt of the request for fair hearing, the responsible state agency director shall immediately notify the claimant, the claimant's legal guardian or conservator, the parent of a minor~~

AB 2780 continued.

This section was deleted by AB 2780.

This section was added by AB 2780 to require the claimant or authorized representative to withdraw the request for a hearing if he/she is satisfied with the decision following an informal meeting.

If an informal meeting has been declined or the claimant is dissatisfied with the decision and mediation is not requested, the matter is to proceed to fair hearing. The Department is to be notified the hearing request was not withdrawn.

This section was amended by AB 2780 and AB 2494 to identify the contents of

~~claimant, the claimant's authorized representative, and the service agency director in writing of all the following:~~

~~(a) Receipt of the request for a fair hearing and of a copy of the decision of the service agency director.~~

~~Upon receipt of the hearing request form, where a fair hearing has been requested but mediation has not, the responsible state agency director shall immediately notify the claimant, the claimant's legal guardian or conservator, the parent of a minor claimant, the claimant's authorized representative, and the service agency director in writing of all the following information applicable to fair hearings. Where the hearing request form contains a request for a fair hearing and mediation, the notification shall be made separately, and each notice shall contain only the information applicable to the particular type of proceeding.~~

~~(b)(a) The time, place, and date of the fair hearing or mediation, as applicable, if agreed to by the service agency.~~

~~(c)(b) The rights of the parties at the fair hearing pursuant to Section 4710.6 or mediation, as applicable, pursuant to Section 4711.5.~~

~~(d)(c) The availability of advocacy assistance pursuant to paragraph (1) of subdivision (b) of Section 4710.6 for both mediation and fair hearings.~~

~~(e)(d) The name, address, and telephone number of the persons or offices designated by the director of the responsible state agency, as applicable, to conduct fair hearings, mediate disputes, and to receive requests for continuance or consolidation for both mediation and fair hearings.~~

~~(e) The rights and responsibilities of the parties established pursuant to subdivision (d) to (m), inclusive, of Section 4712.~~

4711.5. (a) Upon receipt of the written request for mediation, the service agency shall be given five days to accept or decline mediation.

(b) If the service agency declines mediation, the notice of that decision shall be sent immediately to the claimant, his or her authorized representative, and the director of the responsible state agency.

(c)(1) If the service agency accepts mediation, the service agency shall immediately send notice of that decision to the claimant, his or her authorized representative, and the director of the responsible state agency.

(2) Within five days after the receipt of the notice of the service agency's decision regarding mediation, the responsible state agency or the designee of the responsible state agency shall notify the claimant, his or her authorized representative, and the service agency of the information applicable to voluntary mediation specified in Section 4711. The mediation shall be held within 20

the written notification to the claimant, claimant's parents, guardian or conservator, or authorized representative when a hearing request form has been received requesting a fair hearing and mediation.

This section was added by AB 2780 to require service agencies to accept or decline a request for mediation within 5 days.

This section also specifies the qualification of mediators with whom the Department contracts.

davs of the date the hearing request form is postmarked or received by the service agency, whichever is earlier, unless a continuance is granted to the claimant at the discretion of the mediator.

(3) A continuance granted pursuant to paragraph (2) shall constitute a waiver of medicaid home and community-based services of the participant's right to a decision within 90 days of the date the hearing request form is postmarked or received by the service agency, whichever is earlier. The extension of time for the final decision resulting from the continuance shall only be as long as the time period of the continuance.

(d) Mediation shall be conducted in an informal, nonadversarial manner, and shall incorporate the rights of the claimant contained in Section 47 10.6.

(e) The State Department of Developmental Services shall contract with the mediators that meet the following requirements:

(1) Familiarity with the provisions of this division and implementing regulations. familiarity with the process of reconciling differences in a nonadversarial, informal manner.

(2) The person is not in the business of providing or supervising services provided to regional centers or to regional center consumers.

(f) During the course of the mediation, the mediator may meet separately with the participants to the mediation, and may speak with any party or parties confidentially in an attempt to assist the parties to reach a resolution that is acceptable to all parties.

(g) The mediator shall voluntarily disqualify himself or herself and withdraw from any case in which he or she cannot be fair and impartial. Any party may request the disqualification of the mediator by filing an affidavit, prior to the voluntary mediation, stating with particularity the grounds upon which it is claimed that a fair and impartial mediation cannot be accorded. The issue shall be decided by the mediator.

(h) Either the service agency or the claimant or his or her authorized representative may withdraw at any time from the mediation and proceed to a fair hearing.

4711.7. (a) If the issue or issues involved in the mediation are resolved to the satisfaction of both parties, the mediator shall prepare a written resolution. Agreement of the claimant or his or her authorized representative to the final solution shall be accompanied by a withdrawal, in writing, of the fair hearing request. The final resolution shall go into effect 10 days after receipt of the withdrawal of the request for a fair hearing by the service agency. The mediator shall immediately forward a copy of the withdrawal to the director of the responsible state agency.

(b) If the mediation fails to resolve an issue or issues to the

AB 2780 continued.

This section was added by AB 2780 to require the mediator to prepare a written resolution if the issues are resolved in the mediation.

If the mediation fails to resolve the issues, the matter will proceed to fair

satisfaction of the claimant, or his or her authorized representative, the matter shall proceed to fair hearing with respect to the unresolved issue or issues as provided under this chapter, and the mediator shall immediately notify the director of the responsible state agency of the outcome of the mediation.

4712. (a) ~~The fair hearing shall be held within 20 days of the receipt of a request for fair hearing by the responsible state agency director. Either party may request a continuance, which shall be granted at the discretion of the hearing officer. Any continuance shall not extend the time for a hearing beyond 30 days of receipt of the request for the fair hearing unless it is determined that good cause exists for an additional continuance. A continuance for good cause beyond 30 days of the receipt of the request for fair hearing shall not affect the provision of services pending a final administrative decision. 50 days of the date the hearing request form is postmarked or received by the service agency, whichever is earlier, unless a continuance based upon a showing of good cause has been granted to the claimant. The service agency may also request a continuance based upon a showing of good cause, provided that the granting of the continuance does not extend the time period for rendering a final administrative decision beyond the 90-day period provided for in this chapter.~~ For purposes of this section, good cause includes, but is not limited to, the following circumstances:

- (1) Death of a spouse, parent, child, brother, sister, grandparent of the claimant or authorized representative, or legal guardian or conservator of the claimant.
- (2) Personal illness or injury of the claimant or authorized representative.
- (3) Sudden and unexpected emergencies, including, but not limited to, court appearances of the claimant or authorized representative, conflicting schedules of the authorized representative if the conflict is beyond the control of the authorized representative.
- (4) Unavailability of a witness or evidence, the absence of which would result in serious prejudice to the claimant.**
- (5) An intervening request by the claimant or his or her authorized representative for mediation.**

(b) Notwithstanding Sections 19130, 19131, and 19132 of the Government Code, the department shall contract for the provision of independent hearing officers. Hearing officers shall have had at least two years of full-time legal training at a California or American Bar Association accredited law school or the equivalent in training and experience as established **by** regulations to be ~~promulgated~~ **adopted** by the department pursuant to Section **4705**. These hearing officers shall receive training in the law and regulations governing services to developmentally disabled

hearing. The mediator is to notify the Department of the outcome of mediation.

This section was amended by SB 1038, AB 2780 and AB 2494 to require the fair hearing to be held within 50 days of the date of the hearing request form unless a continuance has been granted, based upon good cause, to either the claimant or the service agency.

This section was also amended to identify areas to be covered in required annual training for hearing officers conducted by the Department. The Department is also required to consult with specified entities in developing standardized hearing procedures and training materials.

individuals and administrative hearings. Training shall include, but not be limited to, the Lanterman Developmental Disabilities Services Act and regulations adopted thereunder, relevant case law, information about services and supports available to persons with developmental disabilities, including innovative services and supports, the standard agreement contract between the department and regional centers and regional center purchase-of-service policies, and information and training on protecting the rights of consumers at administrative hearings, with emphasis on assisting, where appropriate, those consumers represented by themselves or an advocate inexperienced in administrative hearings in fully developing the administrative record. The State Department of Developmental Services shall seek the advice of the State Council of Developmental Disabilities, the Organization of Area Boards, the protection and advocacy agency designated by the Governor in this state to fulfill the requirements and assurances of the federal Developmental Disabilities Assistance and Bill of Rights Act, contained in Chapter 75 (commencing with Section 6000) of Title 42 of the United States Code, the Association of Regional Center Agencies, and other state agencies or organizations and consumers and family members as designated by the department in the development of standardized hearing procedures for hearing officers and training materials and the implementation of training procedures by the department. The department shall provide formal training for hearing officers on at least an annual basis. The training shall be developed and presented by the department, however, the department shall invite those agencies and organizations listed in this subdivision to participate.

(c) The hearing officer shall not be an employee, agent, board member, or contractor of the service agency against whose action the appeal has been filed, or a spouse, parent, child, brother, sister, grandparent, legal guardian, or conservator of the claimant, or any person who has a direct financial interest in the outcome of the fair hearing, or any other interest which would preclude a fair and impartial hearing.

~~(d) When requested by the hearing officer, a service agency shall provide information relevant to the matter under appeal to the hearing officer prior to the fair hearing. Immediate notice of the documents provided to the hearing officer shall be mailed by the service agency to the claimant and the authorized representative, either of whom may submit additional documentation to the hearing officer prior to the hearing.~~

(d) The claimant and the service agency shall exchange a list of potential witnesses, the general subject of the testimony of each witness, and copies of all potential documentary evidence at least five days prior to the hearing. The hearing officer may prohibit

testimony of a witness that is not disclosed and may prohibit the introduction of documents that have not been disclosed. However, the hearing officer may allow introduction of such testimony or witness in the interest of justice.

(e) The fair hearing shall be held at a time and place reasonably convenient to the claimant and the authorized representative. The claimant or the authorized representative of the claimant and the regional center shall agree on the location of the fair hearing.

(f) Merits of a pending fair hearing shall not be discussed between the hearing officer and a party outside the presence of the other party.

(g) The hearing officer shall voluntarily disqualify himself or herself and withdraw from any case in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of the hearing officer by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be decided by the hearing officer.

(h) Both parties to the fair hearing shall have the rights specified in subdivision (a) of Section.

(i) The fair hearing need not be conducted according to the technical rules of evidence and those related to witnesses. Any relevant evidence shall be admitted. Both parties shall be allowed to submit documents into evidence at the beginning of the hearing. No party shall be required to formally authenticate any document unless the hearing officer determines the necessity to do so in the interest of justice. All testimony shall be under oath or affirmation which the hearing officer is empowered to administer.

(j) A service agency shall present its witnesses and all other evidence before the claimant presents his or her case unless the parties agree otherwise or the hearing officer determines that there exists good cause for a witness to be heard out of order. This section does not alter the burden of proof.

(k) A recording shall be made of the proceedings before the hearing officer. Any cost of recording shall be borne by the responsible state agency.

(l) The fair hearing shall be conducted in the English language. However, if the claimant, the claimant's guardian or conservator, parent of a minor claimant, or authorized representative does not understand English, an interpreter shall be provided by the responsible state agency.

(m) The fair hearing shall be open to the public except at the request of the claimant or authorized representative or when personnel matters are being reviewed.

(n) The agency awarded the contract for independent hearing

The agency awarded the contract for independent hearing officers shall annually conduct, or cause to be conducted, an evaluation of the hearing officers who conduct hearings. The agency awarded the contract will annually submit to the Department copies of administrative decisions reviewed by the superior court and a summary analysis of the rationale as to why the superior court affirmed or denied the decisions. Information and date for this evaluation is to be solicited from consumers who were claimants in a hearing over the past year, their family members or authorized representatives, regional centers, nonattorney advocates, attorneys who represented claimants, and other advocacy organizations. The Department will be provided a copy of the evaluation and will use it to evaluate the contract for the provision of hearing officers. A summary of the data collected and the summary analysis of superior court decisions will be made available to the public upon request.

officers shall annually conduct, or cause to be conducted, an evaluation of the hearing officers who conduct hearings under this part. The department shall approve the methodology used to conduct the annual evaluation. The agency awarded the contract shall annually submit to the department copies of administrative decisions reviewed by the superior court and a summary analysis of the rationale as to why the superior court affirmed or denied the decisions. Information and data for this evaluation shall be solicited from consumers who were claimants in an administrative hearing over the past year, their family members or authorized representative if involved in the hearing, regional centers, and nonattorney advocates, attorneys who represented either party in an administrative hearing over the past year, and the organizations identified in subdivision (b). The areas of evaluation shall include, but not be limited to, the hearing officers' demeanor toward parties and witnesses, conduct of the hearing in accord with fairness and standards of due process, ability to fairly develop the record in cases where consumers represent themselves or are represented by an advocate that does not have significant experience in administrative hearings, use of legal authority, clarity of written decisions, and adherence to the requirements of subdivision (b) of Section 4712.5. The department shall be provided with a copy of the evaluation and shall use the evaluation in partial fulfillment of its evaluation of the contract for the provision of independent hearing officers. A summary of the data collected and the summary analysis of superior court decisions shall be made available to the public upon request, provided that the names of individual hearing officers and consumers shall not be disclosed.

~~4712.5 (a) Within 10 days of the concluding day of the state hearing, the hearing officer shall render a written decision and shall transmit the decision to each party and to the director of the responsible state agency.~~

~~(b) The hearing officer's decision shall be in ordinary and concise language. It shall contain the following:~~

~~(1) A summary of facts, a statement of the evidence from the proceedings which was relied on, a decision on each of the issues presented, and identification of the statutes, regulations, and policies supporting the decision. The decision shall be in ordinary and concise language.~~

~~(2) Notification that this is the final administrative decision, both parties shall be bound thereby, and either party may appeal any final administrative decision to a court of competent jurisdiction within 90 days.~~

(a) Except as provided in subdivision (c), within 10 days of the concluding day of the state hearing, but not later than 80 days

SB 1038, AB 2780 and AB 2494 continued.

This section is amended by SB 1038 and AB 2780 to require a hearing officer to render a written decision within 10 days of concluding the hearing but not later than 80 days following the date the hearing request form was postmarked or received. The Department will collect and maintain, or cause to be collected and maintained, redacted copies of all administrative hearing decisions.

following the date the hearing request form was postmarked or received, whichever is earlier, the hearing officer shall render a written decision and shall transmit the decision to each party and to the director of the responsible state agency, along with notification that this is the final administrative decision, that each party shall be bound thereby, and that either party may appeal the decision to a court of competent jurisdiction within 90 days of the receiving notice of the final decision.

(b) The hearing officer's decision shall be in ordinary and concise language and shall contain a summary of the facts, a statement of the evidence from the proceedings that was relied upon, a decision on each of the issues presented, and an identification of the statutes, regulations, and policies supporting the decision.

(c) Where the decision involves an issue arising from the federal home- and community-based service waiver program, the hearing officer's decision shall be a proposed decision submitted to the Director of Health Services as the single state agency for the medicaid program. Within 90 days following the date the hearing request form is postmarked or received, whichever is earlier, the director may adopt the decision as written or decide the matter on the record. If the Director of Health Services does not act on the proposed decision within 90 days, the decision shall be deemed to be adopted by the Director of Health Services. The final decision shall be immediately transmitted to each party, along with the notice described in subdivision (a). If the decision of the Director of Health Services differs from the proposed decision of the hearing officer, a copy of that proposed decision shall also be served upon each party.

(d) The department shall collect and maintain, or cause to be collected and maintained, redacted copies of all administrative hearing decisions issued under this division. Hearing decisions shall be categorized by the type of service or support that was the subject of the hearing and by the year of issuance. The department shall make copies of the decisions available to the public upon request at a cost per page not greater than that which it charges for document requests submitted pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. The department shall use this information in partial fulfillment of its obligation to monitor regional centers and its evaluation of the contract for the provision of independent hearing officers.

4712.7. In addition to any other delegation of authority granted to the Director of Health Services, the director may delegate his or her authority to adopt final decisions under this chapter to hearing officers described in subdivision (b) of Section 4712 to the extent

**SB 1038 and AB 2780
continued.**

**This section was added by
AB 2780 to allow DHS to
delegate authority to
adopt final administrative**

deemed appropriate by the director. The delegation shall be in writing.

4714. (a) Commencing July 1, 1999, for each appeal request submitted pursuant to Section 4710.5, regional centers and developmental centers shall submit information to the department including, but not limited to, all of the following:

(1) Whether the case was resolved through an informal meeting or medication.

(2) Whether an informal meeting or mediation was declined, and if so, by which party.

(3) The issue or issues involved in the case.

(4) The outcome of the case if a fair hearing was held.

(b) The information collected pursuant to this section shall be compiled by the department and made available to the public upon request.

4715. (a) Except as otherwise provided in this section, if a request for a hearing is postmarked or received by the service agency no later than 10 days after receipt of the notice of the proposed action mailed pursuant to subdivision (a) of Section 4710, services that are being provided pursuant to a recipient's individual program plan shall be continued during the appeal procedure up to and including the 10th day after receipt of ~~the certified mailing of either of the following final administrative decisions~~ any of the following:

~~(1) The service agency director's decision if the right to appeal from the service agency director's decision is not exercised.~~

~~(2) The decision of the hearing officer, if the right to appeal from the service agency director's decision is exercised.~~

(1) Receipt by the service agency, following an informal meeting, of the withdrawal of the fair hearing request pursuant to Section 4710.9.

(2) Receipt by the service agency, following mediation, of the withdrawal of the fair hearing request pursuant to subdivision (a) of Section 4711.4

(3) Receipt by the recipient of the final decision of the hearing officer or single state agency pursuant to subdivisions (a) and (c) of Section 4712.5.

(b) Services continued pursuant to subdivision (a) may be modified by agreement of the parties in accordance with the decision of the interdisciplinary team and the individual program plan.

(c) Any appeal to a court by either party shall not operate as a stay of enforcement of the final administrative decision, provided that either party may seek a stay of enforcement **from any** court of competent jurisdiction.

decisions to hearing officers.

This section was added by AB 2494 to require RCs and DCs, effective July 1, 1999, to submit information to the Department for each appeal request submitted.

The Department is to compile this information and make it available to the public upon request.

This section was amended by AB 2780 to include criteria for continuation of services identified in the individual's IPP during the appeal procedure.

4731. (a) Each consumer or any representative acting on behalf of any consumer or consumers, who believes that any right to which ~~a~~ the consumer is entitled has been abused, punitively withheld, or improperly or unreasonably denied by a regional center, developmental center, or service provider, may pursue a complaint as provided in this section.

(b) Initial referral of any complaint taken pursuant to this section shall be to the clients' rights advocate assigned to the regional center from which the consumer receives case management services. If the consumer resides in a state developmental center, the complaint shall be made to the clients' rights advocate assigned to that state developmental center. The clients' rights advocate shall, within 10 working days of receiving a complaint, investigate the complaint and send a written proposed resolution to the complainant and to the regional center, developmental center, or service provider .

(c) If the complainant expresses dissatisfaction with the action taken or proposed by the clients' rights advocate, the complainant shall be referred, by the clients' rights advocate, within five working days, to the director of the state developmental center or of the regional center.

(d) If the complaint is not resolved to the satisfaction of the complainant within ten working days of receipt by the director of the state developmental center or regional center, it shall be referred by that director to the State Department of Developmental Services. The director shall, within **45** days of receiving a complaint, issue a written administrative decision and send a copy of the decision to the complainant.

(e) The department shall annually compile the number of complaints filed, by each regional center catchment area, the subject matter of each complaint, and a summary of each decision. Copies shall be made available to any person upon request.

(f) This section shall not be used to resolve disputes concerning the nature, scope, or amount of services and supports that should be included in an individual program plan, for which there is an appeal procedure established in this division, or disputes regarding rates or audit appeals for which there is an appeal procedure established in regulations. Those disputes shall be resolved through the appeals procedure established by this division or in regulations .

(g) All consumers or, where appropriate, their parents, legal guardian, conservator, or authorized representative, shall be notified in writing in a language which they comprehend, of the right to file a complaint pursuant to this section when they apply for services from a regional center or are admitted to a developmental center, and at each regularly scheduled planning meeting.

~~(h) This section shall become operative on January 1, 1998.~~

This section was amended by SB 1038 to allow more than one consumer to be a party to a complaint as provided in this section. Additionally, the operative date, January 1, 1998, was deleted.

4740. The Legislature finds the following:

(a) The ,quality of care provided to persons with developmental disabilities by residential facilities is contingent upon a closely coordinated "team" effort by the regional center or its designee, the client person with developmental disabilities, the parent or representative if appropriate, the residential facility administrator, and the licensing agency. The rights and responsibilities of each must be identified in order to assure clear direction and accountability for each.

(b) The quality of care is impaired when inordinate numbers of staff from placement and licensing agencies give direction to the facility administrator regarding care and service requirements.

4741. An adult person with a developmental disability has the legal right to determine where his or her residence will be. Except in a situation which presents immediate danger to the health and well-being of the individual, the regional center or its designee shall not remove a client consumer from a residential care facility against the client's wishes unless there has been specific court action to abridge such right with respect to an adult or unless the parent, guardian or conservator consents with respect to a child.

4742. The regional center or its designated representative shall (a) guide and counsel facility staff regarding the care and services required by each client consumer served by the regional center; and (b) monitor the care and services provided the individual to assure that care and services are provided in accordance with the individual program plan.

4742.1 (a) A statement made by a regional center representative when discharging his or her obligation to monitor the provision of services and supports pursuant to this division shall be a privileged communication. subject to subdivision (b).

(b) A statement shall not be urivileged pursuant to subdivision (a) if a party to a iudicial action demonstrates that the regional center representative made the disputed statement with knowledge of its falsity or with reckless disregard for the truth.

This section was added by SB 1038 to indicate that statements made by RC representatives are p r i v i l e g e d communications unless it can be demonstrated that the RC representative made the statement with knowledge of its falsity or with reckless disregard for the truth.

4743. It is the intent of the Legislature that to the greatest extent possible, the staff of the regional center or its designee are assigned so as to minimize the number of persons responsible for programs provided in a given facility.

The regional center or its designee shall designate the staff person responsible for assuring that each individual ~~client's~~ consumer's program plan is carried out. One person shall be assigned by the regional center as the principal liaison to a facility and to monitor the provision of care and the services provided by that facility in accordance with the individual program plans. If, due to the number of regional center ~~clients~~ consumers in the facility, additional staff of a regional center or its designee serve ~~clients~~ consumers in the facility, one person shall be assigned as having primary responsibility for, and assure consistency and continuity of, directions to the administrator and for the monitoring of care and services.

4744. The regional center or its designee shall provide to the residential facility administrator all information in its possession concerning any history of dangerous propensity of the ~~client~~ consumer prior to the placement in that facility. However, no confidential client information shall be released pursuant to this section without the consent of the client or authorized representative.

4745. During each visit to the facility, the designated staff person shall inform the administrator orally of any substantial inadequacies in the care and services provided, the specific corrective action necessary and the date by which corrective action must be completed. The designated staff person shall confirm this information in writing to the administrator within **48** hours after the oral notice and inform the administrator in writing of the right to appeal the findings.

This section was amended by SB 1038 to require the designated staff person of a facility to notify the administrator in writing of substantial inadequacies and of the right to appeal the findings.

~~4747. If an adult person or the parent, guardian or conservator on behalf of a child requests a relocation, the regional center or its designee may provide assistance in locating and moving to another residence.~~

~~The regional center or its designee shall not encourage a client to move from a residential facility without reasonable cause. If reasonable cause does exist, the regional center or its designee shall give at least 15 days' written notice to the facility administrator of the intent, prior to counseling the client to move.~~

If a consumer or, when appropriate, the parent, guardian, or conservator or authorized representative, including those appointed pursuant to Section 4590 or subdivision (e) of Section 4705, requests a relocation, the regional center shall schedule an individual program plan meeting, as soon as possible to assist in locating and moving to another residence.

This section was amended by SB 1038 to require a RC to schedule an IPP meeting as soon as possible when a consumer, parent, guardian, conservator or authorized representative requests a relocation.

4847. The State Department of Developmental Services shall coordinate, or require each regional center to coordinate, a meeting within each regional center catchment area between the regional center, the local health facility providers, the State Department of Health Services representatives from the local district office, and the State Department of Developmental Services center staff. The meeting shall be held at least annually to better coordinate services and supports provided to regional center consumers in licensed health facilities.

This section was added by SB 1038 to require the Department to coordinate, or require each RC to coordinate, an annual meeting within each RC's catchment area with local health facility providers, DHS representatives from local district offices, and Department staff, to better coordinate services provided to consumers in licensed health facilities.