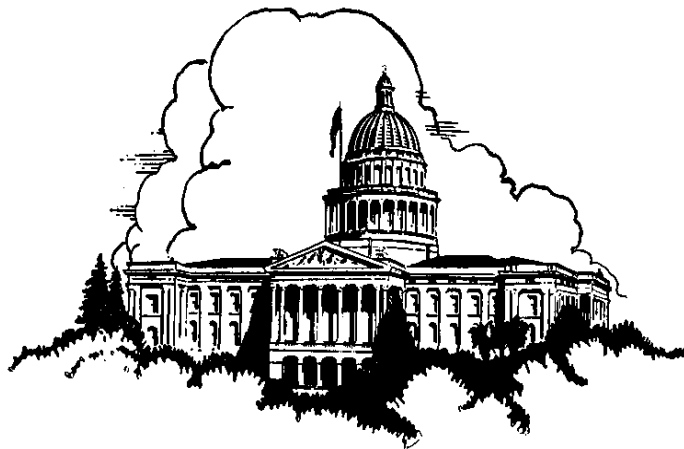


# 2000 LEGISLATIVE SESSION

IMPACT  
OF

*AB 2877, AB 2377 AND AB 2919  
ON SERVICES FOR PEOPLE WITH  
DEVELOPMENTAL DISABILITIES*



## INTRODUCTION

During the 2000 Legislative session, provisions of the Welfare and Institutions Code and Government Code were amended, deleted or added by three pieces of legislation as follows:

- AB 2877 (Thomson) Trailer Bill (Chapter 93, Statutes of 2000) effective immediately (July 7, 2000)
- AB 2377 (Longville) Regional Center: Liability (Chapter 382, Statutes of 2000) effective January 1, 2001
- AB 2919 (Assembly Committee on Human Services) Developmental Disabilities: Fair Hearings and Mediation Procedures (Chapter 416, Statutes of 2000) effective January 1, 2001

This document was prepared to identify significant statutory changes that occurred in the 2000 Legislative session, focusing on those changes which affect service to persons with developmental disabilities. This document is not an official legislative publication and does not include any Budget Act language that may impact services. However, it does include changes in law outside of the Lanterman Developmental Disabilities Services Act that may impact services for programs for persons with developmental disabilities.

The text is presented in ~~strikeout~~ and underline format. Underlined text is new or revised. ~~Strikeout~~ indicates previous language which is now deleted from the text. Comments in the right-hand column highlight and summarize the impact of the corresponding changes.

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JANUARY, 2001

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The following is a compilation of amendments made by:

Assembly Bill 2877, Chapter 93, Statutes of 2000

## THE LANTERMAN DEVELOPMENTAL DISABILITIES SERVICES ACT

Welfare and Institutions Code

Division 4.5

Services for the Developmentally Disabled

### CHAPTER 2

State Council on Developmental Disabilities

4598.5. If, in the unforeseen event that federal funds are not available for appropriation or transfer to Item 4110-001-0001 of Section 2.00 of the Budget Act of 2000 for support of the Organization of Area Boards on Developmental Disabilities, from Item 4100-001-0890 Section 2.00 of the Budget Act of 2000 based on a determination by the Department of Finance, the Department of Finance shall notify the appropriate fiscal and policy committees of the Legislature and the Joint Legislative Budget Committee within 10 calendar days of this determination. This notification shall specify the dollar amount needed to fully continue operations of the Organization of Area Boards on Developmental Disabilities, and this amount is hereby appropriated from the General Fund for those purposes, commencing 10 days after the receipt of the notification by the Legislature.

This section was added to ensure that State funds would be available to support the Organization of Area Boards, in the event that federal funding should become unavailable.

**CHAPTER 5**  
**Regional Centers for Persons With Developmental Disabilities**

4639.5. (a) By December 1 of each year, each regional center shall provide a listing to the State Department of Developmental Services a completed current salary schedule for all personnel classifications used by the regional center. The information shall be provided in a format prescribed by the department. The department shall provide this information to the public upon request.

(b) By December 1 of each year, each regional center shall provide a listing to the State Department of Developmental Services on all prior fiscal year expenditures from the regional center operations budget for all administrative services, including managerial, consultant, accounting, personnel, labor relations, and legal services, whether procured under a written contract or otherwise. Expenditures for the maintenance, repair, or purchase of equipment or property shall not be required to be reported for purposes of this subdivision. The report shall be prepared in a format prescribed by the department and shall include, at a minimum, for each recipient, the amount of funds expended, the type of service, and purpose of the expenditure. The department shall provide this information to the public upon request.

**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

**This section was added to require each regional center to report to the department by December 1 of each year:**

- (1) A complete current salary schedule for all personnel used by the regional center, and**
- (2) all prior fiscal year expenditures from the operations budget for specified administrative services.**

**This section was amended to change the deadline date from January 1, 2000 to July 1, 2002 for the department, in consultation with the stakeholder organizations, to establish by regulation, a payment methodology for supported living service providers.**

**This section also repeals statute to allow for the**

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~~, July 1, 2002, 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 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 department for the purpose of increasing the level of payment for supported living providers.~~

**4791.** (a) The Legislature finds that when the state faces an unprecedented fiscal crisis, the services set forth in this division are necessary to enable persons with developmental disabilities to live in the least restrictive setting.

(b) In order to ensure that services to eligible consumers are available throughout the fiscal year, regional centers shall administer their contracts within the level of funding available within the annual Budget Act.

(c) To carry out the intent of this provision, and notwithstanding Chapter 5 and Section 4643, each regional center contract shall include provisions which ensure the regional center will provide services to eligible consumers within the funds available in the contract throughout the fiscal year. Regional centers

**pass-through of 10 percent direct care staff wage increase and a 5 percent administrative increase for Supported Living Services.**

**This section was amended to extend the sunset date of this provision that addresses the process by which the State and regional centers are to manage during a deficit or unallocated reduction**

shall implement innovative, cost-effective methods of services delivery, which may include, but not be limited to, the use of vouchers, consumer or parent services coordinators, increased administrative efficiencies, and alternative sources of payment for services.

(d) In the event of an unallocated reduction, the Budget Act of each fiscal year shall determine the distribution of any unallocated reduction within the regional center budget item.

(e) In the event of an unallocated reduction in the regional center budget, or if an individual regional center notifies the department that the regional center will be unable to provide services and supports to eligible consumers throughout the fiscal year within the level of funding available in their contract, the following shall apply:

(1) The department shall provide the regional center or regional centers with guidelines, technical assistance, and a variety of options for reducing operations and purchase of service costs.

(2) Within 30 days of the enactment of the Budget Act or after the date a regional center notifies the department of a projected deficit in its purchase of services budget, each impacted regional center shall develop and submit a plan to the department describing in detail how it intends to absorb any unallocated reduction and shall achieve savings necessary to provide services to eligible consumers throughout the fiscal year within the limitations of the funds allocated. Prior to adopting the plan, each regional center shall hold a public hearing in order to receive comment on the plan. The regional centers shall provide notice to the community at least 10 days in advance of the public hearing. The regional center shall summarize and respond to the public testimony in their plan.

(3) The plan submitted to the department may include, but not be limited to:

(A) Innovative and cost-effective methods of services delivery that include, but are not limited to, the use of vouchers; the use of consumers and parents as service coordinators; alternative methods of case management; the use of volunteer teams, made up of consumers, parents, other family members, and advocates, to conduct the monitoring activities described in Section 4648.1; increased administrative efficiencies; alternative

sources of payment for services; use of available assessments in determining eligibility; and alternative nonresidential rate methodologies or service delivery models, or both. In addition, the regional center shall take into account, in identifying the consumer's service needs, the family's responsibility for providing similar services to a child without disabilities.

(B) The maximization of all alternative funding sources, including federal and generic funding sources.

(C) Assurances that all other operations expenditure reductions are considered before any reductions are made in nonsupervisory service coordination staff.

**(4)** The regional centers shall implement components of their plans upon approval of the department. The department shall review and approve, or require modification of portions of the regional centers' plan, within 30 days of receipt of the plan. If the required modification is significant, the department shall require the regional center to hold an additional public hearing to review and comment on the modification.

(f) Notwithstanding any other provision of law, in any fiscal year in which an unallocated reduction is made in the regional center budget, the director may adopt, amend, repeal, or suspend regulations as necessary to permit program flexibility and allow regional centers to achieve cost savings or innovative approaches to service delivery, including, but not limited, to those specified in subparagraph (A) of paragraph (1) of subdivision (e) without adversely affecting consumer health and safety of placing persons with disabilities in a more restrictive environment. Furthermore, any such regulatory change shall not authorize categorical reductions; changes in service delivery shall have an exemption process. It is the intent of the Legislature that any such action be deemed an emergency necessary for the immediate preservation of the public peace, health, and safety, or general welfare for purposes of subdivision (b) of Section 11346.1 of the Government Code.

(g) Notwithstanding any other provision of law, the State Director of the Department of Developmental Services may require one or more regional centers to take any actions he or she determines to be necessary to ensure reductions are made in the regional center operations budget, including, but not limited to, the following:



(1) Require a regional center to centralize billing and other fiscal and administrative functions.

(2) Require a regional center to reduce office space through the decentralization of service coordinators by allowing service coordinators to work in their homes and in community-based programs.

(3) Require a regional center to freeze or reduce levels of pay for administrative and managerial employees.

(4) Require a regional center to contract for specified functions currently conducted directly by the regional center.

(5) Require regional centers to seek Medi-Cal provider status for regional center staff performing reimbursable activities,

(h) Notwithstanding any other provisions of law, the director may terminate a regional center contract if he or she determines that the regional center is unable or unwilling to make the necessary reductions in its operations budget or if the action is necessary to avoid reductions in the purchase of services for regional center consumers.

(i) Notwithstanding any other provisions of law, the department may directly operate a regional center after the termination of a contract.

(j) If the director determines that regional centers cannot provide services throughout the fiscal year within the funds provided by the Budget Act, he or she shall immediately report to the Governor and the appropriate fiscal committees of the Legislature and recommend actions to secure additional funds or reduce expenditures, including any actions which require the suspension of the entitlement to service set forth in this division.

(k) Developing and implementing the plan shall be considered a contractual obligation pursuant to Section 4635 of the Welfare and Institutions Code. Accordingly, the department shall make reasonable efforts to assist regional centers in fulfilling their contractual obligations and provide technical assistance, as necessary. In addition, a regional center's failure to develop and implement the plan may be considered grounds for contract termination or nonrenewal. If at any time the director of the department determines that a regional center's plan does not adequately address a funding deficiency during the fiscal year, the director may require the use of operational funds to reduce the deficiency in purchase of services funds.

(l) This section shall become inoperative on July 1, ~~2000~~ 2001, and, as of January 1, ~~2001~~ 2002, is repealed, unless a later enacted statute, that becomes operative on or before January 1, ~~2001~~ 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

## GOVERNMENT CODE

**14672.9.** (a) Notwithstanding Section 14670, the Director of General Services, with the consent of the State Department of Developmental Services, may let in the best interests of the state to a nonprofit corporation, for the purposes specified in this section, real property not exceeding 45.3 acres located within the grounds of the Agnews State Hospital. Of this amount, up to 27 acres may be leased for a period not to exceed 79 years beginning in 1974 and ending July 1, 2053, for the purpose of constructing a business development park. In addition, no more than five acres, of the remaining acres, required by the local government agency for offsite improvements and roadways to support the business development park, may be leased for a period not to exceed 79 years beginning in 1974 and ending July 1, 2053. The remaining acres shall be leased for a period not to exceed 50 years beginning in 1974 and ending on July 1, 2024, for the purpose of conducting an educational and work program for developmentally disabled and other handicapped persons. In the event the nonprofit corporation fails to substantially commence construction of the business development park by July 1, 1988, the terms of the lease allowing construction of a business development park and roadways and offsite improvements shall be null and void, and the lease shall revert to a 50-year period terminating July 1, 2024. The Department of General Services may provide a one-year extension to the deadline for commencement of construction if the department determines the nonprofit corporation has reasonable grounds for failure to commence construction. (b) The

**This section was amended by AB 2877 to require the department to:**

**(1) consult with stakeholder groups in the development of criteria for the requests for proposal, and in ranking proposals and awarding funds, and**

**(2) submit a report on or before April 15 of each year to the appropriate legislative policy and budget committees to include a description of the projects funded and the process used to select projects.**

lease authorized by this section shall be subject to periodic review every five years. The review shall require submission of a report every five years by the lessee. The report shall be reviewed by the Director of General Services, who shall assure the state that the original purposes of the lease are being carried out.

(c) Subject to the approval of the Director of General Services and the State Department of Developmental Services, a lease executed under subdivision (a) may be revised to provide any of the following:

(1) That the nonprofit corporation may assign its interest in the leased property, in whole or in part.

(2) That the nonprofit corporation may sublet all or any portion of the leased property.

(3) That the nonprofit corporation may enter into joint ventures with any other person, firm, partnership, or corporation to construct facilities or to conduct programs and activities on the leased property.

**(d)** Any revision of the nonprofit corporation's lease pursuant to subdivision (c) shall be subject to the requirement that all activities, assignments, and subleases shall be in furtherance of the purposes specified in subdivision (a).

(e) Any sublease or partial assignment or transfer of the nonprofit corporation's interest in the leased property, whether voluntary, involuntary, or by operation of law, shall not terminate the nonprofit corporation's remaining interest in the leased property.

(f) In addition to rent paid by the nonprofit corporation to the state, the nonprofit corporation shall pay the state 50 percent of the gross rental income resulting from any subleases pursuant to subdivision (c) through June 30, 2024, and 75 percent of the gross rental income from July 1, 2024, to July 1, 2053. Any proceeds received by the state shall be deposited in a special account within the General Fund to be known as the Developmental Disabilities Services Account. All funds within this account shall be held without regard to fiscal years and shall be available for appropriation by the Legislature for the benefit of persons with developmental disabilities. Any interest accruing to moneys deposited in the account also shall accrue to the account.

On or before April 15 of each year beginning in 1987, the State Department of Developmental Services shall submit a report to the Assembly Ways and Means Committee and the Senate Appropriations Committee. The report shall include, but not be limited to, the

following information:

(1) The amount of funds in the Developmental Disabilities Services Account in the General Fund.

(2) The department's priorities for expenditure of those funds.

(g) Any profits to the nonprofit corporation from the proceeds of a sublease executed pursuant to paragraph (2) of subdivision (c) shall be directed into programs for persons with disabilities for the purpose of directly benefitting clients of the nonprofit corporation.

(h) A minimum of 15 percent of the total number of jobs created as a result of the sublease shall be reserved for handicapped employees and placed by the nonprofit corporation.

(i) (1) Moneys in the Developmental Disabilities Services Account shall be expended by the State Department of Developmental Services, through a request for proposals process, for projects that expand the availability of affordable housing for persons with developmental disabilities, including a housing for funding developers in nonprofit housing development corporations or coalitions with expertise in the housing needs of persons with developmental disabilities.

(2) Prior to the expenditure of funds under this subdivision, the department shall consult with stakeholder groups, as designated by the State Department of Developmental Services, in ranking proposals and awarding funds. At least one project shall be located on the site previously known as the West Campus of Aanev's Developmental Center. Funds shall not be awarded pursuant to this subdivision to a regional center for the development or management of housing projects or to fund regional center staff required in subdivision (c) of Section 4640.6 of the Welfare and Institutions Code.

(3) On or before April 15 of each year, the State Department of Developmental Services shall submit a report to the appropriate fiscal and policy committees of the Legislature on the implementation of this subdivision. The report shall include, but not be limited to, both of the following:

(1) A description of projects funded in the previous year.

(2) A description of the process used to select projects, including the criteria used in their selection and the stakeholder groups that were consulted as part of that process.

TRAILER BILL SECTION 104  
(No Reference to California Code)

(a) The State Department of Developmental Services shall identify a range of options to meet the future needs of individuals currently served, or who will need services similar to those provided, in state developmental centers.

(b) The department shall establish a workgroup consisting of system stakeholders to assist in examining the various options including, but not limited to, renovation of existing developmental centers, smaller state owned and operated facilities, state operated leased facilities, privately owned and operated facilities, and services and supports provided in consumer owned or leased homes.

(c) Options shall be evaluated for their appropriateness in meeting consumers' needs, compliance with requirements of federal and state laws, and efficient use of state and federal funds.

(d) The department shall report on these options and the recommendations of the workgroup to the Legislature by March 1, 2001.

This section is new language that requires the department to:

- (1) Identify a range of options to meet the future needs of individuals in the developmental centers,
- (2) establish a workgroup consisting of system stakeholders to examine the various options, and
- (3) report to the Legislature on options and the recommendations of the workgroup by March 1, 2001.

The following is an amendment made by:

AB 2377 (Chapter 382, Statutes of 2000)

THE LANTERMAN DEVELOPMENTAL DISABILITIES ACT  
DIVISION 4.5  
CHAPTER 1  
General Provisions

SECTION 1. Section 4519.7 is added to the Welfare and Institutions Code, to read:

4519.7. (a) Any regional center employee shall not be liable for civil damages on account of an injury or death resulting from an employee's act or omission where the act or omission was the result of the exercise of the discretion vested in him or her, in good faith, in carrying out the intent of this division, except for acts or omissions of gross negligence or acts or omissions giving rise to a claim under Section 3294 of the Civil Code. This section shall not be applied to provide immunity from liability for any criminal act.

(b) This section is not intended to change, alter, or affect the liability of regional centers, including, but not limited to, the vicarious liability of a regional center due to a negligent employee.

(c) A regional center employee, when participating in filing a complaint or providing information as required by law regarding a consumer's health, safety, or well-being, or participating in a judicial proceeding resulting therefrom, shall be presumed to be acting in good faith, and unless the presumption is rebutted, shall be immune from any liability, civil or criminal, and shall be immune from any penalty, sanction, or restriction that might be incurred or imposed. The presumption established by this subdivision is a presumption affecting the burden of producing evidence.

(d) This section shall apply only to acts or omissions that occur on or after January 1, 2001.

(e) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

**This section was added to provide regional center employees immunity against civil and criminal law suits resulting from:**

- 1. Acts or omissions which were the result of the exercise of the discretion vested in him or her, in good faith, and**
- 2. Participation in filing a complaint or when providing information as required by law regarding a consumer's health, safety or well-being.**

The following is a compilation of amendments made by:

AB 2929 (Chapter 416), Statutes of 2000

THE LANTERMAN DEVELOPMENTAL DISABILITIES ACT  
DIVISION 45  
Services for the Developmentally Disabled  
Chapter 7  
Appeals

SECTION 1. Section 4701 of the Welfare and Institutions Code is amended to read:

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. That if a fair hearing is requested, the claimant has the following riights:~~

~~(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 choosina.~~

~~(4) The right to access to records pursuant to Article 5 (commencina with Section 4725)~~

~~(5) The riight to an interpreter.~~

(g) Information on availability of advocacy assistance, including referral to the ~~state hospital~~ developmental

AB 2919 makes minor technical changes to the fair hearing procedures contained in Welfare & Institutions Code Sections 4700, et seq. The changes include:

1. Modifying the time line requirements so that most time lines begin upon receipt of a fair hearing rather than postmark date,

2. Allowing regional centers to provide notice of rights once, rather than twice,

3. Allowing regional centers five working days, rather than calendar days, to send copies of the fair hearing request to the entities providing mediation and hearings, and

4. Extending the time line for mediation from 20 to 30 days.

AB2919 also changes the

center 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 (42 U.S.C.A. Sec. 6000 et seq.).

~~(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 the service agency, whichever is earlier, as specified in subdivision (c) of Section 4711.5: The fair hearing procedure, including deadlines, access to service agency records under Article 5 (commencing with Section 4725), the opportunity to request mediation which shall be~~

~~voluntary for both the claimant and the service agency. (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. If the claimant has requested an informal hearing, information that it shall be held within 10 days of the date the hearing request form is received by the service agency.~~

~~(j) 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 4713, 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. The option of requesting mediation prior to a fair hearing, as provided in Section 4711.5. 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.~~

**requirement that the agency responsible for conducting fair hearings evaluate its hearing officers annually, to once every two years.**



(k) The fair hearing shall be completed and a final administrative decision rendered within 90 days of the date the hearing request form is received by the service agency.

(l) 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).

(m) 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 the service agency, whichever is earlier, as specified in subdivision (c) of Section 4711.5.

(n) 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.

(o) A statement indicating whether the recipient is a participant in the home and community-based waiver.  
4702.7 For purposes of this section, "medicaid home and community-based waiver participant" means an individual deemed eligible and receiving services through the Medicaid Home and Community-based waiver program.

**SEC. 3.** Section 4705 of the Welfare and Institutions Code is amended to read:

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 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 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 or developmental 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 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.

SEC. 5. Section 4710.5 of the Welfare and Institutions Code is amended to read:

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.~~ The opportunity to request a voluntary informal

meeting and an opportunity for mutually agreed upon voluntary mediation shall also be offered at this time.

(b) The request for a fair hearing and for mediation, or for a voluntary informal meeting, or any combination thereof, shall be stated in writing on a hearing request form provided by the service agency.

(c) If any person makes a 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~~ facsimile (FAX) 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 working days of the service agency director's receipt of the request. The department shall keep a file of all hearing request forms.

SEC. 6. Section 4710.6 of the Welfare and Institutions Code is amended to read:

4710.6. (a) Upon receipt by the service agency director of the hearing request form requesting a fair hearing, mediation, or a voluntary informal meeting, the service agency director shall ~~notify in writing immediately provide adequate notice pursuant to Section 4701 to~~ 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:~~

~~(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. If an informal meeting is requested by the claimant, the service agency and the~~

claimant shall determine a mutually agreed upon time for the meeting. The service agency shall notify the claimant of the date upon which his or her hearing request form was received by the service agency.

~~(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 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 voluntary informal meeting is requested by the claimant, it shall be held within 10 days of the 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 4711.5. 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.~~  
notice shall also confirm the mutually agreed upon date, time, and place for 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. The written notice shall also state that the claimant or his or her authorized representative may decline an informal meeting.

~~(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.~~  
written notification of rights required pursuant to subdivision (a) shall not be required if the service agency includes written notification of those rights with the notice required by Section 4710.

SEC. 7. Section 4710.7 of the Welfare and Institutions Code is amended to read:

4710.7. (a) 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 fair hearing. The written notice shall state that the claimant or his or her authorized representative may decline an informal meeting.~~ Upon request a fair hearing, the claimant has the right to request a voluntary informal meeting with the service agency director or his or her designee. The purpose of the meeting is to attempt to resolve the issue or issues that are the subject of the fair hearing appeal informally prior to the scheduled fair hearing.

(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 working days of the meeting.

(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.

(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). SEC. 8. Section 4710.8 of the Welfare and Institutions Code is amended to read:

4710.8. (a) At an informal meeting, the claimant shall have the rights stated pursuant to ~~subdivision (a) of Section 4710.6~~ Section 4701.

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

(c) 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.

SEC. 9. Section 4711 of the Welfare and Institutions Code is amended to read:

4711. 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 notifications shall be made separately, and each notice shall contain only the information applicable to the particular type of proceeding.

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

(b) The rights of the parties at the fair hearing pursuant to Section ~~4710.6~~ 4701 or mediation, as applicable, pursuant to Section 4711.5.

(c) The availability of advocacy assistance pursuant to ~~paragraph (1)~~ subdivision ~~(b)~~ (g) of Section ~~4710.6~~ 4701 for both mediation and fair hearings.

(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.

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

SEC. 10. Section 4711.5 of the Welfare and Institutions Code is amended to read:

4711.5. (a) Upon receipt of the written request for mediation, the service agency shall be given five working 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 calendar 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~~ 30 days 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 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 4710.6~~ paragraphs (1), (3), (4), and (5) of subdivision (f) of Section 4701.

(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.

SEC. 11. Section 4712 of the Welfare and Institutions Code is amended to read:

4712. (a) The fair hearing shall be held within 50 days of the date the hearing request form is ~~postmarked or~~ received by the service agency, 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 regulation to be adopted by the department pursuant to Section 4705. These hearing officers shall receive training in the law and regulations governing services to developmentally disabled 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 on 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) 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 calendar 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 ~~as specified in subdivision (a)~~ specified in subdivision (f) of Section 4701.

(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 officers shall ~~annually~~ biennially 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 two years, 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 two years, and the organizations identified in subdivision (b). Regional centers shall forward copies of administrative decisions reviewed by the superior court to the department. 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 shall be made available to the public upon request, provided that the names of individual hearing officers and

consumers shall not be disclosed.

SEC. 12. Section 4712.2 of the Welfare and Institutions Code is amended to read:

4712.2. (a) Two or more claimants with a common complaint, or their authorized representatives, or a service agency may request the consolidation of appeals involving a common question of law or fact.

The hearing officer may grant the request for consolidation if the hearing officer finds that consolidation would not result in prejudice or undue inconvenience to any party, undue delay, or a violation of any claimant's right to confidentiality unless the claimant agrees to have otherwise confidential information revealed to other claimants. Requests for consolidation shall be forwarded to the hearing officer, and postmarked within five working days of the receipt of the notice sent pursuant to Section 4711. The hearing officer shall notify the parties and authorized representatives, if any, of a request for consolidation and shall afford an opportunity for any written objections to be submitted.

(b) In all consolidated hearings, each individual claimant shall have all the rights specified in subdivision ~~(e)~~ (f) of Section ~~4710.6~~ 4701. A separate written decision shall be issued to each claimant and respective authorized representatives. SEC. 13. Section 4712.5 of the Welfare and Institutions Code is amended to read:

4712.5. (a) Except as provided in subdivision (c), within 10 working days of the concluding day of the state hearing, but not later than 80 days following the date the hearing request form was received, 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 in its evaluation of the contract for the provision of independent hearing officers.