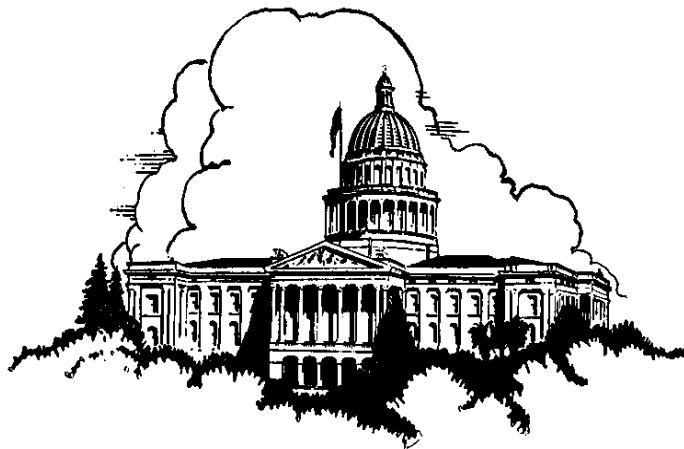


# 2003 LEGISLATIVE SESSION

IMPACT  
OF

*AB 1753, AB 1762, SB 577, AND SB 1075  
ON SERVICES FOR PEOPLE WITH  
DEVELOPMENTAL DISABILITIES*



## INTRODUCTION

During the 2003 Legislative session, provisions of the Welfare and Institutions Code were amended, deleted or added by four pieces of legislation as follows:

- AB 1753 (Chapter 226, Statutes of 2003) (Committee on Budget - Oropeza, Bermudez, Chan, Chu, Diaz, Dutra, Dymally, Goldberg, Hancock, Jackson, Liu, Montanez, Nakano, Pavley, Reyes, Simitian, and Wolk) effective July 1, 2004;
- AB 1762 (Chapter 230, Statutes of 2000) (Committee on Budget - Oropeza, Bermudez, Chan, Chu, Diaz, Dutra, Dymally, Goldberg, Hancock, Jackson, Liu, Montanez, Nakano, Pavley, Reyes, Simitian, and Wolk) effective August 9, 2003;
- SB 577 (Chapter 878, Statutes of 2003) (Chesbro, Kuehl, and Lieber) effective January 1, 2004); and
- SB 1075 (Chapter 886, Statutes of 2003)(Committee on Health and Human Services - Ortiz, Alarcon, Chesbro, Escutia, Figueroa, Florez, Kuehl, Nation, Romero, Vasconcellos, and Vincent) effective July 1, 2004.

This document was prepared to identify significant statutory changes that occurred in the 2003 Legislative session, focusing on those changes which affect services 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 and does not include changes in law outside of the Lanterman Developmental Disabilities Services Act that may impact services or 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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**The following is a compilation of the amendments made by:**

**Assembly Bill 1753, Chapter 226, Statutes of 2003**

**Assembly Bill 1762, Chapter 230, Statutes of 2003**

**Senate Bill 577, Chapter 878, Statutes of 2003**

**Senate Bill 1075, Chapter 886, Statutes of 2003**

**DEVELOPMENTAL SERVICES**

**Welfare and Institutions Code (WIC)**

**Division 4.1**

**General Administration, Powers and Duties of the Department**

4433. (a) The Legislature finds and declares all of the following:

(1) The State of California accepts its responsibility to ensure and uphold the rights of persons with developmental disabilities and an obligation to ensure that laws, regulations, and policies on the rights of persons with developmental disabilities are observed and protected.

(2) Persons with developmental disabilities are vulnerable to abuse, neglect, and deprivation of their rights.

(3) Clients' rights advocacy services provided by the regional centers, the advocacy services currently provided by the department at the state hospitals, and the services provided by the department's Office of Human Rights may have conflicts of interest, or the appearance of a conflict of interest.

(4) The services provided to individuals with developmental disabilities and their families are of such a special and unique nature that they cannot satisfactorily be provided by state agencies or regional centers and must be contracted out pursuant to paragraph (3) of subdivision (b) of Section 19130 of the Government Code.

(B)(1) To avoid the potential for a conflict of interest or the appearance of a conflict of interest, beginning January 1, 1998, the department shall contract for clients' rights advocacy services. The department shall solicit a single statewide contract with a nonprofit agency that results in at least three responsive bids that meet all of the criteria specified in paragraph (2) to perform the services specified in subdivision

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(d). If three responsive bids are not received, the department may rebid the contract on a regional basis, not to exceed three regional contracts and one contract for developmental centers and headquarters.

(2) Any contractor selected shall meet the following requirements:

(A) The contractor can demonstrate the capability to provide statewide advocacy services to individuals with developmental disabilities living in developmental centers and in the community.

(B) The contractor does not directly or indirectly provide services to individuals with developmental disabilities, except advocacy services.

(C) The contractor has knowledge of the service system, entitlements, and service rights of persons receiving services from regional centers and in state hospitals.

(D) The contractor can demonstrate the capability of coordinating services with the protection and advocacy agency specified in Division 4.7 (commencing with Section 4900) and the area boards.

(E) The contractor has not provided any services, except advocacy services, to, or been employed by, any regional center or the Association of Regional Center Agencies during the two year period prior to the effective date of the contract.

(c) For the purposes of this section, the Legislature further finds and declares that because of a potential conflict of interest or the appearance of a conflict of interest, the goals and purposes of the regional center clients' rights advocacy services, the state hospitals, and the services of the Office of Human Rights, cannot be accomplished through the utilization of persons selected pursuant to the regular civil service system, nor can the services be provided through the department's contracts with regional centers. Accordingly, contracts into which the department enters pursuant to this section are permitted and authorized by paragraphs (3) and (5) of subdivision (b) of Section 19130 of the Government Code.

(d) The contractor shall do all of the following:

(1) Provide clients' rights advocacy services to persons with developmental disabilities who are consumers of regional centers and to individuals who reside in the state developmental centers and hospitals, including ensuring the rights of persons with developmental disabilities, and assisting persons with developmental disabilities in pursuing administrative and legal

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remedies.

(2) Investigate and take action as appropriate and necessary to resolve complaints from, or concerning persons with, developmental disabilities residing in licensed health and community care facilities regarding abuse, and unreasonable denial, or punitive withholding, of rights guaranteed under this division.

(3) Provide consultation, technical assistance, supervision and training, and support services for clients' rights advocates that were previously the responsibility of the Office of Human Rights.

(4) Coordinate the provision of clients' rights advocacy services in consultation with the department, stakeholder organizations, and persons with developmental disabilities and their families representing California's multi cultural diversity.

(5) Provide at least two self-advocacy trainings for consumers and family members.

(e) In order to ensure that individuals with developmental disabilities have access to high quality advocacy services, the contractor shall establish a grievance procedure and shall advise persons receiving services under the contract of the availability of other advocacy services, including the services provided by the protection and advocacy agency specified in Division 4.7 (commencing with Section 4900) and the area boards.

(f) The department shall contract on a multi year basis for a contract term of up to five ~~three~~ years, subject to the annual appropriation of funds by the Legislature.

(g) This section shall not prohibit the department and the regional center from advocating for the rights, including the right to generic services, of persons with developmental disabilities.

This amendment changes the contract term from three years to five years.

(AB 1762, Chapter 230, Statutes of 2003)

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 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 individuals with mental retardation, but shall

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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 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; camping; community integration services; community support; daily living skills training; emergency and crisis intervention; facilitating circles of support; habilitation; homemaker services; infant stimulation program; 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

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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 participants in the circle of support.

(g) “Facilitating” means the use of modified or adapted materials, special 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.

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(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.

4514.3. (a) Notwithstanding Section 4514, information and records shall ~~may~~ be disclosed to 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 of 2000, contained in Chapter 144 75 (commencing with Section 15001 6000) of Title 42 of the United States Code, for the protection and advocacy of the rights of persons with developmental disabilities, as defined in Section 15002(8) 6001(5) of Title 42 of the United States Code.

This section was amended to update section numbers. (SB 577, Chapter 878, Statutes of 2003)

(b) Access to information and records to which subdivision (a) applies shall be in accord with Division 4.7 (commencing with Section 4900).

4620.2. (a) The State Department of Developmental Services, after consultation with stakeholder groups, shall develop a system of enrollment fees, copayments, or both, to be assessed against the parents of each child between the ages of three and 17 years who lives in the parent’s home and receives services purchased through the regional center. This system shall be

This section was added to require the development of a parental co-pay system; requires an implementation plan to be submitted to the

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submitted to the Legislature on or before April 1, 2004, immediately prior to the fiscal year in which the system is to be implemented, and as a part of the Governor's proposed 2004-05 budget or subsequent legislation.

(b) The department, after consultation with stakeholder groups, shall submit a detailed plan for implementing a parental copayment system for children receiving services purchased through a regional center. This plan shall be submitted to the Legislature by April 1, 2004.

(c) The plan submitted on or before April 1, 2004, pursuant to subdivision (b), and any resources requested in the 2004-05 Governor's Budget and related authority may be subsequently modified during the legislative review process.

(d) The parental copayment system shall only be applicable to families that have adjusted gross family incomes of over 200 percent of the federal poverty level and that have a child who meets all of the following criteria:

(1) The child is receiving services purchased through a regional center.

(2) The child is living at home.

(3) The child is not otherwise eligible to receive services provided under the Medi-Cal program.

(4) The child is at least three years of age and not more than 17 years of age.

(e) The department's plan shall address, at a minimum all of the following:

(1) Description of the families and children affected, including those families with more than one child as described under subdivision (d).

(2) Privacy issues and potential safeguards regarding the families' income, the children's regional center clinical records, and related matters.

(3) Schedule of parental copayments and any other related assessments, and criteria or service thresholds for which these copayments and assessments are based.

(4) The options for a sliding scale for the schedule of parental copayments based on family income and family size.

(5) Proposed limits on parental cost sharing.

(6) An exemption process for families who are experiencing financial hardships and may need deferral or waiver of any copayments or assessments.

(7) An appeal process for families who may dispute the level of copayment or assessments for which they are billed.

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Legislature by April 1, 2004; establishes criteria for eligibility; requires the department to collect data from a select group of families for the purpose of developing a detailed implementation.

(AB 1762, Chapter 230, Statutes of 2003)

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(8) The specific methods and processes to be used by the department, regional centers, or other responsible party, for the collection of all parental copayments and assessments.

(9) Any potentials for the disruption of services to applicable regional center consumers due to the implementation of a parental copayment system.

(10) The estimated amount of revenues to be collected and any applicable assumptions made for making this determination.

(11) Any estimate related to a slowing of the trend in the growth for regional center services due to the implementation of a parental copayments and assessments.

(12) A comparison to how the State Department of Health Services and other state agencies utilize personal information to manage the delivery of benefits and assessment of copayments.

(13) A recommendation on whether the parental copayment system should be centralized at the department or decentralized in the regional centers and the basis for this recommendation.

(14) The estimated cost for implementing a parental copayment system, including any costs associated with consultant contracts, state personnel, revenue collection, computer system processing, regional center operations, or any other cost factor that would need to be included in order to capture all estimated costs for implementation.

(15) The time frame for which the parental copayment system is to be implemented.

(f)(1) In order for the department to develop a detailed plan for the implementation of a parental copayment system, the department shall collect information from selected families. In order to be cost efficient and prudent regarding the collection of information, the department may conduct a survey of only those families known to have children not eligible for the Medi-Cal program. The survey instrument may only be used for the sole purpose of obtaining information that is deemed necessary for the development of a parental copayment system, including the following:

(A) A family's annual adjusted gross family income.

(B) The number of family members dependent on that income.

(C) The number of children who meet the criteria specified in subdivision (d).

(2) Results of the survey in the aggregate shall be provided to the Legislature as part of the department's plan as required by subdivision (a).

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4631.5. (a) The legislature finds and declares both of the following:

(1) The state is facing an unprecedented fiscal crisis that will require an unallocated reduction in the 2003-04 ~~2002-03~~ fiscal year for regional centers' purchase of service budgets of ten ~~fifty-two~~ million dollars (\$1052,000,000).

(2) Even when the state faces an unprecedented fiscal crisis, the services and supports set forth in the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)) shall continue to be provided to individuals with developmental disabilities in accordance with state and federal statutes, regulations, and case law, including the Association for Retarded Citizens v. Department of Developmental Services (1985) 38 Cal.3d 384.

(b) It is the intent of the Legislature that actions taken pursuant to this section shall not eliminate an individual's eligibility, adversely affect an individual's health and safety, or interfere with an individual's rights as described in Section 4502.

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

(d) Within 30 days of the enactment of the annual Budget Act, and after consultation with stakeholder organizations, the department shall make in its purchase-of-service budget and shall provide each regional center with guidelines, technical assistance, and a variety of options for reducing operations and purchase of service costs.

(e) Within 60 days of the enactment of the annual Budget Act, each regional center shall develop and submit a plan to the department describing in detail how it intends to absorb the unallocated reduction and 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 center 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 its plan.

(f) A regional center shall implement components of its plans upon approval of the department. Within 30 days of receipt of the plan, the department shall review and approve, or require modification of, portions of the regional center's plan.

This section was amended to update the fiscal year date and budget amount.

(AB 1762, Chapter 230, Statutes of 2003)

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(g) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

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 shall require regional centers to have service coordinator-to-consumer ratios, as follows:

(1) An average service coordinator-to-consumer ratio of 1 to 62 for all consumers who have not moved from the developmental centers to the community since April 14, 1993. In no case shall a service coordinator for these consumers have an assigned caseload in excess of 79 consumers for more than 60 days.

(2) An average service coordinator-to-consumer ratio of 1 to 45 for all consumers who have moved from a developmental center to the community since April 14, 1993. In no case shall a service coordinator for these consumers have an assigned caseload in excess of 59 consumers for more than 60 days.

(3) Commencing January 1, 2004, to June 30, 2007, inclusive, the following coordinator-to-consumer ratios shall apply:

(A) All consumers three years of age and younger and for consumers enrolled on the Home and Community-based Services Waiver for persons with developmental disabilities, an average service coordinator-to-consumer ratio of 1-62.

(B) All consumers who have moved from a developmental center to the community since April 14, 1993, and have lived continuously in the community for at least 12 months, an average service coordinator-to-consumer ratio of 1-62.

(C) All consumers who have not moved from the developmental centers to the community since April 14, 1993, and who are not described in subparagraph (A), an average services coordinator-

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This section was amended to establish coordinator-to-consumer ratios for the period January 1, 2004 to June 30, 2007.

(AB 1762, Chapter 230, Statutes of 2003)

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to-consumer ratio of 1 to 66.

(4) For purposes of paragraph (3), service coordinators may have a mixed caseload of consumers three years of age and younger, consumers enrolled on the Home and Community-based Services Waiver program for persons with developmental disabilities, and other consumers if the overall average caseload is weighted proportionately to ensure that overall regional center average service coordinator-to-consumer ratios as specified in paragraph (3) are met. For purposes of paragraph (3), in no case shall a service coordinator have an assigned caseload in excess of 84 for more than 60 days.

(d) For purposes of this section, “service coordinator” means a regional center employee whose primary responsibility includes preparing, implementing, and monitoring consumers’ individual program plans, securing and coordinating consumer services and supports, and providing placement and monitoring activities.

(e) In order to ensure that caseload ratios are maintained pursuant to this section, each regional center shall provide service coordinator caseload data to the department annually in September and March of for each fiscal year, ~~commencing in the 1999-2000 fiscal year.~~ The data shall be submitted in a format, including the content, prescribed by the department. Within 30 days of receipt of data submitted pursuant to this subdivision, the department shall make a summary of the data available to the public upon request. The department shall verify the accuracy of the data when conducting regional center fiscal audits. Data submitted by regional centers pursuant to this subdivision shall:

(1) Only include data on service coordinator positions as defined in subdivision (d). Regional centers shall identify the number of positions that perform service coordinator duties on less than a full-time basis. Staffing ratios reported pursuant to this subdivision shall reflect the appropriate proportionality of these staff to consumers served.

(2) Be reported separately for service coordinators whose caseload primarily includes any of the following:

(A) Consumers who are three years of age and older and who have not moved from the developmental center to the community since April 14, 1993.

(B) Consumers who have moved from a developmental center to the community since April 14, 1993.

(C) Consumers who are younger than three years of age.

This section was amended to require regional centers to provide service coordinator caseload data to the department on an annual basis. (AB 1762, Chapter 230, Statutes of 2003)

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(D) Consumers enrolled in the Home and Community-based Services Waiver program.

(3) Not include positions that are vacant for more than 60 days or new positions established within 60 days of the reporting month that are still vacant.

(f) The department shall provide technical assistance and require a plan of correction for any regional center that, for two consecutive reporting periods, fails to maintain service coordinator caseload ratios required by this section or otherwise demonstrates an inability to maintain appropriate staffing patterns pursuant to this section. Plans of correction shall be developed following input from the local area board, local organizations representing consumers, family members, regional center employees, including recognized labor organizations, and service providers, and other interested parties.

(g) Contracts between the department and regional center shall require the regional center 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 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 coordinating 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

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maximum cost-effectiveness and to ensure that the service needs of consumers and families are met.

(h) Any regional center proposing a staffing arrangement that substantially deviates from the requirements of this section shall request a waiver from the department. Prior to granting a waiver, the department shall require a detailed staffing proposal, including, but not limited to, how the proposed staffing arrangement will benefit consumers and families served, and shall demonstrate clear and convincing support for the proposed staffing arrangement from constituencies served and impacted, that include, but are not limited to, consumers, families, providers, advocates, and recognized labor organizations. In addition, the regional center shall submit to the department any written opposition to the proposal from organizations or individuals, including, but not limited to, consumers, families, providers, and advocates, including recognized labor organizations. The department may grant waivers to regional centers that sufficiently demonstrate that the proposed staffing arrangement is in the best interest of consumers and families served, complies with the requirements of this chapter, and does not violate any contractual requirements. A waiver shall be approved by the department for up to 12 months, at which time a regional center may submit a new request pursuant to this subdivision.

(i) The requirements of subdivisions (c), (f), and (h) shall not apply when a regional center is required to develop an expenditure plan pursuant to Section 4791, and when the expenditure plan addresses the specific impact of the budget reduction on staffing requirements and the expenditure plan is approved by the department.

(j)(1) Any contract between the department and a regional center entered into on and after January 1, 2003, shall require that all employment contracts entered into with regional center staff or contractors be available to the public for review, upon request. For purposes of this subdivision, an employment contract or portion thereof may not be deemed confidential nor unavailable for public review.

(2) Notwithstanding paragraph (1), the social security number of the contracting party may not be disclosed.

(3) The term of the employment contract between the regional center and an employee or contractor shall not exceed the term of the state's contract with the regional center.

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4643. (a) If assessment is needed, prior to July 1, 2004~~3~~, the assessment shall be performed within 120 days following initial intake. Assessment shall be performed as soon as possible and in no event more than 60 days following initial intake where any delay would expose the client to unnecessary risk to his or her health and safety or to significant further delay in mental or physical development, or the client would be at imminent risk of placement in a more restrictive environment. Assessment may include collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs and is conditional upon receipt of the release of information specified in subdivision (b). On and after July 1, 2004~~3~~, the assessment shall be performed within 60 days following intake and if unusual circumstances prevent the completion of assessment within 60 days following intake, this assessment period may be extended by one 30-day period with the advance written approval of the department.

(b) In determining if an individual meets the definition of developmental disability contained in subdivision (a) of Section 4512, the regional center may consider evaluations and tests, including, but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests for evaluations that have been performed by, and are available from, other sources.

4648.4. (a) The Legislature finds and declares that the state faces a fiscal crisis requiring that unprecedented measures be taken to reduce General Fund expenditures.

(b) Notwithstanding any other provision of law or regulation, during the 2003-04 fiscal year, no regional center may pay any provider of the following services or supports a rate that is greater than the rate that is in effect on or after June 30, 2003, unless the increase is required by a contract between the regional center and the vendor that is in effect on June 30, 2003, or the regional center demonstrates that the approval is necessary to protect the consumer's health or safety and the department has granted prior written authorization:

- (1) Supported living services.
  - (2) Transportation, including travel reimbursement.
  - (3) Socialization training programs.
  - (4) Behavior intervention training.
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This section was amended to modify dates.

(AB 1762, Chapter 230, Statutes of 2003)

This section was added to limit the rate for services and supports to the rate that was set as of June 30, 2003.

(AB 1762, Chapter 230, Statutes of 2003)

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- (5) Community integration training programs.
  - (6) Community activities support services.
  - (7) Mobile day programs.
  - (8) Creative art programs.
  - (9) Supplemental day services program supports.
  - (10) Adaptive skills trainers.
  - (11) Independent living specialists.

4681.5. (a) The Legislature finds and declares that the state faces a fiscal crisis requiring that unprecedented measures be taken to reduce General Fund expenditures.

(b) Notwithstanding any other provision of law or regulations, during the 2003-04 fiscal year, no regional center may approve any service level for a residential service provider, as defined in Section 56005 of Title 17 of the California Code of Regulations, if the approval would result in an increase in the rate to be paid to the provider that is greater than the rate that is in effect on or after June 30, 2003, unless the regional center demonstrates to the department that the approval is necessary to protect the consumer's health or safety and the department has granted prior written authorization.

This section was added to limit the service level rate for residential service providers to the rate established as of June 30, 2003 unless the regional center can demonstrate the increase is necessary to protect the consumer's health and safety.

(AB 1762, Chapter 230, Statutes of 2003)

4685.5. (a) Notwithstanding any other provision of law, commencing January 1, 1999, the department shall conduct a 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.

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(c) The department shall allow the continuation of the existing pilot project in five regional center catchment areas and shall expand the pilot project to other regional center catchment areas only when consistent with federal approval of a self-determination waiver. The department may approve additional regional center proposals to offer self-determination or self-directed services to consumers that meet criteria established by the department and that demonstrate purchase-of-services savings are achieved in the aggregate and have no impact on the General Fund. 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-services 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.
- (4) Kern Regional Center
- (5) San Diego Regional Center.

(f) Each pilot operating 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 multi cultural 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.

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

This section was amended to allow for the continuation of existing pilot projects and expand the pilot project to include two additional regional centers. Additional pilot project proposals can be approved by the Department if the project meets established criteria and has no impact on the general fund.

(AB 1762, Chapter 230, Statutes of 2003)

This section was amended to require joint regional center and area board support for local self determination programs and requires the establishment of a local advisory committee which is require to review the development and ongoing progress of the pilot project.

(AB 1762, Chapter 230, Statutes of 2003)

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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 multi-cultural 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, 2004, and as of that date is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2004, extends or deletes that date.~~

4691.6. (a) The Legislature finds and declares that the state faces a fiscal crisis requiring that unprecedented measures be taken to reduce General Fund expenditures.

(b) Notwithstanding any other provision of law or regulation, during the 2003-04 fiscal year, the department may not establish any permanent payment rate for a community-based day program or in-home respite service agency provider that has a temporary payment rate in effect on June 30, 2003, if the permanent payment rate would be greater than the temporary payment rate in effect on or after June 30, 2003, unless the regional center demonstrates to the department that the

This section was added to limit the permanent payment rate for community-based day program providers or in-home respite providers to the rate established as of June 30, 2003 unless the regional center demonstrates the increase is necessary to protect the health and safety of the consumer.

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permanent payment rate is necessary to protect the consumers' health or safety.

(c) Notwithstanding any other provision of law or regulation, during the 2003-04 fiscal year, neither the department nor any regional center may approve any program design modification or revendorization for a community-based day program or in-home respite service agency provider that would result in an increase in the rate to be paid to the vendor from the rate that is in effect on or after June 30, 2003, unless the regional center demonstrates that the program design modification or revendorization is necessary to protect the consumers' health or safety and the department had granted prior written authorization.

(d) Notwithstanding any other provision of law or regulation, during the 2003-04 fiscal year, the department may not approve an anticipated rate adjusted for a community-based day program or in-home respite service agency provider that would result in an increase in the rate to be paid to the vendor from the rate that is in effect on or after June 30, 2003, unless the regional center demonstrates that the anticipated rate adjustment is necessary to protect the consumers' health or safety.

4781.5. For the 2002-03 and 2003-04 fiscal years only, a regional center may not expend any purchase of service funds for the startup of any new program unless the expenditure is necessary to protect the consumer's health or safety or because of other extraordinary circumstances, and the department has granted prior written authorization for the expenditure. This provision shall not apply to any of the following:

(a) The purchase of services funds allocated as part of the department's community placement plan process.

(b) Expenditures for the startup of new programs made pursuant to a contract entered into before July 1, 2002.

SECTION 1. Chapter 13 (commencing with Section 4850) of Division 4.5 of the Welfare and Institutions Code is repealed.

SECTION 2. Chapter 13 (commencing with Section 4850) is added to Division 4.5 of the Welfare and Institutions Code, to read:

4850. (a) The Legislature reaffirms its intent that habilitation services for adults with developmental disabilities should be

Also limits the approval of program design modifications or revendorization of community-based day programs or in-home respite providers unless the regional center demonstrates the modifications or revendorization is necessary to protect the health and safety of the consumer.

(AB 1762, Chapter 226, Statutes of 2003)

Extends to FY 2003-04 the prohibition of expending any POS funds for the startup of new programs unless necessary to protect the consumer's health or safety or because of other extraordinary circumstances.

(AB 1762, Chapter 230, Statutes of 2003)

This section was added to

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planned and provided as a part of a continuum and that habilitation services should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to nondisabled people of the same age.

(b) The Legislature further intends that habilitation services shall be provided to adults with developmental disabilities as specified in this chapter in order to guarantee the rights stated in Section 4502.

4850.1. Notwithstanding Section 19050.9 of the Government Code, beginning July 1, 2004, the State Department of Developmental Services shall succeed to all functions and responsibilities of the Department of Rehabilitation with respect to the administration of the Habilitation Services Program established pursuant to former Chapter 4.5 (commencing with Section 19350) of Part 2 of Division 10.

4850.2. (a) Except as otherwise specifically provided, this chapter shall only apply to those habilitation services purchased by the regional centers.

(b) Nothing in this section shall be construed to abridge the rights stated in Section 4502.

4851. The definitions contained in this chapter shall govern the construction of this chapter, with respect to habilitation services provided through the regional center, and unless the context requires otherwise, the following terms shall have the following meanings:

(a) "Habilitation services" means community-based services purchased or provided for adults with developmental disabilities, including services provided under the Work Activity Program and the Supported Employment Program, to prepare and maintain them at their highest level of vocational functioning, or to prepare them for referral to vocational rehabilitation services.

(b) "Individual program plan" means the overall plan developed by a regional center pursuant to Section 4646.

(c) "Individual habilitation service plan" means the service plan

reaffirm the legislative intent that habilitation services be provided to persons with developmental disabilities.

(AB 1753, Chapter 230, Statutes of 2003)

This section was added to transfer the Habilitation Services Program from the Department of Rehabilitation to the Department of Developmental Services.

(AB 1753, Chapter 226, Statutes of 2003)

This section was added to limit these requirements to habilitation services purchased by the regional centers.

(AB 1753, Chapter 226, Statutes of 2003)

This section was added to provide definitions for terms used in the Habilitation Services Program.

(AB 1753, Chapter 226, Statutes of 2003)

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developed by the habilitation service vendor to meet employment goals in the individual program plan.

(d) "Department" means the State Department of Developmental Services.

(e) "Work activity program" includes, but is not limited to, sheltered workshops or work activity centers, or community-based work activity programs certified pursuant to subdivision (f) or accredited by CARF, the Rehabilitation Accreditation Commission.

(f) "Certification" means certification procedures developed by the Department of Rehabilitation.

(g) "Work activity program day" means the period of time during which a Work Activity Program provides services to consumers.

(h) "Full day of service" means, for purposes of billing, a day in which the consumer attends a minimum of the declared and approved work activity program day, less 30 minutes, excluding the lunch period.

(i) "Half day of service" means, for purposes of billing, any day in which the consumer's attendance does not meet the criteria for billing for a full day of service as defined in subdivision (g), and the consumer attends the work activity program not less than two hours, excluding the lunch period.

(j) "Supported employment program" means a program that meets the requirements of subdivisions (n) to (s), inclusive.

(k) "Consumer" means any adult who receives services purchased under this chapter.

(l) "Accreditation" means a determination of compliance with the set of standards appropriate to the delivery of services by a work activity program or supported employment program, developed by CARF, the Rehabilitation Accreditation Commission, and applied by the commission or the department.

(m) "CARF" means CARF the Rehabilitation Accreditation Commission.

(n) "Supported employment" means paid work that is integrated in the community for individuals with developmental disabilities.

(o) "Integrated work" means the engagement of an employee with a disability in work in a setting typically found in the community in which individuals interact with individuals without disabilities other than those who are providing services to those individuals, to the same extent that individuals without

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disabilities in comparable positions interact with other persons.

(p) "Supported employment placement" means the employment of an individual with a developmental disability by an employer in the community, directly or through contract with a supported employment program. This includes provision of ongoing support services necessary for the individual to retain employment.

(q) "Allowable supported employment services" means the services approved in the individual program plan and specified in the individual habilitation service plan for the purpose of achieving supported employment as an outcome, and may include any of the following:

(1) Job development, to the extent authorized by the regional center.

(2) Program staff time for conducting job analysis of supported employment opportunities for a specific consumer.

(3) Program staff time for the direct supervision or training of a consumer or consumers while they engage in integrated work unless other arrangements for consumer supervision, including, but not limited to, employer supervision reimbursed by the supported employment program, are approved by the regional center.

(4) Community-based training in adaptive functional and social skills necessary to ensure job adjustment and retention.

(5) Counseling with a consumer's significant other to ensure support of a consumer in job adjustment.

(6) Advocacy or intervention on behalf of a consumer to resolve problems affecting the consumer's work adjustment or retention.

(7) Ongoing support services needed to ensure the consumer's retention of the job.

(r) "Group services" means job coaching in a group supported employment placement at a job coach-to-consumer ratio of not less than one-to-four nor more than one-to-eight where services to a minimum of four consumers are funded by the regional center or the Department of Rehabilitation. For consumers receiving group services, ongoing support services shall be limited to job coaching and shall be provided at the worksite.

(s) "Individualized services" means job coaching and other supported employment services for regional center-funded consumers in a supported employment placement at a job coach-to-consumer ratio of one-to-one, and that decrease over time until stabilization is achieved. Individualized services may be provided on or off the jobsite.

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4852. A consumer shall be referred to a provider of habilitation

services under this chapter when all of the following apply:

(a) The individual is an adult who has been diagnosed as having a developmental disability.

(b) The individual is determined to be in need of and has chosen habilitation services through the individual program planning process pursuant to Section 4646.

4853. (a) When a referral for habilitation services pursuant to Section 4852 has been made and if the individual is placed in a work activity program, he or she shall be deemed presumptively eligible for a period not to exceed 90 days.

(b) During the period of presumptive eligibility, the work activity program shall submit a work skills evaluation report to the regional center. The work skills evaluation report shall reflect the performance of the consumer in all of the following areas:

(1) Appropriate behavior to safely conduct himself or herself in a work setting.

(2) Adequate attention span to reach a productivity level in paid work.

(3) Ability to understand and act on simple instructions within a reasonable length of time.

(4) Ability to communicate basic needs and understand basic receptive language.

(5) Attendance level.

(c) During the period of presumptive eligibility, the individual program plan planning team shall, pursuant to Section 4646, utilize the work skills evaluation report to determine the appropriateness of the referral.

4854. In developing the individual habilitation service plan pursuant to Section 4853, the habilitation service provider shall develop specific and measurable objectives to determine whether the consumer demonstrates ability to reach or maintain individual employment goals in all of the following areas:

(a) Participation in paid work for a specified period of time.

(b) Obtaining or sustaining a specified productivity rate.

(c) Obtaining or sustaining a specified attendance level.

(d) Demonstration of appropriate behavior for a work setting.

This section establishes criteria for referral to habilitation service providers.

(AB 1753, Chapter 226, Statutes of 2003)

This section was added to establish an eligibility period to determine appropriateness of referral not to exceed 90 days and to require the development of a work skills evaluation report and to specify what performance measurements to include in the report.

(AB 1753, Chapter 226, Statutes of 2003)

This section was added to require the habilitation service provider to develop performance objectives to assist consumers in achieving employment goals.

(AB 1753, Chapter 226, Statutes of 2003)

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4854.1. The individual program plan planning team, shall, pursuant to Section 4646, meet, when it is necessary to review any of the following:

- (a) The appropriateness of job placement.
- (b) The appropriateness of the services available at the Work Activity Program or Supported Employment Program.
- (c) The individual habilitation service plan.

This section was added to require the planning team to meet and review the appropriateness of job placement and program services and to review the individual habilitation service plan.  
(AB 1753, Chapter 226, Statutes of 2003)

4855. When an individual who is eligible for habilitation services under this chapter is referred to the Department of Rehabilitation for vocational rehabilitation services, including supported employment services, and is placed on a Department of Rehabilitation waiting list for vocational rehabilitation as a result of the Department of Rehabilitation's order of selection regulations, the regional center shall authorize appropriate services for the individual pursuant to this chapter as needed until services can be provided by the vocational rehabilitation program.

This section was added to require the regional centers to authorize appropriate services for a consumer during the time the consumer is on a waiting list to receive vocational rehabilitation.  
(AB 1753, Chapter 226, Statutes of 2003)

4856. (a) The regional center shall monitor, evaluate, and audit habilitation services providers for program effectiveness, using performance criteria that include, but are not limited to, all of the following:

- (1) Service quality.
- (2) Protections for individuals receiving services.
- (3) Compliance with applicable CARF standards.
- (b) (1) The regional center may impose immediate sanctions on providers of work activity programs and supported employment programs for noncompliance with accreditation or services standards contained in regulations adopted by the department, and for safety violations which pose a threat to consumers of habilitation services.
- (2) Sanctions include, but are not limited to, the following:
  - (A) A moratorium on new referrals.
  - (B) Imposition of a corrective plan as specified in regulations.
  - (C) Removal of consumers from a service area where dangerous conditions or abusive conditions exist.
  - (D) Termination of vendorization.
- (c) A moratorium on new referrals may be the first formal sanction to be taken except in instances where consumers are at

This section requires regional center monitoring, evaluation and auditing of habilitation service providers and specifies performance criteria; provides for the imposition of sanctions for program noncompliance and for safety violations that threaten a consumers; provides for a corrective action plan and the termination of vendorization if there is noncompliance with the plan; allows for the removed of consumers when dangerous or abusive conditions exist; allows for due process for providers who have been sanctioned.  
(AB 1753, Chapter 226, Statutes of 2003)

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imminent risk of abuse or other harm. When the regional center determines a moratorium on new referrals to be the first formal sanction, a corrective action plan shall be developed. The moratorium shall be lifted only when the conditions cited are corrected per a corrective action plan.

(d) A corrective action plan is a formal sanction, that may be imposed either simultaneously with a moratorium on new referrals, or as a single sanction in circumstances that do not require a moratorium, as determined by the regional center. Noncompliance with the conditions and time lines of the corrective action plan shall result in termination of vendorization.

(e) Removal of consumers from a program shall only take place where dangerous or abusive conditions are present, or upon termination of vendorization. In instances of removal for health and safety reasons, when the corrections are made by the program, as determined by the regional center, consumers may return, at their option.

(f) Any provider sanctioned under subparagraph (B) or (C) of paragraph (2) of subdivision (b) may request an administrative review as specified in Section 4648.1.

(g) Any provider sanctioned under subparagraph (D) of paragraph (2) of subdivision (b) shall have a right to a formal review by the Office of Administrative Hearings under Chapter 4 (commencing with Section 11370) of Part 1 of Division 3 of Title 2 of the Government Code.

(h) Effective July 1, 2004, if a habilitation services provider is under sanction under former Section 19354.5, the provider shall complete the requirements of the corrective action plan or any other terms or conditions imposed upon it as part of the sanctions. At the end of the term of the corrective action plan or other compliance requirements, the services provider shall be evaluated by the regional center based upon the requirements in this section.

4857. The regional center shall purchase habilitation services pursuant to the individual program plan. Habilitation services shall continue as long as satisfactory progress is being made toward achieving the objectives of the individual habilitation service plan or as long as these services are determined by the regional center to be necessary to maintain the individual at

This section was added to require the regional centers to purchase habilitation services pursuant to the IPP and continue the services so long

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their highest level of vocational functioning, or to prepare the individual for referral to vocational rehabilitation services.

as the consumers are making progress.  
(AB 1753, Chapter 226, Statutes of 2003)

4857.1. Regional centers may purchase habilitation services only from providers who are accredited community nonprofit agencies that provide work activity services or supported employment services, or both, and that have been vendored as described in Section 4861 and regulations promulgated pursuant thereto. Habilitation services providers who, on July 1, 2004, are providing services to consumers shall be deemed to be an approved vendor.

This section was added to require regional centers to purchase services only from accredited providers.  
(AB 1753, Chapter 226, Statutes of 2003)

4858. (a) Each work activity program vendor shall, at a minimum, annually review the status of consumers participating in their program to determine whether these individuals would benefit from vocational rehabilitation services, including supported employment.

This section was added to require each provider to annually review the status of consumers to determine if they are eligible for vocational rehabilitation services.

(b) If it is determined that the consumer would benefit from vocational rehabilitation services, the work activity program vendor shall, in conjunction with the regional center and in accordance with the individual program plan process, refer the consumer to the Department of Rehabilitation.

(AB 1753, Chapter 226, Statutes of 2003)

4859. (a) The department shall adopt regulations to establish rates for work activity program services subject to the approval of the Department of Finance. The regulations shall provide for an equitable and cost-effective rate setting procedure in which each specific allowable service, activity, and provider administrative cost comprising an overall habilitation service, as determined by the department, reflects the reasonable cost of service. Reasonable costs shall be determined biennially by the department, subject to audit at the discretion of the department.

This section was added to require the Department to adopt rate regulations for work activity programs services; requires the existing rate level to continue to remain in effect until the next rate setting year.  
(AB 1753, Chapter 226, Statutes of 2003)

(b) The department shall adopt the existing work activity program rates as of July 1, 2004, that shall remain in effect until the next rate setting year.

(c) Notwithstanding paragraph (4) of subdivision (a) of Section 4648, the regional center shall pay the work activity program rates established by the department.

4860. (a) (1) The hourly rate for supported employment services provided to consumers receiving individualized

This section was added to

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services shall be twenty-seven dollars and sixty-two cents (\$27.62).

(2) Job coach hours spent in travel to consumer work sites may be reimbursable for individualized services only when the job coach travels from the vendor's headquarters to the consumer's worksite or from one consumer's worksite to another, and only when the travel is one way.

(b) The hourly rate for group services shall be twenty-seven dollars and sixty-two cents (\$27.62), regardless of the number of consumers served in the group. Consumers in a group shall be scheduled to start and end work at the same time, unless an exception that takes into consideration the consumer's compensated work schedule is approved in advance by the regional center. The department, in consultation with stakeholders, shall adopt regulations to define the appropriate grounds for granting these exceptions. When the number of consumers in a supported employment placement group drops to fewer than the minimum required in subdivision (r) of Section 4851 the regional center may terminate funding for the group services in that group, unless, within 90 days, the program provider adds one or more regional center, or Department of Rehabilitation funded supported employment consumers to the group.

(c) Job coaching hours for group services shall be allocated on a prorated basis between a regional center and the Department of Rehabilitation when regional center and Department of Rehabilitation consumers are served in the same group.

(d) When Section 4855 applies, fees shall be authorized for the following:

(1) A two hundred dollar (\$200) fee shall be paid to the program provider upon intake of a consumer into a supported employment program. No fee shall be paid if that consumer completed a supported employment intake process with that same supported employment program within the previous 12 months.

(2) A four hundred dollar (\$400) fee shall be paid upon placement of a consumer in an integrated job, except that no fee shall be paid if that consumer is placed with another consumer or consumers assigned to the same job coach during the same hours of employment.

(3) A four hundred dollar (\$400) fee shall be paid after a 90-day

establish an hourly rate for supported employment services; to provide for termination of group services funding if placement drops below the allowable staff to consumer ratio; allows for the application of fees upon consumer intake into a program, placement in an integrated job, and retention on the job.

(AB 1753, Chapter 226, Statutes of 2003)

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retention of a consumer in a job, except that no fee shall be paid if that consumer has been placed with another consumer or consumers, assigned to the same job coach during the same hours of employment.

(e) Notwithstanding paragraph (4) of subdivision (a) of Section 4648 the regional center shall pay the supported employment program rates established by this section.

4861. The regional center may vendor new work activity or supported employment programs, after determining the capacity of the program to deliver effective services, and assessing the ability of the program to comply with CARF requirements.

(a) Programs that receive the regional center's approval to provide supported employment services shall receive rates in accordance with Section 4860.

(b) A new work activity program shall receive the statewide average rate, as determined by the department. As soon as the new work activity program has a historical period of not less than three months that is representative of the cost per consumer, as determined by the department, the department shall set the rate in accordance with Section 4859.

(c) The regional center may purchase services from new work activity programs and supported employment programs, even though the program is not yet accredited by CARF, if all of the following apply:

(1) The vendor can demonstrate that the program is in compliance with certification standards established by the Department of Rehabilitation, to allow a period for becoming CARF accredited.

(2) (A) The program commits, in writing, to apply for accreditation by CARF within three years of the approval to purchase services by the regional center.

(B) CARF shall accredit a program within four years after the program has been vendored.

(d) The regional center may approve or disapprove proposals submitted by new or existing vendors based on all of the following criteria to the extent that it is federally permissible:

(1) The need for a work activity or supported employment program.

(2) The capacity of the vendor to deliver work activity or supported employment services effectively.

(3) The ability of the vendor to comply with the requirements of

This section was added to allow regional centers to vendor new work activity or supported employment programs after determining program capacity to deliver effective services; establishes rate levels for these programs; allows regional centers to purchase services from programs not accredited by CARF when certain criteria are met.

(AB 1753, Chapter 226, Statutes of 2003)

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this section.

(4) The ability of the vendor to achieve integrated paid work for consumers served in supported employment.

4862. (a) The length of a work activity program day shall not be less than five hours, excluding the lunch period.

(b) (1) Except as provided in paragraph (2), the length of a work activity program day shall not be reduced from the length of the work activity program day in the historical period that was the basis for the approved habilitation services rate.

(2) (A) A work activity program may, upon consultation with, and prior written approval from, the regional center, change the length of a work activity program day.

(B) If the regional center approves a reduction in the work activity program day pursuant to subparagraph (A), the department may change the work activity program.

(c) (1) A work activity program may change the length of a work activity program day for a specific consumer in order to meet the needs of that consumer, if the regional center, upon the recommendation of the individual program planning team, approves the change.

(2) The work activity program shall specify in writing to the regional center the reasons for any proposed change in a work activity program day on an individual basis.

4863. (a) In accordance with regulations adopted by the department, and if agreed upon by the work activity program and the regional center, hourly billing shall be permitted, provided that it does not increase the regional center's costs when used in lieu of full-day or half-day billing. A work activity program shall be required to submit a request for the hourly billing option to the regional center not less than 60 days prior to the program's proposed implementation of this billing option.

(b) If a work activity program and the regional center elect to utilize hourly billing, the hourly billing process shall be required

to be used for a minimum of one year.

(c) When the hourly billing process is being used, the definitions contained in subdivisions (h) and (i) of Section 4851 shall not apply.

This section was added to establish the length of operation hours for a work activity program to change the length of the program day upon prior written approval from the regional center. (AB 1753, Chapter 226, Statutes of 2003)

This section was added to establish a process for hourly billing. (AB 1753, Chapter 226, Statutes of 2003)



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4864. The department shall authorize payment for absences in work activity programs and supported employment programs that are directly consequent to a declaration of a State of Emergency by the Governor. If the department authorizes payment for absences due to a state of emergency, the vendor shall bill only for absences in excess of the average number of absences experienced by the vendor during the 12-month period prior to the month in which the disaster occurred.

This section was added to allow the Department of Developmental Services to authorize payments for absences in work activity programs and supported employment programs when the Governor declares a state of emergency.  
(AB 1753, Chapter 226, Statutes of 2003)

4865. At the request of the Department of Rehabilitation, a work activity or supported employment program or both shall release accreditation and state licensing reports and consumer special incident reports as required by law or regulations in instances of suspected abuse.

This section was added to require a work activity or supported employment program to release accreditation, state licensing reports and special incident reports in instances of suspected abuse.  
(AB 1753, Chapter 226, Statutes of 2003)

4866. The department may promulgate emergency regulations to carry out the provisions of this chapter. If the Department of Developmental Services promulgates emergency regulations, the adoption of the regulations shall be deemed 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.

This section was added to allow the Department of Developmental Services to promulgate emergency regulations to adopt the habilitation regulations.  
(AB 1753, Chapter 226, Statutes of 2003)

4867. Nothing in this chapter shall be interpreted to mean that work activity programs or supported employment programs cannot serve consumers who are funded by agencies other than regional centers, including, but not limited to, the Department of Rehabilitation.

This section has been adopted to clarify that work activity and supported employment programs can also serve consumers who are funded by agencies other than the regional centers  
(AB 1753, Chapter 226, Statutes of 2003)

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4900. (a) The definitions contained in this section shall govern the construction of this division, unless the context requires otherwise. These definitions shall not be construed to alter or impact the definitions or other provisions of the Elder and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600), or Chapter 13 (commencing with Section 15750), of Part 3 of Division 9.

(b) “Abuse” means any act or failure to act that would constitute abuse as that term is defined federal regulations pertaining to the authority of protection and advocacy agencies, including Section 51.2 of Title 42 of the Code of Federal Regulations. “Abuse” also means an act, or failure to act, that would constitute abuse as that term is defined in Section 15610.07 of the Welfare and Institutions Code ~~in subdivision (g) of Section 15610 of the Welfare and Institutions Code~~ or Section 11165.6 of the Penal Code.

(c) “Complaint” has the same meaning as “complaint” as defined in federal statutes and regulations pertaining to the authority of protection and advocacy agencies, including Section 10802(1) of Title 42 of the United States Code, Section 51.2 of Title 42 of the Code of Federal Regulations, or Section 1386.19 of Title 45 of the Code of Federal Regulations.

(~~d~~e) “Developmental disability” means a developmental disability, as defined in Section 15002(8) of Title 42 of the United States Code, a mental illness, as defined in Section 10802(4) of Title 42 of the United States Code, a disability within the meaning of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), as defined in Section 12102(2) of Title 42 of the United States Code, or a disability within the meaning of the California Fair Employment and Housing Act (Part 2.8(commencing with Section 12900) of Division 3 of Title 2 of the Government Code), as defined in subdivision (i) or (k) of Section 12926 of the Government Code ~~the same as defined in Section 6001(5) of Title 42 of the United States Code.~~

(~~e~~d) “Facility” or “program” means a public or private any facility or program providing services, support, care or treatment to persons with developmental disabilities, even if only on an as-needed basis or under contractual agreement or persons with mental illness. “Facility” or “program” includes, but is not limited to, a hospital, a long-term health care facility, a community living arrangement for people with disabilities,

This section was amended to define terms used by the Protection and Advocacy agency.  
(SB 577, Chapter 878, Statutes of 2003)

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including a group home, a board and care home, an individual residence or apartment or a person with a disability where services are provided, a day program a juvenile detention facility, a homeless shelter, a jail, or a prison, including all general areas, as well as special, mental health, or forensic units. The term includes any facility licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code and any facility that is unlicensed but is not exempt from licensure as provided in subdivision (a) of Section 1503.5 of the Health and Safety Code. The term also includes a public or private schools or and other institutions or programs providing education, training, habilitation, therapeutic, or residential services to persons with ~~developmental disabilities or persons with mental illness.~~

(fe) “Neglect” means any act or failure to act that would constitute neglect as that term is defined in subdivision (d) of Section 15610 of the Welfare and Institutions Code or Section 11165.2 of the Penal Code.

(gf) “Persons with mental illness” means the same as mentally ill individuals, as defined in Section 10802(3) of Title 42 of the United States Code.

(hg) “Probable cause” to believe that an individual has been subject to abuse or neglect exists when the protection and advocacy agency determines that it is objectively reasonable for a person to entertain such a belief, based upon facts that could cause a reasonable person in a like position, drawing when appropriate upon his or her training and experience, to suspect abuse or neglect.

(ih) “Protection and advocacy agency” means the private nonprofit corporation designated by the Governor in this state pursuant to federal law for the protection and advocacy of the rights of the following persons:

(1) Persons with developmental disabilities, as authorized under the federal Developmental Disabilities Assistance and Bill of Rights Act, as amended, contained in Chapter 75 (commencing with Section 6000) of Title 42 of the United States Code.

(2) Persons with mental illness, including mentally ill individuals, as authorized under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986, as amended, contained in Chapter 114 (commencing with Section 10801) of Title 42 of the United States Code.

4901. (a) The protection and advocacy agency, for purposes of

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this division, shall be a private nonprofit corporation and shall meet all of the requirements of federal law applicable to protection and advocacy systems, including, but not limited to, the requirement that it establish a grievance procedure for clients or prospective clients of the system to ensure that persons with developmental disabilities and persons with mental illness have full access to services of the system.

(b) State officers and employees, in taking any action relating to the protection and advocacy agency, shall meet the requirements of federal law applicable to protection and advocacy systems.

(c) The authority of the protection and advocacy agency set forth in this division shall not diminish the authority of the protection and advocacy agency under federal statutes pertaining to the authority of protection and advocacy systems, or under federal rules and regulations adopted in implementation of those statutes.

(d) Nothing in this division shall be construed to supplant the jurisdiction or the responsibilities of adult protective services programs pursuant to Chapter 11 (commencing with Section 15600), or Chapter 13 (commencing with Section 15750), of Part 3 of Division 9.

(e)(1) Nothing in this division shall be construed to supplant the duties or authority of the State Long-Term Care Ombudsman Program pursuant to Chapter 11 (commencing with Section 9700) of Division 8.5.

(2) The protection and advocacy agency shall cooperate with the Office of the State Long-Term Care Ombudsman when appropriate, as provided in Section 9717.

(f)(1) Nothing in this division shall be construed to alter or impact the Elder and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600), or Chapter 13 (commencing with Section 15750), of Part 3 of Division 9, including the confidentiality requirements of Section 15633 and the legal responsibility of the protection and advocacy agency to report elder or dependent adult abuse or neglect as required by paragraph (1) of subdivision (b) of Section 15630.

(2) The adult protection services agency shall retain the responsibility to investigate any report of abuse or neglect in accordance with Chapter 13 (commencing with Section 15750) of Part 3 of Division 9 when the reported abuse or neglect is within the jurisdiction of the adult protective services agency.

This section was added to clarify that these amendments will not diminish or supplant the authority or jurisdiction of the Protection and Advocacy agency, adult protective services, the State Long-Term Care Ombudsman Program or the Elder and Dependent Adult Civil Protection Act.

(SB 577, Chapter 878, Statutes of 2003)

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4902. (a) The protection and advocacy agency, in protecting and advocating the rights of people ~~persons who have developmental~~ with disabilities and persons with mental illness, pursuant to the federal mandate, may do all of the following:

(1) Investigate any incident of abuse and neglect of any persons with a ~~developmental~~ disabilities and persons with mental illness if the incident is reported to the protection and advocacy agency or if the protection and advocacy agency determines there is probable cause to believe the abuse or neglect ~~incident~~ occurred. This authority shall include reasonable access to a ~~the~~ facility or program and authority to examine all relevant records and interview any facility or program service recipient, employee, or other person who might have knowledge of the alleged abuse or neglect.

(2) Pursue administrative, legal, and other appropriate remedies or approaches to ensure the protection of the rights of people ~~persons with developmental~~ disabilities.

(3) ~~Pursue administrative, legal, and other appropriate remedies or approaches to ensure the protection of the rights of individuals with mental illness who are in facilities providing care and treatment, or who have been discharged from such a facility, with respect to matters that occur within 90 days after discharge.~~

(~~3~~4) Provide information and training on, and referral to, programs and services addressing the needs of people ~~persons with developmental~~ disabilities and persons with mental illness, including information and training about regarding individual rights and the services available from the protection and advocacy agency.

(b) The protection and advocacy agency shall, in addition, have reasonable access to facilities or programs in the state ~~which~~ that provide care and treatment to ~~persons~~ people with ~~who have developmental~~ disabilities and persons with mental illness, and access to those persons. (1) The protection and advocacy agency shall have reasonable unaccompanied access to public or private facilities, programs, and services, and to recipients of services therein, at all times as are necessary to investigate incidents of abuse and neglect in accord with paragraph (1) of subdivision (a); Access shall be afforded upon request, to the agency when any of the following has occurred: (A) An incident is reported or a complaint is made to the agency. (B) The agency determines there is probable cause to believe that an incident has or may have occurred. (C) The agency determines

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This section was amended to clarify those situations in which the protection and advocacy agency shall have access to facilities or programs and clarifies the reasons for allowing access.

(SB 577, Chapter 878, Statutes of 2003)

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that there is or may be imminent danger of serious abuse or neglect of an individual with a disability. (2) The protection and advocacy agency shall have reasonable unaccompanied access to public and private facilities, programs, and services, and recipients of services therein and shall have access during normal working hours and visiting hours for other advocacy services in accord with paragraphs (2), (3), and (4) of subdivision (a). In the case of information and training services, access shall be at times mutually agreeable to the protection and advocacy agency and facility management. This access shall be for the purpose of any of the following: (A) Providing information and training on, and referral to programs addressing the needs of, individuals with disabilities, and information and training on individual rights and the protection and advocacy services available from the agency, including, but not limited to, the name, address, and telephone number of the protection and advocacy agency. (B) Monitoring compliance with respect to rights and safety of residents or service recipients. (C) Inspecting, viewing, and photographing all areas of the facility or program that are used by residents or service recipients, or that are accessible to them.

(c) If the protection and advocacy agency's access to facilities, programs, service recipients, residents, or records covered by this division is delayed or denied by a facility, program, or service, the facility, program, or service shall promptly provide the agency with a written statement of reasons. In the case of denial of access for alleged lack of authorization, the facility, program, or service shall promptly provide to the agency the name, address, and telephone number of the legal guardian, conservator, or other legal representative of the individual with a disability for whom authorization is required. Access to a facility, program, service recipient, resident, or to records, shall not be delayed or denied without prompt provision of a written statement of the reasons for the denial.

(d) The protection and advocacy agency may not enter an individual residence or apartment of a client or his or her family without the consent of an adult occupant. In the absence of this consent, the protection and advocacy agency may enter only if it has obtained the legal authority to enforce its access authority pursuant to legal remedies available under this division or applicable federal law.

This section was added to require a written statement of reasons when the protection and advocacy agency has been denied access or access has been delayed.

(SB 577, Chapter 878, Statutes of 2003)

This section was added to require the protection and advocacy agency to obtain consent of an adult occupant of a residence before entering the residence.

(SB 577, Chapter 878, Statutes of 2003)

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(e) A care provider, including, but not limited to, any individual, state entity, or other organization that is required to respond to these requests, may charge a reasonable fee to cover the cost of copying records pursuant to this division that may take into account the costs incurred by the care provider in locating, identifying, and making the records available as required pursuant to this division. Charges for copying records that would otherwise be available to the protection and advocacy agency or the person with a disability whose records are requested, under other statutes providing for access to records, may not exceed any rates for obtaining copies of the records specified in the applicable provisions.

This section was added to allow for charging a reasonable fee to cover the cost of copying records. (SB 577, Chapter 878, Statutes of 2003)

4903. (a) The protection and advocacy agency shall have access to the records of any of the following ~~people~~ ~~persons~~ ~~with developmental disabilities and persons with mental illness~~:  
(1) Any person who is a client of the agency, or any person who has requested assistance from the agency, if that person or the agent designated by that person, or the legal guardian, conservator, or other legal representative of that person, has authorized the protection and advocacy agency to have access to the records and information. If a person with a disability who is able to authorize the protection and advocacy agency to access his or her records expressly denies this access after being informed by the protection and advocacy agency of his or her right to authorize or deny access, the protection and advocacy agency may not have access to that person's records.  
(2) Any person, including any individual who cannot be located, to whom all of the following conditions apply: is deceased or cannot be located, to whom all of the following conditions apply: (A) The individual, due to his or her mental or physical condition is unable to authorize the protection and advocacy agency to have access to his or her records. (B) The individual does not have a legal guardian, conservator, or other legal representative, or the individual's representative is a public entity, including the state or one of its political subdivisions. (C) The protection and advocacy agency has received a complaint that the individual has been subject to abuse or neglect, or has determined that probable cause exists to believe that the individual has been subject to abuse or neglect.  
(3) Any person who is deceased, and for whom the protection and advocacy agency has received a complaint that the

This section was amended to clarify that a person with a disability has a right to deny the protection and advocacy agency access to that person's records; clarifies that the protection and advocacy agency has access rights to a deceased person's records if the agency had received a complaint that the person had been the victim of abuse or neglect; extends the protection and advocacy's list of available records to those that are written, either draft or final, handwritten notes, electronic files, photographs, videotapes or audiotapes, and records prepared or received during evaluation, education, training, or other supportive services including medical, financial, monitoring or other reports and personnel records. (SB 577, Chapter 878, Statutes of 2003)

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individual had been subjected to abuse or neglect, or for whom the agency has determined that probable cause exists to believe that the individual had been subjected to abuse or neglect.

(43) Any person who has a legal guardian, conservator, or other legal representative with respect to whom a complaint has been received by the protection and advocacy agency, or with respect to whom the protection and advocacy agency has determined that probable cause exists to believe that the person has been subjected to abuse or neglect, health or safety of the individual is in serious and immediate jeopardy, whenever all of the following conditions exist: (A) The representative has been contacted by the protection and advocacy agency upon receipt of the representative's name and address. (B) The protection and advocacy agency has offered assistance to the representatives to resolve the situation. (C) The representative has failed or refused to act on behalf of the person.

(b) ~~Information and Individual records which~~ that shall be available to the protection and advocacy agency under this section shall include, but not be limited to, all of the following information and records related to the investigation, whether written or in another medium, draft or final, including, but not limited to, handwritten notes, electronic files, photographs, videotapes, or audiotapes: obtained in the course of providing intake, assessment, and services: (1) Information and records obtained prepared or received in the course of providing intake, assessment, evaluation, education, training, or other supportive services, including but not limited to, medical records, financial records, monitoring reports, or other reports, and services, including reports prepared or received by a any member of the staff of a facility, or program, or service that is providing care, treatment, or services. rendering care and treatment. (2) Reports prepared by an agency charged with investigating reports of incidents of abuse, neglect, or injury or death occurring at the program, facility or service, or by or for a program, facility, or service, that describe any or all of the following: (A) Abuse, neglect, or injury or death occurring at the facility. (B) The steps taken to investigate the incidents. (C) Reports and records, including, but not limited to, personnel records prepared or maintained by the facility, program or service in connection with reports of incidents, subject to the following: (i) If a state statute specifies procedures with respect to personnel records, the protection and advocacy agency shall follow those procedures. (ii) Personnel records shall be

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protected from disclosure in compliance with the fundamental right of privacy established pursuant to Section 1 of Article I of the California Constitution. The custodian of personnel records shall have a right and a duty to resist attempts to allow the unauthorized disclosure of personnel records, and may not waive the privacy rights that are guaranteed pursuant to Section 1 of Article I of the California Constitution.

(D) Supporting information that was relied upon in creating a report, including, but not limited to, all information and records that document interviews with persons who were interviewed, physical and documentary evidence that was reviewed, or related investigative findings.

(3) Discharge planning records.

(c) Information in the possession of a program, facility, or service that must be available to the agency investigating instances of abuse or neglect pursuant to paragraph (1) of subdivision (a) of Section 4902, whether written or in another medium, draft or final, including but not limited to, handwritten notes, electronic files, photographs, videotapes, audiotapes, or records, shall include, but not be limited to, all of the following:

(1) Information in reports prepared by individuals and entities performing certification, as well as related assessments prepared for a program, facility, or service by its staff, contractors, or related entities, subject to any other provision of state law protecting records produced by medical care evaluation or peer review committees.

(2) Information in professional, performance, building, or other safety standards, or demographic and statistical information, relating to the facility.

(d) The authority of the protection and advocacy agency to have access to records does not supersede any prohibition on discovery specified in Sections 1157 and 1157.6 of the Evidence Code, nor does it supersede any prohibition on disclosure subject to the physician-patient privilege or the psychotherapist-patient privilege.

(e)(1) The protection and advocacy agency shall have access to records of individuals described in paragraph (1) of subdivision (a) of Section 4902 and in subdivision (a), and other records that are relevant to conducting an investigation, under the circumstances described in those subdivisions, not later than three business days after the agency makes a written request for the records involved. (2) The protection and advocacy agency shall have immediate access to the records, not later than 24 hours after the agency makes a request, without consent from

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another party, in a situation in which treatment, services, supports, other assistance is provided to an individual with a disability, if the agency determines there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy, or in a case of death of an individual with a disability.

(fd) Confidential information kept or obtained by the protection and advocacy agency shall remain confidential and shall not be subject to disclosure. This subdivision shall not, however, prevent the protection and advocacy agency from doing any of the following: (1) Sharing the information with the individual client who is the subject of the record or report or other document, or with his or her legally authorized representative, subject to any limitation on disclosure to recipients of mental health services as provided in subsection (b) of Section 10806 of Title 42 of the United States Code. (2) Issuing a public report of the results of an investigation which maintains the confidentiality of individual service recipients. (3) Reporting the results of an investigation to responsible investigative or enforcement agencies should an investigation reveal information concerning the facility, its staff, or employees warranting possible sanctions or corrective action. This information may be reported to agencies that are responsible for facility licensing or accreditation, employee discipline, employee licensing or certification suspension or revocation, or criminal prosecution. (4) Pursuing alternative remedies, including the initiation of legal action. (5) Reporting suspected elder or dependent adult abuse pursuant to the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 commencing with Section 15600) of Part 3 of Division 9).

(g) The protection and advocacy agency shall inform and train employees as appropriate regarding the confidentiality of client records.

4905. (a) No employee or agent of a facility, ~~or program, or service~~ shall subject a person with ~~a disability developmental disabilities or a person with mental illness~~ to reprisal or harassment or directly or indirectly take or threaten to take any actions that would ~~which~~ prevent the person, his or her legally authorized representative, or family member from reporting or otherwise bringing to the attention of the protection and advocacy agency any facts or information relative to suspected abuse, neglect, or other violations of ~~his or her~~ the person's

This section was amended to make minor technical changes to the language.

(SB 577, Chapter 878, Statutes of 2003)

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rights.

(b) Any attempt to involuntarily remove from a facility, ~~or~~ program, ~~or service~~ or to deny privileges or rights without good cause to a person with a ~~disability~~ ~~developmental disabilities~~ ~~or~~ ~~person with mental illness~~ by whom or for whom a complaint has been made to the protection and advocacy agency within 60 days after the date the complaint is made or within 60 days after the conclusion of any proceeding resulting from the complaint shall raise a presumption that the action was taken in retaliation for the filing of the complaint.

4906. (a) The protection and advocacy agency may not obtain access through the use of physical force to facilities, programs, service recipients, residents, or records required by the division if this access is delayed or denied. (b) Notwithstanding subdivision (a), nothing in this division is intended to preclude the protection and advocacy agency from pursuing appropriate legal remedies to enforce its access authority under this division or applicable federal law.

This section was added to clarify that the protection and advocacy agency cannot obtain access through the use of physical force if the access is delayed or denied.  
(SB 577, Chapter 878, Statutes of 2003)