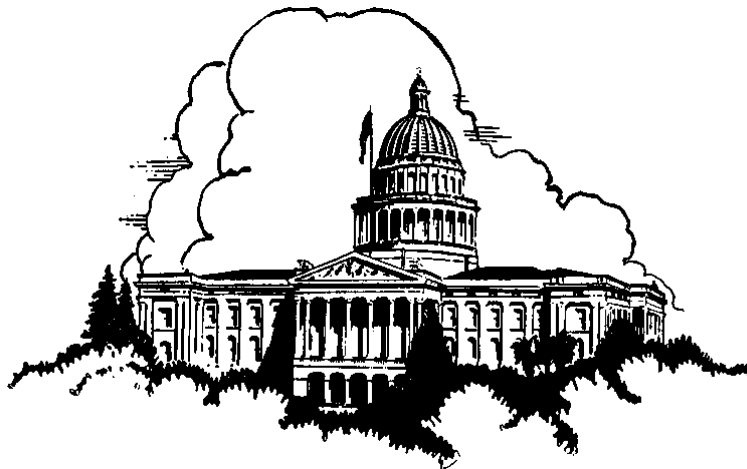


2004 LEGISLATIVE SESSION

IMPACT
OF

*AB 2100, SB 1103, SB 1364 AND SB 1819
ON SERVICES FOR PEOPLE WITH
DEVELOPMENTAL DISABILITIES*



INTRODUCTION

During the 2004 legislative session, provisions of the Welfare and Institutions Code were amended, deleted or added by four pieces of legislation as follows:

- AB 2100 (Chapter 831, Statutes of 2004, effective January 1, 2005) – Steinberg, Richman, Cohn, Chesbro
- SB 1103 (Chapter 228, Statutes of 2004, effective August 16, 2004) – Budget Act of 2004
- SB 1364 (Chapter 68, Statutes of 2004, effective January 1, 2005) – Chesbro
- SB 1819 (Chapter 406, Statutes of 2004, effective January 1, 2005) – Ashburn

This document identifies significant statutory changes enacted during 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 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 2100, Chapter 831, Statutes of 2004
Senate Bill 1103, Chapter 228, Statutes of 2004
Senate Bill 1364, Chapter 68, Statutes of 2004
Senate Bill 1819, Chapter 406, Statutes of 2004**

**Welfare and Institutions Code
Division 1, Department of Developmental Services**

4514. All information and records obtained in the course of providing intake, assessment, and services under Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) to persons with developmental disabilities shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons, whether employed by a regional center or state developmental center, or not, in the provision of intake, assessment, and services or appropriate referrals. The consent of the person with a developmental disability, or his or her guardian or conservator, shall be obtained before information or records may be disclosed by regional center or state developmental center personnel to a professional not employed by the regional center or state developmental center, or a program not vendored by a regional center or state developmental center.

(b) When the person with a developmental disability, who has the capacity to give informed consent, designates individuals to whom information or records may be released, except that nothing in this ~~chapter~~ article shall be construed to compel a physician, psychologist, social worker, marriage and family therapist, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(c) To the extent necessary for a claim, or for a claim or

This section was amended by substituting chapter for article.
(SB 1819, Chapter 406, Statutes of 2004)

application to be made on behalf of a person with a developmental disability for aid, insurance, government benefit, or medical assistance to which he or she may be entitled.

(d) If the person with a developmental disability is a minor, ward, or conservatee, and his or her parent, guardian, conservator, or limited conservator with access to confidential records, designates, in writing, persons to whom records or information may be disclosed, except that nothing in this ~~chapter article~~ shall be construed to compel a physician, psychologist, social worker, marriage and family therapist, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(e) For research, provided that the Director of Developmental Services designates by regulation rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. These rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

This section was amended by substituting chapter for article.
(SB 1819, Chapter 406, Statutes of 2004)

" _____
Date

As a condition of doing research concerning persons with developmental disabilities who have received services from _____ (fill in the facility, agency or person), I, _____, agree to obtain the prior informed consent of persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, or the person's parent, guardian, or conservator, and I further agree not to divulge any information obtained in the course of the research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services so those persons who received services are identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

" _____
Signed

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Senate Committee on Rules ~~Committee~~ or the Assembly Committee on Rules ~~Committee~~ for the purposes of legislative investigation authorized by the committee.

This section was amended to change the name of the committees.
(SB 1819, Chapter 406, Statutes of 2004)

(i) To the courts and designated parties as part of a regional center report or assessment in compliance with a statutory or regulatory requirement, including, but not limited to, Section 1827.5 of the Probate Code, Sections 1001.22 and 1370.1 of the Penal Code, Section 6502 of the Welfare and Institutions Code, and Section 56557 of Title 17 of the California Code of Regulations.

(j) To the attorney for the person with a developmental disability in any and all proceedings upon presentation of a release of information signed by the person, except that when the person lacks the capacity to give informed consent, the regional center or state developmental center director or designee, upon satisfying himself or herself of the identity of the attorney, and of the fact that the attorney represents the person, shall release all information and records relating to the person except that nothing in this article shall be construed to compel a physician, psychologist, social worker, marriage and family therapist, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(k) Upon written consent by a person with a developmental disability previously or presently receiving services from a regional center or state developmental center, the director of the regional center or state developmental center, or his or her designee, may release any information, except information that has been given in confidence by members of the family of the person with developmental disabilities, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the regional center or state developmental center director or designee determines that the information is relevant to the

evaluation. The consent shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(l) Between persons who are trained and qualified to serve on "multidisciplinary personnel" teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) When a person with a developmental disability dies from any cause, natural or otherwise, while hospitalized in a state developmental center, the State Department of Developmental Services, the physician in charge of the client, or the professional in charge of the facility or his or her designee, shall release information and records to the coroner. The State Department of Developmental Services, the physician in charge of the client, or the professional in charge of the facility or his or her designee, shall not release any notes, summaries, transcripts, tapes, or records of conversations between the resident and health professional personnel of the hospital relating to the personal life of the resident that is not related to the diagnosis and treatment of the resident's physical condition. Any information released to the coroner pursuant to this section shall remain confidential and shall be sealed and shall not be made part of the public record.

(n) To authorized licensing personnel who are employed by, or who are authorized representatives of, the State Department of Health Services, and who are licensed or registered health professionals, and to authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate health facilities and community care facilities, and to ensure that the standards of care and services provided in these facilities are adequate and appropriate and to ascertain compliance with the rules and regulations

to which the facility is subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 2 (commencing with Section 1250) and Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Health Services or the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names which are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Health Services or the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Health Services or the State Department of Social Services shall not contain the name of the person with a developmental disability.

(o) To any board which licenses and certifies professionals in the fields of mental health and developmental disabilities pursuant to state law, when the Director of Developmental Services has reasonable cause to believe that there has occurred a violation of any provision of law subject to the jurisdiction of a board and the records are relevant to the violation. The information shall be sealed after a decision is reached in the matter of the suspected violation, and shall not subsequently be released except in accordance with this subdivision. Confidential information in the possession of the board shall not contain the name of the person with a developmental disability.

(p) To governmental law enforcement agencies by the director of a regional center or state developmental center, or his or her designee, when (1) the person with a developmental disability has been reported lost or missing or (2) there is probable cause to believe that a person with

a developmental disability has committed, or has been the victim of, murder, manslaughter, mayhem, aggravated mayhem, kidnapping, robbery, carjacking, assault with the intent to commit a felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, assault or battery, or unlawful possession of a weapon, as provided in Section 12020 of the Penal Code.

This subdivision shall be limited solely to information directly relating to the factual circumstances of the commission of the enumerated offenses and shall not include any information relating to the mental state of the patient or the circumstances of his or her treatment unless relevant to the crime involved.

This subdivision shall not be construed as an exception to, or in any other way affecting, the provisions of Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code, or Chapter 11 (commencing with Section 15600) and Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

(q) To the Youth Authority and Adult Correctional Agency or any component thereof, as necessary to the administration of justice.

(r) To an agency mandated to investigate a report of abuse filed pursuant to either Section 11164 of the Penal Code or Section 15630 of the Welfare and Institutions Code for the purposes of either a mandated or voluntary report or when those agencies request information in the course of conducting their investigation.

(s) When a person with developmental disabilities, or the parent, guardian, or conservator of a person with developmental disabilities who lacks capacity to consent, fails to grant or deny a request by a regional center or state developmental center to release information or records relating to the person with developmental disabilities within a reasonable period of time, the director of the regional or developmental center, or his or her designee, may release information or records on behalf of that person provided both of the following conditions are met:

(1) Release of the information or records is deemed necessary to protect the person's health, safety, or welfare.

(2) The person, or the person's parent, guardian, or conservator, has been advised annually in writing of the policy of the regional center or state developmental center for release of confidential client information or records

when the person with developmental disabilities, or the person's parent, guardian, or conservator, fails to respond to a request for release of the information or records within a reasonable period of time. A statement of policy contained in the client's individual program plan shall be deemed to comply with the notice requirement of this paragraph.

(t)(1) When an employee is served with a notice of adverse action, as defined in Section 19570 of the Government Code, the following information and records may be released:

(A) All information and records that the appointing authority relied upon in issuing the notice of adverse action.

(B) All other information and records that are relevant to the adverse action, or that would constitute relevant evidence as defined in Section 210 of the Evidence Code.

(C) The information described in subparagraph (A) and (B) may be released only if both of the following conditions are met:

(i) The appointing authority has provided written notice to the consumer and the consumer's legal representative or, if the consumer has no legal representative or if the legal representative is a state agency, to the clients' rights advocate, and the consumer, the consumer's legal representative, or the clients' rights advocate has not objected in writing to the appointing authority within five business days of receipt of the notice, or the appointing authority, upon review of the objection has determined that the circumstances on which the adverse action is based are egregious or threaten the health, safety, or life of the consumer or other consumers and without the information the adverse action could not be taken.

(ii) The appointing authority, the person against whom the adverse action has been taken, and the person's representative, if any, have entered into a stipulation that does all of the following:

(I) Prohibits the parties from disclosing or using information or records for any purpose other than the proceedings for which the information or records were requested or provided.

(II) Requires the employee and the employee's legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents or copies thereof that are no longer in the possession of the

This section was added to provide procedures for identifying information and records that may be released during employee adverse action proceedings. (SB 1819, Chapter 406, Statutes of 2004)

employee or the employee's legal representative because they were from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final except for the actual records and documents submitted to the administrative tribunal as a component of an appeal from the adverse action.

(III) Requires the parties to submit the stipulation to the administrative tribunal with jurisdiction over the adverse action at the earliest possible opportunity.

(2) For the purposes of this subdivision, the State Personnel Board may, prior to any appeal from adverse action being filed with it, issue a protective order, upon application by the appointing authority, for the limited purpose of prohibiting the parties from disclosing or using information or records for any purpose other than the proceeding for which the information or records were requested or provided, and to require the employee or the employee's legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final, except for the actual records and documents that are no longer in the possession of the employee or the employee's legal representatives because they were submitted to the administrative tribunal as a component of an appeal from the adverse action.

(3) Individual identifiers, including, but not limited to, names, social security numbers, and hospital numbers, that are not necessary for the prosecution or defense of the adverse action, shall not be disclosed.

(4) All records, documents, or other materials containing confidential information protected by this section that have been submitted or otherwise disclosed to the administrative agency or other person as a component of an appeal from an adverse action shall, upon proper motion by the appointing authority to the administrative tribunal, be placed under administrative seal and shall not, thereafter, be subject to disclosure to any person or entity except upon the issuance of an order of a court of competent jurisdiction.

(5) For purposes of this subdivision, an adverse action

becomes final when the employee fails to answer within the time specified in Section 19575 of the Government Code, or, after filing an answer, withdraws the appeal, or, upon exhaustion of the administrative appeal or of the judicial review remedies as otherwise provided by law.

4521. (a) All references to "state council" in this part shall be a reference to the State Council on Developmental Disabilities.

(b) There shall be 29 voting members on the state council appointed by the Governor, as follows:

(1) One member from each of the 13 area boards on developmental disabilities described in Article 6 (commencing with Section 4543), nominated by the area board to serve as a council member, who shall be persons with a developmental disability, as defined in Section 15002(8) of Title 42 of the United States Code, or parents or siblings, guardians of minors with developmental disabilities or conservators of adults with developmental disabilities ~~these persons~~ residing in California. Five of these members shall be persons with a developmental disability, as defined in Section 15002(8) of Title 42 of the United States Code, three shall be parents, immediate relatives siblings, guardians, or conservators of persons with developmental disabilities, and five shall be either a person with a developmental disability or a parent, immediate relatives sibling, guardian, or conservator of a person with a developmental disability. The nominee from each area board shall be an area board member who was appointed by the Governor.

(2) Ten members of the council shall include the following:

(A) The Secretary of the California Health and Human Services Agency, or his or her designee, who shall represent the agency and the state agency that administers funds under Title XIX of the Social Security Act for people with developmental disabilities.

(B) The Director of Developmental Services or his or her chief deputy.

(C) The Director of Rehabilitation or his or her chief deputy.

(D) The Superintendent of Public Instruction or his or her designee.

(E) A representative from a nongovernmental agency or group concerned with the provision of services to persons with developmental disabilities.

This section was amended to modify the membership of area boards.
(SB 1364, Chapter 68, Statutes of 2004)

(F) One representative from each of the two university centers for excellence in the state, pursuant to 42 U.S.C. Section 15061 et seq., providing training in the field of developmental services.

These individuals shall have expertise in the field of developmental disabilities.

(G) The Director of Health Services or his or her chief deputy.

(H) A member of the board of directors of the agency established in California to fulfill the requirements and assurance of Section 142 of the Developmental Disabilities Act of 1984 for a system to protect and advocate the rights of persons with developmental disabilities.

(I) The Director of Aging or his or her chief deputy.

(3) Six members at large, appointed by the Governor, as follows:

(A) Two shall be persons with developmental disabilities, as defined in Section 15002(8) of Title 42 of the United States Code.

(B) One shall be a person who is a parent, immediate relative sibling, guardian, or conservator of a resident of a developmental center.

(C) One shall be a person who is a parent, immediate relative sibling, guardian, or conservator of a person with a developmental disability living in the community.

(D) One shall be a person who is a parent, immediate relative sibling, guardian, or conservator of a person with a developmental disability living in the community, nominated by the Speaker of the Assembly.

(E) One shall be a person with developmental disabilities, as defined in Section 15002(8) of Title 42 of the United States Code, nominated by the Senate Committee on Rules.

(c) Prior to appointing the 29 members pursuant to this section, the Governor shall request and consider recommendations from organizations representing, or providing services to, or both, persons with developmental disabilities, and shall take into account socioeconomic, ethnic, and geographic considerations of the state.

(d) The term of each member described in ~~subdivision paragraph (1) of, subparagraphs (E) and (H) of paragraph (2) of, and paragraph (3) of, subdivision (b)~~ shall be for three years; provided, however, of the members first appointed by the Governor pursuant to paragraph (1) of subdivision (b), five shall hold office for three years, four shall hold office for two years, and four shall hold office for

This section was amended to update section references.
(SB 1364, Chapter 68, Statutes of 2004)

one year. In no event shall any member described in subdivision paragraph (1) of, subparagraphs (E) and (H) of paragraph (2) of, and paragraph (3) of, subdivision (b) serve for more than a total of six years of service. Service by any individual on any state council on developmental disabilities existing on and after January 1, 2003, shall be included in determining the total length of service.

(e) Members appointed to the state council prior to June 1, 2002, shall continue to serve until the term to which they were appointed expires. Members appointed on June 1, 2002, or thereafter shall have their terms expire on January 1, 2003.

(f) Notwithstanding subdivision (c) of Section 4546, members described in subdivision (b) shall continue to serve on the area board following the expiration of their term on the area board until their term on the state council has expired.

(g) A member may continue to serve following the expiration of his or her term until the Governor appoints that member's successor. The state council shall notify the Governor regarding membership requirements of the council and shall notify the Governor at least 60 days before a member's term expires, and when a vacancy on the council remains unfilled for more than 60 days.

4535. (a) The state council shall meet at least six times each year, and, on call of its chairperson, as often as necessary to fulfill its duties. All meetings and records of the state council shall be open to the public.

(b) The state council shall, by majority vote of the voting members, elect its own chairperson and vice chairperson who shall have full voting rights on all state council actions, from among the appointed members, described in paragraph (1), or (3), ~~or (4)~~ of subdivision (b) of Section 4521, and shall establish any committees it deems necessary or desirable. The chairperson shall appoint all members of committees of the state council. The chairs and vice chairs of the state council and its standing committees shall be individuals with a developmental disability, or the parent, sibling, guardian, or conservator of an individual with a developmental disability.

(c) The state council may appoint technical advisory consultants and may establish committees composed of professional persons serving persons with developmental disabilities as necessary for technical assistance. The

This section was amended to update section references.
(SB 1364, Chapter 68, Statutes of 2004)

state council may call upon representatives of all agencies receiving state or federal funds for assistance and information, and shall invite persons with developmental disabilities, their parents, guardians, or conservators, professionals, or members of the general public to participate on state council committees, when appropriate.

(d) When convening any task force or advisory group, the state council shall make its best effort to ensure representation by consumers and family members representing the state's multicultural diversity.

4547. (a) Each area board shall meet at least quarterly, and on call of the board chairperson, as often as necessary to fulfill its duties. All meetings and records of the area board shall be open to the public.

(b) (1) Each area board shall, by majority vote of the voting members, elect its own chairperson from among the appointed members who are persons with developmental disabilities, or parents, immediate relatives, guardians, or conservators of these persons, and shall establish any committees it deems necessary or desirable. The board chairperson shall appoint all members of committees of the area board.

(2) An area board may call upon representatives of all agencies receiving state funds, for assistance and information, and shall invite persons with developmental disabilities, their parents, immediate relatives, guardians, or conservators, professionals, or members of the general public to participate on area board committees.

(3) When convening any task force or advisory group, the area board shall make its best effort to ensure representation by consumers and family members representing the community's multicultural diversity.

This section was amended to add parents to the group of individuals eligible to be chairperson of an area board.
(SB 1364, Chapter 68, Statutes of 2004)

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

(1) The state is facing a fiscal crisis that will require an unallocated reduction in the 2004-05 ~~2003-04~~ fiscal year for regional centers' purchase of service budgets of ~~fifty-two million dollars (\$52,000,000)~~ seven million dollars (\$7,000,000).

(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

This section was amended to increase regional center unallocated reductions from fifty-two million dollars in FY 2003-04 to seven million dollars in FY 2004-05.
(SB 1103, Chapter 228, Statutes of 2004)

(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 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 within 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 determine the amount of unallocated reduction that each regional center 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.

(g) This section shall become inoperative on July 1, 2006 ~~2004~~, and, as of January 1, 2007 ~~2005~~, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2007 ~~2005~~, deletes or extends the dates on which it becomes inoperative and is repealed.

This section was amended to extend an inoperative date.
(SB 1103, Chapter 228, Statutes of 2004)

4637.5. (a) The State Department of Developmental Services shall provide data, by regional center, regarding all vendors providing services to regional center consumers for each fiscal year beginning with the 2003-04 fiscal year. The data shall include a list of the services provided by each vendor; to the extent data is available, an unduplicated count of consumers receiving the services, the total amount paid to each vendor for each service, and the average cost for each service. For parent voucher services, the department shall summarize the information for each regional center.

(b) The department shall compile the data and submit the information to the chairs and vice chairs of each fiscal committee by March 1 of the fiscal year following the close of the prior fiscal year. The data shall not include personal or confidential consumer information.

(c) The department shall evaluate and report on the adequacy of the data provided through March 1, 2008, and recommend changes, if needed. By March 1, 2008, the report shall be provided to the chair and vice chair of each fiscal committee.

(d) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

This section was added to require the department to provide specified regional center data to the chairs and vice chairs of each fiscal committee. Personal and confidential consumer information will not be provided. The department shall provide an evaluation report to the chairs and vice chairs of each fiscal committee by January 1, 2008.

(AB 2100, Chapter 831, Statutes of 2004)

4643. (a) If assessment is needed, prior to July 1, 2005 ~~2004~~, 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, 2005 ~~2004~~, the assessment shall be performed within 60 days following intake and if unusual circumstances prevent the

This section was amended to change the assessment date from July 1, 2004 to July 1, 2005.

(SB 1103, Chapter 228, Statutes of 2004)

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 or 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. Notwithstanding any other provision of law or regulation, during the 2004-05 ~~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, 2004 ~~2003~~, unless the increase is required by a contract between the regional center and the vendor that is in effect on June 30, 2004 ~~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:~~

- ~~(a) Supported living services.~~
- ~~(b) Transportation, including travel reimbursement.~~
- ~~(c) Socialization training programs.~~
- ~~(d) Behavior intervention training.~~
- ~~(e) Community integration training programs.~~
- ~~(f) Community activities support services.~~
- ~~(g) Mobile day programs.~~
- ~~(h) Creative art programs.~~
- ~~(i) Supplemental day services program supports.~~
- ~~(j) Adaptive skills trainers.~~
- ~~(k) 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. Notwithstanding any other provision of law or regulation, during the 2004-05 ~~2003-04~~ fiscal year, no regional center may approve any service level for a residential service~~

This section was amended to repeal outmoded language and extend the date for the cap on the payment rate of selected services and supports to FY 2004-05. (SB 1103, Chapter 228, Statutes of 2004)

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, 2004 ~~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 amended to limit the service level rate for residential service providers to the rate established as of June 30, 2004 unless the regional center can demonstrate the increase is necessary to protect the consumers health and safety. (SB 1103, Chapter 228, Statutes of 2004)

~~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.~~

(a) Notwithstanding any other provision of law or regulation, during the 2004-05 ~~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, 2004 ~~2003~~, if the permanent payment rate would be greater than the temporary payment rate in effect on or after June 30, 2004 ~~2003~~, unless the regional center demonstrates to the department that the permanent payment rate is necessary to protect the consumers' health or safety.

This section was amended 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, 2004 unless the regional center demonstrates the increase is necessary to protect the health and safety of the consumer.

(b) Notwithstanding any other provision of law or regulation, during the 2004-05 ~~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, 2004 ~~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 has granted prior written authorization.

(SB 1103, Chapter 228, Statutes of 2004)

(c) Notwithstanding any other provision of law or regulation, during the 2004-05 ~~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, 2004 ~~2003~~, unless the regional center demonstrates that the anticipated rate adjustment is necessary to protect the consumers' health or safety.

(d) Notwithstanding any other provision of law or

regulation, during the 2004-05 fiscal year, the department may not approve any rate adjustment for a habilitation services program 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, 2004, unless the regional center demonstrates that the rate adjustment is necessary to protect the consumers' health and safety and the department has granted prior written authorization.

4781.5. For the 2004-05 and 2005-06 ~~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.

4783. (a) (1) The Family Cost Participation Program is hereby created in the State Department of Developmental Services for the purpose of assessing a cost participation to parents, as defined in Section 50215 of Title 17 of the California Code of Regulations, who have a child to whom all of the following applies:

(A) The child has a developmental disability.

(B) The child is three years of age through 17 years of age.

(C) The child lives in the parents' home.

(D) The child receives services and supports purchased through the regional center.

(E) The child is not eligible for Medi-Cal.

(2) Notwithstanding any other provision of law, a parent described in subdivision (a) shall participate in the Family Cost Participation Program established pursuant to this section.

(b) (1) The department shall develop and establish a Family Cost Participation Schedule that shall be used by regional centers to assess the parents' cost participation. The schedule shall consist of a sliding scale for families with an annual gross income not less than 400 percent of the federal poverty guideline, and be adjusted for the level

This section was amended to extend to Fiscal Years 2004-05 and 2005-06 the prohibition of expending any POS funds for the startup of new programs unless necessary to protect the consumer's health or safety.

(SB 1103, Chapter 228, Statutes of 2004)

This section was added to create the Family Cost Participation Program.

(SB 1103, Chapter 228, Statutes of 2004)

This section was added to establish a Family Cost Participation Schedule consisting of a sliding scale for families with an annual gross income not less than 400 percent of the federal poverty guideline. Participation assessments are

of annual gross income and the number of persons living in the family home.

(2) The schedule established pursuant to this section shall be exempt from the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Family cost participation assessments shall only be applied to respite, day care, and camping services that are included in the child's individual program plan.

(d) If there is more than one minor child living in the parents' home and receiving services or supports paid for by the regional center, or living in a 24-hour out-of-home facility, including a developmental center, the assessed amount shall be adjusted as follows:

(1) A parent that meets the criteria specified in subdivision (b) with two children shall be assessed at 75 percent of the respite, day care, and camping services in each child's individual program plan for each child living at home.

(2) A parent that meets the criteria specified in subdivision (b) with three children shall be assessed at 50 percent of the respite, day care, and camping services included in each child's individual program plan for each child living at home.

(3) A parent that meets the criteria specified in subdivision (b) with four children shall be assessed 25 percent of the respite, day care, and camping services included in each child's individual program plan for each child living at home.

(4) A parent that meets the criteria specified in subdivision (b) with more than four children shall be exempt from participation in the Family Cost Participation Program.

(e) For each child, the amount of cost participation shall be less than the amount of the parental fee that the parent would pay if the child lived in a 24-hour, out-of-home facility.

(f) Commencing January 1, 2005, each regional center shall be responsible for administering the Family Cost Participation Program.

(g) Family cost participation assessments or reassessments shall be conducted as follows:

(1) (A) By December 31, 2005, a regional center shall assess the cost participation for all parents of current consumers who meet the criteria specified in this section. A regional center shall use the most recent individual

applied only to respite, day care and camping services. The schedule is exempted from state rulemaking procedures. Anticipated inoperative date of July 1, 2007.
(SB 1103, Chapter 228, Statutes of 2004)

program plan for this purpose.

(B) A regional center shall assess the cost participation for parents of newly identified consumers at the time of the initial individual program plan.

(C) Reassessments for cost participation shall be conducted as part of the individual program plan review pursuant to subdivision (b) of Section 4646.

(D) The parents are responsible for notifying the regional center when a change in family income occurs that would result in a change in the assessed amount of cost participation.

(2) Parents shall self-certify their gross annual income to the regional center by providing copies of W-2 Wage Earners Statements, payroll stubs, a copy of the prior year's state income tax return, or other documents and proof of other income.

(3) A regional center shall notify parents of the parents' assessed cost participation within 10 working days of receipt of the parents' complete income documentation.

(4) Parents who have not provided copies of income documentation pursuant to paragraph (2) shall be assessed the maximum cost participation based on the highest income level adjusted for family size until such time as the appropriate income documentation is provided. Parents who subsequently provide income documentation that results in a reduction in their cost participation shall be reimbursed for the actual cost difference incurred for services identified in the individual program plan for respite, day care, and camping services, for 90 calendar days preceding the reassessment. The actual cost difference is the difference between the maximum cost participation originally assessed and the reassessed amount using the parents' complete income documentation, that is substantiated with receipts showing that the services have been purchased by the parents.

(5) The executive director of the regional center may grant a cost participation adjustment for parents who incur an unavoidable and uninsured catastrophic loss with direct economic impact on the family or who substantiate, with receipts, significant unreimbursed medical costs associated with care for a child who is a regional center consumer. A redetermination of the cost participation adjustment shall be made at least annually.

(h) A provider of respite, day care, or camping services shall not charge a rate for the parents' share of cost that is

higher than the rate paid by the regional center for its share of cost.

(i) The department shall develop, and regional centers shall use, all forms and documents necessary to administer the program established pursuant to this section. The forms and documents shall be posted on the department's Web site. A regional center shall provide appropriate materials to parents at the initial individual program plan meeting and subsequent individual program plan review meetings. These materials shall include a description of the Family Cost Participation Program.

(j) The department shall include an audit of the Family Cost Participation Program during its audit of a regional center.

(k) (1) Parents may appeal an error in the amount of the parents' cost participation to the executive director of the regional center within 30 days of notification of the amount of the assessed cost participation. The parents may appeal to the Director of Developmental Services, or his or her designee, any decision by the executive director made pursuant to this subdivision within 15 days of receipt of the written decision of the executive director.

(2) Parents who dispute the decision of the executive director pursuant to paragraph (5) of subdivision (g) shall have a right to a fair hearing as described in, and the regional center shall provide notice pursuant to, Chapter 7 (commencing with Section 4700). This paragraph shall become inoperative on July 1, 2006.

(3) On and after July 1, 2006, a parent described in paragraph (2) shall have the right to appeal the decision of the executive director to the Director of Developmental Services, or his or her designee, within 15 days of receipt of the written decision of the executive director.

(l) The department may adopt emergency regulations to implement this section. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted from the requirement that it describe specific facts showing the need for immediate action. A certificate of compliance for these implementing regulations shall be filed within 24 months following the adoption of the first emergency regulations filed pursuant to this subdivision.

(m) By April 1, 2005, and annually thereafter, the

department shall report to the appropriate fiscal and policy committees of the Legislature on the status of the implementation of the Family Cost Participation Program established under this section. On and after April 1, 2006, the report shall contain all of the following:

(1) The annual total purchase of services savings attributable to the program per regional center.

(2) The annual costs to the department and each regional center to administer the program.

(3) The number of families assessed a cost participation per regional center.

(4) The number of cost participation adjustments granted pursuant to paragraph (5) of subdivision (g) per regional center.

(5) The number of appeals filed pursuant to subdivision (k) and the number of those appeals granted, modified, or denied.

(n) This section shall become inoperative on July 1, 2009, and, as of January 1, 2010, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

4865.1. (a) A regional center shall continue to pay the rate in effect as of June 30, 2004, for a supported employment placement group composed of a coach-to-client ratio of 1:3 when the provider submits to the State Department of Developmental Services and the regional center, by July 30, 2004, documentation that all of the following conditions apply:

(1) The group was established prior to July 1, 2002.

(2) The group was at the 1:3 ratio on May 1, 2004.

(3) The employer will only accommodate a group of three.

(b) In consultation with the regional center, the State Department of Developmental Services shall determine whether the requirements of this section have been met. The department's decision shall be final.

(c) Groups paid under this section shall meet the requirements of subdivision (r) of Section 4851 by July 1, 2005, or be subject to termination of funding pursuant to subdivision (b) of Section 4860.

4688.5. (a) Notwithstanding any other provision of law to the contrary, the department may approve a proposal or proposals by Golden Gate Regional Center, Regional

The section was added to limit the payment rate for supported employment placement groups with a coach-to-client ratio of 1:3 to the rate that was in effect as of June 30, 2004.

(SB 1103, Chapter 228, Statutes of 2004)

This section was added to allow Golden Gate Regional Center, Regional Center of the East Bay and San Andreas Regional

Center of the East Bay, and San Andreas Regional Center to provide for, secure, and assure the payment of a lease or leases on housing, developed pursuant to this section, based on the level of occupancy in each home, if all of the following conditions are met:

(1) The acquired or developed real property is occupied by individuals eligible for regional center services and is integrated with housing for people without disabilities.

(2) The regional center has approved the proposed ownership entity, management entity, and developer or development entity for each project, and, prior to granting the approval, has consulted with the department and has provided to the department a proposal that includes the credentials of the proposed entities.

(3) The costs associated with the proposal are reasonable.

(4) The proposal includes a plan for a transfer at a time certain of the real property's ownership to a nonprofit entity to be approved by the regional center.

(b) Prior to approving a regional center proposal pursuant to subdivision (a), the department, in consultation with the California Housing Finance Agency and the Department of Housing and Community Development shall review all of the following:

(1) The terms and conditions of the financing structure for acquisition and/or development of the real property.

(2) Any and all agreements that govern the real property's ownership, occupancy, maintenance, management, and operation, to ensure that the use of the property is maintained for the benefit of persons with developmental disabilities.

(c) No sale encumbrance, hypothecation, assignment, refinancing, pledge, conveyance, exchange or transfer in any other form of the real property, or of any of its interest therein, shall occur without the prior written approval of the department and the Health and Human Services Agency.

(d) Notice of the restrictions pursuant to this section shall be recorded against the acquired or developed real property subject to this section.

(e) At least 45 days prior to granting approval under subdivision (c), the department shall provide notice to the chairs and vice chairs of the fiscal committees of the Assembly and the Senate, the Secretary of the Health and Human Services Agency, and the Director of Finance.

(f) The regional center shall not be eligible to acquire or develop real property for the purpose of residential

Center to provide for, secure, and assure payment of a lease on housing. Prohibits a regional center from acquiring or developing real property for residential housing.

(AB 2100, Chapter 831, Statutes of 2004)

housing.

4689.1. (a) The Legislature declares that it places a high priority on providing opportunities for adults with developmental disabilities to live with families approved by family home agencies and to receive services and supports in those settings as determined by the individual program plan. Family home agencies may offer services and supports in family homes or family teaching homes. All requirements of this section and Sections 4689.2 to 4689.6, inclusive, shall apply to a family home and a family teaching home.

(b) For purposes of this section, "family home" means a home that is owned, leased, or rented by, and is the family residence of, the family home provider or providers, and in which services and supports are provided to a maximum of two adults with developmental disabilities regardless of their degree of disability, and who do not require continuous skilled nursing care.

(c) For purposes of this section, "family teaching home" "~~family home agency~~" means a ~~private not for profit agency that is vendored to do all of the following:~~

- ~~(1) Recruit, approve, train, and monitor family home providers.~~
- ~~(2) Provide social services and in-home support to family home providers.~~
- ~~(3) Assist adults with developmental disabilities in moving into approved family homes.~~

home that is owned, leased, or rented by the family home agency wherein the family home provider and the individual have independent residences, either contiguous or attached, and in which services and supports are provided to a maximum of three adults with developmental disabilities regardless of their degree of disability, and who do not require continuous skilled nursing care.

(d) For purposes of this section, "family home agency" means a private not-for-profit agency that is vendored to do all of the following:

- (1) Recruit, approve, train, and monitor family home providers.
- (2) Provide social services and in-home support to family home providers.
- (3) Assist adults with developmental disabilities in moving into approved family homes.

(e) For purposes of ensuring that regional centers may secure high quality services that provide supports in

This section was added to establish family teaching homes.
(AB 2100, Chapter 831, Statutes of 2004)

natural settings and promote inclusion and meaningful participation in community life for adults with developmental disabilities, the department shall promulgate regulations for family home agencies, family teaching homes, and family homes that shall include, but not be limited to, standards and requirements related to all of the following:

(1) Selection criteria for regional centers to apply in vendoring family home agencies, including, but not limited to, all of the following:

- (A) The need for service.
- (B) The experience of the agency or key personnel in providing the same or comparable services.
- (C) The reasonableness of the agency's overhead.
- (D) The capability of the regional center to monitor and evaluate the vendor.

(2) Vendorization.

(3) Operation of family home agencies, including, but not limited to, all of the following:

- (A) Recruitment.
- (B) Approval of family homes.
- (C) Qualifications, training, and monitoring of family home providers.
- (D) Assistance to consumers in moving into approved family homes.
- (E) The range of services and supports to be provided.
- (F) Family home agency staffing levels, qualifications, and training.

(4) Program design.

(5) Program and consumer records.

(6) Family homes.

(7) (A) Rates of payment for family home agencies and approved family home providers. In developing the rates pursuant to regulation, the department may require family home agencies and family homes to submit program cost or other information, as determined by the department.

(B) Regional center reimbursement to family home agencies for services in a family home shall not exceed rates for similar individuals when residing in other types of out-of-home care established pursuant to Section 4681.1.

(8) The department and regional center's monitoring and evaluation of the family home agency and approved homes, which shall be designed to ensure that services do all of the following:

- (A) Conform to applicable laws and regulations and provide for the consumer's health and well-being.

(B) Assist the consumer in understanding and exercising his or her individual rights.

(C) Are consistent with the family home agency's program design and the consumer's individual program plan.

(D) Maximize the consumer's opportunities to have choices in where he or she lives, works, and socializes.

(E) Provide a supportive family home environment, available to the consumer 24 hours a day, that is clean, comfortable, and accommodating to the consumer's cultural preferences, values, and lifestyle.

(F) Are satisfactory to the consumer, as indicated by the consumer's quality of life as assessed by the consumer, his or her family, and if appointed, conservator, or significant others, or all of these, as well as by evaluation of outcomes relative to individual program plan objectives.

(9) Monthly monitoring visits by family home agency social service staff to approved family homes and family teaching homes.

(10) Procedures whereby the regional center and the department may enforce applicable provisions of law and regulation, investigate allegations of abuse or neglect, and impose sanctions on family home agencies and approved family homes and family teaching homes, including, but not limited to, all of the following:

(A) Requiring movement of a consumer from a family home under specified circumstances.

(B) Termination of approval of a family home or family teaching home.

(C) Termination of the family home agency's vendorization.

(11) Appeal procedures.

(f) Each adult with developmental disabilities placed in a family home or family teaching home shall have the rights specified in this division, including, but not limited to, the rights specified in Section 4503.

(g) Prior to placement in a family home of an adult with developmental disabilities who has a conservator, consent of the conservator shall be obtained.

(h) The adoption of any emergency regulations to implement this section that are filed with the Office of Administrative Law within one year of the date on which the act that added this section took effect shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

This section was amended to require monthly monitoring for family teaching homes.

(AB 2100, Chapter 831, Statutes of 2004)

