

**DEPARTMENT OF DEVELOPMENTAL SERVICES**

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TO: REGIONAL CENTER DIRECTORS AND BOARD PRESIDENTS

SUBJECT: JUNE 2011 TRAILER BILL LANGUAGE AFFECTING REGIONAL CENTERS

The purpose of this correspondence is to transmit a summary of the recently enacted Trailer Bill (AB 104, Chapter 37, Statutes of 2011) that directly affects regional centers or the developmental services system. This trailer bill language (TBL) became effective July 1, 2011. Regional centers should continue to educate their communities regarding these legislative changes. While this correspondence provides a high level summary of the TBL, a complete and thorough review of TBL (see [www.leginfo.ca.gov](http://www.leginfo.ca.gov)) is imperative for regional centers' statutory compliance. Clarifying information regarding implementation of TBL is included in several areas below.

**Health Benefit Cards**

**TBL Sections 1, 8 and 9:** Section 95020 of the Government Code (Gov. Code) and sections 4643 and 4646.4 of Welfare & Institutions Code<sup>1</sup> were amended, requiring that at the time of intake and assessment for Early Start or Lanterman Act services, and at the time of subsequent development, scheduled reviews, or modification of a consumer's Individualized Family Service Plan (IFSP) or Individual Program Plan (IPP), the consumer, or where appropriate, parents, legal guardian, or conservator must provide copies of any health benefit cards under which the consumer is eligible to receive health benefits, including, but not limited to, private health insurance, a health care service plan, Medi-Cal, Medicare, and TRICARE. If the individual, or, where appropriate, the parents, legal guardians, or conservators, have no such benefits, the regional center may not use that fact to negatively impact the services that the individual may or may not receive from the regional center.

**Vendor Electronic Billing (e-billing)**

**TBL Sections 2 and 7:** Section 95020.5 was added to the Gov. Code and section 4641.5 was added, requiring that effective July 1, 2011, regional centers begin transitioning providers and vendors of services purchased through a regional center to electronic billing. "Electronic billing" is defined as the Regional Center e-Billing System web application provided by the Department of Developmental Services (Department).

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<sup>1</sup> All citations are to the Welfare and Institutions Code unless otherwise stated.

All providers, vendors and contracted providers of services provided or purchased through a regional center must submit all billings electronically for services provided on or after July 1, 2012, with the exception of the following:

- A provider or vendor whose services are paid for by vouchers, as that term is defined in section 4512 (j).
- A provider or vendor who demonstrates that submitting billings electronically for services presents a substantial financial hardship for the provider.

*Implementation: Regional centers are encouraged to develop and share with their community a timeline for, and immediately begin, transitioning vendors to e-billing over the course of the fiscal year.*

### **Transfer Reduced Scope Prevention Program to the Family Resource Centers**

**TBL Sections 5 and 6:** Section 4435 was amended stating that babies identified as being at-risk who were in the prevention program as of June 30, 2011, are to continue in the prevention program until the child reaches 36 months of age, the regional center has determined the child is eligible for Early Start services, the regional center has determined the child is eligible for Lanterman Act services, or June 30, 2012, whichever date is earlier. Effective July 1, 2011, a regional center may not refer any at-risk babies to the prevention program described in section 4435.

Section 4435.1 was added, stating that effective July 1, 2011, the Department shall establish a program for at-risk babies. "At risk babies" means children under 36 months of age who are not eligible for the Early Start or Lanterman Act programs, and whose genetic, medical, developmental, or environmental history is predictive of a substantially greater risk for developmental disability than that for the general population, the presence of which is diagnosed by qualified clinicians. Effective July 1, 2011, when a regional center intake and assessment determination is that a baby is an at-risk baby, the regional center will, with parental consent, refer the baby and family to the family resource center described below, for outreach, information, and referral services.

Effective July 1, 2011, the Department is required to contract with an organization representing one or more family resource centers which receive federal funds to provide outreach, information, and referral services to generic agencies for children under 36 months of age who are not eligible for the Early Start or Lanterman Act programs. The organization with which the Department contracts is to be an organization that supports families of young children with intellectual or developmental disabilities, and those at risk of intellectual or developmental disabilities by ensuring the continuance, expansion, promotion, and quality of local family support services, including coordination, outreach, and referral. The contract must ensure the expeditious delivery of outreach, information, and referral services to at-risk babies, and require the organization to

establish a process with the applicable regional center or centers for referral of the at-risk baby to the regional center when the family resource center suspects that the child may be eligible for Early Start or Lanterman Act services.

*Implementation: The Department has contracted with the Family Resource Center Network of California and Support for Families of Children with Disabilities (contractors) to carry out the requirements of section 4435.1. The program is known as the Prevention Resource and Referral Services. The contractors will deliver services through subcontracts with the local Family Resource Centers (FRC). Local FRCs are required to negotiate a Memorandum of Understanding (MOU) with their regional center by September 1, 2011. The MOU will specify the procedures by which the local FRCs shall accept referrals from the regional center and refer children to the regional center who may be exhibiting developmental concerns that necessitate evaluation by the regional center for Early Start or Lanterman Act services. Other MOU components shall include activities to ensure coordination between the FRCs and the regional centers. Regional centers will receive current year's prevention program funds based on their percent to total share of the June, 2011 Prevention Program (Status Code P) caseload. The Department previously notified regional centers not to allocate two percent of their current year Prevention Program funds to the FRCs.*

### **Enhancing Community Integration and Participation—Development of Transportation Access Plans**

TBL Section 10: Section 4646.5 was amended to require that the planning process for the IPP also include the development of a transportation access plan for a consumer when all of the following conditions are met:

- The regional center is purchasing private, specialized transportation services or services from a residential, day, or other provider, excluding vouchered service providers, to transport the consumer to and from day or work services;
- The planning team has determined that a consumer's community integration and participation could be safe and enhanced through the use of public transportation services; and,
- The planning team has determined that generic transportation services are available and accessible.

To maximize independence and community integration and participation, the transportation access plan must identify the services and supports necessary to assist the consumer in accessing public transportation and comply with section 4648.35. These services and supports may include, but are not limited to, mobility training services and the use of transportation aides. Regional centers are encouraged to coordinate with local public transportation agencies.

*Implementation:* Where applicable, at the time of development, review, or modification of the IPP, regional centers must develop the required transportation access plan. The Department will review the regional centers' implementation of this provision through the Department's IPP monitoring protocol, as part of the Home and Community Based Services Waiver monitoring or other Department monitoring activities.

### **Maximize Utilization of Generic Resources—Education Services**

**TBL Section 13:** Section 4648.55 was added, prohibiting a regional center from purchasing day program, vocational education, work services, independent living program, or mobility training and related transportation services for a consumer who is 18 to 22 years of age, if the consumer is eligible for special education and related education services and has not received a diploma or certificate of completion, unless the planning team determines that the consumer's needs cannot be met in the educational system or grants an exemption pursuant to section 4648(d). The exemption language in section 4648(d) states: "An exemption to the provisions of this section may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a). An exemption shall be granted through the IPP process and shall be based on a determination that the generic service is not appropriate to meet the consumer's need. The consumer shall be informed of the exemption and the process for obtaining an exemption."

If the planning team determines that generic services can meet the consumer's day, vocational education, work services, independent living, or mobility training and related transportation needs, the regional center is to assist the consumer in accessing those services. To ensure that consumers receive appropriate educational services and an effective transition from services provided by educational agencies to services provided by regional centers, the regional center service coordinator, at the request of the consumer or, where appropriate, the consumer's parent, legal guardian, or conservator, may attend the individualized education program planning team meeting.

For consumers who are 18 to 22 years of age, who have left the public school system, and who are receiving regional center purchased services identified above on or before July 1, 2011, a determination is to be made through the IPP as to whether the return to the educational system can be achieved while meeting the consumer's needs. If the planning team determines that the consumer's needs cannot be met in the educational system, the regional center may continue to purchase the services identified above. If the planning team determines that generic services can meet the consumer's day, vocational education, work services, independent living, or mobility training and related transportation needs, the regional center must assist the consumer in accessing those services.

For consumers who are 18 to 22 years of age, who have left school prior to July 1, 2011, but who are not receiving any of the regional center purchased services identified above the regional center is to use generic education services to meet the consumer's day, vocational education, work services, independent living, or mobility training and related transportation needs if those needs are subsequently identified in the IPP unless the consumer is eligible for an exemption, based on the criteria below. If the planning team determines that generic services can meet the consumer's day, vocational education, work services, independent living, or mobility training and related transportation needs, the regional center is to assist the consumer in accessing those services.

*Implementation: The statutory provisions apply to all consumers 18-22 years of age, who are eligible for special education and related education services and have not received a diploma or certificate of completion, even if the regional center is currently purchasing day program, vocational education, work services, independent living program, or mobility training and related transportation services. For consumers 18 to 22 years of age, at the time of development, review, or modification of the IPP, each planning team must determine if generic educational services continue to or can meet a consumer's needs, or if extraordinary circumstances exist, and decide whether or not an exemption on that basis may be granted. Also, when the planning team determines, through the IPP process, that the generic (education) services are not appropriate to meet the consumer's needs, an exemption should be granted.*

*The Department will review the regional centers' implementation of this provision through the Department's IPP monitoring protocol, as part of the Home and Community Based Services Waiver monitoring or other Department monitoring activities.*

### **Maintaining the Consumer's Home of Choice—Mixed Payment Rates in Residential Facilities with Alternative Residential Model Rates**

TBL Section 14: Section 4681.7 was added, stating that effective July 1, 2011, in order to maintain a consumer's preferred living arrangement and adjust the residential services and supports in accordance with changing service needs identified in the IPP, a regional center may enter into a signed written agreement with a residential service provider for a consumer's supervision, training, and support needs to be provided at a lower level of payment than the facility's designated Alternative Residential Model (ARM) service level. The regional center signed written agreement with the provider must ensure all of the following:

- Services provided to other facility residents comply with the applicable service requirements for the facility's approved service level pursuant to section 4681.1 and Title 17 of the California Code of Regulations;
- Protection of the health and safety of each facility resident;

- Identification of the revised services and supports to be provided to the consumer within the ARM rate structure as part of the establishment or revision of an IPP; and,
- Identification of the rate.

If the service needs of a consumer referred to above change such that the consumer requires a higher level of supervision, training, and support, the regional center must adjust the consumer's service level and rate to meet the consumer's changing needs.

A regional center is authorized to enter into a signed written agreement with a residential service provider for a consumer's needed services at a lower level of payment and staffing without adjusting the facility's approved service level. A signed written agreement for a lower level of payment and staffing may only be entered into when a regional center, a consumer, and the facility agree that the facility can safely provide the service and supports needed by the consumer, as identified in the IPP, at the lower level of payment with the payment options within the ARM rate structure and with associated ARM service level requirements.

*Implementation: Compliance with this section of TBL will be monitored through the Department's fiscal audits of regional centers and vendors, as appropriate.*

### **Maximizing Resources for Behavioral Services**

TBL Section 15: Section 4686.3 was added, requiring the Department to adopt emergency regulations to address the use of paraprofessionals in group practice provider behavioral intervention services and establish a rate. The regulations must establish a rate and the educational or experiential qualifications and professional supervision requirements necessary for the paraprofessional to provide behavioral intervention services.

*Implementation: Department staff is currently working on the needed regulations to implement the statutory provisions.*

TBL Section 16: Section 4686.31 was added requiring any vendor who provides services as specified below to submit verification to the regional center for services provided to consumers who are under 18 years of age and residing in the family home. The Department must develop and post a standard form for vendors to complete and provide to the family for signature. The form must include, but not be limited to, the name and title of the vendor, the vendor identification number, the name of the consumer, the unique client identifier, the location of the service, the date and start and end times of the service, and a description of the service provided. The form must also

include instructions for the parents or legally appointed guardians to contact the regional center service coordinator immediately if they are unable to sign the form.

The vendor must provide the parents or legally appointed guardians of a minor consumer with the Department form to sign. The form must be signed and dated by the parents or legally appointed guardians of a minor consumer and be submitted to the vendor providing services within 30 days of the month in which the services were provided. The vendor must submit the completed forms to the regional center together with the vendor's invoices for the services provided. If the parents or legally appointed guardians of a minor consumer do not submit a form to the vendor, the vendor must notify the regional center.

This requirement only applies to the following types of services: Behavior Analyst, Associate Behavior Analyst, Behavior Management Assistant, Behavior Technician (Paraprofessional), Behavior Management Consultant, Counseling Services, Tutor, Crisis Team-Evaluation and Behavioral Intervention, Tutor Services-Group, Client/Parent Support Behavior Intervention Training, and Parent-Coordinated Home Based Behavior Intervention Program for Autistic Children.

The failure of the parents or legally appointed guardians of a minor consumer to submit a verification of services to the vendor shall not be a basis for terminating or changing behavioral services to the minor consumer. Any changes to behavioral services shall be made by the consumer's planning team pursuant to section 4512.

*Implementation: The Department notified regional centers of these new requirements in an email dated July 11, 2011. The required form is available on the Department's homepage at: <http://www.dds.ca.gov/Forms/docs/DS5862.pdf> in English, Spanish, Tagalog, Russian, Chinese, and Vietnamese. In a case where the vendor notifies the regional center the parent(s) or legally appointed guardian will not sign the form, the regional center should follow-up with the parent/legally appointed guardian to determine if services were delivered prior to making payment.*

*Also, as noted previously, release of the emergency regulations implementing the new classification of behavior technician (paraprofessional) is pending.*

### **Individual Choice Day Services**

**TBL Sections 17 and 18:** Sections 4688.1 and 4688.2 were amended prohibiting regional centers, effective July 1, 2011, from referring any additional consumers to alternative senior programs and alternative customized programs respectively.

*Implementation: While new service referrals are prohibited, consumers receiving services from these two program types, prior to July 1, may continue to do so.*

TBL Section 19: Section 4688.21 was added, indicating that the Legislature places a high priority on opportunities for adults with developmental disabilities to choose and customize day services to meet their individualized needs; have opportunities to further the development or maintenance of employment and volunteer activities; direct their services; pursue postsecondary education; and increase their ability to lead integrated and inclusive lives. To further these goals, a consumer may choose a tailored day service or vouchered community-based training service, in lieu of any other regional center vendored day program, look-alike day program, supported employment program, or work activity program.

### **Tailored Day Service**

A tailored day service must do both of the following:

- Include an individualized service design, as determined through the IPP and approved by the regional center, that maximizes the consumer's individualized choices and needs. This service design may include, but may not be limited to, fewer days or hours than in the program's approved day program, look-alike day program, supported employment program, or work activity program design; and flexibility in the duration and intensity of services to meet the consumer's individualized needs; and,
- Encourage opportunities to further the development or maintenance of employment, volunteer activities, or pursuit of postsecondary education; maximize consumer direction of the service; and increase the consumer's ability to lead an integrated and inclusive life.

The type and amount of tailored day service must be determined through the IPP process, and the IPP must contain, but not be limited to:

- A detailed description of the consumer's individualized choices and needs and how these choices and needs will be met; and,
- The type and amount of services and staffing needed to meet the consumer's individualized choices and needs, and unique health and safety and other needs.

The staffing requirements set forth in section 55756 of Title 17 of the California Code of Regulations and section 4851 (r) do not apply to a tailored day service. For currently vendored programs wishing to offer a tailored day service option, the regional center shall vendor a tailored day service option upon negotiating a rate and maximum units of service design that includes, but is not limited to:



- A daily or hourly rate and maximum units of service design that does not exceed the equivalent cost of four days per week of the vendor's current rate, if the vendor has a daily day program rate; and,
- A rate and maximum units of service design that does not exceed the equivalent cost of four-fifths of the hours of the vendor's current rate, if the vendor has an hourly rate.

The regional center must ensure that the vendor is capable of complying with, and will comply with, the consumer's IPP, individual choice, and health and safety needs.

For new programs wishing to offer a tailored day service option, the regional center shall vendor a tailored day service option upon negotiating a rate and maximum units of service design. The rate paid to the new vendor shall not exceed four-fifths of the temporary payment rate or the median rate, whichever is applicable.

Effective July 1, 2011, and prior to the time of development, review, or modification of a consumer's IPP, regional centers must provide information about tailored day service to eligible adult consumers. A consumer may request information about tailored day services from the regional center at any time and may request an IPP meeting to secure those services.

*Implementation: Entities/persons not currently vendored as day program, look-alike day program, supported employment program or a work activity program seeking vendorization to provide tailored day services, must be vendored under an existing, appropriate service code for day program, look-alike day program, supported employment program or a work activity program. When purchasing tailored day services from a day program, look-alike day program, supported employment program, or work activity program, the regional center shall sub code the expenditure accordingly:*

- *TDS – Tailored Day Service “Big Claim” Program Code 00*
- *TDSC – Tailored Day Service CPP Program Code 01 (This sub code should be used by the regional center during the fiscal year in which a consumer moves from a developmental center to the community.)*

### **Voucher – Community-based Training Service**

A vouchered community-based training service is defined as a consumer-directed service that assists the consumer in the development of skills required for community integrated employment or participation in volunteer activities, or both, and the assistance necessary for the consumer to secure employment or volunteer positions or pursue secondary education. Implementation of vouchered community-based training service is contingent upon the approval of the federal Centers for Medicare and Medicaid Services (CMS). Vouchered community-based training service must be

provided in natural environments in the community, separate from the consumer's residence. A consumer, parent, or conservator vendored as a vouchered community-based training service must utilize the services of a financial management services (FMS) entity, and the regional center must provide information about available FMS and assist the consumer in selecting a FMS vendor to act as co-employer. A parent or conservator is prohibited from being the direct support worker employed by the vouchered community-based training service vendor.

If the direct support worker is required to transport the consumer, the vouchered community-based training service vendor must verify that the direct support worker can transport the consumer safely and has a valid California driver's license and proof of insurance. The rate for vouchered community-based training service shall not exceed thirteen dollars and forty-seven cents (\$13.47) per hour. The rate includes employer-related taxes and all transportation needed to implement the service, except a consumer vendored as a vouchered community-based training service may also be eligible for a regional center-funded bus pass, if appropriate and needed. The rate does not include the cost of the FMS.

Vouchered community-based training services are limited to a maximum of 150 hours per quarter. The services to be provided and the service hours must be documented in the consumer's IPP. A direct support worker of vouchered community-based training service must be an adult who possesses the skill, training, and experience necessary to provide services in accordance with the IPP. Effective July 1, 2011, and prior to the time of development, review, or modification of a consumer's IPP, regional centers must provide information about vouchered community-based training service to eligible adult consumers. A consumer may request information about vouchered community-based training services from the regional center at any time and may request an IPP meeting to secure those services. The type and amount of vouchered community-based training service must be determined through the IPP process. And the IPP must contain, but not be limited to:

- A detailed description of the consumer's individualized choices and needs and how these choices and needs will be met; and,
- The type and amount of services and staffing needed to meet the consumer's individualized choices and unique health and safety and other needs.

*Implementation: This vouchered option is in lieu of any other regional center vendored day program, look-alike day program, supported employment program, or work activity program. As specified in statute the implementation of vouchered community-based training service is contingent upon the approval of CMS. As such, the Department's submitted Home and Community-Based Services Waiver renewal application includes this service option with a requested effective date of October 1, 2011. Additionally, as*

*the statute requires use of a FMS, implementing regulations defining and establishing the use of and rates for such services will be released shortly. When implemented upon receipt of CMS approval, the vouchered community-based day training service will also be available to consumers who are not Waiver beneficiaries.*

**TBL Section 21:** Section 4690.6 was added, requiring activity centers, adult development centers, behavior management programs, and other look-alike day programs with a daily rate to bill regional centers for services provided to consumers in terms of half days of service and full days of service. "Full day of service" means a day in which the consumer's attendance is at least 65 percent of the declared and approved program day. "Half day of service" means any day in which the consumer's attendance does not meet the criteria for billing for a full day of service. A regional center may change the length of the declared and approved program day for a specific consumer to meet the needs of that consumer, upon the recommendation of the planning team. The regional center must set forth in the IPP the length of the consumer's program day and the reasons for the change in the length of the declared and approved program day. The definitions above do not apply to vendors of tailored day program service.

***Implementation:** Regional centers should ensure providers are aware of this provision and maintain appropriate documentation regarding individual consumer attendance. Such documentation should be reviewed during regional center and Department vendor audits. The Department will not be establishing half-day rates; the statute does not change the rate. The statute requires the vendor to bill for one-half of their current rate when a consumer attends the program for 65% or less of the program day.*

### **Supported Living Services: Maximizing Resources**

**TBL Section 20:** Section 4689 was amended stating that for consumers receiving supported living services (SLS) who share a household with one or more adults receiving SLS, efficiencies in the provision of service may be achieved if some tasks can be shared, meaning the tasks can be provided at the same time while still ensuring that each person's individual needs are met. These tasks may only be shared to the extent they are permitted under the Labor Code and related regulations, including, but not limited to, Industrial Welfare Commission Minimum Wage Order No. 15. The planning team, at the time of development, review, or modification of a consumer's IPP, for housemates currently in a supported living arrangement or planning to move together into a supported living arrangement, or for consumers who live with a housemate not receiving SLS who is responsible for the task, shall consider, with input from the service provider, whether any tasks, such as meal preparation and cleanup, menu planning, laundry, shopping, general household tasks, or errands can appropriately be shared. If tasks can be appropriately shared, the regional center shall purchase the prorated share of the activity. Upon a determination of a reduction in

services the regional center must inform the consumer of the reason for the determination, and provide a written notice of fair hearing rights pursuant to section 4701.

To ensure that consumers in supported living arrangements receive the appropriate amount and type of supports, an independent assessment is required for consumers currently receiving, or initially entering, supported living who have SLS costs, or have an initial recommendation for service costs, that exceed 125 percent of the annual statewide average cost of SLS, as published by the Department commencing June 30, 2011. Commencing July 1, 2011, regional centers must identify consumers currently receiving SLS, whose annual SLS costs exceed 125 percent of the annual statewide average cost of SLS. The regional center must also identify consumers who have an initial recommendation for SLS costs that exceed 125 percent of the annual statewide average cost of SLS. For these consumers the regional center must arrange for an independent assessment to be completed prior to the next scheduled IPP for consumers currently in a supported living arrangement and within 30 days of identification of consumers with an initial recommendation for services. The independent assessment must be completed by an impartial entity or individual other than the SLS agency providing, or planning to provide, the service and shall be used during IPP meetings to assist the team to determine whether the services provided or recommended are necessary and sufficient and that the most cost-effective methods of service are utilized. Decisions about supported living shall be made by the IPP team.

The independent assessment process must adhere to all of the following:

- SLS providers must conduct comprehensive assessments for the purpose of getting to know the consumer they will be supporting and developing a support plan congruent with the choices and needs of the individual and consistent with the principles of supported living set forth in the Lanterman Act and Title 17. The independent assessment is not intended to take the place of or repeat the service provider's comprehensive assessment. The purpose of the independent assessment is to provide an additional look at whether the SLS being provided, or being proposed for a person initially entering supported living, are necessary, sufficient, or cost-effective to meet the person's choices and needs, as determined by the comprehensive assessment and the planning team. The independent needs assessment may include, but is not limited to, use of natural and generic support, technology that provides support otherwise necessary through direct staffing hours, shared housing, support alternatives, learning methods, lifting and transferring, bathroom, grooming, meals, communication, transportation, mobility, emergency procedures, medication management, household responsibilities, personal needs, interpersonal relationships, and behavioral, medical, and overnight supports.

- A consumer shall not be excluded from SLS based on an independent assessment.
- The entity or individual conducting independent assessments shall not be an employee of a regional center or the consumer's service provider. Current supported living providers may conduct independent assessments for consumers being supported, or about to be supported, by other providers. However, a provider who conducts an independent assessment may not provide direct services to a consumer it has assessed for a period of one year. Each regional center must publicly identify the entities and individuals it will use to conduct independent assessments. Regional centers must ensure there are sufficient independent assessors so that assessments can be provided when required without undue delay.
- Initial entry into supported living may not be delayed for more than 30 days following the determination to request an independent assessment due to the need for an independent assessment. If the independent assessment cannot be conducted within that time period, the individual may move into supported living with the amount of supports recommended by the service provider's comprehensive assessment and an additional IPP to consider the results of the independent assessment must be conducted when that assessment becomes available, if necessary. For individuals currently in a supported living arrangement, supports must continue at the same level while the independent assessment is being conducted.
- Independent assessors shall meet all of the following qualifications:
  - Have a demonstrated understanding of the foundation of supported living as a service that assists an individual to live in his or her own home with supports as needed to be part of their community and of the principles and operational requirements of supported living set forth in the Lanterman Act and Title 17;
  - Have a demonstrated understanding of the IPP process and the legal rights of people with developmental disabilities in California; and,
  - Have experience with the provision of SLS in California.
- The Department must establish a rate of payment for an independent assessment.
- The planning team must consider the independent assessment along with the provider's assessment, if available, and any other relevant information in determining whether there should be any adjustment to the amount or type of supports currently being received by individuals in supported living arrangements or recommended for individuals initially entering supported living arrangements. Any decisions to reduce supports shall not be applied retroactively.

- A consumer shall be reassessed every three years in conjunction with the consumer's IPP review to determine whether all services are necessary and sufficient and to ensure that the most cost-effective methods of service are being utilized.
- Individuals who are moving to a supported living arrangement or have moved to a supported living arrangement from a developmental center or state-operated community facility are not required to have an additional assessment during the first 12 months following placement.
- Upon a determination of a reduction in service, the regional center must inform the consumer of the reason for the determination, and provide a written notice of fair hearing rights pursuant to section 4701.
- Nothing precludes the completion of an independent assessment for other purposes.

*Implementation: The purpose of the independent assessment is to provide an additional look at whether the SLS being provided to, or proposed for, the consumer are necessary, sufficient, or cost-effective to meet the consumer's choices and needs. Commencing July 1, 2011, regional centers must identify consumers currently receiving SLS, whose annual SLS costs exceed 125 percent of the annual statewide average cost of SLS. The regional center must also identify consumers who have an initial recommendation for SLS costs that exceed 125 percent of the annual statewide average cost of SLS. For these consumers the regional center must arrange for an independent assessment to be completed prior to the next scheduled IPP for consumers currently in a supported living arrangement and within 30 days of identification of consumers with an initial recommendation for services. As required by law, the Department has published on its homepage the annual statewide average cost of SLS, and 125 percent of the annual statewide average cost of SLS. Commencing July 1, 2011, the annual average cost of SLS is \$44,196 and 125 percent of the average annual cost of SLS is \$55,245.*

*Regional centers shall use only one of the following service codes when purchasing an independent assessment: 1) Supported Living Services, Service Code 896, if the assessor is a current SLS vendor, or 2) Independent Living Specialist, Service Code Independent Living Specialist - Service Code 635. Use of any other service code (Ex. 056) previously used for independent assessments must be discontinued.*

*When purchasing the independent assessment under either of these service codes, the purchase should additionally be sub coded as:*

- *INAS – Independent Assessment “Big Claim” Program Code 00*

*The rate for an independent assessment under both service code 896 and 635 can not exceed \$50.00 an hour nor \$1,000 in total.*

### **Annual Family Program Fee**

TBL Section 22: Section 4785 was added, stating that effective July 1, 2011, regional centers must assess an annual family program fee, as described below, from parents whose adjusted gross family income is at or above 400 percent of the federal poverty level based upon family size and who have a child to whom all of the following apply:

- The child has a developmental disability or is eligible for Early Start services;
- The child is less than 18 years of age;
- The child lives with his or her parent;
- The child or family receives services beyond eligibility determination, needs assessment, and service coordination; and,
- The child does not receive services through the Medi-Cal program.

An annual family program fee shall not be assessed or collected if the child receives only respite, day care, or camping services from the regional center, and a cost for participation is assessed to the parents under the Family Cost Participation Program. The annual family program fee shall be initially assessed by a regional center at the time of the development, scheduled review, or modification of the IPP or IFSP, but no later than June 30, 2012, and annually thereafter. Application of the annual family program fee to children zero through two years of age, is contingent upon necessary approval by the United States Department of Education.

The annual family program fee for parents described above shall be two hundred dollars (\$200) per family, regardless of the number of children in the family with developmental disabilities or who are eligible for services under Early Start. Parents who demonstrate to the regional center that their adjusted gross family income is less than 800 percent of the federal poverty level shall be required to pay an annual family program fee of one hundred fifty dollars (\$150) per family, regardless of the number of children in the family with developmental disabilities or who are eligible for Early Start.

At the time of intake or at the time of development, scheduled review, or modification of a consumer's IPP or IFSP, but no later than June 30, 2012, the regional center must provide to parents described above a form and an envelope for the mailing of the annual family program fee to the Department. The form, which must include the name

of the children in the family currently being served by a regional center and their unique client identifiers, must be sent, with the family's annual program fee, to the Department. The Department will notify each regional center at least quarterly of the annual family program fees collected.

The regional center must, within 30 days after notification from the Department, provide a written notification to the parents from whom the Department has not received the annual family program fees. Regional centers must notify the Department if a family receiving notification has failed to pay its annual family program fees based on the subsequent notice. For these families, the Department will pursue collection pursuant to the Accounts Receivable Management Act (Chapter 4.3 (commencing with section 16580) of Part 2 of Division 4 of Title 2 of the Gov. Code).

A regional center may grant an exemption to the assessment of an annual family program fee if the parents demonstrate any of the following:

- That the exemption is necessary to maintain the child in the family home;
- The existence of an extraordinary event that impacts the parents' ability to pay the fee or the parents' ability to meet the care and supervision needs of the child;  
or,
- The existence of a catastrophic loss that temporarily limits the ability of the parents to pay and creates a direct economic impact on the family. Catastrophic loss may include, but is not limited to, natural disasters, accidents involving, or major injuries to, an immediate family member, and extraordinary medical expenses.

Services may not be delayed or denied for a consumer or child based upon the lack of payment of the annual family program fee. "Parents" means the parents, whether natural, adoptive, or both, of a child with developmental disabilities under 18 years of age. Parents described above are jointly and severally responsible for the annual family program fee, unless a court order directs otherwise.

"Total adjusted gross family income" means income acquired, earned, or received by parents as payment for labor or services, support, gift, or inheritance, or parents' return on investments. It also includes the community property interest of a parent in the gross adjusted income of a stepparent. The total adjusted gross family income shall be determined by adding the gross income of both parents, regardless of whether they are divorced or legally separated, unless a court order directs otherwise, or unless the custodial parent certifies in writing that income information from the noncustodial parent cannot be obtained from the noncustodial parent and in this circumstance only the income of the custodial parent shall be used to determine the annual family program fee.



This new law sunsets on June 30, 2013, and as of January 1, 2014, is repealed, unless a later enacted statute, that becomes operative on or before June 30, 2013, deletes or extends the dates on which it becomes inoperative and is repealed.

*Implementation: The Department will be sending out implementation information under separate cover. The Department will provide regional centers with the standard forms to be provided to families, and related instructions; information on the federal poverty level applicable for 2011; and, the interim process for exchange of information between regional centers and the Department.*

#### **4.25 Percent Payment Reduction**

**TBL Section 24:** Section 10 of Chapter 13 of the Third Extraordinary Session of the Statutes of 2009, as amended by Section 16 of Chapter 9 of the Statutes of 2011, was amended providing that to implement changes in the level of funding for regional center purchase of services, regional centers must reduce payments for services and supports provided pursuant to Title 14 (commencing with section 95000) of the Gov. Code and Division 4.1 (commencing with section 4400) and Division 4.5 (commencing with section 4500). From February 1, 2009, to June 30, 2010, regional centers were required to reduce all payments for these services and supports paid from purchase of services funds for services delivered on or after February 1, 2009, by 3 percent, and from July 1, 2010, to June 30, 2012, by 4.25 percent, unless the regional center demonstrates that a nonreduced payment is necessary to protect the health and safety of the individual for whom the services and supports are proposed to be purchased, and the Department has granted prior written approval.

Regional centers shall not reduce payments for:

- Supported employment services with rates set by section 4860;
- Services with "usual and customary" rates established pursuant to Title 17 section 57210, except as provided below; and,
- Payments to offset reductions in Supplemental Security Income/State Supplementary Payment (SSI/SSP) benefits for consumers receiving supported and independent living services.

The exemption provided for above for services with a usual and customary rate shall not apply to payments for any of the following services:

- Crisis and behavioral services provided by a nationally certified or state-licensed professional, consistent with the professional's scope of practice, as set forth in the Business and Professions Code.
- Services of group practices providing behavioral intervention.
- Parent-coordinator home-based behavioral intervention for children with autism.
- Individual or family training.

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- Registered nurse services.
- Therapy services, including physical, speech, occupational, recreational, and music therapy.
- Audiology services.
- Independent living specialist services.
- Translator and interpreter services.
- Mobility training, socialization training, or community integration training services.
- Community activities support, program support, or parenting support services.
- Personal assistance services.
- Tutoring services.
- Creative arts services.
- Early start specialized therapeutic services.

*Implementation: If the regional center has accepted a usual and customary rate as the rate of payment for any of the providers of services reflected in the list directly above, the regional center, effective July 1, 2011, must apply the 4.25 percent payment reduction.*

TBL Section 23: Section 7502.5 was amended specifying that the total number of developmental center residents in the secure treatment facility at Porterville Developmental Center (PDC), including those residents receiving services in the PDC transition treatment program, shall not exceed 230. The Department shall not admit any persons into the secure treatment facility at PDC until the population of the secure treatment facility is less than 230 persons. To maximize federal financial participation, the Department shall not admit any more than 104 people who are ineligible to participate in programs certified for federal financial participation into the secure treatment facility at PDC.

If you have any questions regarding this correspondence, please contact Brian Winfield, at (916) 654-1569.

Sincerely,

*ORIGINAL SIGNED BY BRIAN WINFIELD FOR*

RITA WALKER  
Deputy Director  
Community Operations Division

cc: Robert Baldo, ARCA  
Mark Hutchinson, DDS