

DEPARTMENT OF DEVELOPMENTAL SERVICES

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DATE: September 18, 2014

TO: REGIONAL CENTER DIRECTORS AND BOARD PRESIDENTS

SUBJECT: JUNE 2014 TRAILER BILL LANGUAGE AFFECTING REGIONAL CENTERS

The purpose of this correspondence is to transmit a summary of the recently enacted Developmental Services Budget Trailer Bill, SB 856 (Chapter 30, Statutes of 2014), which directly affects regional centers, developmental centers and the developmental services system. SB 856 contains an urgency clause, and was therefore effective immediately upon enactment, June 20, 2014. Some changes effected by SB 856 include:

- Revisions to the definition of "infant or toddler" for purposes of eligibility for early intervention services, effective January 1, 2015.
- Establishment of two new models of care for regional center consumers-- enhanced behavioral supports homes and community crisis homes.
- Development of stand-alone units at Fairview Developmental Center (FDC) and Sonoma Developmental Center (SDC) to meet the needs of individuals in acute crisis.
- Authorization to admit consumers to the crisis center at SDC due to an acute crisis, beginning January 1, 2015.
- Authorization for regional centers to pay health care service plan or health insurance policy deductibles.
- Authorization to adjust service provider rates due to the minimum wage increase and changes in federal regulations.
- Authorization to expand the Community State Staff program throughout the state for consumers in transition or 'deflection'.

While this correspondence provides a high level summary of SB 856, a complete and thorough review of the bill is imperative for regional centers' statutory compliance.¹ Clarifying information regarding implementation of SB 856 is included in several areas below. Regional centers should continue to educate their communities regarding these legislative changes.

¹ Go to the June 12, 2014, amended version of the bill at <http://leginfo.legislature.ca.gov> to see the changes in statute made by SB 856.

"Building Partnerships, Supporting Choices"

Eligibility for Early Intervention Services

TBL Section 2 and 3: Section 95014 of the Government Code was amended to revise, beginning January 1, 2015, the term “eligible infant or toddler” for purposes of eligibility for early intervention services. Section 95014(a)(1) of the Government Code currently states, “Developmentally delayed infants and toddlers are those who are determined to have a significant difference between the expected level of development for their age and their current level of functioning. This determination shall be made by qualified personnel who are recognized by, or part of, a multidisciplinary team, including the parents. A significant difference is defined as a 33-percent delay in one developmental area before 24 months of age, or, at 24 months of age or older, either a delay of 50 percent in one developmental area or a 33-percent delay in two or more developmental areas.”

Beginning January 1, 2015, a “significant difference” will be defined as a 33-percent delay in one or more developmental areas. Additionally, beginning January 1, 2015, the term “eligible infant or toddler” will include infants and toddlers who are at high risk of having substantial developmental disability due to a combination of biomedical risk factors, the presence of which are diagnosed by qualified personnel recognized by, or part of, a multidisciplinary team, including the parents.

Implementation: Beginning January 1, 2015, the eligibility criteria for the Early Start program will expand in two ways. First, infants and toddlers who are at high risk of having a developmental disability will be eligible to receive services. Second, the threshold for determining a “significant difference” for purposes of assessing developmental delay will be the same for all infants and toddlers, regardless of age. Currently, children assessed at 24 months of age or older must have more significant delays to meet the eligibility criteria.

Enhanced Behavioral Supports Homes

TBL Section 6 and 18: Article 9.5 (commencing with Section 1567.61) was added to Chapter 3 of Division 2 of the Health and Safety Code, and, Article 3.6 (commencing with Section 4684.80) was added to Chapter 6 of Division 4.5 of the Welfare and Institutions Code, establishing enhanced behavioral supports homes as a new model of care for regional center consumers with challenging behavioral needs. “Enhanced behavioral supports home” means a facility certified by the Department of Developmental Services (Department) and licensed by the Department of Social Services (DSS) as an adult residential facility or a group home that provides 24-hour nonmedical care to regional center consumers who require intensive services and supports due to challenging behaviors that cannot be managed in a community setting without the availability of enhanced behavioral services and supports, and who are at risk of institutionalization or out-of-state placement, or are transitioning to the community

from a developmental center, other state-operated residential facility, institution for mental disease, or out-of-state placement. Enhanced behavioral supports homes shall have a maximum capacity of four consumers and shall be eligible for federal Medicaid Home and Community-based Services funding.

Section 4684.81 of the Welfare and Institutions Code² requires the Department to implement a pilot program, until January 1, 2020, using Community Placement Plan (CPP) funds to test the effectiveness of enhanced behavioral supports homes. No more than six enhanced behavioral supports homes may be approved by the Department each fiscal year, through the CPP process, in which the pilot program is in effect and to the extent funding is available for this purpose. The homes shall be located throughout the state, as determined by the Department, based on regional center requests.

Each enhanced behavioral supports home shall exceed the minimum requirements for a Residential Facility Service Level 4-i pursuant to Sections 56004 and 56013 of Title 17 of the California Code of Regulations, and shall meet all applicable statutory and regulatory requirements applicable to a facility licensed as an adult residential facility or a group home for facility licensing, seclusion, and restraint, including Division 1.5 (commencing with Section 1180) of the Health and Safety Code, and the use of behavior modification interventions, subject to any additional requirements applicable to enhanced behavioral supports homes established by statute or by regulation promulgated pursuant to this article of the Welfare and Institutions Code, and, Article 9.5 (commencing with Section 1567.61) of Chapter 3 of Division 2 of the Health and Safety Code.

An enhanced behavioral supports home using delayed egress devices, in compliance with Section 1531.1 of the Health and Safety Code, may utilize secured perimeters, in compliance with Section 1531.15 of the Health and Safety Code and applicable regulations. No more than two enhanced behavioral supports homes using delayed egress devices in combination with secured perimeters may be certified by the Department during the first year of the pilot program, one in northern California and one in southern California, and no more than one additional home using delayed egress devices in combination with a secured perimeter may be certified by the Department in each subsequent year of the pilot program. No more than six enhanced behavioral supports homes that use delayed egress devices in combination with a secured perimeter shall be certified during the pilot program. Enhanced behavioral supports homes shall not be counted for purposes of the statewide limit established in regulations on the total number of beds permitted in homes with delayed egress devices in combination with secured perimeters pursuant to subdivision (k) of Section 1531.15 of the Health and Safety Code. The Department shall make reasonable efforts to include enhanced behavioral supports homes within the statewide limit.

² All citations are to the Welfare and Institutions Code unless otherwise stated.

Pursuant to Section 4684.81(j), the Department shall establish by regulation a rate methodology for enhanced behavioral supports homes that includes a fixed facility component for residential services and an individualized services and supports component based on each consumer's needs as determined through the individual program plan process, which may include assistance with transitioning to a less restrictive community residential setting. The established facility rate for a full month of service, as defined in regulations adopted pursuant to this article of the Welfare and Institutions Code, shall be paid based on the licensed capacity of the facility once the facility reaches maximum capacity, despite the temporary absence of one or more consumers from the facility or subsequent temporary vacancies created by consumers moving from the facility. Prior to the facility reaching licensed capacity, the facility rate shall be prorated based on the number of consumers residing in the facility.

When a consumer is temporarily absent from the facility, including when a consumer is in need for inpatient care in a health facility, as defined in subdivision (a), (b), or (c) of Section 1250 of the Health and Safety Code, the regional center may, based on consumer need, continue to fund individual services, in addition to paying the facility rate. Individual consumer services funded by the regional center during a consumer's absence from the facility shall be approved by the regional center director and shall only be approved in 14-day increments. The regional center shall maintain documentation of the need for these services and the regional center director's approval.

A certificate of program approval must be issued by the Department before an enhanced behavioral supports home can be licensed by DSS. Pursuant to Section 4684.86, a certification shall not be issued by the Department until emergency regulations filed by the Department have been published. These regulations shall be developed in consultation with stakeholders, including DSS, consumer advocates, and regional centers. The regulations shall address at least the following:

- Program standards, including program design requirements, staffing structure, staff qualifications, and training. Training requirements shall include:
 - A minimum of 16 hours of emergency intervention training, which shall include the techniques the licensee will use to prevent injury and maintain safety regarding consumers who are a danger to self or others and shall emphasize positive behavioral supports and techniques that are alternatives to physical restraints.
 - Additional training for direct care staff to address the specialized needs of the consumers, including training in emergency interventions.
- Requirements and timelines for the development and updating of consumers' individual behavior supports plans.
- Admission and continued stay requirements.

- Requirements for ensuring that appropriate services and supports are provided at the time of admission to meet the consumer's immediate needs pending development of the consumer's individual behavior supports plan.
- The rate methodology.
- Consumer rights and protections.

Section 1567.64 of the Health and Safety Code states that DSS shall adopt regulations to address, at a minimum, staffing structure, staff qualifications, and training.

Section 4684.84(d) requires the Department to conduct a review of the pilot program in consultation with stakeholders. The results of the review shall be shared in writing with DSS no later than September 1, 2018.

Implementation: The Department will work with stakeholders regarding input for promulgating regulations for implementation of these new statutory provisions. Stakeholder input meetings occurred in August and September 2014, in northern, central and southern regions of the state.

The regional center may fund, with regional center director approval, individualized services in 14-day increments, in a temporary setting until the consumer returns to the enhanced behavioral supports home or a new location. The regional center must maintain documentation of the need for these services and the regional center director's approval.

See Enclosure A for current statutes and regulations related to monitoring for this home type.

Community Crisis Homes

TBL Section 7 and 21: Article 9.7 (commencing with Section 1567.80) was added to Chapter 3 of Division 2 of the Health and Safety Code, and, Article 8 (commencing with Section 4698) was added to Chapter 6 of Division 4.5 of the Welfare and Institutions Code, establishing community crisis homes as a new model of care for regional center consumers in need of crisis intervention services. "Community crisis home" means a facility certified by the Department and licensed by DSS as an adult residential facility, providing 24-hour nonmedical care to regional center consumers in need of crisis intervention services who would otherwise be at risk of admission to the acute crisis center at FDC or SDC, an out-of-state placement, a general acute hospital, an acute psychiatric hospital, or an institution for mental disease. A community crisis home shall have a maximum capacity of eight consumers and shall be eligible for federal Medicaid Home and Community-based Services funding.

Section 4698(b)(1) requires the Department to establish using CPP funds a community-based residential option consisting of community crisis homes. A community crisis home shall be certified only if approved through a regional center community placement plan pursuant to Section 4418.25. Community crisis homes shall exceed the minimum requirements for a Residential Facility Service Level 4-i pursuant to Sections 56004 and 56013 of Title 17 of the California Code of regulations, and shall meet all applicable statutory and regulatory requirements for facility licensing, the use of behavior modification interventions, and seclusion and restraint, including Division 1.5 (commencing with Section 1180) of the Health and Safety Code, and that are applicable to facilities licensed as adult residential facilities.

The Department shall establish by regulation a rate methodology for community crisis homes that includes a fixed facility component for residential services and an individualized services and supports component based on each consumer's needs as determined through the individual program plan process, which may include assistance with returning to the consumer's prior living arrangement or transitioning to an alternative community residential setting.

A certificate of program approval must be issued by the Department before a community crisis home can be licensed by DSS. Pursuant to Section 4698.1, a certification shall not be issued by the Department until emergency regulations filed by the Department have been published. These regulations shall be developed in consultation with stakeholders, including DSS, consumer advocates, and regional centers. The regulations shall address at least all of the following:

- Program standards, including program design requirements, staffing structure, staff qualifications, and training. Training requirements shall include all of the following:
 - A minimum of 16 hours of emergency intervention training, which shall include the techniques the facility will use to prevent injury and maintain safety regarding consumers who are a danger to self or others and shall emphasize positive behavioral supports and techniques that are alternatives to physical restraint.
 - Additional training for direct care staff to address the specialized needs of the consumers, including training in emergency interventions.
- Requirements and timelines for the development and updating of each consumer's individual program plan, including time-limited objectives and a plan to transition the consumer to his or her prior residence or an alternative community-based residential setting with needed services and supports. In developing these regulations, the Department shall place a high priority on transitioning the consumer to his or her prior residence, when that is the preferred objective in the consumer's individual program plan.

- Procedures and requirements for identifying and providing supplemental and ancillary staffing and supports, including therapeutic, behavioral, and clinical services and supports, based on individual consumer need.
- The rate methodology.
- Consumer rights and protections.

Additionally, Section 1567.82 of the Health and Safety Code states that DSS' regulations shall address, at a minimum, staffing structure, staff qualifications, and training.

Implementation: The Department will work with stakeholders regarding input for promulgating regulations for implementation of these new statutory provisions. Stakeholder input meetings occurred in August and September 2014, in northern, central and southern regions of the state.

See Enclosure A for current statutes and regulations related to monitoring for this home type.

Statutory Changes Related to Establishment of Enhanced Behavioral Supports Homes and Community Crisis Homes

TBL Section 4: Section 1502 of the Health and Safety Code was amended to include within the definition of a community care facility an "enhanced behavioral supports home" and a "community crisis home".

TBL Section 5: Section 1524 of the Health and Safety Code was amended to state that a facility license shall be forfeited when:

- For an enhanced behavioral supports home, the certification issued by the Department to a licensee is rescinded.
- For a community crisis home, the certificate of program approval issued by the Department to a licensee of a community crisis home is rescinded.

Admission to Acute Crisis Centers at Fairview and Sonoma Developmental Centers

TBL Section 9: Section 4418.7 was amended, requiring the regional center to notify the clients' rights advocate for the regional center when the regional center determines, or is informed by the consumer's parents, legal guardian, conservator, or authorized representative that the community placement of a consumer is at risk of failing, and that admittance to a developmental center is a likelihood, or the regional center is notified by a court of a potential admission to a developmental center consistent with Section 7505. For purposes of this section, notification to the clients' rights advocate shall include a copy of the most recent comprehensive assessment or updated assessment, and the

time, date, and location of an individual program plan meeting held pursuant to Section 4418.7(b). The regional center shall provide this notice as soon as practicable but not less than 7 calendar days prior to the meeting.

This section was amended to specify that the regional resource development project, in consultation with the regional center, the consumer, and, when appropriate, the consumer's parents, legal guardian, conservator, or authorized representative, shall not make a determination that admittance to a state developmental center is necessary due to an acute crisis unless the determination includes a regional center report detailing all considered community-based services and supports, *including a community crisis home*, and an explanation of why those options could not meet the consumer's needs at the time of such a determination.

Additionally, Section 4418.7 was amended to state, commencing January 1, 2015, admissions to a developmental center pursuant to a court order for an acute crisis as described in this section shall be limited to the acute crisis center at FDC and the acute crisis center at SDC. The acute crisis centers at FDC and SDC shall each consist of one unit that is distinct from other residential units at the developmental center and shall each serve no more than five consumers. Crisis center residents may participate in day, work, and recreation programs, and other developmental center facility activities, outside of the acute crisis unit, when the individual program plan identifies it is appropriate and consistent with the individual's treatment plan. The acute crisis centers shall assist the consumer with transitioning back to his or her prior residence, or an alternative community-based residential setting, within the timeframe described in this section.

TBL Section 23: Section 6509 was amended, specifying that care and treatment of a person with a developmental disability, who is a danger to himself, herself, or to others, and is committed to the Department by court order, may be placed in the acute crisis center at FDC if the person meets the criteria for admission pursuant to Section 7505(a)(2), and, on or after January 1, 2015, the acute crisis center at SDC, if the person meets the criteria for admission pursuant to Section 7505(a)(3).

TBL Section 24 and 25: Section 7505 was amended to conform with the changes made to Section 4418.7, concerning admissions to the acute crisis centers at FDC and SDC.

Implementation: The Department has begun work to identify the distinct location for each of the crisis units at FDC and SDC; however development of a program design is underway. Stakeholder input meetings occurred in August and September 2014, in northern, central and southern regions of the state. Additionally, the Department will initiate a survey process to obtain feedback from those who have accessed acute crisis services at FDC.

Evaluation of Enhanced Behavioral Supports Homes, Community Crisis Homes and the Acute Crisis Centers at FDC and SDC

TBL Section 10: Section 4436 was added to require the Department to evaluate enhanced behavioral supports homes, community crisis homes, and the acute crisis centers at FDC and SDC, and provide the evaluations to the budget committees and appropriate policy committees of the Legislature.

The evaluation for enhanced behavioral supports homes and community crisis homes shall include information, by regional center catchment area, regarding the number of homes approved, the number of homes opened, the number of beds, the number of placements in a home from outside the regional center catchment area, comparative summary information regarding the characteristics of the persons served in these homes, immediate past residential settings, vacancy rates, and the established fixed facility rates and individual rates.

The evaluation for enhanced behavioral supports homes shall also include the number of beds in the homes utilizing delayed egress devices in combination with secured perimeters, the extent to which the statewide limit established in regulation on the total number of beds permitted in homes with delayed egress devices in combination with secured perimeters is exceeded, the number of residents requiring out-of-home crisis intervention services, the nature of the services provided, and the ability of residents to return to the same home after temporary placement in another facility.

The evaluation for community crisis homes and the acute crisis centers at FDC and SDC shall include comparative information regarding characteristics of the persons served, immediate past residential settings, staffing requirements, the average monthly occupancy, the average length of time to secure placement into the home or center, the average length of stay, the regional center of origin for placements, the number of placements from outside the regional center of origin, the number of individuals with multiple stays, the number of residents whose discharge was delayed due to the unavailability of a residential placement, and the per capita and total cost for each home or center.

Notwithstanding Section 10231.5 of the Government Code, the Department shall provide the evaluations of enhanced behavioral supports homes and community crisis homes to the budget committees and appropriate policy committees of the Legislature annually, commencing on January 10 of the year after the first enhanced behavioral supports home or community crisis home is opened and services have commenced.

Notwithstanding Section 10231.5 of the Government Code, the Department shall provide the evaluations for the acute crisis centers at FDC and SDC to the budget committees and appropriate policy committees of the Legislature annually:

1. For FDC, commencing on January 10, 2015.
2. For SDC, commencing on January 10, 2016.

Implementation: The Department will develop a format for collecting and reporting the required information. The Department will work with regional centers who will be expected to work with affected service providers in the collection and timely reporting of the data. The methods for collecting and reporting data will be outlined in forthcoming regulations.

Comprehensive Assessments and Notification to the Clients' Rights Advocate

TBL Section 8: Section 4418.25 was amended to state that comprehensive assessments for consumers residing in developmental centers, completed pursuant to this section, or the assessments completed in the prior two years, including the updates required by Section 4418.25(c)(2)(E) (see below), shall be provided to both of the following:

1. The individual program planning team and clients' rights advocate for the regional center in order to assist the planning team in determining the least restrictive environment for the consumer; and,
2. The superior court with jurisdiction over the consumer's placement at the developmental center, including the consumer's attorney of record and other parties known to the regional center. For judicial proceedings pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6, the comprehensive assessment shall be included in the regional center's written report required by Section 6504.5. For all other proceedings, the regional center shall provide the comprehensive assessment to the court and parties to the case at least 14 days in advance of any regularly scheduled judicial review. This clause shall not apply to consumers committed pursuant to Section 1370.1 of the Penal Code.

Section 4418.25(c)(2)(E) specifies that assessments completed pursuant to this section shall be updated annually as part of the individual program planning process for as long as the consumer resides in the developmental center. To the extent appropriate, the regional center shall also provide relevant information from the statewide specialized resource service. The regional center shall notify the clients' rights advocate for the regional center of the time, date, and location of each individual program plan meeting that includes discussion of the results of the comprehensive assessment and updates to that assessment. The regional center shall provide this notice as soon as practicable following the completion of the comprehensive assessment or update and not less than 30 calendar days prior to the meeting. The clients' rights advocate may participate in the meeting unless the consumer objects on his or her own behalf.

TBL Section 13: Section 4514 was amended to authorize a regional center to provide the clients' rights advocate for the regional center with the assessment completed or updated pursuant to Section 4418.25, 4418.7, or 4648.

TBL Section 15: Section 4648 was amended to specify that notification to the clients' rights advocate when a consumer is admitted to an institution for mental disease shall include a copy of the most recent comprehensive assessment or updated assessment and the time, date, and location of any individual program planning meetings convened pursuant to Section 4648(a)(9)(C)(iv) and (v), and shall be provided as soon as practicable, but not less than 7 calendar days prior to the meeting.

TBL Section 22: Section 6504.5 was amended to require the regional center director or designee to submit to the court with his or her report pursuant to this section, any comprehensive assessment, or updated assessment, conducted by the regional center pursuant to Section 4418.25(c)(2).

Use of State Staff and Resources in Transitioning Consumers from Developmental Centers to the Community and Deflecting Admissions to Specified Facilities

TBL Section 1: Section 854.1 of the Government Code was amended to expand the definition of "mental institution" or "medical facility", for purposes of these provisions, to mean any facility or place where a public employee provides services and supports to individuals transitioning from a developmental center to the community or to individuals with developmental disabilities at risk of admission to a developmental center, an institution for mental disease, an out-of-state placement, a general acute care hospital, or an acute psychiatric hospital.

TBL Section 11: Section 4474.2 was amended to state that the Department may operate any facility, provide its employees to assist in the operation of any facility, or provide other necessary services and supports if, in the discretion of the Department, it determines that the activity will assist in meeting the goal of successfully transitioning developmental center residents to community living or deflecting the admission of individuals with developmental disabilities to a developmental center, an institution for mental disease, an out-of-state placement, a general acute care hospital, or an acute psychiatric hospital.

The Department shall prepare a report on the use of the Department's employees in providing services in the community pursuant to this section. The report shall include data on the number and classification of state employees working in the community program and recommendations on whether the program should be continued or ways in

which the program may be improved. Notwithstanding Section 10231.5 of the Government Code, the report shall be submitted with the Governor's proposed budget for the 2015–16 fiscal year to the fiscal committees of both houses of the Legislature and annually thereafter.

TBL Section 12: Section 4474.3 was amended, stating that the provisions of Section 10411 of the Public Contract Code (former state employee conflict-of-interest provisions) shall not apply to any person who provides developmental services and supports to individuals transitioning from a developmental center to community living or to individuals with developmental disabilities at risk of admission to a developmental center, an institution for mental disease, an out-of-state placement, a general acute care hospital, or an acute psychiatric hospital, pursuant to Section 4474.2.

Implementation: The Department will develop marketing strategies to ensure all are informed of the Community State Staff (CSS) program. Stakeholder input meetings occurred in August and September 2014, in northern, central and southern regions of the state. Additionally, the Department will initiate a survey process to obtain feedback from those who have accessed the CSS program.

Payment for Health Care Service Plan or Health Insurance Policy Deductibles

TBL Section 16: Section 4659.1 was amended, authorizing regional centers to pay any applicable deductible for a service or support required by a consumer's individual program plan if the support or service is paid for by the health care service plan or health insurance policy of the consumer or his or her parent, guardian, or caregiver, and other conditions specified in this section are satisfied.

TBL Section 14: Section 4519.6 was amended to require the Department and regional centers to annually collaborate to determine the most appropriate methods to collect and compile meaningful data in a uniform manner, as specified in Section 4519.5, related to the payment of copayments, coinsurance, and deductibles by each regional center.

Implementation: Similar to the implementation of purchases of health insurance copayments and coinsurance resulting from TBL of 2013, regional centers must ensure that purchases for health insurance deductibles are authorized only if the family (or adult consumer) either 1) has an annual gross income that does not exceed 400 percent of the federal poverty level or 2) the service or support is necessary to successfully maintain the child at home or the adult consumer in the least-restrictive setting, and demonstrates the existence of an extraordinary event, catastrophic loss or significant unreimbursed medical costs as defined if the family or adult consumer has an annual gross income that exceeds 400 percent of the federal poverty level. Compliance with this section of TBL will be monitored through the Department's fiscal audits of regional centers.

For consumers 18 years of age or older, if the consumer is either the health insurance policy holder or identified as eligible under a policy held by another, purchases for the insurance deductible may be authorized if the consumer meets either the income or other criteria.

In order to identify the purchase of deductibles in the similar method used to identify copayments and coinsurance, regional centers must use the following service sub code that begins with 'DEDI' for the insurance deductible.

Additionally, to ensure purchases are eligible for federal reimbursement, purchases of insurance deductibles must be made using the service code appropriate for the type of service/provider. For example, an insurance deductible for a service provided by a Behavior Analyst must be made using service code 612 and a sub code that begins with 'DEDI'. Effective July 1, 2014, all purchases of insurance deductibles must use these service/sub code combinations.

Rate Adjustments Due to the Minimum Wage Increase and Changes in Federal Regulations Implementing the Fair Labor Standards Act of 1938

Residential Service Providers, TBL Section 17: Section 4681.6 was amended to state, notwithstanding Section 4681.6(a), commencing July 1, 2014, regional centers may negotiate a rate adjustment with residential service providers regarding rates that are otherwise restricted pursuant to Section 4681.6(a), if the adjustment is necessary in order to pay employees no less than the minimum wage as established by Section 1182.12 of the Labor Code, as amended by Chapter 351 of the Statutes of 2013, and only for the purpose of adjusting payroll costs associated with the minimum wage increase. The rate adjustment shall be specific to the unit of service designation that is affected by the increased minimum wage, shall be specific to payroll costs associated with any increase necessary to adjust employee pay only to the extent necessary to bring pay into compliance with the increased state minimum wage, and shall not be used as a general wage enhancement for employees paid above the minimum wage. Regional centers shall maintain documentation on the process to determine, and the rationale for granting, any rate adjustment associated with the minimum wage increase.

Work Activity Programs, Community-based Day Programs and In-home Respite

Services, TBL Section 19: Section 4691.6 was amended to state, notwithstanding any other law or regulation, commencing July 1, 2014:

- The Department may approve rate adjustments for a work activity program that demonstrates to the Department that the rate adjustment is necessary in order to pay employees who, prior to July 1, 2014, were being compensated at a wage that is less than the minimum wage established on and after July 1, 2014, by Section 1182.12 of the Labor Code, as amended by Chapter 351 of the Statutes of 2013.

- Community-based day program and in-home respite services agency providers with temporary payment rates set by the Department may seek unanticipated rate adjustments from the Department due to the impacts of the increased minimum wage as established by Section 1182.12 of the Labor Code, as amended by Chapter 351 of the Statutes of 2013.

The rate adjustments specified in this section shall be specific to payroll costs associated with any increase necessary to adjust employee pay only to the extent necessary to bring pay into compliance with the increased state minimum wage, and shall not constitute a general wage enhancement for employees paid above the increased minimum wage.

Additionally, Section 4691.6 was amended to state, notwithstanding any other law or regulation, commencing January 1, 2015, the in-home respite service agency rate schedule authorized by the Department and in operation December 31, 2014, shall be increased by 5.82 percent, subject to funds specifically appropriated for this increase for costs due to changes in federal regulations implementing the federal Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.). The increase shall be applied as a percentage, and the percentage shall be the same for all applicable providers.

Other Service Providers, TBL Section 20: Section 4691.9 was amended to state, notwithstanding Section 4691.9(a), commencing July 1, 2014, regional centers may negotiate a rate adjustment with providers regarding rates if the adjustment is necessary to pay employees no less than the minimum wage as established by Section 1182.12 of the Labor Code, as amended by Chapter 351 of the Statutes of 2013, and only for the purpose of adjusting payroll costs associated with the minimum wage increase. The rate adjustment shall be specific to the unit of service designation that is affected by the increased minimum wage, shall be specific to payroll costs associated with any increase necessary to adjust employee pay only to the extent necessary to bring pay into compliance with the increased state minimum wage, and shall not be used as a general wage enhancement for employees paid above the increased minimum wage. Regional centers shall maintain documentation on the process to determine, and the rationale for granting, any rate adjustment associated with the minimum wage increase.

Implementation: For the above sections covering rate adjustments due to minimum wage, the Department provided guidance regarding how the rates would be adjusted for the various types of providers and their corresponding rate methodologies in its correspondence to regional centers dated May 16, 2014 (see Enclosure B). Compliance with these sections of TBL related to adjusting rates will be monitored through the Department's fiscal audits of regional centers.

For the In-home Respite Agency (IHRA) rate adjustment of 5.82 percent, effective January 1, 2015, the Department will revise the rates for all IHRAs, issue new rate letters to the providers, and send regional centers copies of the revised rate letters.

Personal Assistance and Supported Living Services, TBL Section 20: Section 4691.9 was amended to state, notwithstanding any other law or regulation, commencing January 1, 2015, rates for personal assistance and supported living services in effect on December 31, 2014, shall be increased by 5.82 percent, subject to funds specifically appropriated for this increase for costs due to changes in federal regulations implementing the federal Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.). The increase shall be applied as a percentage, and the percentage shall be the same for all applicable providers. As used in this subdivision, both of the following definitions shall apply:

1. "Personal assistance" is limited only to those services provided by vendors classified by the regional center as personal assistance providers, pursuant to the miscellaneous services provisions contained in Title 17 of the California Code of Regulations.
2. "Supported living services" are limited only to those services defined as supported living services in Title 17 of the California Code of Regulations.

Implementation: Effective January 1, 2015, rates for personal assistance and supported living services will increase by 5.82 percent. If needed, prior to the effective date, the Department will provide guidance to regional centers related to implementing the rate increases for personal assistance and supported living services, and reporting those increases to the Department. Note: Since the change in minimum wage is effective July 1, 2014, the 5.82 percent rate increase effective January 1, 2015, will be applied after any rate increase that was negotiated due to the change in minimum wage.

Reappropriation of Funds

TBL Section 26: Item 4300-101-0001 of Section 2.00 of the Budget Act of 2011 (Chapter 33 of the Statutes of 2011) is available for liquidation of encumbrances through June 30, 2015. The unencumbered balance of \$13,048,000 of the amount appropriated pursuant to this Item is reappropriated for the purposes provided for in the appropriation and is available for encumbrance or expenditure until June 30, 2015, and for liquidation through June 30, 2017.

Implementation: The Department has been and will continue to work with regional centers on the use of regional center positions funded through the CPP, as well as the development of enhanced behavioral supports and community crisis homes using these funds.

Regional Center Directors and Board Presidents
September 18, 2014
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If you have any questions regarding this correspondence, please contact Brian Winfield at (916) 654-1569.

Sincerely,

Original signed by Brian Winfield for

NANCY BARGMANN
Deputy Director
Community Services Division

Enclosures

cc: Association of Regional Center Agencies

**MONITORING IN ENHANCED BEHAVIORAL SUPPORTS HOMES (EBSH)
AND COMMUNITY CRISIS HOMES (CCH)**

<p align="center">Trailer Bill Language, SB 856 Welfare and Institutions Code</p>	<p align="center">California Code of Regulations, Title 17</p>	<p align="center">California Code of Regulations, Title 22</p>
<p><u>Section 4684.81(i)(2) (Re: RC Monitoring in EBSH)</u> “(2) The vendoring regional center and each consumer’s regional center shall have joint responsibility for monitoring and evaluating the services provided in the enhanced behavioral supports home. Monitoring shall include at least quarterly, or more frequently if specified in the consumer’s individual program plan, face-to-face, onsite case management visits with each consumer by his or her regional center and at least quarterly quality assurance visits by the vendoring regional center. The State Department of Developmental Services shall monitor and ensure the regional centers’ compliance with their monitoring responsibilities.”</p> <p><u>Section 4684.84(a), (b) and (c) (Re: RC Behavior Modification Professional Monitoring in EBSH)</u> “(a) The regional center shall have responsibility for monitoring and evaluating the implementation of the consumer’s individual behavior supports plan objectives. (b) A regional center qualified behavior modification professional shall visit, with or without notice, the consumer, in person, at least monthly in the enhanced behavioral supports home, or more frequently if specified in the consumer’s individual behavior supports plan. At least four of these visits, annually, shall be unannounced.</p>	<p><u>Section 56047. Regional Center Monitoring of the IPP Objectives.</u> “(a) The regional center representative shall meet with the consumer at least quarterly to review the consumer's progress towards achieving IPP objectives. (1) At least two of the quarterly meetings required by subsection (a) shall take place at the consumer's residence and a representative of the facility shall be present at these meetings. (2) Other quarterly meetings may take place at a site other than the consumer's residence that is acceptable to the consumer. (3) Quarterly meetings pursuant to subsection (a) may be conducted during an unannounced visit pursuant to Welfare and Institutions Code Section 4648.1, provided the requirements specified in subsection (a) are met. ... (b) When the consumer is a child with special health care needs, the regional center representative shall meet with the representative of the facility and the consumer at the facility at least quarterly to review the consumer's progress toward achieving IPP objectives pursuant to the requirements specified in subsection (a)(1) through (5).”</p>	<p><u>Evaluator Manual - 3-4610(6)</u> Subject to a “Required Annual Visit”: Any facility which has been vendored by a Regional Center to serve persons with developmental disabilities, except for Foster Family Homes and Adult Day Programs.</p>

**MONITORING IN ENHANCED BEHAVIORAL SUPPORTS HOMES (EBSH)
AND COMMUNITY CRISIS HOMES (CCH)**

<p align="center">Trailer Bill Language, SB 856 Welfare and Institutions Code</p>	<p align="center">California Code of Regulations, Title 17</p>	<p align="center">California Code of Regulations, Title 22</p>
<p>(c) The State Department of Developmental Services shall monitor and ensure the regional centers' compliance with the requirements of this article. The monitoring shall include onsite visits to all the enhanced behavioral supports homes at least every six months for the duration of the pilot project."</p> <p><u>Section 4698(e) (Re: RC Monitoring in CCH)</u> "(e) The local regional center and each consumer's regional center shall have joint responsibility for monitoring and evaluating the provision of services in the community crisis home. Monitoring shall include at least monthly face-to-face, onsite case management visits with each consumer by his or her regional center and at least quarterly quality assurance visits by the vendoring regional center. The State Department of Developmental Services shall monitor and ensure the regional centers' compliance with their monitoring responsibilities."</p>		

DEPARTMENT OF DEVELOPMENTAL SERVICES

1600 NINTH STREET, Room 320, MS 3-9
SACRAMENTO, CA 95814
TDD 654-2054 (For the Hearing Impaired)
(916) 654-1954



May 16, 2014

TO: REGIONAL CENTER EXECUTIVE DIRECTORS

SUBJECT: MINIMUM WAGE INCREASE

Effective July 1, 2014, the minimum wage in California will increase from \$8.00 to \$9.00 per hour. The proposed budget and accompanying proposed budget trailer bill (enclosed) assumes many vendors will either receive, or be eligible to request, a rate increase if necessary to adjust employees' pay to comply with the new minimum wage. This letter contains information on the types of vendors that are affected and what process will be used to make necessary rate adjustments.

Providers with rates set by the Department of Developmental Services

(Department): The proposed budget trailer bill, combined with current Title 17 regulations, allow Community-Based Day Programs (CBDP) and Work Activity Programs (WAP) to submit rate adjustment requests to the Department due to the increase in minimum wage. Vendors can begin submitting requests to the Department, with a copy to the vendoring regional center, at any time. However, all rate adjustment requests must be received by the Department no later than September 2, 2014. General information about the increase in minimum wage as well as detailed instructions and a workbook for submitting rate adjustment requests to the Department can be found at the following website:

www.dds.ca.gov/MinWage

To request a rate adjustment, vendors of CBDP and WAP services must submit to the Department, information on only those costs necessary to increase an employee's actual hourly wage to the new \$9.00 per hour minimum wage rate and associated mandated employer costs (e.g. Social Security, Medicare, and workers' compensation). Vendors must submit actual employment and mandated employer cost information for affected employees only and total program units of service provided for the period of October, November, and December 2013, or an applicable period for up to three (3) months. The Department will provide regional centers a copy of all letters sent to service providers in response to rate adjustment requests. Final approval of rate adjustments is contingent upon approval of the 2014-15 State budget and will be effective July 1, 2014.

"Building Partnerships, Supporting Choices"

Providers with rates set through negotiation by regional centers:

The proposed budget trailer bill also allows regional centers to negotiate rate adjustments with providers in order to pay employees no less than the new minimum wage effective July 1, 2014. The rate adjustment must be specific to the unit of service that is affected by the new minimum wage and shall only include those costs necessary to increase an employee's actual hourly wage to the new \$9.00 per hour minimum wage rate and associated mandated employer costs (e.g. Social Security, Medicare, and workers' compensation). Regional centers may use a worksheet similar to the one developed for CBDPs discussed above to assist in processing rate adjustment requests and must maintain documentation on the process to determine, and rationale for granting, any rate adjustment associated with minimum wage. Vendors must submit rate adjustment requests to the vendoring regional center no later than September 2, 2014. Final approval of rate adjustments is contingent upon approval of the 2014-15 State budget and will be effective July 1, 2014.

By September 30, 2014, regional centers must provide the Department information on all rate adjustments negotiated with vendors. The Department will follow up with regional centers on the process for reporting the needed information.

Providers with other rates:

- Alternative Residential Model (ARM) rates/respite facilities: The proposed ARM rates, effective July 1, 2014, for community care facilities, are enclosed. These rates also affect respite facilities (service code 869).
- In-Home Respite Agencies (IHRAs): The Department will revise the rates for all IHRAs and will provide regional centers with copies of the revised rate letters to IHRAs.
- In-Home Respite Worker (service code 864): The proposed new rate, effective July 1, 2014, is \$11.88 per consumer hour.
- Voucher and Participant-Directed Respite (service codes 420 and 465): The proposed new rate, effective July 1, 2014, is \$11.88 per consumer hour.
- Non-Mobile Supplemental Staffing: Pursuant to Title 17, Section 57530, the supplemental reimbursement rate for Community-Based Day Programs will increase to \$1.08 per consumer hour.

Regional Center Executive Directors
May 16, 2014
Page three

If you have any questions regarding this letter, please contact Jeff Greer, Chief, Rates and Fiscal Support Section, at (916) 654-2300.

Sincerely,

Original Signed By

JIM KNIGHT
Assistant Deputy Director
Community Services Division

Enclosure

cc: Regional Center Administrators
Regional Center Chief Counselors
Association of Regional Center Agencies

OFFICE COPY

Prepared By _____

Approved By _____

An act to amend Sections 4681.6, 4691.6, and 4691.9 of the Welfare and Institutions Code, relating to developmental services.

DRAFT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4681.6 of the Welfare and Institutions Code is amended to read:

4681.6. (a) Notwithstanding any other ~~provision of law or regulation,~~ commencing July 1, 2008:

~~(a)~~ ~~No~~

(1) A regional center ~~may~~ shall not pay an existing residential service provider, for services where rates are determined through a negotiation between the regional center and the provider, a rate higher than the rate in effect on June 30, 2008, unless the increase is required by a contract between the regional center and the vendor that is in effect on June 30, 2008, 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.

~~(b)~~ ~~No~~

(2) A regional center ~~may~~ shall not negotiate a rate with a new residential service provider, for services where rates are determined through a negotiation between the regional center and the provider, that is higher than the regional center's median rate for the same service code and unit of service, or the statewide median rate for the same service code and unit of service, whichever is lower. The unit of service designation ~~must~~ shall conform with an existing regional center designation or, if none exists, a designation used to calculate the statewide median rate for the same service. The regional center shall annually certify to the department its median rate for each negotiated rate service code, by designated unit of service. This certification ~~will~~ shall

be subject to verification through the department's biennial fiscal audit of the regional center.

(b) Notwithstanding subdivision (a), commencing July 1, 2014, regional centers may negotiate a rate adjustment with residential service providers regarding rates that are otherwise restricted pursuant to subdivision (a), if the adjustment is necessary in order to pay employees no less than the minimum wage as established by Section 1182.12 of the Labor Code, as amended by Chapter 351 of the Statutes of 2013, and only for the purpose of adjusting payroll costs associated with the minimum wage increase. The rate adjustment shall be specific to the unit of service designation that is affected by the increased minimum wage, shall be specific to payroll costs associated with any increase necessary to adjust employee pay only to the extent necessary to bring pay into compliance with the increased state minimum wage, and shall not be used as a general wage enhancement for employees paid above the minimum wage. Regional centers shall maintain documentation on the process to determine, and the rationale for granting, any rate adjustment associated with the minimum wage increase.

(c) For purposes of this section, "residential service provider" includes Adult Residential Facilities for Persons with Special Health Care Needs, as described in Section 4684.50.

(d) This section shall not apply to those services for which rates are determined by the State Department of Health Care Services, or the State Department of Developmental Services, or are usual and customary.

SEC. 2. Section 4691.6 of the Welfare and Institutions Code is amended to read:

4691.6. (a) Notwithstanding any other ~~provision of~~ law or regulation, commencing July 1, 2006, the community-based day program, work activity program, and in-home respite service agency rate schedules authorized by the department and in operation June 30, 2006, shall be increased by 3 percent, subject to funds specifically appropriated for this increase in the Budget Act of 2006. The increase shall be applied as a percentage, and the percentage shall be the same for all providers. Any subsequent increase shall be governed by subdivisions (b), (c), (d), ~~and (e)~~ (e), (f), and (g), and Section 4691.9.

(b) Notwithstanding any other ~~provision of~~ law or regulation, the department ~~may~~ shall 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, 2008, if the permanent payment rate would be greater than the temporary payment rate in effect on or after June 30, 2008, unless the regional center demonstrates to the department that the permanent payment rate is necessary to protect the consumers' health or safety.

(c) Notwithstanding any other ~~provision of~~ law or regulation, neither the department nor any regional center ~~may~~ shall 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, 2008, 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.

(d) Notwithstanding any other ~~provision of~~ law or regulation, the department ~~may~~shall not approve an anticipated rate adjustment 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, 2008, unless the regional center demonstrates that the anticipated rate adjustment is necessary to protect the consumers' health or safety.

(e) Notwithstanding any other ~~provision of~~ law or regulation, except as set forth in subdivision (f), the department ~~may~~shall not approve any rate adjustment for a work activity 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, 2008, 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.

(f)Notwithstanding any other law or regulation, commencing July 1, 2014, the department may approve rate adjustments for a work activity program that demonstrates to the department that the rate adjustment is necessary in order to pay employees who, prior to July 1, 2014, were being compensated at a wage that is less than the minimum wage established on and after July 1, 2014, by Section 1182.12 of the Labor Code, as amended by Chapter 351 of the Statutes of 2013. The rate adjustment pursuant to this subdivision shall be specific to payroll costs associated with any increase necessary to adjust employee pay only to the extent necessary to bring pay into compliance with the increased state minimum wage, and shall not constitute a general wage enhancement for employees paid above the increased minimum wage.

(g) Notwithstanding any other law or regulation, commencing July 1, 2014, community-based day program and in-home respite services agency providers with temporary payment rates set by the department may seek unanticipated rate adjustments from the department due to the impacts of the increased minimum wage as established by Section 1182.12 of the Labor Code, as amended by Chapter 351 of the Statutes of 2013. The rate adjustment shall be specific to payroll costs associated with any increase necessary to adjust employee pay only to the extent necessary to bring pay into compliance with the increased state minimum wage, and shall not constitute a general wage enhancement for employees paid above the increased minimum wage.

SEC. 3. Section 4691.9 of the Welfare and Institutions Code is amended to read:

(a) Notwithstanding any other provision of law or regulation, commencing July 1, 2008:

~~(a) No~~

(1) A regional center shall not pay an existing service provider, for services where rates are determined through a negotiation between the regional center and the provider, a rate higher than the rate in effect on June 30, 2008, unless the increase is required by a contract between the regional center and the vendor that is in effect on June 30, 2008, 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.

~~(b) No~~

(2) A regional center may shall not negotiate a rate with a new service provider, for services where rates are determined through a negotiation between the regional center and the provider, that is higher than the regional center's median rate for the same service code and unit of service, or the statewide median rate for the same service code and unit of service, whichever is lower. The unit of service designation ~~must~~ shall conform with an existing regional center designation or, if none exists, a designation used to calculate the statewide median rate for the same service. The regional center shall annually certify to the State Department of Developmental Services its median rate for each negotiated rate service code, by designated unit of service. This certification ~~will~~ shall be subject to verification through the department's biennial fiscal audit of the regional center.

(b) Notwithstanding subdivision (a), commencing July 1, 2014, regional centers may negotiate a rate adjustment with providers regarding rates that are otherwise restricted pursuant to subdivision (a), if the adjustment is necessary in order to pay employees no less than the minimum wage as established by Section 1182.12 of the Labor Code, as amended by Chapter 351 of the Statutes of 2013, and only for the purpose of adjusting payroll costs associated with the minimum wage increase. The rate adjustment shall be specific to the unit of service designation that is affected by the increased minimum wage, shall be specific to payroll costs associated with any increase necessary to adjust employee pay only to the extent necessary to bring pay into compliance with the increased state minimum wage, and shall not be used as a general wage enhancement for employees paid above the increased minimum wage.

Regional centers shall maintain documentation on the process to determine, and the rationale for granting, any rate adjustment associated with the minimum wage increase.

(c) This section shall not apply to those services for which rates are determined by the State Department of Health Care Services, or the State Department of Developmental Services, or are usual and customary.

OFFICE COPY

Prepared By _____

Approved By _____

LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced,_____.

General Subject: Service provider rate adjustments conforming with changes to minimum wage law.

Existing law establishes the State Department of Developmental Services and sets forth its powers and duties, including, but not limited to, the administration of state developmental centers and the administration and oversight of community programs providing services to consumers with developmental disabilities and their families.

Existing law, the Lanterman Developmental Disabilities Services Act, requires the department to enter into contracts with private nonprofit corporations to operate regional centers that provide community services and support for consumers and their families, including, but not limited to, residential placement. Existing law sets forth the duties of the regional centers, including, but not limited to, development of individual program plans, the purchase of needed services to implement the plan, and

monitoring of the delivery of those services. Existing law sets forth the department's and the regional center's authority to negotiate provider rates, and sets forth certain limitations. Existing law authorizes prescribed provider rate increases and prohibits others.

Existing law, commencing July 1, 2014, increases the state minimum wage to no less than \$9 per hour.

This bill would, notwithstanding existing law, authorize adjustment in prescribed provider rates commencing July 1, 2014, as necessary to adjust employee wages to meet the new state minimum wage law.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

DEPARTMENT OF DEVELOPMENTAL SERVICES
COMMUNITY CARE FACILITY RATES
EFFECTIVE JANUARY 1, 2014
AND PROPOSED RATES
EFFECTIVE JULY 1, 2014

Service Level	Monthly Payment Rate Per Consumer Effective 1/01/2014*	Monthly Payment Rate Per Consumer Effective 7/01/2014*
1	\$1003	\$1003
2-Owner	\$1,910	\$2,035
2-Staff	\$2,146	\$2,271
3-Owner	\$2,194	\$2,355
3-Staff	\$2,502	\$2,663
4A	\$2,941	\$3,108
4B	\$3,134	\$3,316
4C	\$3,326	\$3,523
4D	\$3,567	\$3,779
4E	\$3,825	\$4,047
4F	\$4,082	\$4,323
4G	\$4,386	\$4,647
4H	\$4,707	\$4,991
4I	\$5,159	\$5,477

The Personal and Incidental (P&I) expenses effective with the January 1, 2014 SSI/SSP payment standard increased from \$129.00 to \$130.00.

*Includes the SSI/SSP pass through effective January 1, 2014.