

**DEPARTMENT OF DEVELOPMENTAL SERVICES**

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**DATE: November 22, 2016**

**TO: REGIONAL CENTER DIRECTORS AND BOARD PRESIDENTS**

**SUBJECT: JUNE 2016 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, Assembly Bill 1606 (Chapter 26, Statutes of 2016), which directly impacts regional centers, developmental centers and the developmental services system. AB 1606 effects the following changes:

- Repeals statute that required the Department<sup>1</sup> to establish a program for at-risk babies and regional centers to perform related activities.
- Prohibits the use of physical restraint or containment for more than 15 consecutive minutes unless authorized by the Department by regulation in enhanced behavioral supports homes.
- Expands special incident reporting requirements for regional center vendors that provide crisis or residential services, supported living services, long-term health care facilities, and acute psychiatric hospitals.
- Requires the Department and the Department of Health Care Services (DHCS) to coordinate on the transition of health care services for Medi-Cal eligible consumers who are transitioning from a developmental center into the community, and requires DHCS to issue transition requirements.
- Requires the Department to establish a rate schedule for residential community care facilities vendored to provide services to a maximum of four persons with developmental disabilities.
- Specifies that a regional center shall not approve a service level for a residential service provider if the approval would result in an increase in state costs or if it is a community care facility vendored to provide services to a maximum of four persons with developmental disabilities under the new rate schedule.
- Authorizes service provider rate adjustments due to minimum wage increases.
- Authorizes a five percent (5%) increase to rates for providers of out-of-home respite services.

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<sup>1</sup> "Department" means the Department of Developmental Services unless otherwise noted.

**“Building Partnerships, Supporting Choices”**

- Specifies requirements related to competitive integrated employment incentive payments.
- Requires regional centers to consult with the local volunteer advisory committee in conducting outreach and training to consumers and their families about the Self-Determination Program.
- Requires regional centers to provide specific information in its public meetings held regarding disparity data and specifies requirements for regional center funding proposals related to this data.
- Requires the Department to develop and implement a performance dashboard.
- Establishes new legislative reporting requirements for the Department.
- Appropriates to the Department funds related to reimbursements associated with funds appropriated in Assembly Bill X2-1 (ABX2-1).
- Subject to the approval of the Director of the Department, makes specific laws in Public Contract Code inapplicable to employees of the Department for the purpose of the employee becoming a vendor of a regional center.

While this correspondence provides a high level summary of AB 1606, a complete and thorough review of the bill is imperative for regional centers' statutory compliance.<sup>2</sup> Clarifying information regarding implementation of AB 1606 is included in several areas below. Regional centers should continue to educate their communities regarding these legislative changes.

### **Elimination of At-Risk Babies Program**

TBL Section 3: Section 4435.1 of the Welfare and Institutions Code<sup>3</sup> was repealed, eliminating statute that required the Department to establish a program for at-risk babies; contract with an organization representing one or more family resource centers to provide outreach, information, and referral services for at-risk babies; and, required regional centers to refer at-risk babies to the family resource centers.

### **Use of Physical Restraints or Containment in Enhanced Behavioral Supports Homes**

TBL Section 1: Health and Safety Code Section 1180.4 was amended to prohibit the use of physical restraint or containment for more than 15 consecutive minutes in enhanced behavioral supports homes. The Department may, by regulation, authorize an exception to the 15-minute maximum duration, if necessary, to protect the immediate health and safety of residents or others from risk of imminent serious physical harm.

*Implementation: As part of the certification process for enhanced behavioral supports homes, the Department will review program plans to ensure consistency with this amendment.*

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<sup>2</sup> Go to the June 13, 2016, amended version of the bill at <http://leginfo.legislature.ca.gov> to see the changes in statute made by AB 1606.

<sup>3</sup> All citations are to the Welfare and Institutions Code unless otherwise noted.

**Reporting Requirements for Vendors of Crisis or Residential Services, Supported Living Services, Long-term Health Care Facilities and Acute Psychiatric Hospitals**

TBL Section 9: Section 4659.2(b) was amended, expanding reporting requirements for regional center vendors that provide crisis or residential services, supported living services, long-term health care facilities, and acute psychiatric hospitals. Vendors of these services and facility types must report to the agency designated pursuant to Section 4900(i) (Disability Rights California), all of the following:

- Each death or serious injury of a person occurring during, or related to, the use of seclusion, physical restraint, or chemical restraint, or any combination thereof.
- Any unexpected or suspicious death, regardless of whether the cause is immediately known.
- Any allegation of sexual assault, as defined in Section 15610.63, in which the alleged perpetrator is a staff member, service provider, or facility employee or contractor.
- Any report made to the local law enforcement agency in the jurisdiction in which the facility is located that involves physical abuse, as defined in Section 15610.63, in which a staff member, service provider, or facility employee or contractor is implicated.

Reports shall be made no later than the close of the business day following the death or serious injury, and must include the encrypted identifier of the person involved, and the name, street address, and telephone number of the facility.

On a monthly basis, these vendors shall report to the agency designated pursuant to Section 4900(i) (Disability Rights California), all of the following:

- The number of incidents of seclusion and the duration of time spent per incident in seclusion.
- The number of incidents of the use of behavioral restraints and the duration of time spent per incident of restraint.
- The number of times an involuntary emergency medication is used to control behavior.

The monthly reports shall include the name, street address, and telephone number of each facility.

*Implementation: Regional centers should notify its vendors of these reporting requirements.*

**Transition of Health Care Services for Medi-Cal Eligible Consumers Moving from Developmental Centers into the Community**

TBL Section 6: Section 4474.6 was added, stating that the Department and the DHCS shall coordinate the transition of health care services for Medi-Cal eligible consumers who are transitioning from a developmental center into the community. For those consumers whose individual program plans document the need for coordinated medical and specialty care, DHCS shall issue transition requirements including referral practices, service authorization practices, coordination of case management services, education and training services, and the management and sharing of medical records, to applicable Medi-Cal managed care health plans and monitor compliance.

These transition requirements shall include, but are not limited to:

- Processes for individuals assigned to a Medi-Cal managed care plan which promote coordination of care during and following the transition;
- Identification of providers prior to a transition occurring; and
- The continuation of medically necessary covered services.

These processes shall be described in a transition plan which will be shared with stakeholders prior to being finalized. The final transition plan must be submitted to the Joint Legislative Budget Committee no later than December 31, 2016.

DHCS shall implement this section only to the extent that any necessary federal approvals are obtained and federal financial participation is available, and DHCS may implement, interpret, or make specific this section, in whole or in part, by means of all-county letters, plan letters, plan or provider bulletins, policy letters, or other similar instructions, without taking regulatory action. [Notwithstanding Government Code, Title 2, Division 3 Part 1, Chapter 3.5 (commencing with Section 11340)]

*Implementation: The Department is working with regional centers to ensure continuity of health services after closure through community-based providers, including the development of new health and dental resources. Additionally, the Department has been in discussions with DHCS since May 2015, when the closure of the state's remaining developmental centers was announced.*

*The Department continues to work with DHCS to identify procedures to expedite eligibility and enrollment processes for individuals moving from a developmental center who want to enroll in a managed care plan. In addition, DHCS is required to develop transition processes and requirements to promote the coordination of care during and following transition, identification of providers prior to a transition, and the continuation of medically necessary covered services. DHCS is currently developing a "transition plan" describing these processes that will be presented to the Joint Legislative Budget Committee by December 31, 2016. The plan will be shared with stakeholders before being finalized.*

### **Out-of-home Respite Rate Increase**

TBL Section 13: Section 4690.5 was amended to authorize a five percent (5%) rate increase to providers of out-of-home respite services.

*Implementation: Please refer to Enclosure A, the Department's June 24, 2016, correspondence to regional centers which provided information on various rate increases, including the 5% rate increase for providers of out-of-home respite services.*

### **Residential Facility Service Level Approval and Community Care Facility Four-bed Rate Schedule**

TBL Section 10: Section 4681.5(a) was amended to stipulate that a regional center shall not approve a service level for a residential service provider, as defined in California Code of Regulations, Title 17, Section 56002, if the approval would result in an increase in state costs or if it is a residential service providers subject to Section 4681.5(b).

Section 4681.5(b) was added to state, notwithstanding Section 4681.5(a), the Department shall, effective July 1, 2016, establish a rate schedule for residential community care facilities vendored to provide services to a maximum of four persons with developmental disabilities. Community care facilities (CCF) with rates established pursuant to Section 4681.5(b) are subject to the regulatory requirements contained in California Code of Regulations, Title 17, Division 2, Chapter 3, Subchapter 4 (commencing with Section 56001). Rate changes made as a result of implementing the rate schedule established pursuant to Section 4681.5(b) are not subject to the restrictions of Section 4681.5(a) if the approved service level is not higher than the service level in effect at the time of the change.

No later than February 1, 2017, regional centers shall report to the Department on the number of CCFs with rates established pursuant to Section 4681.5(b). The report shall include, but not be limited to, both of the following:

- The number of facilities vendored since July 1, 2016, by service level and vendored capacity.
- The number of facilities vendored prior to July 1, 2016, that have subsequently been approved for a new rate, by service level, vendored capacity, and prior vendored capacity, if applicable.

*Implementation: As required by Section 4681.5(b), the Department published a rate schedule for CCFs that are vendored to serve a maximum of four persons with developmental disabilities. See the last page of Enclosure A. As a result, effective July 1, 2016, regional centers may apply these new rates for CCFs with rates set through the Alternative Residential Model (ARM) and are vendored to serve no more than four individuals, if the approved service level is not higher than the service level in effect at the time of the change. The Department will provide further guidance on the reporting required by Section 4681.5(b) at a later date.*

**Rate Adjustments Due to the Minimum Wage Increases**

Residential Service Providers, TBL Section 11: Section 4681.6 was amended to state, notwithstanding Section 4681.6(a), commencing January 1, 2017, 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 to pay employees no less than the minimum wage as established by Section 1182.12 of the Labor Code, as amended by Chapter 4 of the Statutes of 2016, 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 14: Section 4691.6 was amended to state, notwithstanding any other law or regulation, commencing January 1, 2017:

- 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 January 1, 2017, were being compensated at a wage that is less than the minimum wage established on and after January 1, 2017, by Section 1182.12 of the Labor Code, as amended by Chapter 4 of the Statutes of 2016.
- 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 4 of the Statutes of 2016.

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.

Other Service Providers, TBL Section 15: Section 4691.9 was amended to state, notwithstanding Section 4691.9(a), commencing January 1, 2017, 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 4 of the Statutes of 2016, 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: The process for adjusting provider rates due to the January 1, 2017, statewide minimum wage increase will be similar to the process for prior minimum wage increases in 2014 and 2016. The Department will issue details on this process.*

### **Competitive Integrated Employment Incentive Payments**

**TBL Section 16:** Section 4870 was amended to state that competitive integrated employment incentive payments apply to regional center service providers, whereas the prior language was specific to providers of supported employment services. Additionally, this section was amended to stipulate for a provider to receive the first incentive payment of one thousand dollars (\$1,000), the individual placed into competitive integrated employment must still be competitively employed after 30 consecutive days. Providers that place individuals into internships under Section 4870(a) are not eligible for the employment placement incentives under this section, until the individual is transitioned into a competitive integrated employment placement that is not funded as an internship. The payments made pursuant to this section shall not be in addition to the placement payments made pursuant to Section 4860(d).

*Implementation: The reference to “30 consecutive days” means calendar days. The Department sent regional centers guidance on implementation of the paid internship program and competitive integrated employment incentive payments on July 28, 2016, and August 5, 2016, respectively. See Enclosure B.<sup>4</sup> Information on the use of new sub-codes for the purpose of tracking payments related to these programs was sent to regional centers on August 24, 2016. See Enclosure C.*

*Sections 4870(b) and (e) require regional centers to annually report data to the Department. We will issue a letter to regional centers in December 2016, detailing the data collection process, including, the types of information that will be collected and the manner in which it will be collected.*

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<sup>4</sup> The Department’s guidance on implementation of the paid internship program is attached as ‘Enclosure 2’ of this correspondence.

### **Self-Determination Program**

TBL Section 12: Section 4685.8 was amended, requiring regional centers to consult with the local volunteer advisory committee established pursuant to Section 4685.8(x)(1) in conducting outreach and training to consumers and their families about the Self-Determination Program. The local volunteer advisory committee may designate members to represent the advisory committee at the training.

*Implementation: Section 4685.8(t)(1) already included the requirement for regional centers to contract with local consumer or family-run organizations to conduct outreach about the Self-Determination Program. This section was amended to additionally require consultation with the local advisory committee regarding conducting outreach and providing information about the Self-Determination Program. Further, Section 4685.8(t)(2) was amended requiring that planning for training about the Self-Determination Program includes regional center consultation with the local volunteer advisory committee, who may designate members to represent the committee at the training.*

### **Purchase of Service Disparities**

TBL Section 7: Section 4519.5(e) was amended to specify that regional centers must provide in the public meeting(s) held pursuant to this section, information related to improvements in the provision of developmental services to underserved communities.

Section 4519.5(h), regarding allocation of funding to regional centers to assist with implementation of recommendations and plans developed pursuant to Sections 4519.5(f) and (g), was amended to require each regional center to consult with stakeholders regarding:

- Activities that may be effective in addressing disparities in the receipt of regional center services; and
- The regional center's proposed requests for funding.

The regional center must identify the stakeholders it consulted with and include information on how it incorporated the input of stakeholders into its requests. The Department will review requests for funding within 45 days from the deadline specified in the Department's guidance to regional centers. The regional center shall specify in its annual report pursuant to Section 4519.5(f), how the funding allocations were used and include recommendations of priorities for activities that may be effective in addressing disparities, based on the consultation with stakeholders.

*Implementation: ABX2-1 appropriated eleven million dollars (\$11,000,000) to the Department for allocation to regional centers for implementing plans and recommendations to address disparities and bilingual staff pay. The Department sent funding proposal guidelines to regional centers on July 25, 2016. See Enclosure D.*



*All 21 regional centers have submitted or have committed to submitting a proposal. In October 2016, the Department held conference calls with regional centers that submitted proposals to obtain additional information on proposed activities. The Department subsequently issued response letters to those regional centers with approval and denial details, and instructions for reporting outcomes, funding and claiming, and modifying proposals.*

### **Performance Dashboard**

TBL Section 8: Section 4572 was added, requiring the Department to develop and implement a plan to monitor, evaluate, and improve the quality of community-based services through the use of a performance dashboard. The Department must work with stakeholders, including, but not limited to, regional centers, consumer advocates, providers, and the Legislature, on the development of the dashboard. The dashboard must be published annually and include, but not be limited to, all of the following metrics:

- Recognized quality and access measures.
- Measures to indicate the movement toward compliance with the federal Home and Community-Based Services Waiver rules (CMS 2249-F and CMS 2296-F).
- Measures to evaluate the changes in the number of consumers who work in competitive integrated employment.
- The number of complaints referred to the Department pursuant to Section 4731(c), for every 1,000 consumers served, by each regional center.
- The number of administrative fair hearings held (pursuant to Division 4.5, Chapter 7, Article 3 [commencing with Section 4710]), separated by eligibility and service issues, for individuals ages three and over, for every 1,000 consumers served, by each regional center.

*Implementation: The Department is obtaining input from the required stakeholders on the development of the performance dashboard. On November 7, 2016, the Department sent regional centers information on two webinars conducted on November 10 and 18, 2016, for regional center staff to review and discuss the dashboard and provide feedback to the Department. We anticipate launching the dashboard on the Department's internet website in December 2016.*

### **Department Reporting Requirements**

Developmental Center and Regional Center Budget Information, TBL Section 4: Section 4437 was added, requiring the Department to report to the Legislature and post on its internet website, on or before February 1 of each year, the following:

- For each developmental center, an estimate for the annual budget, including a breakdown of the staffing costs for Porterville Developmental Center's general treatment area and secured treatment area.

- For each regional center, all of the following information:
  - Current fiscal year allocations of total and per capita funding for operations and purchase of services.
  - The number of persons with developmental disabilities being served by the regional center in the current fiscal year.
  - The past fiscal year and current fiscal year information on the funding for its community placement plan, including a breakdown of the funding for startup, assessment, placement, and deflection.
  - Staff information.

Plan for Crisis Services, Difficult to Serve Consumers and Community State Staff Program, TBL Section 5: Section 4474.15 was added, requiring the Department to include an update to the Legislature in the 2017–18 May Revision regarding how the Department will provide access to crisis services after the closure of a developmental center and how the State will maintain its role in providing residential services to those whom private sector vendors cannot or will not serve. As part of this plan, the Department shall assess the option of expanding the Community State Staff Program, authorized in Section 4474.2, to allow the Department's employees to serve as regional crisis management teams that provide assessment, consultation, and resolution for persons with developmental disabilities in crisis in the community. This requirement shall become inoperative on January 1, 2020, pursuant to Section 10231.5 of the Government Code.

Additionally, pursuant to this section, the Department shall post on its internet website a monthly progress report regarding the development of residential capacity by each regional center. The report shall include information on monthly targets for individuals moving out of a developmental center based on transition activities and community resource development activities by each regional center. The report shall also provide an explanation of any targets that have not been met.

General Fund Expenditures Used to Backfill Federal Funding at Developmental Centers Due to Decertification of Intermediate Care Facility Units, TBL Section 19: This section of TBL requires the Department to report quarterly to the Joint Legislative Budget Committee the estimated amount of General Fund expenditures used to backfill federal funding as a result of the decertification of intermediate care facility units at the Sonoma Developmental Center. If the intermediate care facility units at the Fairview Developmental Center or the Porterville Developmental Center are decertified by the federal government in the 2016–17 fiscal year, the State Department shall report quarterly to the Joint Legislative Budget Committee the estimated amount of General Fund expenditures used to backfill federal funding as a result of the decertifications.

### **ABX2-1 Funding**

TBL Section 17: Section 15 of ABX2-1 (Chapter 3, Statutes of 2016) was amended to appropriate to the Department the sum of one hundred eighty-six million two hundred thousand dollars (\$186,200,000) in reimbursements associated with the two hundred eighty-seven million dollars (\$287,000,000) appropriated in ABX2-1. The funds appropriated in ABX2-1 shall be available for encumbrance or expenditure until June 30, 2017, and available for liquidation until June 30, 2019. The following is implementation information for each category of funds appropriated in ABX2-1:

- One hundred sixty-nine million five hundred thousand dollars (\$169,500,000 GF) for a rate increase for the purpose of enhancing wages and benefits for staff who spend a minimum of 75 percent (75%) of their time providing direct services to consumers.
- Nine million nine hundred thousand dollars (\$9,900,000 GF) for administrative costs for service providers.
- A five percent (5%) rate increase for supported and independent living services, in-home and out-of-home respite services, and transportation services.
- A three-dollar-and-forty-two-cent (\$3.42) per hour rate increase for supported employment providers.

*Implementation: Please refer to Enclosure A for information on rate increases authorized by ABX2-1. Additionally, the Department will work with regional centers and other stakeholders to develop a survey of all providers that received a rate increase for the purpose of enhancing wages and benefits for staff who spend a minimum of 75% of their time providing direct services. This survey, required by ABX2-1, will request information on how the rate increase was used by providers and must be submitted by October 1, 2017, or the provider will forfeit the rate increase.*

- Twenty-nine million seven hundred thousand dollars (\$29,700,000) for regional centers for staff.
- One million four hundred thousand dollars (\$1,400,000) for regional centers for administrative costs. This amount includes an amount to be allocated by the Department for regional center clients' rights advocates contracts pursuant to Section 4433(b).

*Implementation: The Department and the Association of Regional Center Agencies agreed to allocate the available funding to regional centers based on the relative percentage of each regional center's FY 2015-16 B-2 contract amendment. The Department allocated this funding to regional centers in the FY 2016-17 preliminary contract amendment. We will develop a survey to capture the necessary data for the purposes of the March and October 2017 reporting.*

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- Twenty million dollars (\$20,000,000) for competitive integrated employment incentive payments.

*Implementation: See TBL Section 16, page seven of this letter.*

- Eleven million dollars (\$11,000,000) for bilingual staff at regional centers and implementing plans and recommendations to address disparities.

*Implementation: See TBL Section 7, page eight of this letter.*

### **Department Fiscal and Research Resources**

TBL Section 18: This section of Trailer Bill Language states, with the fiscal and research resources included as part of the Budget Act of 2016, the Department shall annually assess disparities data reported by regional centers, caseload ratio requirements by regional centers, and performance dashboard data, collected pursuant to Section 4572, as it becomes available.

### **Public Contract Code Regarding State Employees**

TBL Section 2: Public Contract Code Section 10430 was amended, stating that subject to the approval of the Director of the Department, or his/her designee, Chapter 2 of the Public Contract Code does not apply to a state employee of the Department who is qualified to provide necessary services for regional center consumers, for the purpose of that employee becoming a vendor of a regional center pursuant to Section 4648. The state employee shall terminate employment with any state agency or department before providing certification to the regional center pursuant to California Code of Regulations, Title 17, Section 54326(a)(9), as part of the vendorization process. A contract entered into by a regional center and a state employee, in his or her capacity as a private citizen, to become a vendor of the regional center does not constitute a state contract within the meaning of Section 1090 of the Government Code. Accordingly, the state employee has no financial interest in a state contract under these circumstances.

If you have any questions regarding this correspondence, please contact me at (916) 654-1569, or Jim Knight at (916) 654-2759.

Sincerely,

*Original signed by*

BRIAN WINFIELD  
Deputy Director  
Community Services Division

Enclosures  
cc: see next page

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cc: Association of Regional Center Agencies  
Regional Center Administrators  
Regional Center Chief Counselors  
John Doyle, DDS  
Eric Gelber, DDS  
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