

Statutes Authorizing the Extension of Adult Residential Facilities for Persons with Special Health Care Needs

The trailer bill to the Budget Act of 2010, SB 853 (Chapter 717, Statutes of 2010, Budget Committee), included the following statutory changes related to the closure of Lanterman Developmental Center.

Section 1567.50 of the Health and Safety Code is amended to read:

1567.50. (a) Notwithstanding that a community care facility means a place that provides nonmedical care under subdivision (a) of Section 1502, pursuant to Article 3.5 (commencing with Section 4684.50) of Chapter 6 of Division 4.5 of the Welfare and Institutions Code, the department shall jointly implement with the State Department of Developmental Services a ~~pilot project to test the effectiveness of providing~~ *licensing program to provide* special health care and intensive support services to adults in homelike community settings.

(b) The State Department of Social Services may license, subject to the following conditions, an Adult Residential Facility for Persons with Special Health Care Needs to provide 24-hour services to up to five adults with developmental disabilities who have special health care and intensive support needs, as defined in subdivisions (f) and (g) of Section 4684.50 of the Welfare and Institutions Code.

(1) The State Department of Developmental Services shall be responsible for granting the certificate of program approval for an Adult Residential Facility for Persons with Special Health Care Needs (ARFPSHN). The State Department of Social Services shall not issue a license unless the applicant has obtained a certification of program approval from the State Department of Developmental Services.

(2) The State Department of Social Services shall ensure that the ARFPSHN meets the administration requirements under Article 2 (commencing with Section 1520) including, but not limited to, requirements relating to fingerprinting and criminal records under Section 1522.

(3) The State Department of Social Services shall administer employee actions under Article 5.5 (commencing with Section 1558).

(4) The regional center shall monitor and enforce compliance of the program and health and safety requirements, including monitoring and evaluating the quality of care and intensive support services. The State Department of Developmental Services shall ensure that the regional center performs these functions.

(5) The State Department of Developmental Services may decertify any ARFPSHN that does not comply with program requirements. When the State Department of Developmental Services determines that urgent action is necessary to protect clients of the ARFPSHN from physical or mental abuse, abandonment, or any other substantial threat to their health and safety, the State Department of Developmental Services may request the regional center or

centers to remove the clients from the ARFPSHN or direct the regional center or centers to obtain alternative services for the consumers within 24 hours.

(6) The State Department of Social Services may initiate proceedings for temporary suspension of the license pursuant to Section 1550.5.

(7) The State Department of Developmental Services, upon its decertification, shall inform the State Department of Social Services of the licensee's decertification, with its recommendation concerning revocation of the license, for which the State Department of Social Services may initiate proceedings pursuant to Section 1550.

(8) The State Department of Developmental Services and the regional centers shall provide the State Department of Social Services all available documentation and evidentiary support necessary for any enforcement proceedings to suspend the license pursuant to Section 1550.5, to revoke or deny a license pursuant to Section 1551, or to exclude an individual pursuant to Section 1558.

(9) The State Department of Social Services Community Care Licensing Division shall enter into a memorandum of understanding with the State Department of Developmental Services to outline a formal protocol to address shared responsibilities, including monitoring responsibilities, complaint investigations, administrative actions, and closures.

(10) The licensee shall provide documentation that, in addition to the administrator requirements set forth under paragraph (4) of subdivision (a) of Section 4684.63 of the Welfare and Institutions Code, the administrator, prior to employment, has completed a minimum of 35 hours of initial training in the general laws, regulations and policies and procedural standards applicable to facilities licensed by the State Department of Social Services under Article 2 (commencing with Section 1520). Thereafter, the licensee shall provide documentation every two years that the administrator has completed 40 hours of continuing education in the general laws, regulations and policies and procedural standards applicable to adult residential facilities. The training specified in this section shall be provided by a vendor approved by the State Department of Social Services and the cost of the training shall be borne by the administrator or licensee.

~~—(c) The article shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute extends or deletes that date.~~

~~—(d)~~

(c) This article shall only be implemented to the extent that funds are made available through an appropriation in the annual Budget Act.

The heading of Article 3.5 (commencing with Section 4684.50) of Chapter 6 of Division 4.5 of the Welfare and Institutions Code is amended to read:

Article 3.5. Adult Residential Facilities for Persons with Special Health Care Needs: Pilot Program Needs

Section 4684.50 of the Welfare and Institutions Code is amended to read:

4684.50. (a) (1) "Adult Residential Facility for Persons with Special Health Care Needs (ARFPSHN)" means any adult residential facility that provides 24-

hour health care and intensive support services in a homelike setting that is licensed to serve up to five adults with developmental disabilities as defined in Section 4512.

(2) For purposes of this article, an ARFPSHN may *only* be established in a facility ~~financed~~ *approved* pursuant to Section 4688.5 *or through an approved regional center community placement plan pursuant to Section 4418.25.*

(b) "Consultant" means a person professionally qualified by training and experience to give expert advice, information, training, or to provide health-related assessments and interventions specified in a consumer's individual health care plan.

(c) "Direct care personnel" means all personnel who directly provide program or nursing services to consumers. Administrative and licensed personnel shall be considered direct care personnel when directly providing program or nursing services to clients. Consultants shall not be considered direct care personnel.

(d) "Individual health care plan" means the plan that identifies and documents the health care and intensive support service needs of a consumer.

(e) "Individual health care plan team" means those individuals who develop, monitor, and revise the individual health care plan for consumers residing in an Adult Residential Facility for Persons with Special Health Care Needs. The team shall, at a minimum, be composed of all of the following individuals:

(1) Regional center service coordinator and other regional center representative, as necessary.

(2) Consumer, and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative.

(3) Consumer's primary care physician, or other physician as designated by the regional center.

(4) ARFPSHN administrator.

(5) ARFPSHN registered nurse.

(6) Others deemed necessary for developing a comprehensive and effective plan.

(f) "Intensive support needs" means the consumer requires physical assistance in performing four or more of the following activities of daily living:

(1) Eating.

(2) Dressing.

(3) Bathing.

(4) Transferring.

(5) Toileting.

(6) Continence.

(g) "Special health care needs" means the consumer has health conditions that are predictable and stable, as determined by the individual health care plan team, and for which the individual requires nursing supports for any of the following types of care:

(1) Nutrition support, including total parenteral feeding and gastrostomy feeding, and hydration.

(2) Cardiorespiratory monitoring.

- (3) Oxygen support, including continuous positive airway pressure and bilevel positive airway pressure, and use of other inhalation-assistive devices.
- (4) Nursing interventions for tracheostomy care and suctioning.
- (5) Nursing interventions for colostomy, ileostomy, or other medical or surgical procedures.
- (6) Special medication regimes including injection and intravenous medications.
- (7) Management of insulin-dependent diabetes.
- (8) Manual fecal impaction, removal, enemas, or suppositories.
- (9) Indwelling urinary catheter/catheter procedure.
- (10) Treatment for staphylococcus infection.
- (11) Treatment for wounds or pressure ulcers (stages 1 and 2).
- (12) Postoperative care and rehabilitation.
- (13) Pain management and palliative care.
- (14) Renal dialysis.

Section 4684.53 of the Welfare and Institutions Code is amended to read:

4684.53. (a) The State Department of Developmental Services and the State Department of Social Services shall jointly implement a ~~pilot project to test the effectiveness of providing~~ *licensing program to provide* special health care and intensive support services to adults in homelike community settings.

(b) The pilot project shall be implemented through the following regional centers only:

- (1) The San Andreas Regional Center.
- (2) The Regional Center of the East Bay.
- (3) The Golden Gate Regional Center.

(4) All regional centers involved in the closure of the Lanterman Developmental Center, as determined by the State Department of Developmental Services.

~~—(c) The regional centers participating in this pilot project may contract for an aggregate total of services for no more than 120 persons in an ARFPSHN.~~

~~—(d)~~

(c) Each ARFPSHN shall possess a community care facility license issued pursuant to Article 9 (commencing with Section 1567.50) of Chapter 3 of Division 2 of the Health and Safety Code, and shall be subject to the requirements of Chapter 1 (commencing with Section 80000) of Division 6 of Title 22 of the California Code of Regulations, except for Article 8 (commencing with Section 80090).

~~—(e)~~

(d) For purposes of this article, a health facility licensed pursuant to subdivision (e) or (h) of Section 1250 may place its licensed bed capacity in voluntary suspension for the purpose of ~~using~~ *licensing* the facility to operate an ARFPSHN if the facility is selected to participate ~~in the pilot project~~ pursuant to Section 4684.58. Consistent with subdivision (a) of Section 4684.50, any facility ~~selected to participate in the program shall be licensed to~~ *pursuant to this section shall serve up to five adults*. A facility's bed capacity shall not be placed in voluntary suspension until all consumers residing in the facility under the license

to be suspended have been relocated. No consumer may be relocated unless it is reflected in the consumer's individual program plan developed pursuant to Sections 4646 and 4646.5.

—(f)

(e) Each ARFPSHN shall be subject to the requirements of Subchapters 5 through 9 of Chapter 1 of, and Subchapters 2 and 4 of Chapter 3 of, Division 2 of Title 17 of the California Code of Regulations.

—(g)

(f) Each ARFPSHN shall ensure that an operable automatic fire sprinkler system is installed and maintained.

—(h)

(g) Each ARFPSHN shall have an operable automatic fire sprinkler system that is approved by the State Fire Marshal and that meets the National Fire Protection Association (NFPA) 13D standard for the installation of sprinkler systems in single- and two-family dwellings and manufactured homes. A local jurisdiction shall not require a sprinkler system exceeding this standard by amending the standard or by applying standards other than NFPA 13D. A public water agency shall not interpret this section as changing the status of a facility from a residence entitled to residential water rates, nor shall a new meter or larger connection pipe be required of the facility.

—(i)

(h) Each ARFPSHN shall provide an alternative power source to operate all functions of the facility for a minimum of six hours in the event the primary power source is interrupted. The alternative power source shall comply with ~~Section 517-50 of the California Electric Code~~ *the manufacturer's recommendations for installation and operation*. The alternative power source shall be maintained in safe operating condition, and shall be tested every 14 days under the full load condition for a minimum of 10 minutes. Written records of inspection, performance, exercising period, and repair of the alternative power source shall be regularly maintained on the premises and available for inspection by the State Department of Developmental Services.

Section 4684.55 of the Welfare and Institutions Code is amended to read:

4684.55. (a) No regional center may pay a rate to any ARFPSHN for any consumer that exceeds the ~~average annual cost of serving a consumer at Agnews Developmental Center, as determined by the State Department of Developmental Services~~ *rate in the State Department of Developmental Services' approved community placement plan for that facility unless the regional center demonstrates that a higher rate is necessary to protect a consumer's health and safety, and the department has granted prior written authorization.*

(b) The payment rate for ARFPSHN services shall be negotiated between the regional center and the ARFPSHN, and shall be paid by the regional center under the service code "Specialized Residential Facility (Habilitation)."

(c) The established rate for a full month of service shall be made by the regional center when a consumer is temporarily absent from the ARFPSHN 14 days or less per month. When the consumer's temporary absence is due to the

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 shall continue to pay the established rate as long as no other consumer occupies the vacancy created by the consumer's temporary absence, or until the individual health care plan team has determined that the consumer will not return to the facility. In all other cases, the established rate shall be prorated for a partial month of service by dividing the established rate by 30.44 then by multiplying the quotient by the number of days the consumer resided in the facility.

Section 4684.58 of the Welfare and Institutions Code is amended to read:

4684.58. (a) The regional center may recommend for participation, to the State Department of Developmental Services, an applicant ~~for this pilot project to provide services as part of an approved community placement plan~~ when the applicant meets all of the following requirements ~~and has been selected through a request for proposals process issued by one or more of the three participating regional centers:~~ requirements:

~~(a)~~

(1) The applicant employs or contracts with a program administrator who has a successful record of administering residential services for at least two years, as evidenced by substantial compliance with the applicable state licensing requirements.

~~(b)~~

(2) The applicant prepares and submits, to the regional center, a complete facility program plan that includes, but is not limited to, all of the following:

~~(1)~~

(A) The total number of the consumers to be served.

~~(2)~~

(B) A profile of the consumer population to be served, including their health care and intensive support needs.

~~(3)~~

(C) A description of the program components, including a description of the health care and intensive support services to be provided.

~~(4)~~

(D) A week's program schedule, including proposed consumer day and community integration activities.

~~(5)~~

(E) A week's proposed program staffing pattern, including licensed, unlicensed, and support personnel and the number and distribution of hours for such personnel.

~~(6)~~

(F) An organizational chart, including identification of lead and supervisory personnel.

~~(7)~~

(G) The consultants to be utilized, including their professional disciplines and hours to be worked per week or month, as appropriate.

~~(8)~~

(H) The plan for accessing and retaining consultant and health care services, including assessments, in the areas of physical therapy, occupational therapy, respiratory therapy, speech pathology, audiology, pharmacy, dietary/nutrition, dental, and other areas required for meeting the needs identified in consumers' individual health care plans.

~~—(9)~~

(I) A description, including the size, layout, location, and condition of the proposed home.

~~—(10)~~

(J) A description of the equipment and supplies available, or to be obtained, for programming and care.

~~—(11)~~

(K) The type, location, and response time of emergency medical service personnel.

~~—(12)~~

(L) The in-service training program plan for at least the next 12 months, *which shall include the plan for ensuring that the direct care personnel understands their roles and responsibilities related to implementing individual health care plans, prior to, or within, the first seven days of providing direct care in the home and for ensuring the administrator understands the unique roles, responsibilities, and expectations for administrators of community-based facilities.*

~~—(13)~~

(M) The plan for ensuring that outside services are coordinated, integrated, and consistent with those provided by the ARFPSHN.

~~—(14)~~

(N) Written certification that an alternative power system required by subdivision ~~(i)~~ (g) of Section 4684.53 meets the manufacturer's recommendations for installation and operation.

~~—(e)~~

(3) Submits a proposed budget itemizing direct and indirect costs, total costs, and the rate for services.

~~—(d) Certifies, in writing,~~

(4) *The applicant submits written certification that ~~the applicant has~~ they have the ability to comply with all of the requirements of Section 1520 of the Health and Safety Code.*

~~—(e)~~

(b) The regional center shall provide all documentation specified in ~~subdivisions (b) to (d), inclusive, of Section 4684.58 paragraphs (2) to (4), inclusive, of subdivision (a)~~ and a letter recommending program certification to the State Department of Developmental Services.

~~—(f)~~

(c) The State Department of Developmental Services shall either approve or deny the recommendation and transmit its written decision to the regional center and to the State Department of Social Services within 30 days of its decision. The decision of the State Department of Developmental Services not to approve an application for program certification shall be the final administrative decision.

~~—(g)~~

(d) Any change in the ARFPSHN operation that alters the contents of the approved program plan shall be reported to the State Department of Developmental Services and the contracting regional center, and approved by both agencies, prior to implementation.

Section 4684.60 of the Welfare and Institutions Code is amended to read:

4684.60. The vendoring regional center shall, before placing any consumer into an ARFPSHN, ensure that the ARFPSHN has a license issued by the State Department of Social Services for not more than five adults and a contract with the regional center that includes, at a minimum, all of the following:

(a) The names of the regional center and the licensee.

~~—(b) The purpose of the pilot project.~~

~~—(c)~~

(b) A requirement that the contractor shall comply with all applicable statutes and regulations, including Section 4681.1.

~~—(d)~~

(c) The effective date and termination date of the contract.

~~—(e) A requirement that, under no circumstances, shall the contract extend beyond the stated termination date, which shall not be longer than the pilot legislation end date of January 1, 2011.~~

~~—(f)~~

(d) The definition of terms.

~~—(g)~~

(e) A requirement that the execution of any amendment or modification to the contract be in accordance with all applicable federal and state statutes and regulations and be by mutual agreement of both parties.

~~—(h)~~

(f) A requirement that the licensee and the agents and employees of the licensee, in the performance of the contract, shall act in an independent capacity, and not as officers or employees or agents of the regional center.

~~—(i)~~

(g) A requirement that the assignment of the contract for consumer services shall not be allowed.

~~—(j)~~

(h) The rate of payment per consumer.

~~—(k)~~

(i) Incorporation, by reference, of the ARFPSHN's approved program plan.

~~—(l)~~

(j) A requirement that the contractor verify, and maintain for the duration of the project, possession of commercial general liability insurance in the amount of at least one million dollars (\$1,000,000) per occurrence.

~~—(m)~~

(k) Contractor performance criteria.

~~—(n) An agreement to provide, to the evaluation contractor engaged pursuant to subdivision (a) of Section 4684.74, all information necessary for evaluating the project.~~

Section 4684.63 of the Welfare and Institutions Code is amended to read:

4684.63. (a) Each ARFPSHN shall do all of the following:

(1) Meet 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 ensure that all of the following conditions are met:

(A) That a licensed registered nurse, licensed vocational nurse, or licensed psychiatric technician, is awake and on duty 24-hours per day, seven days per week.

(B) That a licensed registered nurse is awake and on duty at least eight hours per person, per week.

(C) That at least two staff on the premises are awake and on duty when providing care to four or more consumers.

(2) Ensure the consumer remains under the care of a physician at all times and is examined by the primary care physician at least once every 60 days, or more often if required by the consumer's individual health care plan.

(3) Ensure that an administrator is on duty at least 20 hours per week to ensure the effective operation of the ARFPSHN.

(4) ~~The~~ *Ensure that the administrator shall have completes the 35-hour administrator certification program pursuant to paragraph (1) of subdivision (c) of Section 1562.3 of the Health and Safety Code without exception, has at least one year of administrative and supervisory experience in a licensed residential program for persons with developmental disabilities, and shall meet is one or more of the following qualifications:*

(A) ~~Be a~~ A licensed registered nurse.

(B) ~~Be a~~ A licensed nursing home administrator.

(C) ~~Be a~~ A licensed psychiatric technician with at least five years of experience serving individuals with developmental disabilities.

(D) ~~Be an~~ *An individual with a bachelors degree or more advanced degree in the health or human services field and two years experience working in a licensed residential program for persons with developmental disabilities and special health care needs.*

(b) The regional center ~~may~~ *shall* require an ARFPSHN to provide additional professional, administrative, or supportive personnel whenever the regional center determines, in consultation with the individual health care plan team, that additional personnel are needed to provide for the health and safety of consumers.

~~—(c) ARFPSHNs may utilize appropriate staff from Agnews Developmental Center.~~

~~—(d) All~~

(c) An ARFPSHN shall ensure that all direct care personnel shall be subject to complete the training requirements specified in Section 4695.2.

Section 4684.65 of the Welfare and Institutions Code is amended to read:

4684.65. (a) A regional center shall not place, or fund the placement for, any consumer in an ARFPSHN until the individual health care plan team has prepared a written individual health care plan that can be fully and immediately implemented upon the consumer's placement.

(b) (1) An ARFPSHN shall only accept, for initial admission, consumers who meet the following requirements:

(A) Reside at ~~Agnews~~ *Lanterman* Developmental Center at the time of the proposed placement.

(B) Have an individual program plan that specifies placement in an ARFPSHN.

(C) Have special health care and intensive support needs.

(2) Except as provided in paragraph (3), when a vacancy in an ARFPSHN occurs due to the permanent relocation or death of a resident, the vacancy may only be filled by a consumer who meets the requirements of paragraph (1).

(3) If there is no resident residing at ~~Agnews Developmental Center~~ *in a developmental center* who meets the requirements of subparagraphs (B) and (C) of paragraph (1), a vacancy may be filled by a consumer who is ~~residing at another developmental center or who is~~ at risk of placement into a developmental center, as determined by the regional center, and who meets the requirements of subparagraphs (B) and (C) of paragraph (1).

(c) The ARFPSHN shall not admit a consumer if the individual health care plan team determines that the consumer is likely to exhibit behaviors posing a threat of substantial harm to others, or has a serious health condition that is unpredictable or unstable. A determination that the individual is a threat to others may only be based on objective evidence or recent behavior and a determination that the threat cannot be mitigated by reasonable interventions.

Section 4684.70 of the Welfare and Institutions Code is amended to read:

4684.70. (a) The State Department of Social Services, in administering the licensing program, shall not have any responsibility for evaluating consumers' level of care or health care provided by ARFPSHN. Any suspected deficiencies in a consumer's level of care or health care identified by the State Department of Social Services' personnel shall be reported immediately to the appropriate regional center and the State Department of Developmental Services for investigation.

(b) The regional center shall have responsibility for monitoring and evaluating the implementation of the consumer's individual plan objectives, including, but not limited to, the health care and intensive support service needs identified in the consumer's individual health care plan and the consumer's integration and participation in community life.

(c) For each consumer placed in an ARFPSHN, the regional center shall assign a service coordinator pursuant to subdivision (b) of Section 4647.

(d) A regional center licensed registered nurse shall visit, with or without prior notice, the consumer, in person, at least monthly in the ARFPSHN, or more frequently if specified in the consumer's individual health care plan. At least four of these visits, annually, shall be unannounced.

(e) 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 ARFPSHNs at least every six months for the duration of the pilot project.

Section 4684.74 of the Welfare and Institutions Code is repealed.

~~4684.74. (a) By July 1, 2006, the State Department of Developmental Services shall contract with an independent agency or organization to evaluate the pilot project and prepare a written report of its findings. The scope of services for the contractor shall be jointly prepared by the State Department of Developmental Services, the State Department of Social Services, the State Department of Public Health, and the State Department of Health Care Services and, at a minimum, shall address all of the following:~~

~~(1) The number, business status, and location of all the ARFPSHNs.~~

~~(2) The number and characteristics of the consumers served.~~

~~(3) The effectiveness of the pilot project in addressing consumers' health care and intensive support needs.~~

~~(4) The extent of consumers' community integration and satisfaction.~~

~~(5) The consumers' access to, and quality of, community-based health care and dental services.~~

~~(6) The types, amounts, qualifications, and sufficiency of staffing.~~

~~(7) The overall impressions, problems encountered, and satisfaction with the ARFPSHN service model by ARFPSHN employees, regional center participants, state licensing and monitoring personnel, and consumers and families.~~

~~(8) The costs of all direct, indirect, and ancillary services.~~

~~(9) An analysis and summary findings of all ARFPSHN consumer special incident reports and unusual occurrences reported during the evaluation period.~~

~~(10) The recommendations for improving the ARFPSHN service model.~~

~~(11) The cost effectiveness of the ARFPSHN model of care compared with other existing public and private models of care serving similar consumers.~~

~~(b) The contractor's written report shall be submitted to the State Department of Developmental Services, the State Department of Social Services, the State Department of Public Health, and the State Department of Health Care Services. The State Department of Developmental Services shall submit the report to the appropriate fiscal and policy committees of the Legislature by January 1, 2010.~~

Section 4684.74 is added to the Welfare and Institutions Code, to read:

4684.74. The State Department of Developmental Services shall only approve the development of Adult Residential Facilities for Persons with Special Health Care Needs (ARFPSHNs) that are directly associated with the orderly closure of the Lanterman Developmental Center, unless a later enacted statute deletes or extends this provision.

Section 4684.75 of the Welfare and Institutions Code is amended to read:

4684.75. (a) The State Department of Developmental Services may adopt emergency regulations to implement this article. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the State Department of Developmental Services is hereby exempted from the requirement that it describe specific facts showing the need for immediate action. A certificate of compliance for these implementing regulations shall be filed within 24 months following the adoption of the first emergency regulations filed pursuant to this section.

~~(b) This article shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute extends or deletes that date.~~

~~(c)~~

(b) This article shall only be implemented to the extent that funds are made available through an appropriation in the annual Budget Act.