

DEPARTMENT OF DEVELOPMENTAL SERVICES

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DATE: March 25, 2016

TO: REGIONAL CENTER DIRECTORS AND BOARD PRESIDENTS

SUBJECT: 2016 SPECIAL SESSION BILL LANGUAGE AFFECTING REGIONAL CENTERS

The purpose of this correspondence is to summarize Assembly Bill (AB)X2 1, Chapter 3, Statutes of 2016, which directly impacts regional centers and the developmental services system. Several provisions will be effective July 1, 2016; others will go into effect on August 1, 2016. ABX2 1 effects the following changes:

- Requires the Department¹ to allocate \$11 million in funding to regional centers to assist in implementing specified recommendations and plans to reduce purchase of service disparities.
- Requires the Department to allocate \$31 million in funding for regional center staff and administrative costs.
- Increases the reimbursement rate for supported living, independent living, family member-provided respite, in-home respite, and transportation services by five percent.
- Authorizes a \$169.5 million wage and benefit increase for service provider staff that spend a minimum of 75 percent of their time providing direct service to consumers.
- Requires the Department to allocate no more than \$9.9 million for the purpose of administrative costs for service providers.
- Increases the hourly rate for individual and group supported employment services from \$30.82 to \$34.24.
- Appropriates \$20 million for provider placement incentives to encourage sustained and appropriate competitive integrated employment opportunities and a paid internship program to encourage competitive integrated employment opportunities for consumers. The Department will establish guidelines and provide oversight for these programs.
- Increases the payment thresholds that determine if a vendor is required to obtain an independent audit or independent review report.
- Requires the Department to submit a rate study to the appropriate fiscal and policy committees of the Legislature on or before March 1, 2019. The rate study must address the sustainability, quality, and transparency of community-based services for consumers.

¹ "Department" means the Department of Developmental Services, unless otherwise noted.

- Increases payment rates for intermediate care facilities for people with developmental disabilities and facilities that provide continuous skilled nursing services for individuals with developmental disabilities. The bill requires the Department of Health Care Services to seek necessary federal approvals in order to implement this section.

While this correspondence provides a high level summary of ABX2 1, a complete and thorough review of the bill is imperative for regional centers' statutory compliance.² Clarifying information regarding implementation of ABX2 1 is included in several areas below. Regional centers should continue to educate their communities regarding these legislative changes.

Efforts to Reduce Purchase of Service Disparities

Section 1: Welfare and Institutions Code³ section 4519.5 requires regional centers to implement recommendations and plans to promote equity, and reduce disparities, in the purchase of services. ABX2 1 amends section 4519.5 to require the Department, subject to available funding, to allocate funding for regional centers in order to assist with the implementation of the recommendations and plans. Allocated funding may be used to fund activities including, but not limited to, pay differentials supporting community-based service providers' direct care bilingual staff, parent or caregiver education programs, regional center staff cultural competency training, outreach to underserved populations, and additional culturally appropriate service types or service delivery models.

Implementation: *In the Spring 2016, the Department will issue guidelines to regional centers. The guidelines will be developed in consultation with a variety of stakeholders and will specify the criteria for submission and approval of proposals regional centers wish to implement to address issues of disparity in their catchment areas and/or regionally. Proposals may apply to one regional center or two or more regional centers may partner to implement strategies to address areas of disparity. Upon receipt of proposals from regional centers, the Department will review them in light of issues the proposals will address, the applicability locally, regionally or statewide and the amount of funding available.*

Increased Funding for Regional Center Staff and Operations

Section 3: ABX2 1 amends section 4639.5 to require the Department, to the extent funds are appropriated in the annual Budget Act, to allocate \$31.1 million, plus any

² The bill can be accessed at <http://leginfo.legislature.ca.gov/>.

³ All statutory references are to the Welfare & Institutions Code, unless otherwise noted.

associated matching funds, for regional center staff salary and/or benefit increases beginning July 1, 2016. Of this amount, \$29.7 million shall be used for salary increase, benefit increase, or both, for regional center staff, and excludes salary or benefit increases to regional center executive staff and unfunded retirement liabilities. The remaining \$1.4 million shall be used for administrative costs, consistent with those specified in section 4629.7(b), for regional centers and clients' rights advocates' contracts, pursuant to section 4433(b). The amendment also requires regional centers to maintain documentation on how funding was allocated and report the use of allocated funding to the Department. The report must be submitted by March 10, 2017, and again by October 1, 2017, in a format prescribed by the Department, and include the following information:

- The total amount provided to staff for purposes of this section.
- The position titles of staff receiving the increase and amounts of increases by title.
- The number of service coordinators receiving the increase.
- Data on staff turnover.
- The classification of expenditures and amount for each of administrative costs as outlined in section 4629.7(b).
- The allocation methodology used by a regional center to distribute the funding.
- Any other information determined by the Department.

The Department shall describe the implementation of the increase in its fiscal year (FY) 2017-18 May Revision fiscal estimate, including, but not limited to, data described in the regional center reports, aggregated by regional center and statewide, and the impact on caseload ratios. Any regional center that fails to report the information required to the Department shall forfeit the increases described in this section.

Implementation: *The Department and the Association of Regional Center Agencies have agreed to allocate the available funding to the regional centers based on each regional center's proportional percentage of the total core staffing allocation as of the FY 2015-16 B-2 contract amendment. Regional centers will be notified by April 8, 2016, of the estimated amount of funding they will receive for staff wages and benefits and for administrative expenses.*

The Department will develop a survey to capture the necessary data for the purposes of the March and October 2017 reporting.

Increased Rates and Wages for Certain Services Providers

The following sections were amended or added to authorize, commencing July 1, 2016, unless otherwise noted, increased funding, to the extent funds are appropriated in the annual Budget Act, for:

- Supported Living Services.
- Independent Living Services.
- Family member-provided respite services.
- In-home respite services.
- Transportation services.
- Certain service provider staff and administrative costs.

Section 5: Section 4689.8 was amended to increase funding for supported living and independent living services by five percent. This increase applies to rates authorized by the Department and in effect on June 30, 2016. The increase shall be applied as a percentage, with the same percentage for all providers.

Section 6: Section 4690.5 was amended to increase funding for family member-provided respite services by five percent. This increase applies to rates authorized by the Department and in operation on June 30, 2016. The increase shall be applied as a percentage, with the same percentage for all providers.

Section 7: Section 4691.6 was amended to increase funding for in-home respite service and independent living service rates by five percent. The five percent increase applies to the rates authorized by the Department and in operation on June 30, 2016. The increase shall be applied as a percentage, with the same percentage for all providers.

Section 8: Section 4691.9 was amended to increase funding for transportation service rates by five percent. This increase applies to the rates authorized by the Department and in effect on June 30, 2016. The increase shall be applied as a percentage, with the same percentage for all applicable providers.

Implementation: *The rate increases authorized by the above sections of statute are to be calculated based on the rates that are in effect on June 30, 2016. The Department is working with a regional center representative on an optional tool that will allow regional centers to upload rate increases from a spreadsheet into UFS. Rate letters will be issued to those providers whose rates are set by the Department and the vendoring regional center will be copied. Regional centers will be responsible to issue rate letters to service providers with rates set through negotiation with the regional center.*

Section 9: Section 4691.10 was added to authorize a rate increase for wages and benefits for staff that spend a minimum of 75 percent of their time providing direct services to consumers. Allocated funding shall not exceed \$169.5 million of the amount appropriated in the act that added this section for this purpose, plus any associated matching funds. The rate increase applies to the rates authorized by the Department or through negotiations between regional centers and service providers, rates paid for supported employment services as specified in section 4860(a) and (b), and vouchered community-based services as specified in section 4688.21(c). This section does not apply to services with rates determined by other entities.

This section defines “direct services” as services, supports, care, supervision, or assistance provided by staff directly to a consumer to address the consumer’s needs, as identified in the individual program plan (IPP), and includes staff’s participation in training and other activities related to providing services to consumers, as defined in California Code of Regulations (CCR) Title 17 section 54302. State employees participating in the Community State Staff Program are ineligible for the wage increase. The rate increase shall be implemented in the following manner:

- The Department, with regional center participation, shall conduct a random sample survey of service providers in each service category eligible for the rate increase. The survey shall be returned to the regional center and Department by April 15, 2016, and shall request information regarding:
 - Number of employees who spend a minimum of 75 percent of their time providing direct services to consumers and their total salary, wage, and benefit costs.
 - Administrative costs as specified in section 4629.7(b), including number of employees and associated total salary, wage, and benefit costs.
 - Any other staff and their total salary, wage, and benefit costs that are not included in either of the two preceding bullets.
 - Any other costs to the provider, other than the costs described in any of the three preceding bullets.
- The vendoring regional center shall certify that, to the best of its knowledge, the survey results accurately reflect the services provided by each surveyed service provider. The Department shall use the survey results to determine the rate increase. The rate increase shall be the same for all eligible providers in each service category and is intended to provide comparable increases across service categories for eligible staff, as described.
- By July 1, 2016, the Department shall utilize the data derived from the survey to do the following:

- For service providers whose rates are set by the Department, notify those providers and the associated regional center of the amount by which the rates are to be increased.
- For service providers whose rates are set by negotiation with the regional center, notify the regional center of the amount by which the rates are to be increased.
- The Department shall, with regional center participation, conduct a survey of all providers who received the rate increase. The survey shall request information on how the rate increase was used by providers.
- Providers shall submit the completed survey to the Department by October 1, 2017. The survey shall include, but not limited to, the following:
 - Number of employees and salary, wage, and benefit costs, and increases provided as a result of this subdivision.
 - Percentage of time each employee spends providing direct services.
 - Administrative expenses, consistent with subdivision (b) of section 4629.7.
 - Any additional information as determined by the Department.

Providers granted a rate increase pursuant to this section shall maintain documentation, subject to audit by the Department or regional center, that the rate increase was used solely for the purposes described in this section. Any provider that fails to report the information by October 1, 2017, shall forfeit the increases. The Department shall describe the implementation of the increases provided pursuant to this section in its 2017-18 May Revision fiscal estimate.

Implementation: *The Department worked with the Association of Regional Center Agencies, regional centers, service providers and advocacy organizations in the development of a survey that could be used on a random sample of providers in twelve service categories that represent all applicable service codes. The Department mailed letters to selected service providers on March 18, 2016, notifying them that they had been randomly selected to participate in the survey and directing them to the Department's website to complete and submit the survey for both direct services and administrative expenses portions of the statute. The names of the selected vendors were also posted on the Department's website. The Department held a conference call on March 25, 2016, at 9:00 am and will hold a second call on March 28, 2016, at 2:00 pm for service providers to ask questions and/or receive clarification regarding completing the survey. The calls are open to anyone who would like to participate, but registration is required. The survey, a complete list of selected vendors and the conference call information may be accessed on the Department's website at: www.dds.ca.gov/vendorsurvey.*

Completed surveys must be received by the Department by April 15, 2016. The Department will share the survey results of each service provider with the vendoring regional center so the results can be certified by the regional center. The Department will use the survey results to calculate the percentage increase to enhance the wages and benefits of those individuals whose work with consumers meets the requirements of the new statute, as well as the percentage increase to be granted to each of the service providers in each of the service categories. These percentages are expected to vary by service category.

By June 15, 2016, the Department will notify regional centers of the new rates by service code, and will directly notify via rate letters those providers whose rates are set by the Department. Regional centers will be responsible to issue rate letters to service providers with negotiated rates. The Department is working with a regional center representative on an optional tool that will allow regional centers to upload rate increases from a spreadsheet into UFS.

The Department will work with the Association of Regional Center Agencies, regional centers, service providers and advocacy organizations on the development of a survey to assess service providers' use of the increased funding. The survey will be issued in August 2017, and must be submitted to the Department by October 1, 2017. Any service provider who fails to complete the required survey will forfeit the rate increase and their rate will revert to the rate that was in effect on July 1, 2016. The reversion will take effect in October 2017.

Section 10: Section 4691.11 was added to authorize the Department to allocate no more than \$9.9 million, plus any associated matching funds, for the purpose of administrative expenses for service providers. The Department shall provide a rate increase for administrative purposes that applies only to providers for which rates are set by the Department or through negotiations between the regional centers and service providers, and to the rates paid for supported employment services and vouchered community-based services, as specified in statute. This increase shall be consistent for providers within each service category and is intended to provide comparable increases for administrative expenses across service categories. This section shall not apply to those services for which rates are determined by other entities.

Implementation: See "Implementation" for Section 9, above.

Increasing Competitive Integrated Employment and Internship Opportunities for Consumers

Section 11: Sections 4860(a)(1) and (b) were amended to increase the hourly rate for individual and group supported employment services provided to consumers from \$30.82 to \$34.24. The new rate shall be adjusted by the Department as described above, pursuant to sections 4691.10(a) and 4691.11.

The Department, with regional center participation, shall conduct an annual survey of supported employment services providers, and describe the survey results in its 2017-18 May Revision fiscal estimate. The survey shall include the following information:

- The number of employment placements in the previous 12 months.
- Types of employment in which consumers are placed.
- The cost components of the rates, including, but not limited to, the amount used for hourly wages of job coaches, administration, and placement search costs.
- The number of hours each consumer works and the hourly wage.
- Any other information determined by the Department.

Implementation: *The Supported Employment rate adjustment will be addressed in a technical bulletin the Department will issue to regional centers before June 15, 2016.*

The Department will work with the Association of Regional Center Agencies, regional centers, service provider organizations and advocacy organizations to develop a survey to obtain the information required by this section.

Section 12: Section 4870 was added to require the Department, in consultation with the State Council on Developmental Disabilities, regional centers, employers, supported employment provider organizations, and clients' rights advocates, to establish a program to encourage competitive integrated employment opportunities for consumers. The Department shall establish guidelines and oversee the program, to increase paid internship opportunities for consumers that produce outcomes consistent with the IPP. The program shall be administered by community service providers and meet all of the following criteria:

- Internship payments shall not exceed \$10,400 per year for each individual placed in an internship.
- Placements shall be made into competitive, integrated work environments.
- Placements shall be made into internships that develop skills that will facilitate future paid employment opportunities.

- Once the program is implemented, and during the IPP process, regional centers shall increase awareness of these internships to consumers outside of current employment programs through outreach to consumers.

The Department shall require annual reporting by the regional centers and vendors that ensures program accountability and achievement of program goals, including but not limited to:

- The number of interns placed who might not have otherwise achieved placement without an internship program.
- Types of employment in which interns are placed.
- Length of internships.
- Demographic information of interns.
- Amount of each intern placement payment.
- Employment-related supports provided by another agency or individual to the intern.
- Number of interns who subsequently entered paid employment, including salary and benefit information.
- Any additional information, as determined by the Department.

The Department shall include a description of the implementation of the program in its annual May Revision fiscal estimate. The description shall include, but is not limited to, a description of stakeholder consultation, data described in the required regional center and vendor annual reporting, aggregated by regional center and statewide, and any recommendations for program changes that may be necessary or desirable to maximize program effectiveness and accountability.

Implementation: *In April 2016, the Department will work with the entities specified in statute, and others who wish to contribute, to obtain input for the purpose of issuing guidelines to regional centers. The guidelines will specify the parameters of paid internships; the requirements for employer and consumer participation; the Department's, regional centers' and service provider roles in the administration of paid internships; the mechanics of payments to consumers for work performed in the paid internships, and any other information obtained through the stakeholder input process that will assist in the operation of the program and/or increase employer participation and consumer participation and outcomes.*

The guidelines issued by the Department will also specify the data regional centers will be required to collect so regional centers will be prepared to respond to the Department's surveys to obtain the information required by this section of statute.

Consistent with the IPP, an incentive program shall increase sustained and appropriate competitive integrated employment placements by providers of supported employment services, as defined in statute, as follows:

- A payment of \$1,000 to the supported employment services provider for initial placements made on or after July 1, 2016, in competitive integrated employment, as defined in statute.
- An additional payment of \$1,250 to the supported employment services provider for an individual described in the first bullet who remains in competitive integrated employment for six consecutive months.
- An additional payment of \$1,500 to the supported employment services provider for an individual described in the first two bullets who remains in competitive integrated employment for 12 consecutive months.

Regional centers shall annually report to the Department, in a format determined by the Department, the payments for placements pursuant to statute, and shall include the number of individuals placed each year in internships or other employments as described in this section.

Implementation: *Regional centers should work with their local Supported Employment vendors on the implementation of incentive payments, which can begin as early as July 1, 2016. Regional centers will be required to verify that the consumer job placement meets the definition of competitive integrated employment provided in statute. If it is determined that regional centers need guidance on the method for paying and claiming incentive payments, the Department will issue a program advisory to regional centers.*

Changes to Vendor Independent Audit and Review Report Requirements

Section 4: Section 4652.5 was amended to increase the payment thresholds that require vendors to contract for an independent audit or independent review report. Pursuant to ABX2 1, a vendor that receives regional center payments from one or more regional center must contract with an independent accounting firm to obtain an independent audit or independent review report of its financial statements relating to regional center payments, subject to the following:

- If the amount received from regional center payments during the vendor's fiscal year is more than or equal to \$500,000 but less than \$2 million, the vendor shall obtain an independent review report of its financial statements for the period. This subdivision shall also apply to work activity program providers receiving less than \$500,000, consistent with CCR, Title 17, Division 2, Chapter 3.

- If the amount received from regional center payments during the vendor's fiscal year is equal to or more than \$2 million, the vendor shall obtain an independent audit of its financial statements for the period.

A vendor subject to the independent audit or independent review report requirements shall provide copies of the report, and accompanying management letters, to the vendoring regional centers within nine months of the end of the fiscal year for the vendor.

In addition, vendors that are required to obtain an independent review report of its financial statement may apply for a two-year exemption from the independent review report requirement if the regional center does not find issues in the prior year's independent review report that have an impact on regional center services. A vendor may apply to the regional center, subject to the following conditions:

- If the independent audit for the prior year resulted in an unmodified opinion or an unmodified opinion with additional communication, the regional center shall grant the vendor a two-year exemption.
- If the independent audit for the prior year resulted in a qualified opinion and the issues are not material, the regional center shall grant the vendor a two-year exemption. The vendor and the regional center shall continue to address issues raised in this independent audit, regardless of whether the exemption is granted.

Regional centers are required to annually report to the Department any exemptions granted.

Implementation: *The requirements of Section 4652.5 as currently stated in statute, continue to apply to vendors and regional centers. Vendors are required to continue to submit independent review and audit reports to the regional center pursuant to current statute. The amended requirements become effective June 9, 2016. Any vendor to whom the current requirements apply and whose fiscal year ends prior to the effective date of the amended requirements is responsible to submit an independent review or audit report (whichever is applicable) to the regional center at the completion of their fiscal year. A vendor to whom the amended criteria applies, and whose fiscal year ends after the effective date of the amended criteria, must submit an independent review or audit report (whichever applies) to the regional center. The exemption provision for independent reviews is prospective, not retroactive; i.e., after the effective date of the amended criteria, a vendor must obtain an independent review report of its financial statements before it may apply for a two-year exemption from the independent review report requirement.*

Community-Based Services Rate Study

Section 2: Section 4519.8 was added to require that the Department submit a rate study, on or before March 1, 2019, to the appropriate fiscal and policy committees of the Legislature regarding the sustainability, quality, and transparency of community-based services. The Department shall consult stakeholders in developing the study, which shall include, but not be limited to:

- An assessment of the effectiveness of the methods used to pay each category of community service provider. The assessment shall also include the following considerations for each category of service provider:
 - Whether current rate setting methods provide an adequate supply of providers in each category, including but not limited to, whether there is a sufficient supply of providers to enable consumers throughout the state to have a choice of providers, depending on the nature of the service.
 - A comparison of estimated fiscal effects of alternative rate methodologies for each service provider category.
 - How different rate methodologies can incentivize outcomes for consumers.
- An evaluation of the number and type of service codes for regional center services, including, but not limited to, recommendations for simplifying and making service codes more reflective of the level and types of services provided.

Implementation: N/A

Intermediate Care Facilities and Skilled Nursing Facilities

Section 13: Section 14105.075 was added to increase payment rates for intermediate care facilities for people with developmental disabilities and facilities providing continuous skilled nursing care to people with developmental disabilities pursuant to the pilot project established by section 14132.20. Payments shall be the reimbursement rates that were applicable to those facilities in the 2008-09 rate year, increased by 3.7 percent. Payments shall also include the projected cost of complying with new state and federal mandates to the extent applicable to the reimbursement methodology associated with the type of facility.

The Department of Health Care Services is required to seek necessary federal approvals to implement this section. If federal approval is obtained, payments resulting from this subdivision shall be implemented retroactively to August 1, 2016, or another federally approved effective date.

Implementation: N/A

Regional Center Directors and Board Presidents
March 25, 2016
Page thirteen

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
Acting Deputy Director
Community Services Division

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