

Date of Hearing: March 12, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES
Eloise Gómez Reyes, Chair
AB 311 (Frazier) – As Introduced January 29, 2019

SUBJECT: Regional centers: billing: daily rates

SUMMARY: Repeals the requirement that activity centers, adult development centers, behavior management programs, and other look-alike day programs bill regional centers for services in terms of half and full days of service.

Specifically, **this bill:**

- 1) Deletes the definition of “full day of service,” which is defined as a day in which a consumer’s attendance is at least 65% of the declared and approved program day.
- 2) Deletes the definition of “half day of service,” which is defined as a day in which a consumer’s attendance does not meet the criteria for billing for a full day of service.
- 3) Deletes the requirement that activity centers, adult development centers, behavior management programs, and other look-alike day programs bill regional centers for services provided in terms of half and full days of services.
- 4) Deletes a regional center’s ability to change the length of the declared and approved program day for a specific consumer, in order to meet the consumer’s needs, as specified, and further deletes the requirement that a regional center enumerate in a consumer’s individual program plan (IPP) the length of a consumer’s program day, as well as the reasons for the change in the length of the declared and approved program day.
- 5) Deletes the prohibition on applying the definitions of “full day of service” and “half day of service” to tailored day program service providers.

EXISTING LAW:

- 1) Establishes the Lanterman Developmental Disabilities Services Act, which declares California’s responsibility for providing an array of services and supports to meet the needs of each person with developmental disabilities in the least restrictive environment, regardless of age or degree of disability, and to support their integration into the mainstream life of the community. (Welfare and Institutions Code [WIC] Section 4500, *et seq.*)
- 2) Establishes a system of nonprofit regional centers to provide fixed points of contact in the community for all persons with developmental disabilities and their families, to coordinate services and supports best suited to them throughout their lifetime. (WIC 4620)
- 3) Creates a process by which regional centers may “vendorize” service providers, thereby providing a path to contract for services with that provider and ensuring maximum flexibility and availability of appropriate services and support for persons with developmental disabilities. (WIC 4648)

- 4) Requires regional centers to provide the consumer, their parent, legal guardian, or other appropriate authorized representative, as specified, at least annually, a statement of services and supports the regional center purchased, for the purpose of ensuring that the services are delivered. (WIC 4648 (h))
- 5) Requires the development of an IPP for each regional center consumer, which specifies services to be provided to the consumer, based on their individualized needs determination and preferences, and defines that planning process as the vehicle to ensure that services and supports are customized to meet the needs of consumers who are served by regional centers. (WIC 4512)
- 6) Defines “full day of service” as a day in which a consumer’s attendance is at least 65% of the declared and approved program day. (WIC 4690.6 (b)(1))
- 7) Defines “half day of service” as any day in which a consumer’s attendance does not meet the criteria for billing for a full day of service. (WIC 4690.6 (b)(2))
- 8) Requires activity centers, adult development centers, behavior management programs, and other look alike day programs with a daily rate to bill regional centers for services provided to consumers in terms of half days of service and full days of service. (WIC 4690.6 (a))
- 9) Allows a consumer to choose a tailored day service or vouchered community-based training service in lieu of any other regional center vendored day program, look-alike program, supported employment program, or work activity program, and further requires a tailored day service to meet certain criteria, including the use of an individualized service design to maximize the individual’s choices and needs, among others (WIC 4688.21 *et seq.*)
- 10) States Legislative intent that community-based day programs be planned and provided as part of a continuum of services to enable persons with developmental disabilities to approximate the pattern of everyday living available to people of the same age without disabilities, and, further, subjects community-based day programs to certain standards, including staff qualifications, staff-to-client ratios, client entrance and exit criteria, and program design and evaluation, among others. (WIC 4691 *et seq.*)

FISCAL EFFECT: Unknown

COMMENTS:

Developmental Services: The Lanterman Developmental Disabilities Act (Act), adopted in 1969, established that individuals with developmental disabilities and their families have the right to receive services and supports necessary to live independently in the community. The Act outlines the rights of individuals and their families, what services are available to them, and how regional centers and service providers may best serve these individuals. The term “developmental disability” is defined as a disability that presents before an individual reaches 18 years of age, is expected to continue indefinitely, and is a significant disability for that individual; such disabilities include epilepsy, cerebral palsy, and autism spectrum disorder, among others. Additionally, part of the Lanterman Act’s legacy is the creation of California’s 21 regional centers, which are tasked with providing information to, and helping coordinate services and supports for, individuals with developmental disabilities and their families. It is important to

note that regional centers do not directly provide services to individuals, but, rather, help link individuals to service providers in the community.

Regional centers: Because regional centers do not directly provide services, their primary objective is to contract with and provide funding to vendors in the surrounding area to provide services to regional center consumers. However, before a vendor can provide services to a consumer, the vendor must undergo the “vendorization” process, in which the provider applies for contracts that enable them to serve individuals in the community. The vendorization process enables regional centers to verify that an applicant meets specific requirements and standards prior to the provision of services to consumers. While the vendorization process makes a provider eligible to provide services paid for by regional centers, there is no guarantee that a regional center will refer customers to any given vendor. It is also possible for a vendor to be vendorized by more than one regional center, which allows vendors to serve consumers in multiple catchment areas.

Effects of the economic downturn: As a result of the economic downturn associated with the Great Recession, and in response to budgetary constraints, the State of California sought to reduce expenditures wherever possible, and the Department of Developmental Services (DDS), the state department responsible for providing services pursuant to the Lanterman Act, began implementing numerous cost-saving measures, including restrictions and freezes on vendor rates, and reductions in regional center operations funding and provider payments, among others. In 2011, in keeping with the state’s intent to reduce costs, AB 104 (Assembly Committee on Budget), Chapter 37, Statutes of 2011, required activity centers, adult development centers, behavior management programs, and other look-alike day programs with a daily rate to bill regional centers for services provided to consumers in terms of half days of service and full days of service, with a consumer’s attendance of at least 65% of the declared and approved day constituting a full day of service. At the time, the implementation of full and half-day billing procedures was estimated to save approximately \$1.4 million (General Fund) annually.

Following the implementation of half-day billing in 2011, The Arc of California and the Cerebral Palsy Association of San Diego, filed a lawsuit in federal court challenging the ability of the state to implement half-day billing requirements without obtaining prior approval from the federal Centers for Medicare and Medicaid Services (CMS). On February 13, 2015, a federal court issued an injunction stating that the half-day billing requirements could not be enforced until the state had obtained a CMS approval for the requirements. DDS, however, moved to vacate the injunction, and in August 2016, the United States district court lifted the injunction, and the federal appellate court affirmed that decision in May 2017. On June 27, 2018, DDS issued a program directive informing regional centers that half-day billing requirements must be complied with effective July 1, 2018.

Special session legislation: In June 2015, Governor Jerry Brown convened a special Legislative session to examine health and human services issues; specifically, the session included a focus on whether funding and rates for community service providers serving individuals with disabilities were adequate. As a result, Governor Brown signed ABX2 1 (Thurmond), Chapter 3, Statutes of 2016, which, among other things, directly appropriated \$287 million General Fund for select increases to regional centers and community service providers for 2016-17. Additionally, the legislation required DDS to conduct and submit a rate study to the Legislature no later than March 1, 2019, addressing the sustainability, quality, and transparency of

community-based services for individuals with developmental disabilities. As of March 8, 2019, the rate study had not yet been released by DDS.

Need for this bill: The economic recession forced the State of California to reduce spending across its various agencies and programs. The developmental disabilities community in particular experienced numerous reductions in rates and services available to regional center consumers. In recent years, however, the state has enjoyed a budget surplus, and while some programs throughout California have seen restorations to levels at or near pre-recession era funding and service levels, the same cannot be said for services available to individuals with developmental disabilities. As such, there have been numerous legislative and budgetary actions in recent years aimed at repealing the cuts and restoring services to pre-recession era rates and service levels. The provisions of this bill seek to further these efforts by repealing the requirement that certain day programs bill regional centers in terms of half days of service, which would better enable direct service providers to retain the staff necessary to provide community-based services to individuals with intellectual and developmental disabilities.

According to the author, “Community providers are struggling today just to survive and have lost millions of dollars because of recession cuts over the years. These reductions cannot continue when essential services are already at risk for a vulnerable population.”

PRIOR LEGISLATION

ABX2 1 (Thurmond), Chapter 3, Statutes of 2016, appropriated, among other things, \$287 million from the General Fund for increases to regional centers and community service providers in 2016-17, imposed reporting requirements to ensure proper allocation of funds and program accountability, and required DDS to conduct and submit to the Legislature a study examining the sustainability, quality, and transparency of community-based services.

AB 104 (Assembly Committee on Budget), Chapter 37, Statutes of 2011, required activity centers, adult development centers, behavior management programs, and other look-alike day programs with a daily rate to bill regional centers for services provided to consumers in terms of half days of service and full days of service.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

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