

Date of Hearing: March 26, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

AB 438 (Frazier) – As Amended March 19, 2019

SUBJECT: Regional center services: holidays

SUMMARY: Repeals the mandated uniform holiday schedule for certain providers of regional center contracted services for individuals with developmental disabilities. Specifically, **this bill:**

- 1) Deletes the current-law prohibition on regional centers compensating certain vendors for providing any services to a consumer on 14 stipulated days, as specified;
- 2) Deletes the current-law prohibition on regional centers compensating certain transportation service providers for transporting any consumer to receive services from any of the vendors required to observe the uniform holidays on any of those holidays, as specified; and,
- 3) Deletes provisions of current law regarding the administration of, and exceptions to, the uniform holiday schedule, including, as specified: designation of an alternate holiday when a uniform holiday falls on the weekend; the requirement for contracts between affected vendors and regional centers to reflect the holiday closures; and the ability of the Department of Developmental Services (DDS) to adjust the uniform holiday schedule through a program directive.

EXISTING LAW:

- 1) Establishes the Lanterman Developmental Disabilities Services Act (Lanterman 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 the jurisdiction of DDS over state developmental centers (DCs), including Sonoma, Fairview and Porterville DCs, as specified. (WIC 4440 *et seq.*)
- 3) Establishes a system of 21 nonprofit regional centers throughout the state to identify needs and coordinate services for eligible individuals with developmental disabilities and requires DDS to contract with regional centers to provide case management services and arrange for or purchase services that meet the needs of individuals with developmental disabilities, as defined. (WIC 4620 *et seq.*)
- 4) 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 supports for persons with developmental disabilities. (WIC 4648)
- 5) Prohibits regional centers from compensating a number of programs, as specified, for providing any service to a regional center consumer on the following 14 holidays: January 1, the third Monday in January, the third Monday in February, March 31, the last Monday in

May, July 4, the first Monday in September, November 11, Thanksgiving Day, December 25, and the four business days between December 25 and January 1. Additionally, prohibits regional centers from compensating certain transportation service providers for transporting any consumer to receive services from any of the vendors required to observe the 14 uniform holidays on any of those holidays, as specified. (WIC 4692)

FISCAL EFFECT: Unknown

COMMENTS:

Developmental services: Developmental disabilities are defined to be those disabilities that: originate before a person turns 18 years old, are anticipated to continue indefinitely, and that constitute a substantial disability for that individual. They include intellectual disabilities, cerebral palsy, epilepsy, and autism spectrum disorders. Developmental disabilities can also be those disabling conditions similar to an intellectual disability that require care and management similar to what is required by individuals with an intellectual disability.

The state, pursuant to the Lanterman Act, has a responsibility to provide 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. All individuals with developmental disabilities are entitled, per the Lanterman Act, to treatment and habilitation services and supports in the least restrictive setting possible, and services provided under the Lanterman Act are designed to facilitate this, enabling consumers to live more independently in the community.

DDS and 21 regional centers share responsibility for the implementation of the Lanterman Act. These regional centers are private, nonprofit entities that contract with DDS to carry out many of the state's obligations under the Lanterman Act. While DDS still operates two developmental centers (and one state-operated, specialized community facility) which provide 24-hour habilitation and medical and social treatment services to individuals with developmental disabilities, these developmental centers – Fairview Developmental Center and Porterville Developmental Center – are slated to be closed in the coming years, with the exception of the forensic portion of the Porterville Developmental Center. There are currently under 400 total individuals placed at either developmental center or the community facility. Meanwhile, over 345,000 individuals receive services through regional centers.

The 21 regional centers provide a broad range of services, including residential placements, supported living services, respite care, transportation, day treatment programs, work support programs, and various social and therapeutic activities. Regional center representatives work together with consumers and their family members or other authorized representatives and others as an individual program plan (IPP) team to develop an IPP for the consumer. This IPP is based on the consumer's needs and choices, and guides the services provided to the consumer through the developmental services system. Pursuant to the Lanterman Act, the IPP is required to promote integration in an individual's community and to maximize opportunities for each consumer to develop relationships, increase control over their life, be part of community life, and acquire increasingly positive roles in the community. The IPP must place the highest preference on services and supports that enable adults to live as independently as possible in the community and minors to live with their families.

Regional centers do not directly provide services contained in a consumer's IPP, but instead contract with service providers through a "vendorization" process. Before a service provider can be authorized to be compensated by a regional center for providing services to a consumer, the provider must become vendorized by the regional center that oversees the catchment area in which the provider is located. This process includes verifying that the provider meets regulatory standards and requirements and is qualified to provide the planned services. While vendorization makes a provider eligible to provide services paid for by the regional center, this does not guarantee the regional center will refer consumers. Additionally, nothing prevents a vendor from being vendorized by more than one regional center.

Uniform holidays: ABX4 9 (Evans), Chapter 9, Statutes of 2009, among a number of other changes, established in statute 14 uniform holidays for vendors of developmental services, by prohibiting regional centers from compensating a number of programs for providing any service to a regional center consumer on those 14 days. This meant that providers were prohibited from billing for services provided by work activity programs, activity centers, adult developmental centers, behavior management programs, social recreation programs, infant developmental programs, program support group day services, client/parent support behavior intervention training, community integration training programs, community activities support services, and creative arts programs, as well as transportation to these programs.

At the time, it was believed that this change, in effect, resulted in the addition of 4 observed holidays in the regional center system, as many vendors contracting with regional centers were reported to already observe an average of 10 holidays; the change also required that the same 14 holidays be observed statewide. Due to litigation (since resolved), the uniform holiday schedule has not been observed since 2015. The Governor's 2018-19 budget proposed once again enforcing the uniform holiday schedule, but the 2018-19 Budget Act allowed for delayed enforcement by providing one-time funding so regional centers were not required to enforce the uniform holiday schedule in 2018-19. This suspension will sunset on June 30, 2019, and the Governor's Budget proposes reinstatement of the uniform holiday schedule on July 1, 2019.

Need for this bill: This bill seeks to eliminate the 14 uniform holidays established in current law, thereby reverting to the practice of regional centers establishing their own holiday schedules with the vendors with whom they contract – a practice which, according to stakeholders, typically results in the observation of 10 holidays per year on average.

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."

Writing in support, the California Disability Services Association (a co-sponsor of this bill) states that, "The Uniform Holiday Schedule was enacted during the Great Recession as a cost saving measure that codified 14 forced closure days for service providers in multiple services. It amounts to a one percent rate cut at a time when the system is already significantly underfunded. It would also place additional burdens on residential providers and families to provide supports when individuals with developmental disabilities would normally be receiving necessary services. In addition to limiting service opportunities for consumers, the forced closure days would reduce the wages of direct support staff - who are already underpaid as a result of inadequate rates – by forcing four 'furlough' days each year. At a time when recruitment and retention of quality staff is already a crisis, adding an additional staffing challenge would greatly

affect the quality and consistency of services to the individuals our members are charged to support.”

PRIOR LEGISLATION:

ABX4 9 (Evans), Chapter 9, Statutes of 2009, among a number of other changes, established in statute 14 uniform holidays for vendors of developmental services, by prohibiting regional centers from compensating a number of programs, as specified, for providing any service to a regional center consumer on those 14 days.

REGISTERED SUPPORT / OPPOSITION:

Support

The Arc of California and United Cerebral Palsy California Collaboration (Sponsor)

California Disability Services Association (Sponsor)

Anthesis

Association of Regional Center Agencies

California Association for Health Services at Home

Community Vocational Services, Inc.

Contra Costa Arc

Desert Arc

Educate. Advocate.

Empower Family California

Futures Explored, Inc.

MARS Group

Marin Ventures

Napa Valley Support Services

OPARC

Partnerships With Industry

Pathpoint

People's Care Inc.

Pride Industries

Project Independence

Roland Center

TERI Inc.

The Arc Fresno/Madera Counties

The Arc of San Diego

Ukiah Valley Association for Habilitation

Vocational Improvement Program, Inc.

Watch Resources, Inc.

27 private citizens

Opposition

None on file

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