

Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES
Eloise Gómez Reyes, Chair
AB 812 (Frazier) – As Amended April 1, 2019

SUBJECT: Developmental services: Inspector General

SUMMARY: Creates the “Independent Office of the Developmental Services Inspector General” (OIG) within state government, and vests the Office with various oversight duties and responsibilities over the Department of Developmental Services (DDS) and regional centers. Specifically, **this bill:**

- 1) Makes Legislative findings and declarations related to the delivery of services to regional center consumers and ensuring that consumers have access to necessary information and effective service delivery systems, and states Legislative intent to ensure consumers have access to necessary information and effective systems through transparency and accountability of the developmental disabilities system.
- 2) Establishes the Independent Office of the Developmental Services Inspector General (OIG) within state government.
- 3) Prohibits, in order to ensure DDS and regional centers are spending funds efficiently, effectively, and in compliance with applicable federal and state laws, the office from being a part of, or subject to the control of, any other governmental entity.
- 4) Requires the Governor to appoint, subject to approval by the Senate, the Inspector General (IG) to a six-year term, and prohibits the IG from being removed from office during that term, except for good cause.
- 5) Requires the reasons for removal of the IG to be stated in writing, and include the basis for removal, and, further, requires the writing to be sent to the Secretary of the Senate and the Chief Clerk of the Assembly at the time of removal, and, further deems the writing to be a public document.
- 6) Requires the IG’s duties to include reviewing policies, practices, and procedures, and conducting audits, surveys, and other investigations of activities involving state developmental services funds, and, further, requires the specific duties to include, but not be limited to, all of the following, as specified:
 - a) Examining the operating practices of DDS and regional centers to identify potential improvements in the design, implementation, and evaluation of programs;
 - b) Identifying best practices in the delivery of developmental services and developing policies or recommending proposed legislation;
 - c) Identifying best practices in the solicitation, screening, selection, and evaluation of programs and projects that receive funding from DDS;
 - d) Providing objective analysis of, and when possible, offering solutions to concerns raised by the public involving services programs and project delivery methods;

- e) Conducting, supervising, and coordinating audits, surveys, and other investigations relating to DDS and regional center operations; and,
 - f) Ensuring the Secretary of the California Health and Human Services Agency (CHHSA) and the Legislature are fully and currently informed concerning barriers to accountability, transparency, and improved outcomes for consumers as it relates to the expenditure of funds or administration of programs and operations by DDS and regional centers.
- 7) Allows the OIG to do all of the following:
- a) Enter into contracts;
 - b) Establish offices;
 - c) Appoint employees as may be necessary to assist in the discharge of the duties required by the provisions of this bill;
 - d) Fix the compensation of employees and prescribe their duties;
 - e) Have access to, and the authority to examine and reproduce, any and all records and property of DDS or a regional center; and,
 - f) Have access to, and authority to interview, any DDS or regional center employee, as specified.
- 8) Vests the IG with the full authority to exercise all responsibility for maintaining a full-scope, independent, and objective audit and investigation program, as described in current law.
- 9) Requires the IG to report all audit and confidential investigation findings and recommendations to the Secretary of the CHHSA on an ongoing and current basis and report at least annually, or upon request, to certain entities, as specified, a summary of the IG's investigation and audit findings and recommendations.
- 10) Requires the summary be posted on the OIG's internet website, and be made available to the public upon its release to various entities, as specified.
- 11) Requires the summary include, but not be limited to, significant problems discovered by the IG and whether the IG's recommendations relative to audits and investigations have been implemented by DDS or regional centers.

EXISTING LAW:

- 1) Requires all state and local agencies with an aggregate spending of \$50 million or more annually to consider establishing an ongoing audit function. (Government Code [GOV] Section 1237)
- 2) Creates the Office of the California State Auditor for purposes of examining and reporting annually upon the financial statements prepared by the executive branch of the state and to perform other related assignments, including performance audits that are mandated by statute. (GOV 8543 *et seq.*)

- 3) Establishes the State Controller as a Constitutional Officer of the State of California and requires the Controller to superintend the fiscal concerns of the state, and further requires the Controller to audit all claims against the state, and allows for the audit of the disbursement of any state money for correctness, legality, and for sufficient provisions of law for payment. (GOV 12402 *et seq.*)
- 4) Establishes the State Leadership Accountability Act (SLAA), which requires each state agency to maintain effective systems of internal control, to evaluate and monitor the effectiveness of these controls, and requires agency heads to document the system, communicate system requirements to employees, and ensure the system is functioning as prescribed and is modified for any changes in conditions. (GOV 13402)
- 5) States Legislative findings and declarations related to the importance of internal audit activity to public accountability and governance, and ensuring the independence of internal auditors of state agencies and that their findings are reported to the appropriate levels of government is critical to safeguarding public funds and public trust. (GOV 13885)
- 6) Requires all state agencies that have their own internal auditors or that conduct internal audits or internal audit activities conduct internal audit activity under the standards of internal auditing, as specified. (GOV 13886.5)
- 7) Requires, for any state agency that does not report to a governing body, the internal auditor operations to meet certain requirements, as specified. (GOV 13887)
- 8) Allows an internal auditor, if an internal auditor employed by a state agency has a good faith belief that the agency management is interfering with the internal auditor's or auditor's ability to comply with current law, as specified, that the internal auditor or auditors are under pressure to modify or limit findings or recommendations, or that senior management is not taking appropriate action in response to an audit finding or recommendation, to report to the State Auditor information that supports that good faith belief, and further allows the State Auditor to report any report made in relation to this belief. (GOV 13888)
- 9) 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.*)
- 10) 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)
- 11) Defines "protection and advocacy agency" as the private nonprofit corporation designated by the Governor pursuant to federal law for the protection and advocacy of the rights of persons with disabilities, as specified. (WIC 4900 *et seq.*)

FISCAL EFFECT: Unknown

COMMENTS:

Developmental Services: The Lanterman Act, adopted in 1977, 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 Lanterman 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. Currently, over 340,000 individuals receive services through the regional center system.

Regional centers: Because regional centers do not directly provide services, their primary objective is to contract with and supply 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.

Protection and advocacy agency: In 1975, H.R. 4005 (Rogers), P.L. 94-103, was signed into law and required each state to have a statewide protection and advocacy system in place by October 1, 1977, in order to protect the rights of individuals with developmental disabilities. Protection and advocacy agencies were required to be independent of any state agency that provided residential or other services to individuals with developmental disabilities, and were required to provide legal and other advocacy services to protect individuals from abuse and neglect, and advocate on their behalf when they had been denied disability rights. In 1978, Governor Jerry Brown designated Disability Rights California (DRC) (known then as Protection & Advocacy, Inc. [PAI]) as California’s protection and advocacy agency. Over the course of the last 40 years, DRC has advocated for the rights of individuals with developmental disabilities, and, according to its internet website, has worked to educate, investigate, and litigate to advance the rights, dignity, equal opportunities, and choice for people with disabilities.

Other forms of oversight: In addition to the work done by DRC and other organizations that advocate for the rights of individuals with disabilities, California ensures oversight of its various state agencies and affiliate organizations, including DDS and the regional center system, through the following offices and entities:

- *The Legislative Analyst’s Office (LAO):* Provides fiscal and policy advice to the Legislature through an analysis of the Governor’s annual budget, analyses of overarching fiscal issues

faced by the state, analyses of specific departmental budget proposals and recommendations for legislative action. The LAO's Office also prepares written reports and handouts for hearings on the state budget and topics of interest to the Legislature.

- *The Office of the State Auditor:* Responsible for conducting evaluations on state and local government activities, and conducts investigations on state entity activities, whether various programs overlap/are duplicative, the cost-effectiveness of programs, whether resources are used in compliance with laws and regulations, and whether Legislative and regulatory goals are being achieved. The Auditor also conducts investigations to determine whether any state agency action is economically wasteful, involves gross misconduct, or is inefficient.
- *The Office of the State Controller:* Oversees accountability and disbursement of the state's financial resources, performs independent audits on government agencies that spend state funds, and issues reports on the financial condition of government entities.
- *The Developmental Services Task Force:* Works with key stakeholders, including consumers, advocates, caregivers, service providers, regional center representatives, DDS and CHHSA representatives, among others, to develop recommendations to strengthen the developmental disabilities services system through public meetings that encourage community input.
- *State Council on Developmental Disabilities (SCDD):* Comprised of 31 members appointed by the Governor, the State Council provides services to individuals with developmental disabilities and their families by ensuring appropriate laws, regulations, and policies pertaining to the rights of individuals are observed and protected through advocacy efforts, training, monitoring, and providing information to the public.
- *The fair hearings process:* Provides recourse for regional center consumers who disagree with a decision made by a regional center, and allows an individual to engage in mediation or request a hearing before an Administrative Law Judge for purposes of approving or denying a consumer's appeal.

The California State Legislature also possesses significant oversight authority through its ability to write and pass laws, conduct informational and oversight hearings, and review, amend, and approve the Governor's annual budget proposal, among other roles and responsibilities.

Need for this bill: According to the author, "The Legislature should create a new entity, situated outside DDS, to conduct independent evaluation and oversight. Many state and federal agencies with complicated structures have benefitted from the creation of inspectors general or evaluation officers that bring independent perspectives to bear on systemic challenges. For example, California has an inspector general who has as the 'eyes and ears' of the public in overseeing prisons and correctional programs. Why would the creation of an inspector general improve transparency and accountability in the RC system? The complicated relationship between DDS and the 21 private nonprofit regional centers it oversees makes accountability particularly challenging. Part of the mandate of an inspector general would be to evaluate the system as a whole and decide whether structural reforms are needed.

"The independent oversight entities that exist in California – such as the State Controller and the State Auditor – cannot devote much attention to any single agency. The State Auditor, for example, has issued seven reports on DDS in the last 20 years, many of which were focused on

fairly narrow issues. Meanwhile, the State Controller issued one major audit in 2016. These reports are helpful, but generally only treat a topic once, make recommendations, and move on. These statewide entities do not have the bandwidth to engage in more intensive, ongoing monitoring and oversight. In short, an independent entity within CHHSA, which focuses exclusively on DDS, yet is not directly accountable to DDS, will be better equipped to evaluate the efficacy of any new monies allocated toward systemic reforms, such as DDS' proposed restructure or disparities funding. It could also help identify more structural, programmatic, and systemic barriers to transparency and accountability.”

Staff comments: The provisions of this bill seek to ensure additional oversight and transparency of the developmental services system by creating within state government the Office of the Developmental Services Inspector General. The bill tasks the Office with the responsibility of reviewing certain DDS and regional center policies and procedures, and conducting audits, surveys, and other investigations of activities involving state developmental services funds. While it is important to ensure transparency and efficient use of government funds for purposes of meeting the needs of individuals with developmental disabilities, it is unclear whether gaps currently exist across the activities of the various agencies and entities already tasked with the oversight of the developmental services system. Specifically, it has not been made clear to this committee whether the oversight authorities of the Legislature, the LAO, the State Auditor, the State Controller, the state's protection and advocacy agency (DRC), SCDD, the Developmental Services Task Force, and the fair hearings process, among other oversight processes, are inadequate. As such, the provisions of this bill may be duplicative of the myriad existing oversight roles enumerated in current law.

The bill also raises questions of timeliness and appropriate use of resources. During the economic recession, the State of California was forced to reduce spending across its various agencies and programs, and the developmental services community in particular experienced numerous reductions in rates and services. While California has enjoyed a budget surplus in recent years, and some programs have seen restorations to levels at or near pre-recession era funding and services levels, the same cannot be said for services available to individuals with developmental disabilities. As a result, numerous legislative and budgetary actions have been taken to repeal cuts and restore services to pre-recession era rates and levels of service.

Recommended committee amendments: In order to ensure oversight of the developmental services system is comprehensive and not duplicative of existing oversight roles and structures, and in order to identify gaps, if any, that exist within those existing oversight roles and structures, *committee staff recommends the following amendments:*

1) On page 3 of the bill, strike lines 11 through 40.

2) Strike pages 4 through 6 of the bill, inclusive, and instead insert the following:

SEC 1. (a) The California Health and Human Services Agency shall, on or before July 1, 2020, convene a working group to examine certain topics related to oversight and accountability of the developmental services system, including, but not limited to, all of the following:

- (1) Existing oversight structures for the department and regional centers.*
 - (2) The purview, duties, and effectiveness of existing oversight structures.*
 - (3) Any gaps in the purview and duties of existing oversight structures.*
 - (4) Any available data on the utilization rates of existing regional center mediation processes.*
 - (5) Any available data on the utilization rates of the existing administrative appeals process.*
 - (6) What education and/or information, if any, is provided to consumers, their families, and consumer representatives about the existing mediation and appeals processes.*
- (b) The working group shall include, but not be limited to, consumers and consumer representatives, and representatives of all of the following:*
- (1) The Department of Developmental Services.*
 - (2) Regional centers.*
 - (3) The state's protection and advocacy agency.*
 - (4) The State Council on Developmental Disabilities.*
 - (5) The State Auditor's Office.*
 - (6) The State Controller's Office.*
- (c) The department shall, no later than January 1, 2021, report to the Legislature any findings and policy recommendations in accordance with Section 9795 of the Government Code.*

PRIOR/RELATED LEGISLATION:

AB 380 (Frazier) of 2019 creates the Independent Office of the Transportation Inspector General to ensure that both state and external entities receiving state and federal transportation funds are operating efficiently, effectively, and in compliance with federal and state laws. AB 380 is scheduled to be heard in the Assembly Appropriations Committee on April 24, 2019.

H.R. 4005 (Rogers), P.L. 94-103, also known as the Developmental Disabilities Assistance and Bill of Rights Act of 1975, required each state to have a statewide protection and advocacy system in place by October 1, 1977, in order to safeguard the rights of people with developmental disabilities.

REGISTERED SUPPORT / OPPOSITION:

Support

Autism Society Los Angeles
 Disability Voices United
 Gamaliel of California
 Genesis

Opposition

None on file

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