

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

AB 813 (Frazier) – As Amended March 21, 2019

SUBJECT: Developmental services: alternative dispute resolution

SUMMARY: Requires regional centers to establish a dispute resolution program, and establishes within the Department of Developmental Disabilities (DDS) the “Developmental Disabilities Resolution Advisory Council” to promulgate regulations for the dispute resolution programs. Specifically, **this bill:**

- 1) Defines “advisory council” as the Developmental Disabilities Dispute Resolution Advisory Council established by the provisions of this bill.
- 2) Defines “consumer” as an individual who receives, or has been determined to be eligible to receive, services from a regional center or for whom a regional center has commenced the purchase of services process in advance of completing the eligibility determination.
- 3) Defines “dispute resolution” as including, but not limited to, mediation, conciliation, and arbitration.
- 4) Defines “program” as a dispute resolution program established by the provisions of this bill.
- 5) Establishes within DDS the “Developmental Disabilities Dispute Resolution Advisory Council” (Council), and further requires the Council to complete the duties required by the provisions of this bill no later than January 1, 2021.
- 6) Requires the Council to consist of seven individuals, and, further, requires one member to be appointed by the Chair of the State Council on Developmental Disabilities (SCDD), four members be appointed by the Governor, one member be appointed by the Senate Rules Committee, and one member be appointed by the Speaker of the Assembly.
- 7) Requires at least four individuals appointed to the Council to have a minimum of three years of professional experience that includes all of the following:
 - a) Intellectual or developmental disabilities or other relevant social services or health services programs;
 - b) The legal system and the legislative process;
 - c) Dispute resolution or problem resolution techniques, including investigation, mediation, and negotiation; and,
 - d) Organizational management and program administration.
- 8) Specifies that the professional experience described by the provisions of the bill requires any reasonable combination of three years of experience in the areas described, and not three years of experience in each area.

- 9) Allows a master's degree in a field related to one of the aforementioned areas to be substituted for one year of professional experience, and, further, allows a doctoral degree in a field related to one of the areas to be substituted for two years of professional experience.
- 10) Requires that a person's professional experience and the field in which the person earned the master's or doctoral degree to include the areas described by the provisions of the bill.
- 11) Requires at least four persons appointed to the Council to have a minimum of two years of direct experience in utilizing dispute resolution techniques.
- 12) Requires the members of the council to reflect the racial, ethnic, sexual, and geographic diversity of the State of California.
- 13) Prohibits the members of the council from receiving a salary for their services, but requires members to be reimbursed for actual and necessary travel and other expenses, as specified.
- 14) Requires regional centers to establish a dispute resolution program to serve regional center consumers, and, further, requires the program to be neutral and housed in the regional center, with the responsibility of hearing and deciding disputes between regional center consumers regarding the provision of services and eligibility for services.
- 15) Requires the program to comply with all requirements and regulations promulgated by the advisory council, as specified.
- 16) Instructs each regional center, at the time services are authorized for eligibility for services is reviewed, to inform the consumer orally and in writing of the availability and purpose of the program, and, further, requires the regional center to inform the consumer that any decision regarding the provision of services or eligibility for services may be disputed by the consumer through the program.
- 17) Requires all purchase of service, service eligibility, and individual program plan (IPP) documents to include information regarding the availability and purpose of the program in a clearly readable and accessible manner.
- 18) Allows DDS to establish a grant program to provide funding to regional centers to establish the program, as specified.
- 19) Allows regional centers to enter into an agreement with other regional centers to establish a program on a regional basis.
- 20) Prohibits a regional center from being eligible for funding unless it meets certain criteria, as specified.
- 21) Requires a dispute resolution program to provide consumers who indicate intent to use the process with a written statement prior to the resolution proceeding in a language easy to read and understand stating: the nature of the dispute; the nature of the dispute resolution process; the rights and obligations of all parties; the procedures under which the dispute resolution will be conducted; and, if all parties enter into arbitration, whether the dispute resolution will be binding.

- 22) Prohibits an agreement resolving a dispute entered into with the assistance of a program from being enforceable in a court or admissible as evidence in any judicial or administrative proceeding, unless the consent of the parties or the agreement includes a provision that clearly states the intention of the parties that the agreement or any resulting award is enforceable or admissible as evidence.
- 23) Allows the parties to agree in writing to pause or delay the applicable statute of limitations during the dispute resolution process.
- 24) Subjects certain proceedings conducted by a program, including, but not limited to, arbitrations and conciliations, to current law, as specified.
- 25) Requires each program to maintain statistical records as required by the provisions of the bill, as may be required by the regional center, and, further, requires the records to maintain the confidentiality and anonymity of the parties.
- 26) Specifies that the provisions of this bill do not prohibit a person who voluntarily enters the dispute resolution process from revoking their consent, withdrawing from dispute resolution, and seeking judicial or administrative redress, unless all parties have agreed to a binding award.
- 27) Requires, in cases where a criminal complaint has been filed by a prosecutor, as specified, the advice of counsel to be obtained before any dispute resolution process is initiated, and specifies that this does not preclude a defendant from knowingly and voluntarily waiving the right to counsel, and, further, requires a defendant who indicates a desire to waive the right to counsel be encouraged to consult with the public defender or private counsel before waiving the right.
- 28) Requires the advisory Council to adopt rules and regulations to be used by the programs for the recruitment and training of persons conducting dispute resolution and provisions for periodic monitoring and evaluation of the programs, and, further, requires the council to establish guidelines to evaluate the performance of programs as it relates to court caseload reduction, cost savings to the state, and the efficacy of the programs.
- 29) Requires the Council to adopt temporary guidelines within six months of its initial meeting, and, further, does not subject these guidelines to certain procedures related to administrative regulations, as specified.
- 30) Requires DDS, upon the Council's adoption of the temporary guidelines, to award grants pursuant to the provisions of this bill.
- 31) Requires dispute resolution programs to comply with temporary guidelines, the provisions of this bill, and, upon adoption, the formal rules and regulations.
- 32) Requires formal rules and regulations be adopted pursuant to provisions of current law, as specified, and, specifies that, upon adoption, those formal rules and regulations to supersede the temporary guidelines.
- 33) Requires DDS, on and after January 1, 2021, or an earlier date, as specified, to periodically review the effectiveness of the rules and regulations adopted pursuant to the provisions of

this bill, and adopt any necessary changes, and, further requires DDS to monitor and evaluate the programs as to their compliance with those rules and regulations.

- 34) Requires the Director of DDS to administer and enforce the rules and regulations adopted pursuant to the provisions of this bill.
- 35) Requires the rules and regulations adopted by the advisory council to be formulated to promote statewide uniformity with the guidelines, as specified
- 36) Requires each program to annually provide DDS with certain data, as specified, and, further requires the data to maintain the confidentiality and anonymity of the persons employing the dispute resolution process.

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 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) Requires each regional center and each vendor that contracts with a regional center to provide services to consumers to conspicuously post in its internet website, if any, a link to the department's internet website page the provides a description of the appeals procedure and a department telephone number available for answering consumer and applicant appeals procedure questions. (WIC 4704.6)
- 7) Requires every service agency to have, as a condition of continued receipt of state funds, an agency fair hearing procedures for resolving conflicts between the service agency and

recipients of, or applicants for, service, and further requires any public or private agency to adopt and periodically review a written internal grievance procedure. (WIC 4705 (a) and (b))

- 8) Requires all recipients and applicants, and persons having legal responsibility for recipients or applicants, to be informed verbally of, and notified in writing in a language which they comprehend, the service agency's mediation and fair hearing procedure when they apply for service, when they are denied service, when notice of service modification is given, as specified, and upon request. (WIC 4705 (d))
- 9) Permits, if, in the opinion of any person, the rights or interests of a claimant who has not personally authorized a representative will not be properly protected or advocated, SCDD to appoint a person or agency as representative, as specified, to assist the claimant in the mediation and fair hearing procedure. Further, requires the appointment to be in writing to the authorized representative and requires a copy of the appointment to be immediately mailed to the service agency director. (WIC 4705 (e))
- 10) Requires adequate notice be provided to an applicant or recipients and their authorized representative by certified mail at least 30 days prior to certain actions, including: the agency makes a decision without the mutual consent of the service recipient or authorized representative to reduce, terminate, or change services set forth in an IPP or a recipient is determined to be no longer eligible for agency services. (WIC 4710 (a))
- 11) Makes Legislative findings and declarations related to the unprecedented growth in the number of administrative regulations in recent years, and that many regulations are frequently unclear and unnecessarily complex, even when the complicated and technical nature of the subject matter is taken into account. (Government Code Section 11340)
- 12) Defines "mediation" as a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement. (Evidence Code Section 1115 (a))

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 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.

Regional centers: It should be noted that regional centers do not directly provide services to individuals, but, rather, help link individuals to service providers in the community. Because of this, 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. Currently, over 345,000 individuals receive services and supports through the regional center system.

Fair hearing process: A key tenet of the developmental services system is the idea of person-centered planning in order to allow an individual and their family to choose the services and supports that best meet their needs and goals. These services and supports are determined through the individual program planning process, which is a series of discussions or interactions between a person with a developmental disability, their family or representatives, when appropriate, and regional center representatives, among others. This team helps the individual develop a personalized plan, including, but not limited to, a preferred place to live, preferred types of daily activities, and whether employment is a goal. These decisions are based on the individual’s identified strengths, capabilities, preferences, lifestyle, and cultural background; the specific supports and services are enumerated in the consumer’s IPP.

In the event that a regional center makes a decision that the consumer disagrees with, current law provides for recourse through several dispute resolution processes. For children 0-3 years old, the Early Start Complaint Process focuses on children who are at risk of having a developmental disability, or have a developmental disability or delay, as well as their families. The Early Start Complaint Process consists of three components, including a mediation process, an opportunity for a due process hearing, and a state complaint process. For individuals over three years old, the Fair Hearing Process provides a process for resolving disagreements between the regional center or state developmental center and consumers.

The Fair Hearing Process includes a voluntary informal meeting held by the regional center or developmental center director, or their designee, and the consumer or their representative, if applicable. The purpose of the meeting is to attempt to resolve issues of the appeal, though a consumer or their representative may decline the meeting if they so choose. If a consumer or their representative declines the informal hearing or is still dissatisfied with the decision made by the regional or developmental center, they may engage in mediation or proceed directly to a fair hearing. If mediation is requested, a regional or developmental center may decline the request; however, if the request is accepted, mediation is conducted by a mediator provided by the Office of Administrative Hearings in an informal manner. A consumer or their representative may withdraw from mediation at any time and proceed to a fair hearing. If a regional or developmental center declines mediation, or a consumer or their representative withdraws from mediation, a formal fair hearing is conducted by an Administrative Law Judge employed by the Office of Administrative Hearings. A final decision must be made within 90 days of the regional or developmental center receipt of the Fair Hearing Request form, however, the 90-day time limit may be extended if mediation is requested or if a consumer requests a continuance or postponement of the hearing.

Need for this bill: According to the author, “[This bill] will address the inaccessibility of current dispute resolution resources by requiring dispute resolution programs at each regional center. By requiring that dispute resolution personnel and programs be accessible to clients, [this bill] will directly respond to client complaints about the inadequacy of current dispute resolution mechanisms. [This bill] will ensure that improved accessibility to dispute resolution for clients continues to meet a high professional standard for dispute resolution.”

Staff comments: The provisions of this bill seek to ensure regional center consumers have the ability to challenge certain decisions of regional centers in the event that the consumer disagrees with the regional center. The bill does this by requiring regional centers to establish a dispute resolution program to hear and decide disputes between regional centers and consumers regarding the provision of and eligibility for services. The bill would also create within DDS a Developmental Disabilities Dispute Resolution Advisory Council, to be comprised of various individuals who meet qualifications and who are appointed by designated entities; the Council is tasked with adopting rules and regulations for the dispute resolution programs and would further require DDS to periodically review whether the rules and regulations are effective. While the goal of this bill, namely, to ensure regional center consumers have recourse in the event that they disagree with a decision made by a regional center, is laudable, the provisions of this bill raise a number of concerns, including whether the processes created by this bill are redundant of, and inferior to, current dispute resolution practices.

Current law provides individuals with an ability to dispute decisions made by regional centers, requires notification be given to consumers at various intervals and through various channels, including providing links to the DDS webpage for dispute resolutions on service provider websites, and by providing for representation in dispute resolutions in the event that a consumer does not have a representative, among other things. It is unclear what, if any, gaps exist in the current dispute resolution process that the bill’s provisions seek to fill, which raises questions as to the necessity of this bill.

Moreover, this bill raises concerns as to whether consumer experiences will vary significantly depending on the catchment area they live in, as the provisions of this bill require each regional center to create their own dispute resolution program. Additionally, it appears that not all regional centers are guaranteed grants via DDS to support their efforts, which may create even greater disparities across regional center dispute resolution processes. The oversight role of the Council is also unclear, as is the relevance of its composition to the disability services system, which has long strived to solicit, value, and heed consumer voices. The Council, as created by the provisions of this bill, is mandated to consist of a majority of individuals with professional and/or advanced academic experience; e.g., an individual with a Ph.D. and only one year of professional experience may serve on the Council, but there is no required inclusion of a consumer, a consumer’s family member or representative, or a consumer advocate, outside of the SCDD Chair. It is therefore unclear whether the composition of the Council truly reflects the voice of regional center consumers to ensure the needs of consumers are met as it relates to the dispute resolution process.

The bill also raises questions related to timeliness and the current need for resources expressed by many consumers and providers of developmental services. The economic recession forced the State of California to reduce spending across its various agencies and programs, and 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 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. *Should this bill move forward, the author may wish to consider whether the provisions of this bill, which may be redundant of current law – and inferior to current law, considering the significant potential for widely disparate experiences by consumers across regional centers – are an appropriate use of state resources given the ongoing efforts to restore the services and supports provided directly to individuals with developmental disabilities.*

Double referral: This bill will be referred to the Assembly Judiciary Committee should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

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