

Date of Hearing: August 3, 2020

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

SB 1264 (Committee on Human Services) – As Amended July 27, 2020

SENATE VOTE: 40-0

SUBJECT: Human services

SUMMARY: Makes various changes across human services statutes, including, but not limited to, extending the Limited Examination Appointment Program (LEAP) internship pilot, requiring residential facilities and day programs to adopt an emergency and disaster preparedness plan, and defining and specifying authorized representative processes for the State Council on Developmental Disabilities (SCDD). Specifically, **this bill:**

LEAP:

- 1) Extends the LEAP internship pilot for one year, and provides that provisions for this program only remain active until January 1, 2022, and as of that date are repealed.
- 2) Makes various technical changes.

Emergency and Disaster Preparedness Plan:

- 3) Requires an adult residential facility (ARF), social rehabilitation facility, residential care facility and children's residential facility, with the exception of a resource family homes, foster family homes, and small family homes, to have an emergency and disaster plan that must include, but not be limited to, all of the following:
 - a) Evacuation procedures, including identification of an assembly point or points that must be included in the facility sketch;
 - b) Plans for the facility to be self-reliant for a period of not less than 72 hours immediately following any emergency or disaster, as specified;
 - c) Transportation needs and evacuation procedures to ensure that the facility can communicate with emergency response personnel or can access the information necessary in order to check the emergency routes to be used during an evacuation, as specified;
 - d) A contact information list containing all of the following:
 - i) Emergency response personnel;
 - ii) The contact information for the regulating entity; and,
 - iii) Transportation providers.
 - e) At least two appropriate shelter locations that can house or supervise individuals served by the facility during an evacuation, as specified;

- f) The location of utility shut-off valves and instructions for use; and,
- g) Procedures that address all of the following:
 - i) Provisions regarding emergency energy backup, including the procurement and use of installed and portable generators;
 - ii) Responding to an individual's needs if emergency call buttons are inoperable;
 - iii) The procedure for communicating with individuals served by the facility, families, and others, as specified, including a backup process;
 - iv) Assistance with, and administration of, medications;
 - v) Storage and preservation of medications, as specified;
 - vi) The operation of assistive medical devices that need electric power to operate, as specified;
 - vii) A process for identifying individuals served by the facility who have special needs, and a plan for meeting those needs; and,
 - viii) Procedures for confirming the location of each individual served by the facility during an emergency response.
- 4) Requires a facility, if staff is employed, to provide training on the emergency and disaster plan to each staff member upon hire and annually after that. Requires this training to include staff responsibilities during an emergency or disaster.
- 5) Requires a facility to conduct a drill at least quarterly for each shift that takes into account different emergency scenarios, as specified. Requires that documentation of the drill include the date, type of emergency covered, and if applicable, the name of staff participating in the drill.
- 6) Requires a facility to review the emergency and disaster plan annually and make updates as necessary, including changes in floor plans and the population served. Requires the plan to be signed and dated by the licensee, administrator, or regulated individual to indicate that the plan has been reviewed as required.
- 7) Requires a facility to have all of the following information readily available during an emergency:
 - a) A roster of individuals served by the facility, including the date of birth for each individual;
 - b) An appraisal of needs and services plan for each individual served by the facility;
 - c) A medication list for individuals served by the facility with centrally stored medications; and,

- d) Contact information for the responsible party and physician for each individual served by the facility.
- 8) Requires a facility to have both of the following in place:
 - a) An evacuation chair at each stairwell in a residential facility serving adults, on or before July 1, 2021;
 - b) A set of keys available for use during an evacuation that provides access to all of the following:
 - i) All occupied resident units, if applicable;
 - ii) All facility vehicles;
 - iii) All facility exit doors; and,
 - iv) All facility cabinets, cupboards, or files that contain elements of the emergency and disaster plan, as specified.
 - 9) Requires a facility to make the emergency and disaster preparedness plan available, upon request, to individuals served by the facility onsite, any responsible party for a resident, the local long-term care ombudsman, and local emergency responders. Provides that individual and employee information remain confidential if an entity requests a copy of the plan.
 - 10) Requires a facility licensee applicant to submit the emergency and disaster preparedness plan with the initial license application.
 - 11) Requires the facility regulating entity to confirm, during the regularly scheduled visits, that the emergency and disaster preparedness plan is on file at the facility and includes the required content.
 - 12) Encourages a facility to have the emergency and disaster preparedness plan reviewed by the local emergency authorities.
 - 13) Provides that the requirement for facilities to develop an emergency and disaster preparedness plan does not create any new or additional requirement on the regulating entity for these facilities.
 - 14) Requires an adult day program to have an emergency and disaster preparedness plan that includes, but is not limited to, all of the following:
 - a) Evacuation procedures;
 - b) Transportation arrangements;
 - c) A contact information list for all of the following:
 - i) Local emergency response personnel;
 - ii) Each clients' authorized representative or local emergency contact name; and,

iii) The licensing division within the department.

d) The location of all utility shut-off valves and instructions for use.

Authorized Representative:

15) Corrects a cross-reference in the Welfare and Institutions Code (WIC) regarding an authorized representative appointed by the SCDD.

16) Defines “authorized representative” as an individual appointed by the SCDD, as specified.

17) Makes various technical changes.

EXISTING LAW:

LEAP:

1) Establishes the LEAP administered by the California Department of Human Resources (CalHR), which provides an alternative to the civil service general exam and appointment process, and allows disabled individuals to compete for a position in state service by proving eligibility and meeting other specified criteria. (Government Code Section [GOV] 19240 et seq.)

2) Defines “developmental disability” as a disability that originates before an individual attains 18 years of age, continues, or can be expected to continue indefinitely and constitutes a substantial disability for that individual. This definition includes, but is not limited to, intellectual disability, cerebral palsy, epilepsy, autism, and disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability. (Welfare and Institutions Code Section [WIC] 4512(a))

3) Requires CalHR to combine respective civil service general exam employment lists and LEAP lists into one list of candidates for state agencies to consider when filling employment positions. (GOV 19057.1)

4) Requires CalHR to develop a pilot LEAP internship program for developmentally disabled persons in coordination with the Department of Developmental Services (DDS) and the Department of Rehabilitation (DOR). Provides that the provisions related to the pilot LEAP internship program shall sunset on January 1, 2021. (GOV 19241)

Community Care Emergency Plans:

5) Establishes the California Community Care Facilities Act (CCFA) and requires the California Department of Social Services (CDSS) to administer and license community care facilities providing nonmedical services. (Health and Safety Code Section [HSC] 1500 et seq.)

6) Establishes the California Child Day Care Facilities Act, which provides for the licensure and regulation of child day care centers and family day care homes by CDSS. (HSC 1596.70 et seq.)

- 7) Requires community care facilities operating in California, as specified, to have a valid license. (HSC 1503.5)
- 8) Defines “community care facility” to mean any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, individuals with physical disabilities or mental impairments and abused or neglected children. (HSC 1502 (a))
- 9) Defines “residential facility” as any family home, group care facility, or similar facility determined by the department, for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual. (HSC 1502 (a)(1))
- 10) Defines “adult day program” to mean any community-based facility or program that provides care to persons 18 years of age or older in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of these individuals on less than a 24-hour basis. (HSC 1502(a)(2))
- 11) Defines “adult residential facility” as any facility of any capacity that provides 24-hour-a-day nonmedical care and supervision to persons 18 years of age through 59 years of age. (22 California Code of Regulations [CCR] 80001(a)(5))
- 12) Defines “residential care facility for the elderly” to mean a housing arrangement chosen voluntarily by individuals ages 60 and older, or their authorized representative, where varying levels and intensities of care and supervision, protective supervision, personal care, or health-related services are provided, based upon residents varying needs, as determined in order to be admitted and to remain in the facility. (HSC 1569.2(p)(1))
- 13) Defines “residential care facility” to mean a residential care facility for persons with a chronic, life-threatening illness who are 18 years of age or older or are emancipated minors, and for family units. (HSC 1568.01(j))
- 14) Requires CDSS to license residential care facilities for persons with chronic, life-threatening illness under a separate category, as provided. (HSC 1568.02 et seq.)
- 15) Requires a Residential Care Facility for the Elderly (RCFE) to have an emergency plan, that includes specific components, including, but not limited to:
 - a) Evacuation procedures including identification of an assembly point or points that must be included in the facility sketch;
 - b) Plans for the facility to be self-reliant for a period of not less than 72 hours immediately following any emergency or disaster, including, but not limited to, a short-term or long-term power failure, as specified;
 - c) Transportation needs and evacuation procedures to ensure that the facility can communicate with emergency response personnel or can access the information necessary in order to check the emergency routes to be used, as specified;

- d) Contact information for specified entities;
 - e) At least two appropriate shelter locations that can house facility residents during an evacuation, as specified;
 - f) The location of utility shut-off valves and instructions for use; and,
 - g) Procedures that address emergency circumstances, as specified. (HSC 1569.695(a))
- 16) Requires an RCFE to provide training on the emergency plan to each staff member upon hiring and annually after that and requires that the training shall include staff responsibilities during an emergency or disaster. (HSC 1569.695(b))
- 17) Requires an RCFE to conduct an emergency drill at least quarterly for each shift that varies in type of emergency from quarter to quarter. Emergency drills do not require the actual evacuation of residents, and the facility may allow residents to participate but shall not require resident participation. (HSC 1569.695(c))
- 18) Requires an RCFE to review their emergency plan annually and make updates as necessary. (HSC 1569.695(d))
- 19) Requires an RCFE have specified information readily available to facility staff for use during an emergency, as provided. (HSC 1569.695(e))
- 20) Requires RCFEs to make the emergency plan available upon request to residents' onsite, any responsible party for a resident, the local long-term care ombudsman, and local emergency responders. (HSC 1569.695(g))
- 21) Requires the Community Care Licensing Division (CCLD) within CDSS to confirm, during annual licensing visits of RCFEs, that the emergency disaster plan is on file at the facility and includes required content. (HSC 1569.695(i))

Developmental Disabilities:

- 22) 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. (WIC 4500 et seq.)
- 23) 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 (a))
- 24) Establishes the SCDD with authority independent of any single state service agency to work on promoting the core values of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, as specified. (WIC 4520)
- 25) Provides that the SCDD may, in its discretion, honor an individual's choice, if expressed, to reject the assistance of an authorized representative. Provides that if the person does not express a preference, the order of preference for selection of the representative may be the

person's parent, involved family members, or a volunteer selected by the SCDD, as specified. (WIC 4541(a)(2))

- 26) States that the Legislature places a high priority on opportunities for adults with developmental disabilities to choose and customize day services to meet their individualized needs; have opportunities to further the development or maintenance of employment and volunteer activities; direct their services; pursue postsecondary education; increase their ability to lead integrated and inclusive lives. Allows a consumer to choose a tailored day service or vouchered community-based training service, in lieu of any other regional center day program, look-alike day program, supported employment program, or work activity program. (WIC 4688.21(a))

Authorized Representative:

- 27) Defines "authorized representative" as meaning the conservator of an adult, the guardian, conservator, or parent of a person having legal custody of a minor claimant, or a person or agency appointed by the CSDD and authorized in writing by the claimant or by the legal guardian, conservator, or parent or person having legal custody of a minor claimant to act for or represent the claimant. Provides that an "authorized representative" may also mean a responsible adult appointed by a court order, which the court determines is an appropriate representative for the minor, and who does not have a conflict of interest, as defined, including but not limited to, a foster parent, caregiver, or court-appointed special advocate. (WIC 4701.6)
- 28) Provides that the SCDD may, in its discretion, appoint an authorized representative for persons with developmental disabilities to ensure the protection of civil and service rights of persons with developmental disabilities and to assist the person in expressing their desires, and in making decisions and advocating for their needs, preferences, and choices, as specified. (WIC 4541 (a)(1))

FISCAL EFFECT: According to the Senate Appropriations Committee on June 18, 2020, staff estimates indeterminate costs (potentially, low hundreds of thousands General Fund) for the DOR's resources to extend the LEAP internship program by one year, as well as ongoing cost pressures if the program is made permanent in the future. Based on the committee's previous estimate of the proposed internship program in 2015, it assumed 50 internships would be offered annually to applicants who would have otherwise not passed the current written exam or readiness evaluation, approximately \$622,000 with monthly salaries of \$2,074 (Office Assistant). At the time of this analysis, the number of candidates who entered permanent civil service through the internship program was unknown. Staff assumed at least 0.5 PY or like resources at the DOR managed the internship program, at a salary cost that would surpass the committee's suspense threshold.

COMMENTS:

Community Care Facilities: The CCFA, enacted in 1973, contains the provisions for a variety of community-based housing options for the elderly and disabled. The CCFA seeks to provide a new system of community-based care for those who require additional supervision and services that are determined to be nonmedical. Facilities established under the act provide care to individuals with disabilities, seniors, children in foster care, families who need early child education, and those with severe behavioral, emotional, or mental disorders.

Community Care Licensing Division (CCLD): Facilities created under the CCFA are administered through CDSS. The CCLD, located within the department, is responsible for the regulation of a variety of community care facilities. In addition to licensing, the division ensures regulatory compliance and enforcement when necessary. According to the state website, the mission of the CCLD is to “promote the health, safety, and quality of life of each person in community care through the administration of an effective collaborative regulatory enforcement system.” A variety of facilities fall under the purview of this division, including adult day programs, transitional shelters, group homes, foster family homes, homeless youth shelters, child care centers, and others.

Licensed Residential Facilities: Licensed residential facilities include any family home, group care facility, or similar facility that provides 24-hour nonmedical care to individuals in need of personal services, supervision, or assistance to complete daily living tasks. A licensed residential facility may have multiple licenses, depending on levels of care and services provided.

Residential Care Facilities: Residential care facilities, which fall under the licensing purview of the CCLD, provide housing and care to individuals who live with chronic, life-threatening illnesses. A residential care facility is categorized as providing hospice level care and services to individuals who have been diagnosed as terminally ill. These facilities provide housing and care to individuals that are 18 years or older or have been deemed emancipated minors. If necessary, these facilities also may provide room and board to those receiving personal care services.

Residential Care Facility for the Elderly (RCFE): An RCFE, licensed by the CCLD as a type of licensed residential facility, is categorized as providing nonmedical care and supervision to individuals with specific daily living needs. These facilities primarily offer support to those 60 years or older who do not need 24-hour services. RCFE populations often have functional and cognitive impairments that limit their ability to complete various living tasks, but their medical conditions are managed either by themselves or by an outside medical professional. An RCFE may additionally be licensed as a residential care facility, allowing them to take in residents who need a hospice level of care.

Adult Residential Facility (ARF): ARFs, also categorized as a licensed residential facility by the CCLD, provide nonmedical care and services to residents age 18-59, or those 60 and older who meet specific requirements. These facilities are open 24-hours a day and assist those with a mental, physical, or developmental disability. Residents of ARFs can receive assistance with a variety of daily living tasks such as housekeeping, personal hygiene upkeep, bathing, dressing, distribution of medication, and general supervision. While ARFs are not required to provide additional medical services, these facilities may choose to offer hospice level care under the residential care facility license.

Children’s Residential Program: The Children’s Residential Program has regulatory responsibility over residential facilities serving youth, typically those in the child welfare system. These facilities provide 24-hour care and supervision for minors, age zero through 17, and nonminor dependents age 18 through 21. According to the state’s website, the mission of the Children’s Residential Program is “to protect and improve the lives of all youth who reside in a community care facility through the administration of a transparent licensing system that is collaborative, fair, and supportive of families.” Some of the facilities included in the Children’s Residential Program include crisis nurseries, adoption agencies, foster family agencies, licensed

foster family homes; small family homes; group homes; and short-term residential therapeutic treatment programs (STRTP). These facilities, although they vary in level of care and supervision, are also licensed by the CCLD.

Adult Day Programs: Adult Day Programs provided through CDSS are also licensed by CCLD. These programs serve elderly individuals and adults with mental health conditions and developmental disabilities. The facilities used in these programs provide nonmedical care and supports, though the specific services vary by location. The goal of these programs is to help attendees stay mentally and physically active and to prevent social isolation and skill decline. In contrast to ARFs and RCFEs, adult day programs do not offer 24-hour care and are attended only one to two days a week with limited hours.

Lanterman Developmental Disabilities Services Act (Lanterman Act): In 1969, the Lanterman Act established that individuals with developmental disabilities and their families have a right to receive the necessary supports required for them to live independently in their community. The term “developmental disability” is defined under state law 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, but are not limited to, epilepsy, cerebral palsy, and autism spectrum disorder. The Lanterman Act, in addition to defining rights for this population, created a system of regional centers to provide coordination services and information to consumers and family members.

Regional Centers: California’s regional centers are nonprofit corporations that contract with DDS to coordinate services and supports for individuals with developmental disabilities. Centers are located throughout the state and use local resources to provide a range of supportive services. The regional center structure was first created through a legislative pilot program and was expanded through the Lanterman Act, leading to the establishment of 21 centers statewide. These centers provide information and referrals, develop early intervention services, offer genetic counseling, and make other local resources more accessible.

Regional centers conduct an assessment to determine individual diagnosis and eligibility. There is no cost for the assessment, and most support provided by the regional centers are free regardless of income. Individuals receiving assistance from a regional center are assigned a case manager, who is responsible for helping develop a service plan through an in-depth planning process. Regional center case managers partner with the individual receiving services and their families to ensure coordination of care is as seamless as possible.

Authorized Representatives: Within our state there are a number of procedures set forth for determining when an appointment of an authorized representative is necessary for an individual’s successful program participation. A person with disabilities may be granted an authorized representative to provide advocacy on their behalf in the development and implementation of their care plan. There are currently two processes for appointing this type of authorized representative under California law, through a regional center hearing or by selection of the SCDD. An authorized representative expresses the needs and desires of the disabled individual in both appointments; however, a representative is only placed by the SCDD when the person with developmental disabilities has no parent, guardian, or conservator legally authorized to represent them, and the person has either requested the appointment or their rights, as determined by the Council, will not be properly advocated for without assistance. During a regional center hearing, the responsibilities of the authorized representative differ and are defined as such within WIC.

Limited Examination and Appointment Program (LEAP): The LEAP is an examination program that serves as an alternative way of assessing job qualifications for applicants with disabilities in state civil service. To qualify for the program, which allows applicants to demonstrate skills and abilities through a “job examination period” an individual must complete a written, often online, exam or readiness evaluation. LEAP certification is obtained by the DOR, which transfers information of the eligible applicants to CalHR’s database of unranked candidates. Hiring authorities for the state then reach out through the database for interviews and job placement. LEAP allows for individuals to use the job examination period as a probationary time, where they are evaluated on the job and appointed to a classification upon completion. Typically the applicant goes through the examination period for around nine months; however, this timeline varies.

LEAP Internship Program: The LEAP internship program is an alternative way for individuals with developmental disabilities to qualify for state civil service in lieu of the standard assessment. With the completion of a state agency internship, totaling at least 512 hours or more, individuals are considered qualified for state civil service and appointed to a classification. The program is currently set to sunset on January 1, 2021.

Need for this bill: This bill seeks to make several changes across human services statutes, including, but not limited to, requiring various residential facilities to adopt an emergency preparedness plan, extending the LEAP internship pilot, and defining and specifying authorized representative processes for the SCDD. By making these technical changes through the committee omnibus bill, necessary code corrections, sunset extensions, and emergency preparedness requirements could be codified more efficiently in a time where the Legislative timeline is shortened.

According to the author, “This bill provides necessary changes to three distinct policy areas within the purview of the Human Services: emergency plans for facilities licensed by CDSS’s CCLD; code clean up related to authorized representatives for individuals with developmental disabilities; and a one-year sunset extension for the LEAP internship program for persons with developmental disabilities. The COVID-19 pandemic has resulted in an unprecedented number of challenges facing the state and Legislature, all while the Legislature has a shortened timeframe with which to respond to these challenges. This bill allows the Legislature to take action on a combination of issues within the human services space related to the pandemic, other potential states of disaster (such as wildfires) and necessary technical changes/sunset extensions during a time when individual bills on each item are not able to be considered.”

RELATED AND PRIOR LEGISLATION:

SB 1418 (Rubio) of 2020 makes emergency and disaster preparedness provisions for various adult care facilities and children’s residential facilities licensed under the CCFA. SB 1418 is currently in the Senate Human Services Committee.

AB 365 (Garcia) of 2019 would have required CalHR to develop a plan to expand the LEAP and the pilot LEAP internship program. AB 365 was vetoed by Governor Newsom.

AB 3098 (Friedman), Chapter 348, Statutes of 2018, established updates to the required content for RCFE emergency and disaster plans, and required CDSS to confirm that a plan, including the required content, is on file for licensed facilities.

SB 848 (Committee on Budget and Fiscal Review), Chapter 35, Statutes of 2016, removed the six-month probationary period that is traditionally required of state service employees for LEAP employees.

SB 644 (Hancock), Chapter 365, Statutes of 2015, created the LEAP internship program to allow individuals with developmental disabilities to qualify for LEAP with a state agency internship, as specified.

AB 1595 (Chesbro), Chapter 409, Statutes of 2014, provided the statutory responsibilities of the SCDD, including changes to comply with the requirements of the federal Administration of Intellectual and Developmental Disabilities (AIDD).

SB 368 (Liu), Chapter 471, Statutes of 2011, provided juvenile courts the authority to limit a parent or guardian's right to make decisions about the regional center and other developmental services for a child with developmental disabilities and to appoint a developmental services decision-maker.

REGISTERED SUPPORT / OPPOSITION:

Support

California Commission on Aging
Disability Rights California
State Council on Developmental Disabilities

Opposition

None on file

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