

Date of Hearing: June 18, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES  
Eloise Gómez Reyes, Chair  
SB 412 (Stone) – As Amended April 2, 2019

**SENATE VOTE:** 38-0

**SUBJECT:** Developmental services: fees

**SUMMARY:** Repeals the Family Cost Participation Program (FCPP) and deletes the requirement that a regional center assess an annual family program fee (AFPF). Specifically, **this bill:**

- 1) Removes FCPP requirements by deleting provisions of current law that:
  - a) Establish the FCPP in the Department of Developmental Services (DDS) for purposes of assessing a cost participation to parents who have a child with a developmental disability or is eligible for services under the California Early Intervention Services Act and to whom other criteria applies;
  - b) Require DDS to develop and establish a FCPP schedule to be used by regional centers to assess the parents' cost participation;
  - c) Apply the FCPP to respite, day care, and camping services included in an individual program plan (IPP) or individualized family service plan (IFSP) for children zero through two years of age; and,
  - d) Establish other criteria related to the application and administration of the FCPP.
- 2) Removes AFPF requirements by deleting provisions of current law that:
  - a) Require, beginning on July 1, 2011, a regional center to assess an annual family program fee from parents whose adjusted gross family income is at or above 400% of the federal poverty level (FPL) based upon family size, and who have a child to whom the following conditions apply: the child has a developmental disability or is eligible for services under the California Early Intervention Services Act; the child is less than 18 years of age; the child lives with their parent; the child or family receives services beyond eligibility determination, needs assessment, and service coordination; and, the child does not receive services through the Medi-Cal program;
  - b) Dictate by when and from whom an AFPF is to be assessed and collected;
  - c) Require the AFPF for parents that meet the aforementioned qualifications be \$200 per family, regardless of the number of children in the family with developmental disabilities or who are eligible for services under the California Early Intervention Services Act;
  - d) Allow a regional center to grant exemption to the assessment of an AFP fee if the parents demonstrate: that an exemption is necessary to maintain the child in the family home; the existence of an extraordinary event that impacts the parents' ability to pay the fee or the parents' ability to meet the care and supervision needs of the child; and, the existence of a

catastrophic loss that temporarily limits the ability of the parents to pay and creates a direct economic impact on the family;

- e) Prohibit services from delayed or denied for a consumer or child based upon the lack of payment of the AFPP; and,
- 3) Establish other criteria related to the application and administration of the AFPP.
  - 4) Makes technical and conforming changes.

**EXISTING LAW:**

- 1) Establishes an entitlement to services for individuals with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welfare and Institutions Code [WIC] Section 4500 *et seq.*)
- 2) Grants all individuals with developmental disabilities, among all other rights and responsibilities established for any individual by the United States Constitution and laws and the California Constitution and laws, the right to treatment and habilitation services and supports in the least restrictive environment. (WIC 4502)
- 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 the 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) Establishes the FCPP for purposes of assessing a cost participation to parents who have a child and to whom all of the following conditions apply: the child has a developmental disability, or is eligible for services under the California Early Intervention Services Act, as specified; the child is zero through 17 years of age; the child lives in the parents’ home; the child receives services and supports through the regional centers; and, the child is ineligible for Medi-Cal. (WIC 4783 *et seq.*)
- 6) Prohibits Aid to Families with Dependent Children-Foster Care (AFDC-FC) and Adoption Assistance Program (AAP) payments from being counted toward the gross income calculated for purposes of the FCPP, and further prohibits AFDC-FC recipients from being subject to FCPP program requirements. (WIC 4684 (c)(3))
- 7) Requires a regional center, effective July 1, 2011, to assess an AFPP from parents whose adjusted gross family income is at or above 400% of the FPL based upon family size and who have a child to whom all of the following apply: the child has a developmental disability, or is eligible for services under the California Early Intervention Services Act, as specified; the child is less than 18 years of age; the child lives with their parent(s); the child

or family receives services beyond eligibility determination, needs assessment, and service coordination; and, the child does not receive services through Medi-Cal. (WIC 4785 *et seq.*)

- 8) Prohibits the AFPP from being assessed or collected if the child receives only respite, day care, or camping services from the regional center and a cost for participation is assessed pursuant to the FCPP. (WIC 4785 (a)(2))
- 9) Suspends the ability of a regional center to purchase certain services, including camping services and associated travel expenses; social recreation activities, except for those activities vendored as community based day programs; educational services for children three to 17, inclusive, years of age; and nonmedical therapies, including, but not limited to specialized recreation, art, dance, and music, pending implementation of the Individual Choice Budget. (WIC 4648.5 (a))

**FISCAL EFFECT:** According to the Senate Appropriations Committee on April 2, 2019, this bill may result in the following costs:

- 1) Repeal of FCPP: FCPP operating expenses, equipment, and total staff salary and benefits currently cost DDS \$1.09 million (\$700,000 General Fund [GF]) per year. Repealing the FCPP would result in a subsequent savings of \$1.09 million per year for reducing regional center operations. The FCPP, however, generates revenues of approximately \$5 million per year, which would be lost with the repeal. The net cost for the repeal of the FCPP would be \$3.9 million (\$4.3 million GF) per year; and,
- 2) Repeal of the AFPP: Revenues from the AFPP fund the Program Development Fund which provides start-up funding for the Community Placement Plan Program (CPP). The Governor's proposed budget estimates the AFPP would generate \$1.28 million in revenues in 2019-20. Repealing the AFPP would result in a loss of revenue of \$1.28 million, which would have to be offset to continue funding the CPP.

**COMMENTS:**

***Developmental Services:*** The Lanterman Developmental Disabilities Act (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 consumers and their families to service providers in the community.

**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

***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 DDS began implementing numerous cost-saving measures, including restrictions and freezes on vendor rates, and reductions in regional center operations funding and provider payments, in addition to the following.

**Family Cost Participation Program (FCPP):** The FCPP became effective upon the adoption of SB 1103 (Committee on Budget and Fiscal Review), Chapter 228, Statutes of 2004. Under the FCPP, families are required to share in the cost of services provided to their children if the following criteria are met:

- The child has a developmental disability or is eligible for services under the California Early Intervention Services Act;
- The child is zero through 17 years of age;
- The child lives in their parents’ home;
- The child is not eligible for Medi-Cal; and,
- Family income is at or above 400% of the FPL.

The FCPP only applies to the families of children who receive day care, respite, and/or camping services, though it should be noted that, under current law, a regional center’s ability to purchase camping services is suspended effective July 1, 2009. According to the U.S. Department of Health and Human Services, the 2019 FPL for a family of three is \$21,330; in order to be subject to the requirements of the FCPP, a family of three would need a household income of at least \$85,320.

While SB 1103 was initially signed into law several years before the Great Recession forced numerous budgetary cuts, it originally contained a provision that made inoperative the FCPP as of July 1, 2009, and repealed the FCPP as of January 1, 2010; however, ABX3 5 (Committee on Budget), Chapter 3, Statutes of 2008, in response to the Great Recession, extended the FCPP requirements indefinitely. The provisions of this bill would repeal the FCPP in its entirety.

**Annual Family Program Fee (AFPF):** Implemented by AB 104 (Committee on Budget), Chapter 37, Statutes of 2011, the AFPF leverages a fee on the parents of children who meet the following criteria:

- The child has a developmental disability or is eligible for services under the California Early Intervention Services Act;

- The child is less than 18 years of age;
- The child lives with their parents;
- The child or family receives services beyond eligibility determination, needs assessment, and services coordination; and,
- The child does not receive services through the Medi-Cal program.

It should be noted that regional centers may not assess an annual family program fee for children who receive respite, day care, or camping services and for whom a participation cost under the FCPP has been assessed.

Current law requires the AFPP be assessed at the time an individual program plan (IPP) is developed; however, a regional center may grant an exemption to the AFPP if the parent demonstrates that an exemption is necessary in order to keep the child in the family home, or if there exists an extraordinary event that impacts the parents' ability to pay the fee or meet the care and supervision needs of the child. An exemption may also be granted in the event of a catastrophic loss that temporarily limits the ability of a parent to pay and creates a direct economic impact on the family. The provisions of this bill would repeal the AFPP in its entirety.

***Need for this bill:*** This bill seeks to preserve one of the key principles of the Lanterman Act – that individuals with developmental disabilities are entitled to receive services and supports that enable them to live independently in the community – by repealing two changes to the developmental services delivery system that were adopted amidst the Great Recession. First, the bill repeals the FCPP, which, while introduced and adopted in 2004 was extended indefinitely in 2008, and partially shifted the responsibility to fund respite, day care, and camping services to some consumers' families; and, second, repeals the AFPP, which requires regional centers to assess an annual fee for families of individuals with developmental disabilities to share in the cost of providing services.

According to the author, "California serves well over 300,000 individuals with developmental disabilities through contracts with independent, non-profit regional centers. Our great state has made a long-standing public policy commitment to support individuals with developmental disabilities to meet their unique goals in their home communities. However, during the Great Recession, the developmental disabilities services system was subjected to over \$1 billion in cuts and funding reductions. Two of these cuts were the Family Cost Participation Program and the Annual Family Program Fee.

"The Family Cost Participation Program requires regional centers to pay for less respite, day care, and camp (now suspended) than a child needs based on family income. Families are expected to make-up the difference. The Annual Family Program Fee charges parents of children receiving other services based on income. These fees were created to raise money for the state during the Recession, making them, essentially, taxes on disability. [This bill] would simply repeal two of these cuts to disability services. By doing so, this bill removes an artificial barrier to access services.

"As the developmental services system continues to grow, it is incumbent on the state to prioritize overall stability and capacity to meet the variety of unique needs that arise from the combination of each person's diagnosis, age, support need, preferences, and cultural values.

[This bill] will help to keep the promise of the Lanterman Act for hundreds of thousands of Californians who rely on it.”

#### **RELATED AND PRIOR LEGISLATION:**

**AB 261 (Mathis) of 2019** would have repealed the prohibition on a regional center’s ability to purchase camping services and associated travel expenses, and social recreation activities. AB 261 was held on the Assembly Appropriations suspense file.

**AB 311 (Frazier) of 2019** would have repealed 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. AB 311 was held on the Assembly Appropriations suspense file.

**AB 438 (Frazier) of 2019** would have repealed the mandated uniform holiday schedule for certain providers of regional center contracted services for individuals with developmental disabilities. AB 438 was held on the Assembly Appropriations suspense file.

**AB 2522 (Chu) of 2018** would have restored the ability of regional centers to purchase non-required services, social recreation, camping, and educational services, and would have eliminated the FCPP, among other changes to the developmental services system. AB 2522 was held in the Assembly Human Services Committee.

**ABX2 1 (Thurmond), Chapter 3, Statutes of 2016**, appropriated, among other things, \$287 million GF monies 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 (Committee on Budget), Chapter 37, Statutes of 2011**, required regional centers to assess an AFPF from parents whose adjusted gross family income is at or above 400% of the FPL, and who meet certain criteria.

**ABX3 5 (Committee on Budget), Chapter 3, Statutes of 2008**, repealed the sunset of July 1, 2009, for the FCPP and extended indefinitely the FCPP requirements.

**SB 1103 (Committee on Budget and Fiscal Review), Chapter 228, Statutes of 2004**, established the FCPP for purposes of assessing cost participation to parents who meet certain eligibility requirements, and made the FCPP inoperative on July 1, 2009, and repealed the FCPP as of January 1, 2010.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

Association Of Regional Center Agencies  
Disability Rights California  
Educate. Advocate.  
San Diego Regional Center

State Council on Developmental Disabilities  
The Arc of California / United Cerebral Palsy California Collaboration

**Opposition**

None on file

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