

AMENDED IN ASSEMBLY APRIL 12, 2023

AMENDED IN ASSEMBLY MARCH 28, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 1568

Introduced by Assembly Member Wood

February 17, 2023

An act to amend Sections 4688.05 and 4691 of the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1568, as amended, Wood. Developmental services: independent living skills services: rates.

Existing law, the Lanterman Developmental Disabilities Services Act, requires the State Department of Developmental Services to contract with regional centers to provide services and supports to individuals with developmental disabilities and their families. Existing law requires regional centers to provide independent living skills services to an adult consumer that provide the consumer with functional skills training that enables the consumer to acquire or maintain skills to live independently or to achieve greater independence while living in the home of another person. Existing law requires the department to promulgate regulations establishing program standards and an equitable process for setting rates of state payment for community-based day programs, which include independent living programs, among other things.

This bill would require that independent living skills services have functional skills training components, including, among others, cooking, money management, use of medical and dental services, and community

resource awareness, and would prohibit those services from being conducted in a center-based environment. The bill would require the department, on or before April 1, 2024, to revise and implement an equitable and cost-effective ratesetting procedure for state payment for independent living skills services according to specified requirements, including that independent living skills services shall not be categorized as a community-based day program or adult day program and the ratesetting procedure shall reflect the reasonable cost of independent living skills services, as determined using the most up-to-date United States Bureau of Labor Statistics's State Occupational Employment and Wage Estimates for California, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4688.05 of the Welfare and Institutions
2 Code is amended to read:

3 4688.05. (a) (1) Regional centers shall provide independent
4 living skills services to an adult consumer, consistent with the
5 consumer's individual program plan, that provide the consumer
6 with functional skills training that enables the consumer to acquire
7 or maintain skills to live independently in the consumer's own
8 home, or to achieve greater independence while living in the home
9 of a parent, family member, or other person.

10 (2) Independent living skills services shall have all of the
11 following functional skills training components and shall not be
12 conducted in a center-based environment:

13 (A) Cooking.
14 (B) Cleaning.
15 (C) Shopping in natural environments.
16 (D) Menu planning.
17 (E) Meal preparation.
18 (F) Money management, including check cashing and purchasing
19 activities.
20 (G) Use of public transportation in natural environments.
21 (H) Personal health and hygiene.
22 (I) Self-advocacy training.
23 (J) Independent recreation and participation in natural
24 environments.

1 (K) Use of medical and dental services, and other community
2 resources.

3 (L) Community resource awareness, such as police, fire, or
4 emergency help.

5 (M) Home and community safety.

6 (3) Independent living skills services may also provide the
7 supports necessary for a consumer to maintain a self-sustaining,
8 independent living situation in the community.

9 (b) Notwithstanding any other law, for the purpose of ensuring
10 that regional centers may secure high-quality services for persons
11 with developmental disabilities, the department shall, on or before
12 April 1, 2024, revise and implement an equitable and cost-effective
13 ratesetting procedure for state payment for independent living
14 skills services, in accordance with all of the following:

15 (1) Independent living skills services shall not be categorized
16 as a community-based day program or adult day program.

17 (2) The ratesetting procedure shall include each specific
18 allowable service, activity, and provider's administrative cost in
19 the overall independent living skills services rate, as determined
20 by the department, and reflect the reasonable cost of independent
21 living skills services.

22 (3) Reasonable costs shall be determined biennially by the
23 department, subject to audit at the discretion of the department.

24 (4) In determining reasonable costs, the department shall rely
25 on the most up-to-date United States Bureau of Labor Statistics's
26 State Occupational Employment and Wage Estimates for
27 California, and shall assume that the job function of an independent
28 living skills services instructor is comprised of all of the following
29 positions:

30 (A) ~~Forty percent of the job function as a teacher and instructor~~
31 ~~(United States Bureau of Labor Statistics, Standard Occupational~~
32 ~~Classification code 25-3097)~~

33 (B)

34 (A) Thirty percent of the job function as a rehabilitation
35 counselor (United States Bureau of Labor Statistics, Standard
36 Occupational Classification code 21-1015).

37 (C)

38 (B) Thirty percent of the job function as a social and human
39 service assistant (United States Bureau of Labor Statistics, Standard
40 Occupational Classification code 21-1093).

1 (C) *Twenty percent of the job function as a tutor (United States*
2 *Bureau of Labor Statistics, Standard Occupational Classification*
3 *code 25-3041).*

4 (D) *Twenty percent of the job function as a teacher and*
5 *instructor (United States Bureau of Labor Statistics, Standard*
6 *Occupational Classification code 25-3099).*

7 (c) Notwithstanding any other law, the revised ratesetting
8 procedure adopted pursuant to subdivision (b) shall be implemented
9 according to the rate increase schedule specified in paragraph (1)
10 of subdivision (c) of Section 4519.10. Upon implementation of
11 the revised ratesetting procedure pursuant to subdivision (b), the
12 rate increase scheduled for January 1, 2023, as specified in
13 subparagraph (B) of paragraph (1) of subdivision (c) of Section
14 4519.10, shall be immediately applied to the revised independent
15 living skills services rate.

16 (d) The revision and implementation of the ratesetting procedure
17 by the department pursuant to subdivision (b) are exempt from
18 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
19 3 of Title 2 of the Government Code.

20 SEC. 2. Section 4691 of the Welfare and Institutions Code is
21 amended to read:

22 4691. (a) The Legislature reaffirms its intent that
23 community-based day programs be planned and provided as part
24 of a continuum of services to enable persons with developmental
25 disabilities to approximate the pattern of everyday living available
26 to people of the same age without disabilities. The Legislature
27 further intends that standards be developed to ensure high-quality
28 services, and that equitable ratesetting procedures based upon those
29 standards be established, maintained, and revised, as necessary.
30 The Legislature intends that ratesetting procedures be developed
31 for all community-based day programs, which include adult
32 development centers, activity centers, infant day programs,
33 behavior management programs, and social recreational programs.

34 (b) For the purpose of ensuring that regional centers may secure
35 high-quality services for persons with developmental disabilities,
36 the State Department of Developmental Services shall promulgate
37 regulations establishing program standards and an equitable process
38 for setting rates of state payment for community-based day
39 programs. These regulations shall include, but are not limited to,
40 all of the following:

1 (1) The standards and requirements related to the operation of
2 the program including, but not limited to, staff qualifications,
3 staff-to-client ratios, client entrance and exit criteria, program
4 design, program evaluation, program and client records and
5 documentation, client placement, and personnel requirements and
6 functions.

7 (2) The allowable cost components of the program, including
8 salary and wages, staff benefits, operating expenses, and
9 management organization costs in which two or more programs
10 are operated by a separate and distinct corporation or entity.

11 (3) The rate determination processes for establishing rates, based
12 on the allowable costs of the allowable cost components. Different
13 rate determination processes may be developed for establishing
14 rates for new and existing programs, and for the initial and
15 subsequent years of implementation of the regulations. The
16 processes shall include, but are not limited to, all of the following:

17 (A) The procedure for identification and grouping of programs
18 by type of day program and approved staff-to-client ratio.

19 (B) The requirements for an identification of the program, cost,
20 and other information, if any, that the program is required to submit
21 to the department or the regional center, the consequences, if any,
22 for failure to do so, and the timeframes and format for submission
23 and review.

24 (C) The ratesetting methodology.

25 (D) A procedure for adjusting rates as a result of anticipated
26 and unanticipated program changes and fiscal audits of the program
27 and a procedure for appealing rates, including the timeframes for
28 the program to request an adjustment or appeal, and for the
29 department to respond.

30 (E) A procedure for increasing established rates and the
31 allowable range of rates due to cost-of-living adjustments.

32 (F) A procedure for increasing established rates as a result of
33 Budget Act appropriations made pursuant to the ratesetting
34 methodology established pursuant to Section 4691.5 and
35 subdivision (c) of this section.

36 The department shall develop these regulations in consultation
37 with representatives from organizations representing the
38 developmental services system as determined by the department.

39 The State Council on Developmental Disabilities, and other
40 organizations representing regional centers, providers, and clients

1 shall have an opportunity to review and comment upon the
2 proposed regulations prior to their promulgation. The department
3 shall promulgate these regulations for all community-based day
4 programs by July 1, 1990.

5 (c) Upon the promulgation of regulations pursuant to subdivision
6 (b), and pursuant to Section 4691.5, and by September 1 of each
7 year thereafter, the department shall establish rates pursuant to the
8 regulations. Rate increases during the 1990–91 and 1991–92 fiscal
9 years shall be limited to those specified in subdivision (b). For the
10 1992–93 fiscal year and all succeeding fiscal years, any increases
11 proposed during those years in the rates of reimbursement
12 established pursuant to the regulations, except for rate increases
13 due to rate appeals and rate adjustments based on unanticipated
14 program changes, shall be subject to the appropriation of sufficient
15 funds in the Budget Act, for those purposes, to fully provide the
16 proposed increase to all eligible programs for the entire fiscal year.
17 If the funds appropriated in the Budget Act are not sufficient to
18 fully provide for the proposed increase in the rates of
19 reimbursement for all eligible programs for the entire fiscal year,
20 the proposed increase shall be limited to the level of funds
21 appropriated. The increases proposed in the rates of reimbursement
22 shall be reduced equitably among all eligible providers in
23 accordance with funds appropriated and the eligible programs shall
24 be reimbursed at the reduced amount for the entire fiscal year.

25 (d) Using the reported costs of day programs reimbursed at a
26 permanent rate and the standards and ratesetting processes
27 promulgated pursuant to subdivision (b) as a basis, the department
28 shall report to the Legislature as follows:

29 (1) By April 15, 1993, and every odd year thereafter, the
30 difference between permanent rates for existing programs and the
31 rates of those programs based upon their allowable costs and client
32 attendance, submitted pursuant to the regulations specified in
33 subdivision (b). In reporting the difference, the department shall
34 also identify the amount of the difference associated with programs
35 whose rates are above the allowable range of rates, which is
36 available for increasing the rates of programs whose rates are below
37 the allowable range, to within the allowable range, and any other
38 pertinent cost or rate information that the department deems
39 necessary.

1 (2) By April 15, 1994, and every even year thereafter, the level
2 of funding, if any, that was not appropriated to reimburse providers
3 at the proposed rates reported the prior fiscal year pursuant to
4 paragraph (1), and any other pertinent cost or rate information that
5 the department deems necessary.

6 (3) The April 15, 1996, report pursuant to paragraph (2) shall
7 be prepared jointly by the department and organizations
8 representing community-based day program providers, as
9 determined by the department. That report shall also include a
10 review of the ratesetting process and recommendations, if any, for
11 its modification.

12 (e) Rates established by the department pursuant to subdivision
13 (b) are exempt from the provisions of Chapter 3.5 (commencing
14 with Section 11340) of Part 1 of Division 3 of Title 2 of the
15 Government Code.

16 (f) The department shall ensure that the regional centers monitor
17 compliance with program standards.