

Assembly Bill No. 1192

Passed the Assembly September 10, 2007

Chief Clerk of the Assembly

Passed the Senate September 6, 2007

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2007, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 4640.4 to the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1192, Evans. Developmental services: consumer abuse registry.

Existing law, the Lanterman Developmental Disabilities Services Act, grants persons with developmental disabilities the right to receive treatment and services to meet their needs, regardless of age or degree of handicap, at each stage of life. Existing law requires that the state pay for these services through contracts with various private nonprofit corporations for the operation of regional centers for the developmentally disabled, and requires regional centers to develop an individual program plan (IPP) for each consumer that sets forth the treatment and services to be provided for the consumer.

This bill would require the Secretary of California Health and Human Services to designate a department in state government, under its jurisdiction, to be responsible for overseeing the registration of providers and the investigation and substantiation of any allegations of abuse. The bill would require providers to report evidence of consumer abuse to the designated department. The bill would require the designated department to establish a registry of providers and others against whom one or more reports of abuse of a consumer have been substantiated, and to make the registry available, pursuant to a release protocol established by the designated department in consultation with program stakeholders, to persons who would hire persons to provide services and supports to consumers. The bill would provide immunity for development and reliance on the registry. The bill would require the designated department to coordinate with the State Department of Public Health to share information about health care providers, and would require the designated department to adopt regulations to implement the bill by July 1, 2009.

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

SECTION 1. Section 4640.4 is added to the Welfare and Institutions Code, to read:

4640.4. (a) Every regional center and every community care facility shall report any evidence of abuse by a provider of services of a consumer to the department.

(b) The department shall establish a mechanism to investigate and substantiate the report of abuse.

(c) The department shall establish a registry of providers or other persons against whom one or more reports of abuse of a consumer have been substantiated pursuant to this section. The registry shall not contain confidential consumer information. The department shall adopt a protocol to be followed by the department to do all of the following:

(1) Determine whether a reported incident of abuse is substantiated for the purposes of adding a person to the registry.

(2) Provide a procedure for the timely appeal of a decision to add a person to the registry. The procedure shall include the addition of a person to a “pending appeal” category for no longer than a specified period of time.

(3) Enable a person listed on the registry to petition for immediate removal from the registry.

(4) Release the registry information to individuals enumerated in subdivision (e).

(5) Update the registry content on a regular basis.

(d) In developing the protocols required under subdivision (c), the department shall consult with program stakeholders, including, but not limited to, representatives from regional centers, providers of services to persons with developmental disabilities, state and local law enforcement agencies, district attorneys, representatives of county child protective services and adult protective services agencies, the Office of the Attorney General, the state long-term care ombudsperson, Protection and Advocacy, Inc. and other advocates for persons with disabilities, the REACH Coalition, families of persons with developmental disabilities, licensing agencies, the State Department of Developmental Services, the State Department of Social Services, the California Department of Aging, the State Department of Mental Health, and civil rights organizations.

(e) The department shall make the registry available to regional centers, county child protective services and adult protective services agencies in the course of an investigation into allegations of abuse or neglect of a child, elder, or dependent adult, consumers and their families, guardians, and conservators, as appropriate, Protection and Advocacy, Inc. or the designated protection and advocacy organization, and to any person or agency who would employ persons to provide services and supports for consumers and their families.

(f) Notwithstanding any provision of law to the contrary, neither the department nor any person or entity who relies on the registry, shall incur any liability for their participation in developing the registry or for using or relying on information contained in the registry.

(g) The department shall adopt regulations to implement this section by July 1, 2009.

(h) The Secretary of California Health and Human Services shall designate a state department under its jurisdiction to be responsible for overseeing the registration of providers and the investigation and substantiation of any allegations of abuse. “Department” for the purposes of this section means the department in state government designated by the secretary, pursuant to this subdivision. Within 30 days of designating the department pursuant to this subdivision, the secretary shall file with the Chief Clerk of the Assembly and with the Secretary of the Senate a written notice specifying the designated department.

(i) The department designated pursuant to subdivision (h) shall coordinate with the State Department of Public Health to share information about health care providers, or other persons providing services to consumers, against whom one or more reports of abuse of a consumer have been substantiated for inclusion in the registry in accordance with the protocols developed pursuant to subdivision (c).

(j) This section shall not be interpreted to alter or amend any existing child, elder, or dependent adult abuse or neglect reporting requirement, including, but not limited to, Section 1418.91 of the Health and Safety Code, Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or Article 3 (commencing with Section 15630) of Chapter 11 of Part 3 of Division 9.

(k) For the purposes of this section, “abuse” means either of the following:

(1) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.

(2) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering, as those terms are defined in the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9).

(l) For the purposes of this section, “substantiated report” means a report that is determined by the department to be abuse, based upon evidence that makes it more likely than not that abuse, as defined in this section, occurred.

Approved _____, 2007

Governor