

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

SB 1092 (Hurtado)  
Version: April 18, 2022  
Hearing Date: April 26, 2022  
Fiscal: Yes  
Urgency: No  
AM

**SUBJECT**

Developmental services: individual program plan: fair hearings

**DIGEST**

This bill makes various changes to the fair hearing process for individuals with developmental disabilities and their families to enforce their right to services and supports under the Lanterman Developmental Disabilities Services Act (Lanterman Act); such as, moving the hearings from the Office of Administrative Hearings (OAH) to the California Department of Social Services (CDSS), prohibiting a regional center from being represented by an attorney unless the claimant is also represented by an attorney, requiring the Department of Developmental Services (DDS) to approve hearing decisions, and authorizing the decisions of the Director of DDS (director) to be appealed by writ of mandate. The bill additionally makes various changes to the individual program plan (IPP) process, as specified, and provides for a quasi-mandatory mediation of a services disagreement between the consumer and regional center.

**EXECUTIVE SUMMARY**

The Lanterman Act established that individuals with developmental disabilities and their families have a right to receive the necessary supports and services required to live independently in the community. If an individual is denied a service under the act, they may contest that determination. This bill makes various changes to the IPP process, informal hearing processes, and formal hearing processes under that act with the goal of addressing current issues and ensuring a more equitable and accessible process for individuals with developmental disabilities and their families in order to ensure that they are accessing the services the Lanterman Act entitles them to.

The bill is sponsored by Disability Rights Council, Disability Voices United, Integrated Community Collaborative, and the State Council on Developmental Disabilities. There is no known opposition. The bill passed out of the Senate Human Services Committee on a vote of 5 to 0.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes the Lanterman Developmental Disabilities Services Act (Lanterman Act), which states that California is responsible for providing an array of services and supports sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, at each stage of life, and to support their integration into the mainstream life of the community. (Welf. & Inst. Code § 4500, et seq.)<sup>1</sup>
- 2) Establishes a system of nonprofit Regional Centers, overseen by the DDS, to provide fixed points of contact in the community for all persons with developmental disabilities and their families and to coordinate services and supports best suited to them throughout their lifetime. (§ 4620.)
- 3) Establishes an Individual Program Plan (IPP) as the process to ensure that services and supports are customized to meet the needs of consumers who are served by regional centers for the purpose of alleviating a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives. (§ 4512(b).)
- 4) Requires decisions concerning the consumer's goals, objectives, and services and supports included in their IPP to be made by agreement between the regional center representative and the consumer or, when appropriate, the consumer's parents, legal guardian, conservator, or authorized representative, at the program plan meeting. (§ 4646(d).)
- 5) Requires any applicant for or recipient of services, or their authorized representative, who is dissatisfied with any decision or action of a service agency, to be afforded an opportunity for a fair hearing, as specified. Requires a fair hearing request to be filed within 30 days after notification of the decision or action that is the subject of the complaint. Provides the opportunity to request a voluntary informal meeting and mutually agreed upon voluntary mediation at this time. (§§ 4710.5(a) & 4712.)
- 6) Provides that mediation is voluntary for both the claimant and the service agency. (§ 4701(h).)
- 7) Requires DDS to contract for the provision of independent hearing officers. Requires those hearing officers to receive training in the law governing services for

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<sup>1</sup> All further references are to the Welfare and Institutions Code unless specifically indicated otherwise.

individuals with intellectual and developmental disabilities, including the Lanterman Act. (§ 4712(b).)

This bill:

- 1) Makes various changes to the IPP process under the Lanterman Act.
- 2) Moves the mediation process to the CDSS.
  - a) Provides that mediation to resolve an issues is mandatory if requested by the claimant but voluntary if requested by the regional center.
  - b) Allows the regional center or their representative to withdraw from the mediation and proceed to a fair hearing after the conclusion of the first mediation session. Allows the claimant or their authorized representative to withdraw at any time from the mediation and proceed to a fair hearing.
- 3) Requires DDS to contract with CDSS for the provision of independent hearing officers beginning July 1, 2024.
- 4) Prohibits a regional center from hiring, retaining, or employing an attorney to appear at an informal meeting, mediation, or administrative hearing, unless the claimant is also represented by an attorney who appears on their behalf at an informal meeting, mediation, or administrative hearing.
- 5) Specifies that a consumer or their authorized representative is not required to utilize the fair hearing procedure if the dispute concerns a violation of law outside of the developmental services system.
- 6) Allows each party one preemptory challenge of a hearing officer without cause.
- 7) Requires the hearing to be conducted in an impartial and informal manner in order to encourage free and open discussion by participants.
- 8) Requires the hearing officer to fully and fairly develop the record. Further requires the hearing officer, in the case that the claimant is representing themselves or is represented by an advocate who does not have significant experience in administrative hearings, to scrupulously and conscientiously probe into, inquire of, and explore all relevant facts and be especially diligent in ensuring that favorable and unfavorable facts are elicited.
- 9) Requires the hearing officer to render a proposed written decision to DDS after the conclusion of the hearing. As part of the proposed decision, allows the hearing officer to grant the relief the officer determines is appropriate, including compensatory services or retroactive reimbursement. Requires, within 30 days of receiving a proposed decision, the Director of DDS (director) to adopt the decision,

decide the matter on the record, or order a further hearing. Specifies that failure of the director to act on the proposed decision constitutes an affirmation of the proposed decision.

- 10) Authorizes the director's final decision to be appealed to the Superior Court by writ of mandate and provides that any such petition to the superior court is entitled to a preference in setting a date for hearing on the petition.

### COMMENTS

#### 1. Stated need for the bill

The author writes:

Individuals with intellectual and developmental disabilities and their families report finding the fair hearing system to be overly complex, opaque, and biased. A variety of factors, including lack of legal representation, result in families and individuals struggling to navigate the fair hearing process within the Office of Administrative Hearings, with many ultimately withdrawing their cases before the hearing occurs – resulting in lack of justice and dispute resolution for those involved. This bill makes a variety of reforms to address consumers' difficulties in navigating the fair hearing process and improve access to justice.

#### 2. The Lanterman Act

*a. Establishes the rights of individuals with developmental disabilities and their families*

The Lanterman Act was enacted in 1969 and established that individuals with developmental disabilities and their families have a right to receive the necessary supports and services required to live independently in the community. The Lanterman Act enumerates the rights of individuals with developmental disabilities and the rights of their families, what services and supports are available to these individuals, and how regional centers and service providers work together to provide these supports and services. The term "developmental disability" is defined as a disability that originates before a person reaches 18 years of age, is expected to continue indefinitely, and is a significant disability for the individual; such disabilities include, among others: epilepsy, autism spectrum disorder, intellectual disability, and cerebral palsy.

*b. Regional Centers*

The Lanterman Act also created California's regional center system, which is comprised of 21 nonprofit regional centers throughout the state whose primary purpose is to connect individuals with services in the community. Regional centers numerous services and supports for more than 329,000 individuals with developmental disabilities

in California. These services include diagnosis, evaluation, treatment, and care coordination of services (such as personal care, day care, special living arrangements, and physical, occupational, and speech therapy). Additional services include, among others, mental health services, recreation, counseling for the individual served and their family, assistance locating a home, behavior training and modification programs, and emergency and crisis intervention.

*c. Individual Program Plan (IPP)*

An IPP outlines services for individuals with intellectual and developmental disabilities according to the needs and personal choices of the individual and is developed by a team, which generally consists of the individual with developmental disabilities (consumer), their authorized representative, and representatives from a regional center. An IPP is supposed to prioritize the services and supports that allow minors to live with their families and adults to live in the community as independently as possible, and serves as a way for consumers to develop relationships and integrate into community life. A consumer and their representative may contest the decision of a regional center regarding what services a consumer is entitled to receive in an IPP through an informal resolution process or a fair hearing process.

*d. Informal Resolution Process*

Under existing law, an informal meeting between the consumer and their family and a regional center may be commenced before beginning the fair hearing process over any action of the regional center, including determinations about eligibility or services. The consumer and their representative are not required to have an informal meeting. If following an informal meeting the disagreement over the regional center's determination remains, a consumer and their representative may request mediation or a fair hearing. In order for mediation to occur, all parties must agree, and any party may withdraw at any time and proceed to a fair hearing. Mediation is intended to be an informal, non-adversarial meeting and a representative from the OAH acts as a mediator.

*e. Fair hearings*

A fair hearing is a more formal process that is conducted by an administrative law judge (ALJ) from the OAH. Once OAH receives a request for a fair hearing, it sends the claimant notice of the time, place, and date of the fair hearing and information regarding their rights under the fair hearing process, such as the choice to appear with an attorney or any representative of the claimant's choice, the right to review records, the right to give written and oral evidence, and the right to an interpreter. The fair hearing includes the presentation of evidence, testimony under oath, and closing arguments. The ALJ then makes a decision based on the facts, evidence, and relevant laws.

3. This bill seeks to address issues identified with the existing processes under the Lanterman Act

Disability Rights California, Disability Voices United, Integrated Community Collaborative (sponsors of the bill), and the Stanford Intellectual and Developmental Disabilities Law and Policy Project released a report titled *Unfair Hearings: How People with Intellectual and Developmental Disabilities Lack Access to Justice in California* (hereafter Report) in November of 2021. The report found that individuals with disabilities and their families, especially people of color, encounter numerous barriers in attempting to enforce their rights under the Lanterman Act.<sup>2</sup> The Report addressed various issues with the IPP and fair hearing process and made numerous recommendations to address the report's findings, many of which are in this bill. The Senate Committee on Human Services analysis of this bill provides an in-depth analysis of the report's findings and reforms proposed in this bill to address those findings, including: changes to the current IPP process, the informal resolution process, and the fair hearings process; training requirements of ALJs; collection of data sets; and the creation of an advisory committee.<sup>3</sup> This analysis will focus on the issues in this Committee's jurisdiction.

The Report states that about 60 percent of survey respondents from 18 regional centers experienced problems with the informal hearing and/or mediation process, with many problems emanating from a lack of legal representation and confusion of how these processes function.<sup>4</sup>

To address issues in the mediation process with the intent of making mediation more accessible and understandable for consumers and families, the bill proposes several changes including:

- Moving the mediation process from OAH to CDSS.
- Making mediation mandatory if requested by the claimant, but voluntary if requested by the regional center, instead of voluntary as it is under existing law.
- Requiring the regional center to make a mediation statement available to the claimant and mediator in advance of the mediation that explains the facts of the case, the justification for the action, possible resolutions to the dispute, and any other information or documents that may help resolve the dispute.
- Allowing the regional center to withdraw from the mediation and proceed to a fair hearing after the conclusion of the first mediation session, but allowing the

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<sup>2</sup> *Unfair Hearings: How People with Intellectual and Developmental Disabilities Lack Access to Justice in California* (hereafter Report), Disability Rights California, Disability Voices United, Integrated Community Collaborative, and Stanford Intellectual and Developmental Disabilities Law and Policy Project, (Nov. 2021), available at <https://law.stanford.edu/publications/unfair-hearings-how-people-with-intellectual-developmental-disabilities-lack-access-to-justice-in-california/> (as of Apr. 18, 2022).

<sup>3</sup> Sen. Com. on Human Services analysis of Sen. Bill 1092 (Hurtado, 2021-22 reg. session) as amended Apr. 18, 2022.

<sup>4</sup> Report *supra* at 12.

claimant to withdraw at any time from the mediation and proceed to a fair hearing.

The purpose of mediation is to foster swift and equitable resolutions for disagreements between regional centers and consumers and their families. Making mediation mandatory for regional centers if requested by a consumer but optional for a consumer if requested by a regional center seems antithetical to the spirit of the mediation process and may not make regional centers willing and open to engaging in the process. This quasi-voluntary mediation arrangement does not occur anywhere else under existing law. The author may wish to consider making mediation mandatory if requested by either party, as this will aide in facilitating the purpose of mediation while not creating an asymmetry in rights between the parties.

To address issues in the fair hearing process with the goal of facilitating a more accessible and equitable process for consumers and families, the bill makes various changes to the existing fair hearing process including:

- Requiring DDS to contract with CDSS, rather than OAH, for the provision of independent hearing officers, beginning in 2024.
- Prohibiting a regional center from hiring, retaining, or employing an attorney to appear at an informal meeting, mediation, or administrative hearing, unless the claimant is also represented by an attorney who appears on their behalf at an informal meeting, mediation, or administrative hearing.
- Specifying that a consumer or their authorized representative is not required to utilize the fair hearing procedure if the dispute concerns a violation of law outside of the developmental services system.
- Allowing each party one peremptory challenge of a hearing officer without cause.
- Requiring the hearing to be conducted in an impartial and informal manner in order to encourage free and open discussion by all participants.
- Requiring the ALJ to fully and fairly develop the record, as specified.
- Requiring the hearing officer to render a proposed written decision to DDS.
- Requiring, within 30 days of receiving a proposed decision, the director of DDS to adopt the decision, decide the matter on the record, or order a further hearing. Specifies that failure of the director to act on the proposed decision constitutes an affirmation of the proposed decision.
- Authorizes the director's final decision to be appealed to the superior court by writ of mandate and provides that any such petition to the superior court is entitled to a preference in setting a date for hearing on the petition.

The provision of the bill that prohibits a regional center from hiring, retaining, or employing an attorney to appear at an informal meeting, mediation, or administrative hearing, unless the claimant is also represented by an attorney who appears on their behalf at an informal meeting, mediation, or administrative hearing is deeply

problematic. Under existing law the only instance a person is prohibited from having counsel is for small claims actions and that requirement applies to both parties equally. (Code of Civ. Proc. § 116.530.) The U.S. Supreme Court has held that procedural due process requires that the procedures by which laws are applied must be evenhanded and in a way that ensures individuals are not subject to the arbitrary exercise of government power. (*Marhant v. Pennsylvania R.R.* (1894) 153 U.S. 380, 386.) This provision may very well run afoul of procedural due process requirements under the U.S Constitution because it treats parties in the same hearing differently, or rather, it conditions one party's rights on the ability of the other party to afford or be able to obtain legal representation. The inability for consumers and families to afford legal representation is a serious problem, but this is not the way to address it. Attempting to provide an even playing field while prohibiting others from having access to legal representation is not equitable. In light of these concerns, the author may wish to delete this provision from the bill.

#### 4. Proposed amendments<sup>5</sup>

To address the issues raised above the author may wish to amend the bill to:

- make mediation mandatory if requested by the consumer or consumer's authorized representative or the regional center; and
- delete the language that prohibits a regional center from hiring, retaining, or employing an attorney to appear at an informal meeting, mediation, or administrative hearing unless the claimant is also represented by an attorney who appears on their behalf at an informal meeting, mediation, or administrative hearing.

#### 5. Statements in support

The Coalition of California Welfare Rights Organizations (CCWRO) writes in support:

CCWRO has been representing beneficiaries of public social services for several decades. One of our missions is to promote and support meaningful due process for low-income beneficiaries and applicants of government benefits and services.

Many people with intellectual and developmental disabilities and their families, especially communities of color and non-English speakers, feel powerless when they disagree with their regional center. They report that too many decisions are made behind closed doors without their voice being heard and that regional centers do not try hard enough to work out disagreements informally. They are

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<sup>5</sup> The amendments may also include the addition of co-authors and technical, nonsubstantive changes recommended by the Office of Legislative Counsel.



then intimidated by the hearing process they perceive as biased, formal, and complex. They often find an unlevel playing field where regional centers have lawyers to represent them even though they do not. They encounter judges who do little to assist them in understanding the legal process, and who seem unfamiliar with changes in the law and the existence of racial disparities in the regional center system.

SB 1092 empowers people with disabilities and their families, especially people of color, in the decisions about their regional center services, and in disagreements about those services [...]

### **SUPPORT**

Disability Rights Council (sponsor)  
Disability Voices United (sponsor)  
Integrated Community Collaborative (sponsor)  
State Council on Developmental Disabilities (sponsor)  
Aurelia Foundation  
Center for Developmental Play and Learning  
Change.org petition signed by over 350 individuals  
Coalition of California Welfare Rights Organizations  
Consumer Attorneys of California  
Educate. Advocate  
FASD Network of Southern California  
Greenhouse Therapy Center  
Justice in Aging  
Legal Aid Association of California  
National Health Law Program  
Parents Helping Parents  
Progressive Employment Concepts  
Public Counsel  
Resources for Independent Living  
Special Needs Network  
Spina Bifida Association of America  
Touchstone Family Development Center, Inc.  
103 individuals

### **OPPOSITION**

None known

**RELATED LEGISLATION**

Pending Legislation: SB 518 (Laird, 2021) would have increased the use of the Self-Determination Program (SDP) for people with developmental disabilities by creating the Office of the SDP Ombudsperson, providing for the collection of additional data, and increasing training relating to the SDP. This bill being held at the Assembly Desk. Some provisions of this bill were adopted through the 2021-22 Budget Act, resulting in the creation of the Office of the SDP Ombudsperson.

Prior Legislation: SB 683 (Grove, 2019) would have required DDS and regional centers to provide all numeric data disclosed to the public in a machine-readable format, to be determined by DDS in collaboration with certain stakeholders; would have required DDS to develop, provide to regional centers, and post on its internet website transparency guidelines for the disclosure of information; and would have required regional centers to include a public disclosures menu on the homepage of their internet websites, consistent with the transparency guidelines, in order to facilitate greater access to information. SB 683 was held in the Assembly Appropriations Committee.

**PRIOR VOTES:**

Senate Human Services Committee (5 Ayes, 0 Noes)

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