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Proposed Trailer Bill Language on the Early Expansion of the Self-Determination Program for Wait List and Temporary Modification of Fingerprint Requirement

TBL – Additional Self-Determination Program Participants

4685.8. (a) The department shall implement a statewide Self-Determination Program. The Self-Determination Program shall be available in every regional center catchment area to provide participants and their families, within an individual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPP. The statewide Self-Determination Program shall be phased in over three years, and during this phase-in period, shall serve up to 2,500 regional center consumers, inclusive of the remaining participants in the self-determination pilot projects authorized pursuant to Section 13 of Chapter 1043 of the Statutes of 1998, as amended, and Article 4 (commencing with Section 4669.2) of Chapter 5. Following the phase-in period, the program shall be available on a voluntary basis to all regional center consumers who are eligible for the Self-Determination Program. The program shall be available to individuals who reflect the disability, ethnic, and geographic diversity of the state.

(1) To help protect regional center consumers' health and safety and ensure consumers receive critical services and supports during the COVID-19 pandemic, in addition to the 2,500 consumers specified in (a), an additional 5,000 regional center consumers shall be authorized to participate in the program beginning July 1, 2020. Priority for these additional participants shall be given to regional center consumers who are on a waiting list for participation in the self-determination program.

TBL – Modify Fingerprint Requirements for Self-Determination Program

4685.8 (x) (3) The department shall electronically submit to the Department of Justice fingerprint images and related information required by the Department of Justice of nonvendored providers of services and supports, as specified in paragraph (1), for purposes of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal. **The department shall not be required to submit fingerprint images during the declared State of Emergency as a result of COVID-19 and may instead perform name-based criminal background checks, consistent with Penal Code sections 11105.7 and 11105.75, and provided that the department requires each applicant's identity and criminal history be verified by fingerprints as soon as practical after an initial check based on other identifying information has been performed.**

Fingerprint references:

Governor's Executive Order: https://www.gov.ca.gov/wp-content/uploads/2020/04/4.16.20-EO-N-52-20-text.pdf

DoJ form for name check instead of fingerprint - https://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/forms/bcia-9010-covid-19.pdf

Justification for TBL Expanding the Self-Determination Program and Modifying the Fingerprinting Requirement

Summary: In response to the COVID-19 pandemic when flexibility, choice, and control can mean the difference between life and death, this proposal allows: 1) regional center consumers on the Self-Determination Program waiting list to enter the program effective July 1, 2020, a statutory adjustment of less than one year; and 2) temporarily modifies, during the health emergency, the fingerprinting requirements for personal care staff hired through the Self-Determination Program in a manner consistent with the adjustment in the IHSS program.

Background: SB 468, the Self-Determination Law, was signed into law by Governor Brown on October 9, 2013. The Self-Determination Program (SDP), based on a successful 20-year pilot project, allows individuals served by regional centers to choose services and activities outside of the traditional service system paid by a budget based on how much they have been spending. The program is required to be cost neutral in the aggregate. The program was limited to 2500 participants for the first three years following the approval of federal funding.

Consumers and families who worked on SB 468 believed the program could be implemented and phased in by 2018, at which point it would be open to all eligible regional center consumers statewide. Unfortunately, it took the California Department of Developmental Services 4½ years to get federal approval and another year to select the 2,500 phase-in participants and provide a required orientation. Participants and families have encountered additional delays and barriers from regional centers including approvals of their individual budget. Given the delays, the three-year phase currently ends on June 7, 2021.

Justification for the Changes:

- There are still over 5,000 consumers who have been on a years-long waitlist to get into the Self-Determination Program.

- We are now facing an unprecedented health crisis and shutdown due to the coronavirus pandemic. Many traditional services, particularly those in congregate settings, are not being provided. Yet people with disabilities and their families are disproportionately impacted by the pandemic and desperately need these supports.

- More than ever, individuals and families need increased flexibility, choice, and control over their services and supports to enable access to critical services and ensure health and safety. The instability of the service delivery system caused by COVID-19 means utilizing and expanding flexible models of service delivery.

- Examples of how the flexibility of the Self-Determination Program can help individuals and families during the COVID-19 pandemic:
    - They can directly hire staff to support them during the day while programs are closed.
    - They are not tied to a provider rate structure and can provide hazard pay for their staff, as long as they stay within their approved budgets.
    - They can find staff and activities that are unique to their culture and language.
    - They can access unique community activities as they reopen instead of waiting for disability-only services to resume.

- In addition, participants in the SDP will be able to better weather the cutbacks caused by state budget deficits. SDP participants, like other regional center consumers, may face cuts if the additional federal assistance is not provided. For SDP participants, any reduction will be to their individual budgets, allowing them to choose how those cuts can best be managed. As proof, the self-determination pilot participants who received cuts during the great recession speak of their ability to effectively manage those cuts rather than the across-the-board cuts to respite, social recreation and camping experienced by those in the traditional system.

- This proposal also temporarily modifies, during the state of emergency, the requirement that direct personal care staff submit fingerprints as part of a criminal background check. This change is required because people with developmental disabilities should not be putting their staff, and ultimately themselves, at risk by requiring these essential workers who have otherwise been cleared to risk COVID exposure during the fingerprinting process. It will also avoid significant delays in hiring employees given the lack of open live-scan businesses. This language aligns with the Governor's directive allowing the Department of Justice to conduct name-based background checks for IHSS workers during the health emergency.