

An act to add Article 2.6 (commencing with Section 4659.10) to Chapter 5 of Division 4.5 of the Welfare and Institutions Code, relating to developmental services, and declaring the urgency thereof, to take effect immediately.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Article 2.6 (commencing with Section 4659.10) is added to Chapter 5 of Division 4.5 of the Welfare and Institutions Code, to read:

Article 2.6. Third-Party Liability

4659.10. It is the intent of the Legislature that this article shall be implemented consistent with the responsibilities of the department and the regional centers to provide services and supports pursuant to the requirements of this division and the California Early Intervention Program. It is further the intent of the Legislature that the department and the regional centers shall continue to be the payers of last resort consistent with the requirements of this division and the California Early Intervention Program.

4659.11. (a) When services are provided or will be provided to a consumer under this division, or to a child under 36 months of age who is eligible for the California Early Intervention Program pursuant to Title 14 of the Government Code (commencing with Section 95000), as a result of an injury for which another person is liable, or for which an insurance carrier is liable in accordance with the provisions of any policy of insurance issued pursuant to Section 11580.2 of the Insurance Code, the department or the regional center from which the individual obtained services shall have a right to recover from the person or carrier the reasonable value of services so provided. To enforce that right, the department or the regional center may institute and prosecute legal proceedings against the third person or carrier who may be liable for the injury in an appropriate court, either in the name of the department or regional



center or in the name of the child or consumer, his or her guardian, conservator, limited conservator, personal representative, estate, or survivors.

(b) The department and the regional center may compromise, or settle and release a claim as described in subdivision (a).

(c) The department may waive a claim as described in subdivision (a), in whole or in part, if the department determines that collection would not be cost-efficient, would result in undue hardship upon the consumer or child who suffered the injury, or in a wrongful death action upon the heirs of the deceased.

(d) No action taken on behalf of the department or the regional center pursuant to this section or any judgment rendered in that action shall be a bar to any action upon the claim or cause of action of the child or consumer, his or her guardian, conservator, personal representative, estate, dependents, or survivors against the third party who may be liable for the injury, or shall operate to deny to the child or consumer the recovery for that portion of any damages not covered hereunder.

(e) The department and the State Department of Health Care Services shall work together to ensure that the recovery sought by the department, regional centers, and the State Department of Health Care Services for services for Medi-Cal beneficiaries with developmental disabilities is appropriate.

4659.12. (a) Where an action is brought by the department or a regional center pursuant to Section 4659.11, it shall be commenced within the period prescribed in Section 338 of the Code of Civil Procedure.



(b) The death of a consumer or child under 36 months of age who is eligible for the California Early Intervention Program does not abate any right of action established by Section 4659.11.

(c) When an action or claim is brought by a person or persons entitled to bring the action or assert the claim against a third party who may be liable for causing the death of the child or consumer, any settlement, judgment, or award obtained is subject to the right of the department or the regional center to recover from that party the reasonable value of the services provided to the consumer under this division.

(d) Where the action or claim is brought by the child or consumer alone, and the child or consumer incurs a personal liability to pay attorney's fees and costs of litigation, the claim for reimbursement by the department or the regional center of the services provided to the child or consumer shall be limited to the reasonable value of services less 25 percent, which represents the department's or the regional center's reasonable share of attorney's fees paid by the child or consumer, and that portion of the cost of litigation expenses determined by multiplying by the ratio of the full amount of the reasonable value of services so provided to the full amount of the judgment, award, or settlement.

4659.13. (a) If a consumer or child under 36 months of age who is eligible for the California Early Intervention Program, the department, or a regional center brings an action or claim against a third party or carrier, the consumer, child, regional center, or department, within 30 days of filing the action, shall provide the other persons or entities specified in this subdivision with written notice by personal service or registered mail of the action or claim, and of the name of the court or state or local agency in



which the action or claim is brought. Proof of the notice shall be filed in the action or claim. If an action or claim is brought by the department, the regional center, the child, or the consumer, any of the other persons or entities described in this subdivision, at any time before trial on the facts, may become a party to, or shall consolidate, their action or claim with, another action or claim if brought independently.

(b) If an action or claim is brought by the department or the regional center pursuant to subdivision (a) of Section 4659.11, written notice to the child, consumer, guardian, conservator, personal representative, estate, or survivor given pursuant to this section shall advise him or her of his or her right to intervene in the proceeding, his or her right to obtain a private attorney of his or her choice, and the department's right to recover the reasonable value of the services provided.

4659.14. In the event of judgment or award in a suit or claim against a third party or carrier:

(a) If the action or claim is prosecuted by the child or consumer alone, the court or agency shall first order paid from any judgment or award the reasonable litigation expenses incurred in preparation and prosecution of the action or claim, together with reasonable attorney's fees, when an attorney has been retained. After payment of these expenses and attorney's fees the court or agency, on the application of the department or the regional center, shall allow as a lien against the amount of the settlement, judgment, or award, the reasonable value of additional services provided to the child under the California Early Intervention Program or consumer under this division, as provided in subdivision (d) of Section 4659.12.



(b) If the action or claim is prosecuted both by the consumer or child and the department or regional center, the court or agency shall first order paid from any judgment or award the reasonable litigation expenses incurred in preparation and prosecution of the action or claim, together with reasonable attorney's fees based solely on the services rendered for the benefit of the child or consumer. After payment of these expenses and attorney's fees, the court or agency shall apply out of the balance of the judgment or award an amount sufficient to reimburse the department the full amount of the reasonable value of services provided.

4659.15. Upon further application at any time before the judgment or award is satisfied, the court shall allow as a further lien the reasonable value of additional services provided arising out of the same cause of action or claim provided on behalf of the consumer under this division, or child under the California Early Intervention Program, where the services were provided or became payable subsequent to the original order.

4659.16. (a) No settlement, judgment, or award in any action or claim by a consumer or child to recover damages for injuries, where the department or regional center has an interest, shall be deemed final or satisfied without first giving the department notice and a reasonable opportunity to perfect and to satisfy the department's or regional center's lien. Recovery of the lien from an injured consumer's or child's action or claim is limited to that portion of a settlement, judgment, or award that represents payment for services provided on behalf of the consumer under this division or a child under the California Early Intervention Program. All reasonable efforts shall be made to obtain the department's advance agreement to a determination as to what



portion of a settlement, judgment, or award represents payment for services provided on behalf on the consumer under this division or the child under the California Early Intervention Program. Absent the department's advance agreement as to what portion of a settlement, judgment, or award represents payment for medical expenses, or medical care, provided to the child or consumer, the matter shall be submitted to a court for decision. The department, the regional center, or the child or consumer may seek resolution of the dispute by filing a motion, which shall be subject to regular law and motion procedures.

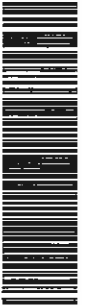
(b) If the child or consumer has filed a third-party action or claim, the court in which the action or claim was filed shall have jurisdiction over a dispute between the department or regional center and the child or consumer regarding the amount of a lien asserted pursuant to this section that is based upon an allocation of damages contained in a settlement or compromise of the third-party action or claim. If no third-party action or claim has been filed, any superior court in California where venue would have been proper, had a claim or action been filed, shall have jurisdiction over the motion. The motion may be filed as a special motion and treated as an ordinary law and motion proceeding subject to regular motion fees. The reimbursement determination motion shall be treated as a special proceeding of a civil nature pursuant to Part 3 (commencing with Section 1063) of the Code of Civil Procedure. When no action is pending, the person making the motion shall be required to pay a first appearance fee. When an action is pending, the person making the motion shall pay a regular law and motion fee. Notwithstanding Section 1064 of the Code of Civil Procedure, the child or



consumer, the regional center, or the department may appeal the final findings, decision, or order.

(c) The court shall issue its findings, decision, or order, which shall be considered the final determination of the parties' rights and obligations with respect to the department's lien, unless the settlement is contingent on an acceptable allocation of the settlement proceeds, in which case, the court's findings, decision, or order shall be considered a tentative determination. If the child or consumer does not serve notice of a rejection of the tentative determination, which shall be based solely upon a rejection of the contingent settlement, within 30 days of the notice of entry of the court's tentative determination, subject to further consideration by the court pursuant to subdivision (d), the tentative determination shall become final. Notwithstanding Section 1064 of the Code of Civil Procedure, the child, consumer, regional center, or department may appeal the final findings, decision, or order.

(d) If the consumer or child does not accept the tentative determination, which shall be based solely upon a rejection of the contingent settlement, any party may subsequently seek further consideration of the court's findings upon application to modify the prior findings, decision, or order based on new or different facts or circumstances. The application shall include an affidavit showing what application was made before, when, and to what judge, what order or decision was made, and what new or different facts or circumstances, including a different settlement, are claimed to exist. Upon further consideration, the court may modify the allocation in the interest of fairness and for good cause.





4659.17. When the department or regional center has perfected a lien upon a judgment or award in favor of a child eligible for the California Early Intervention Program or a consumer against any third party for an injury for which the consumer has received services pursuant to this division, the department or the regional center shall be entitled to a writ of execution as lien claimant to enforce payment of the lien against the third party with interest and other accruing costs as in the case of other executions. In the event the amount of the judgment or award so recovered has been paid to the child or consumer, the department or the regional center shall be entitled to a writ of execution against the child or consumer to the extent of the department's or the regional center's lien, with interest and other accruing costs as in the case of other executions.

4659.18. Notwithstanding any other provision of law, in no event shall the department or the regional center recover an amount greater than the child eligible for the California Early Intervention Program or consumer recovers after deducting from the settlement judgment, or award, attorney's fees and litigation costs paid for by the child or consumer. If the recovery of the department or regional center is determined under this section, the reductions in subdivision (d) of Section 4659.12 shall not apply.

4659.19. The amount recovered by the department or regional center shall not exceed the amount derived from applying Section 4659.12, 4659.16, or 4659.18, whichever is less.

4659.20. In the event that the child or consumer, his or her guardian, conservator, limited conservator, personal representative, estate, or survivors, or any of them brings an action against the third party that may be liable for the injury, notice of institution



of legal proceedings, notice of settlement, and all other notices required by this article shall be given to the director of the department in Sacramento except in cases where the director specifies that notice shall be given to the Attorney General. All notices shall be given by insurance carriers, as described in Section 14124.70, having liability for the child's or consumer's claim, and by the attorney retained to assert the claim by the consumer or child, or by the injured child or consumer, his or her guardian, conservator, limited conservator, personal representative, estate, or survivors, if no attorney is retained.

4659.21. Notwithstanding any other provision of law, all carriers described in Section 14124.70, including automobile, casualty, property, and malpractice insurers, shall enter into agreements with regional centers and the department to permit and assist the matching of the eligibility files of the department and the regional centers against the carrier's claim files, utilizing, if necessary, social security numbers as common identifiers for the purpose of determining whether services were provided to a child eligible for the California Early Intervention Program or consumer because of an injury for which another person is liable, or for which a carrier is liable in accordance with the provisions of any policy of insurance. The carrier shall maintain a centralized file of claimants' names, mailing addresses, and social security numbers or dates of birth. This information shall be made available to the department and the regional center upon a reasonable request by the department or a regional center. The agreement described in this section shall include financial arrangements for reimbursing carriers for necessary costs incurred in furnishing requested information.



4659.22. (a) Every health insurer, self-insured plan, group health plan, as defined in Section 607(1) of the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001, et seq.), service benefit plan, managed care organization, including health care service plans as defined in subdivision (f) of Section 1345 of the Health and Safety Code, licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code), pharmacy benefit manager, or other party that is, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service, upon request of the department or a regional center for any records, or any information contained in records pertaining to, an individual or group health insurance policy or plan issued by the insurer or plan against, or pertaining to, the services paid by or claims made against the insurer or plans under a policy or plan, shall make the requested records or information available upon a certification by the department or regional center that the individual is an applicant for or recipient of services under this division, is an applicant for or recipient of services under the California Early Intervention Program, or is a person who is legally responsible for the applicant or recipient.

(b) The department or regional center shall enter into a cooperative agreement setting forth mutually agreeable procedures for requesting and furnishing appropriate information, consistent with laws pertaining to the confidentiality and privacy of medical records. These procedures shall include any financial arrangements as may be necessary to reimburse insurers or plans for necessary costs incurred in furnishing requested information, and the time and manner those procedures are to become effective.



(c) The information required to be made available pursuant to this section shall be limited to information necessary to determine whether services have been or should have been claimed and paid pursuant to a health insurance policy or plan with respect to services received by a particular individual for which services under this division or under the California Early Intervention Program would be available.

(d) Not later than the date upon which the procedures agreed to pursuant to subdivision (b) become effective, the director shall establish guidelines to ensure that information relating to an individual certified to be an applicant child or consumer, furnished to any insurer or plan pursuant to this section, is used only for the purpose of identifying the records or information requested in the manner so as not to violate the confidentiality of an applicant or recipient.

(e) The department shall implement this section no later than \_\_\_\_\_.

4659.23. In order to assess overlapping or duplicate health coverage, every health insurer, self-insured plan, group health plan, as defined in Section 607(1) of the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001, et seq.), service benefit plan, managed care organization, including health care service plans as defined in subdivision (f) of Section 1345 of the Health and Safety Code, licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code), pharmacy benefit manager, or other party that is, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service shall maintain a centralized file of the subscribers', policyholders', or enrollees' names, mailing addresses, and social security numbers or date of birth, and where available, for all



other covered persons, the names and social security numbers or dates of births. This information shall be made available to the department or a regional center upon reasonable request. Notwithstanding Section 20230 of the Government Code, the Board of Administration of the California Public Employees' Retirement System and affiliated systems or contract agencies shall permit data matches with the state department to identify consumers with third-party health coverage or insurance.

4659.24. (a) When the rights of a consumer or a child receiving services under the California Early Intervention Program to recovery from an insurer have been assigned to the department or a regional center, an insurer shall not impose any requirement on the department or the regional center that is different from any requirement applicable to an agent or assignee of the covered consumer or child.

(b) The department may garnish the wages, salary, or other employment income of, and withhold amounts from state tax refunds from, any person to whom both of the following apply:

(1) The person is required by a court or administrative order to provide coverage of the costs of services provided to a child under the California Early Intervention Program or a consumer under this division.

(2) The person has received payment from a third party for the costs of the services for the child or consumer, but he or she has not used the payments to reimburse, as appropriate, either the other parent or the person having custody of the child or consumer, or the provider of the services, to the extent necessary to reimburse the department for expenditures for those costs under this division. All claims for current

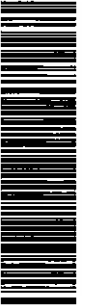


or past due child support shall take priority over claims made by the department or the regional center.

(c) For purposes of this section, “insurer” includes every health insurer, self-insured plan, group health plan, as defined in Section 607(1) of the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001, et seq.), service benefit plan, managed care organization, including health care service plans as defined in subdivision (f) of Section 1345 of the Health and Safety Code, licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code), pharmacy benefit manager, or other party that is, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make necessary changes to implement the Budget Act of 2011, it is necessary for this act to take effect immediately.



## LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, \_\_\_\_\_.

General Subject: Regional centers: dispute resolution: third-party liability.

Under existing law, the Lanterman Developmental Disabilities Services Act, the State Department of Developmental Services is authorized to contract with regional centers to provide support and services to individuals with developmental disabilities. Under existing law, the regional centers purchase needed services for individuals with developmental disabilities through approved service providers or arrange for their provision through other publicly funded agencies. Existing law establishes procedures for the resolution of disputes between a regional center and a generic agency, as defined, over provision of, or payment for, services that are contained in an individualized family service plan or individual program plan for any child under 6 years of age.

Existing law, the California Early Intervention Services Act, provides various early intervention services for infants and toddlers who have disabilities to enhance their development and to minimize the potential for developmental delays.



This bill would establish procedures authorizing the department or regional center to institute legal proceedings against a 3rd party or insurance carrier, as specified, when developmental services are provided or will be provided to a developmental services consumer, or a child under 36 months of age who is eligible for the California Early Intervention Program, as a result of an injury for which the 3rd party or carrier is liable.

This bill would entitle the department or regional center to recover the reasonable value of services provided to the child or consumer from a person who has brought an action or claim against a 3rd party who may be liable for causing the death of the child or consumer. The bill would provide for a similar recovery provision when the action is brought by the child or consumer, but would provide for the deduction of a share of the child's or consumer's attorney's fees and litigation costs from the reasonable value of the services provided, as specified. The bill would set forth the powers and duties of the department in recouping these amounts, and would prohibit the department or regional center from recovering an amount greater than the child or consumer.

This bill would establish procedures for the enforcement of a lien perfected by the department or regional center upon a judgment or award in favor of a child or consumer for a 3rd-party injury. This bill would require an insurer, as defined, to perform various duties relating to actions or claims brought pursuant to the bill, including a requirement to make requested information available to the department or regional center, pursuant to procedures set forth in a cooperative agreement entered into by the insurer and the department or regional center.

This bill would declare that it is to take effect immediately as an urgency statute.





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Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local  
program: no.



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