

Introduced by Senator McGuireFebruary 16, 2018

An act to amend Section 4514 of, and to add Section 10850.6 to, the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

SB 1274, as introduced, McGuire. Developmental services: data exchange.

(1) Existing federal law provides for allocation of federal funds through the federal Temporary Assistance for Needy Families (TANF) block grant program to eligible states. Existing law provides for the California Work Opportunity and Responsibility to Kids (CalWORKs) program, under which, through a combination of state and county funds and federal funds received through the TANF program, each county provides cash assistance and other benefits to qualified low-income families. Existing law generally requires a recipient of CalWORKs benefits to participate in welfare-to-work activities as a condition of eligibility for aid. Existing federal law also provides for the federal Supplemental Nutrition Assistance Program (SNAP), known in California as CalFresh, under which supplemental nutrition assistance benefits allocated to the state by the federal government are distributed to eligible individuals by each county. Under existing law, the State Department of Social Services is charged with state administration of both of these programs.

Existing law generally prohibits county welfare departments and the State Department of Social Services from disclosing records and information concerning the administration of public social services for which grants-in-aid are received from the United States government,

such as CalWORKs and CalFresh, and requires that those records and information be kept confidential, except as prescribed.

Existing law establishes the Employment First Policy, which is the policy that opportunities for integrated, competitive employment be given the highest priority for working-age individuals with developmental disabilities, regardless of the severity of their disabilities. Existing law requires various state agencies to disclose specified information to the State Department of Developmental Services to assist the department in the implementation of this policy.

This bill would, notwithstanding the general prohibition above, require the State Department of Social Services to disclose eligibility and enrollment data for the CalWORKs and CalFresh programs to the State Department of Developmental Services to assist that department in the implementation of the Employment First Policy, as specified, to the extent permitted under federal law and regulations.

(2) Existing law provides that all information and records obtained by the State Department of Developmental Services in the course of providing intake, assessment, and services to persons with developmental disabilities are confidential and may only be disclosed under specified circumstances.

This bill would authorize disclosure of this information as necessary to authorized employees of the State Department of Social Services to enable the State Department of Developmental Services to obtain the CalWORKs and CalFresh eligibility and enrollment data described above.

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 4514 of the Welfare and Institutions Code
2 is amended to read:
3 4514. All information and records obtained in the course of
4 providing intake, assessment, and services under Division 4.1
5 (commencing with Section 4400), Division 4.5 (commencing with
6 Section 4500), Division 6 (commencing with Section 6000), or
7 Division 7 (commencing with Section 7100) to persons with
8 developmental disabilities shall be confidential. Information and
9 records obtained in the course of providing similar services to
10 either voluntary or involuntary recipients prior to 1969 shall also

1 be confidential. Information and records shall be disclosed only
2 in any of the following cases:

3 (a) In communications between qualified professional persons,
4 whether employed by a regional center or state developmental
5 center, or not, in the provision of intake, assessment, and services
6 or appropriate referrals. The consent of the person with a
7 developmental disability, or his or her guardian or conservator,
8 shall be obtained before information or records may be disclosed
9 by regional center or state developmental center personnel to a
10 professional not employed by the regional center or state
11 developmental center, or a program not vendored by a regional
12 center or state developmental center.

13 (b) When the person with a developmental disability, who has
14 the capacity to give informed consent, designates individuals to
15 whom information or records may be released, except that this
16 chapter shall not be construed to compel a physician and surgeon,
17 psychologist, social worker, marriage and family therapist,
18 professional clinical counselor, nurse, attorney, or other
19 professional to reveal information that has been given to him or
20 her in confidence by a family member of the person unless a valid
21 release has been executed by that family member.

22 (c) To the extent necessary for a claim, or for a claim or
23 application to be made on behalf of a person with a developmental
24 disability for aid, insurance, government benefit, or medical
25 assistance to which he or she may be entitled.

26 (d) If the person with a developmental disability is a minor,
27 dependent ward, or conservatee, and his or her parent, guardian,
28 conservator, limited conservator with access to confidential records,
29 or authorized representative, designates, in writing, persons to
30 whom records or information may be disclosed, except that this
31 chapter shall not be construed to compel a physician and surgeon,
32 psychologist, social worker, marriage and family therapist,
33 professional clinical counselor, nurse, attorney, or other
34 professional to reveal information that has been given to him or
35 her in confidence by a family member of the person unless a valid
36 release has been executed by that family member.

37 (e) For research, if the Director of Developmental Services
38 designates by regulation rules for the conduct of research and
39 requires the research to be first reviewed by the appropriate
40 institutional review board or boards. These rules shall include, but

1 need not be limited to, the requirement that all researchers shall
2 sign an oath of confidentiality as follows:

3
4 “ _____
5 Date

6
7 As a condition of doing research concerning persons with
8 developmental disabilities who have received services from ____
9 (fill in the facility, agency or person), I, ____, agree to obtain the
10 prior informed consent of persons who have received services to
11 the maximum degree possible as determined by the appropriate
12 institutional review board or boards for protection of human
13 subjects reviewing my research, or the person’s parent, guardian,
14 or conservator, and I further agree not to divulge any information
15 obtained in the course of the research to unauthorized persons, and
16 not to publish or otherwise make public any information regarding
17 persons who have received services so those persons who received
18 services are identifiable.

19 I recognize that the unauthorized release of confidential
20 information may make me subject to a civil action under provisions
21 of the Welfare and Institutions Code.

22
23 _____”
24 Signed

- 25
- 26 (f) To the courts, as necessary to the administration of justice.
- 27 (g) To governmental law enforcement agencies as needed for
- 28 the protection of federal and state elective constitutional officers
- 29 and their families.
- 30 (h) To the Senate Committee on Rules or the Assembly
- 31 Committee on Rules for the purposes of legislative investigation
- 32 authorized by the committee.
- 33 (i) To the courts and designated parties as part of a regional
- 34 center report or assessment in compliance with a statutory or
- 35 regulatory requirement, including, but not limited to, Section
- 36 1827.5 of the Probate Code, Sections 1001.22 and 1370.1 of the
- 37 Penal Code, and Section 6502 of this code.
- 38 (j) To the attorney for the person with a developmental disability
- 39 in any and all proceedings upon presentation of a release of
- 40 information signed by the person, except that when the person

1 lacks the capacity to give informed consent, the regional center or
2 state developmental center director or designee, upon satisfying
3 himself or herself of the identity of the attorney, and of the fact
4 that the attorney represents the person, shall release all information
5 and records relating to the person except that this article shall not
6 be construed to compel a physician and surgeon, psychologist,
7 social worker, marriage and family therapist, professional clinical
8 counselor, nurse, attorney, or other professional to reveal
9 information that has been given to him or her in confidence by a
10 family member of the person unless a valid release has been
11 executed by that family member.

12 (k) Upon written consent by a person with a developmental
13 disability previously or presently receiving services from a regional
14 center or state developmental center, the director of the regional
15 center or state developmental center, or his or her designee, may
16 release any information, except information that has been given
17 in confidence by members of the family of the person with
18 developmental disabilities, requested by a probation officer charged
19 with the evaluation of the person after his or her conviction of a
20 crime if the regional center or state developmental center director
21 or designee determines that the information is relevant to the
22 evaluation. The consent shall only be operative until sentence is
23 passed on the crime of which the person was convicted. The
24 confidential information released pursuant to this subdivision shall
25 be transmitted to the court separately from the probation report
26 and shall not be placed in the probation report. The confidential
27 information shall remain confidential except for purposes of
28 sentencing. After sentencing, the confidential information shall be
29 sealed.

30 (l) Between persons who are trained and qualified to serve on
31 “multidisciplinary personnel” teams pursuant to subdivision (d)
32 of Section 18951. The information and records sought to be
33 disclosed shall be relevant to the prevention, identification,
34 management, or treatment of an abused child and his or her parents
35 pursuant to Chapter 11 (commencing with Section 18950) of Part
36 6 of Division 9.

37 (m) When a person with a developmental disability dies from
38 any cause, natural or otherwise, while hospitalized in a state
39 developmental center, the State Department of Developmental
40 Services, the physician and surgeon in charge of the client, or the

1 professional in charge of the facility or his or her designee, shall
2 release the patient's medical record to a medical examiner, forensic
3 pathologist, or coroner, upon request. Except for the purposes
4 included in paragraph (8) of subdivision (b) of Section 56.10 of
5 the Civil Code, a medical examiner, forensic pathologist, or coroner
6 shall not disclose any information contained in the medical record
7 obtained pursuant to this subdivision without a court order or
8 authorization pursuant to paragraph (4) of subdivision (c) of
9 Section 56.11 of the Civil Code.

10 (n) To authorized licensing personnel who are employed by, or
11 who are authorized representatives of, the State Department of
12 Public Health, and who are licensed or registered health
13 professionals, and to authorized legal staff or special investigators
14 who are peace officers who are employed by, or who are authorized
15 representatives of, the State Department of Social Services, as
16 necessary to the performance of their duties to inspect, license,
17 and investigate health facilities and community care facilities, and
18 to ensure that the standards of care and services provided in these
19 facilities are adequate and appropriate and to ascertain compliance
20 with the rules and regulations to which the facility is subject. The
21 confidential information shall remain confidential except for
22 purposes of inspection, licensing, or investigation pursuant to
23 Chapter 2 (commencing with Section 1250) and Chapter 3
24 (commencing with Section 1500) of Division 2 of the Health and
25 Safety Code, or a criminal, civil, or administrative proceeding in
26 relation thereto. The confidential information may be used by the
27 State Department of Public Health or the State Department of
28 Social Services in a criminal, civil, or administrative proceeding.
29 The confidential information shall be available only to the judge
30 or hearing officer and to the parties to the case. Names that are
31 confidential shall be listed in attachments separate to the general
32 pleadings. The confidential information shall be sealed after the
33 conclusion of the criminal, civil, or administrative hearings, and
34 shall not subsequently be released except in accordance with this
35 subdivision. If the confidential information does not result in a
36 criminal, civil, or administrative proceeding, it shall be sealed after
37 the State Department of Public Health or the State Department of
38 Social Services decides that no further action will be taken in the
39 matter of suspected licensing violations. Except as otherwise
40 provided in this subdivision, confidential information in the

1 possession of the State Department of Public Health or the State
2 Department of Social Services shall not contain the name of the
3 person with a developmental disability.

4 (o) To any board that licenses and certifies professionals in the
5 fields of mental health and developmental disabilities pursuant to
6 state law, when the Director of Developmental Services has
7 reasonable cause to believe that there has occurred a violation of
8 any provision of law subject to the jurisdiction of a board and the
9 records are relevant to the violation. The information shall be
10 sealed after a decision is reached in the matter of the suspected
11 violation, and shall not subsequently be released except in
12 accordance with this subdivision. Confidential information in the
13 possession of the board shall not contain the name of the person
14 with a developmental disability.

15 (p) (1) To governmental law enforcement agencies by the
16 director of a regional center or state developmental center, or his
17 or her designee, when (1) the person with a developmental
18 disability has been reported lost or missing or (2) there is probable
19 cause to believe that a person with a developmental disability has
20 committed, or has been the victim of, murder, manslaughter,
21 mayhem, aggravated mayhem, kidnapping, robbery, carjacking,
22 assault with the intent to commit a felony, arson, extortion, rape,
23 forcible sodomy, forcible oral copulation, assault or battery, or
24 unlawful possession of a weapon, as provided in any provision
25 listed in Section 16590 of the Penal Code.

26 (2) This subdivision shall be limited solely to information
27 directly relating to the factual circumstances of the commission
28 of the enumerated offenses and shall not include any information
29 relating to the mental state of the patient or the circumstances of
30 his or her treatment unless relevant to the crime involved.

31 (3) This subdivision shall not be construed as an exception to,
32 or in any other way affecting, the provisions of Article 7
33 (commencing with Section 1010) of Chapter 4 of Division 8 of
34 the Evidence Code, or Chapter 11 (commencing with Section
35 15600) and Chapter 13 (commencing with Section 15750) of Part
36 3 of Division 9.

37 (q) To the Division of Juvenile Facilities and Department of
38 Corrections and Rehabilitation or any component thereof, as
39 necessary to the administration of justice.

1 (r) To an agency mandated to investigate a report of abuse filed
2 pursuant to either Section 11164 of the Penal Code or Section
3 15630 of this code for the purposes of either a mandated or
4 voluntary report or when those agencies request information in
5 the course of conducting their investigation.

6 (s) When a person with developmental disabilities, or the parent,
7 guardian, or conservator of a person with developmental disabilities
8 who lacks capacity to consent, fails to grant or deny a request by
9 a regional center or state developmental center to release
10 information or records relating to the person with developmental
11 disabilities within a reasonable period of time, the director of the
12 regional or developmental center, or his or her designee, may
13 release information or records on behalf of that person provided
14 both of the following conditions are met:

15 (1) Release of the information or records is deemed necessary
16 to protect the person's health, safety, or welfare.

17 (2) The person, or the person's parent, guardian, or conservator,
18 has been advised annually in writing of the policy of the regional
19 center or state developmental center for release of confidential
20 client information or records when the person with developmental
21 disabilities, or the person's parent, guardian, or conservator, fails
22 to respond to a request for release of the information or records
23 within a reasonable period of time. A statement of policy contained
24 in the client's individual program plan shall be deemed to comply
25 with the notice requirement of this paragraph.

26 (t) (1) When an employee is served with a notice of adverse
27 action, as defined in Section 19570 of the Government Code, the
28 following information and records may be released:

29 (A) All information and records that the appointing authority
30 relied upon in issuing the notice of adverse action.

31 (B) All other information and records that are relevant to the
32 adverse action, or that would constitute relevant evidence as
33 defined in Section 210 of the Evidence Code.

34 (C) The information described in subparagraphs (A) and (B)
35 may be released only if both of the following conditions are met:

36 (i) The appointing authority has provided written notice to the
37 consumer and the consumer's legal representative or, if the
38 consumer has no legal representative or if the legal representative
39 is a state agency, to the clients' rights advocate, and the consumer,
40 the consumer's legal representative, or the clients' rights advocate

1 has not objected in writing to the appointing authority within five
2 business days of receipt of the notice, or the appointing authority,
3 upon review of the objection has determined that the circumstances
4 on which the adverse action is based are egregious or threaten the
5 health, safety, or life of the consumer or other consumers and
6 without the information the adverse action could not be taken.

7 (ii) The appointing authority, the person against whom the
8 adverse action has been taken, and the person's representative, if
9 any, have entered into a stipulation that does all of the following:

10 (I) Prohibits the parties from disclosing or using the information
11 or records for any purpose other than the proceedings for which
12 the information or records were requested or provided.

13 (II) Requires the employee and the employee's legal
14 representative to return to the appointing authority all records
15 provided to them under this subdivision, including, but not limited
16 to, all records and documents or copies thereof that are no longer
17 in the possession of the employee or the employee's legal
18 representative because they were from any source containing
19 confidential information protected by this section, and all copies
20 of those records and documents, within 10 days of the date that
21 the adverse action becomes final except for the actual records and
22 documents submitted to the administrative tribunal as a component
23 of an appeal from the adverse action.

24 (III) Requires the parties to submit the stipulation to the
25 administrative tribunal with jurisdiction over the adverse action
26 at the earliest possible opportunity.

27 (2) For the purposes of this subdivision, the State Personnel
28 Board may, prior to any appeal from adverse action being filed
29 with it, issue a protective order, upon application by the appointing
30 authority, for the limited purpose of prohibiting the parties from
31 disclosing or using information or records for any purpose other
32 than the proceeding for which the information or records were
33 requested or provided, and to require the employee or the
34 employee's legal representative to return to the appointing authority
35 all records provided to them under this subdivision, including, but
36 not limited to, all records and documents from any source
37 containing confidential information protected by this section, and
38 all copies of those records and documents, within 10 days of the
39 date that the adverse action becomes final, except for the actual
40 records and documents that are no longer in the possession of the

1 employee or the employee’s legal representatives because they
2 were submitted to the administrative tribunal as a component of
3 an appeal from the adverse action.

4 (3) Individual identifiers, including, but not limited to, names,
5 social security numbers, and hospital numbers, that are not
6 necessary for the prosecution or defense of the adverse action,
7 shall not be disclosed.

8 (4) All records, documents, or other materials containing
9 confidential information protected by this section that have been
10 submitted or otherwise disclosed to the administrative agency or
11 other person as a component of an appeal from an adverse action
12 shall, upon proper motion by the appointing authority to the
13 administrative tribunal, be placed under administrative seal and
14 shall not, thereafter, be subject to disclosure to any person or entity
15 except upon the issuance of an order of a court of competent
16 jurisdiction.

17 (5) For purposes of this subdivision, an adverse action becomes
18 final when the employee fails to answer within the time specified
19 in Section 19575 of the Government Code, or, after filing an
20 answer, withdraws the appeal, or, upon exhaustion of the
21 administrative appeal or of the judicial review remedies as
22 otherwise provided by law.

23 (u) To the person appointed as the developmental services
24 decisionmaker for a minor, dependent, or ward pursuant to Section
25 319, 361, or 726.

26 (v) To a protection and advocacy agency established pursuant
27 to Section 4901, to the extent that the information is incorporated
28 within any of the following:

29 (1) An unredacted facility evaluation report form or an
30 unredacted complaint investigation report form of the State
31 Department of Social Services. This information shall remain
32 confidential and subject to the confidentiality requirements of
33 subdivision (f) of Section 4903.

34 (2) An unredacted citation report, unredacted licensing report,
35 unredacted survey report, unredacted plan of correction, or
36 unredacted statement of deficiency of the State Department of
37 Public Health, prepared by authorized licensing personnel or
38 authorized representatives described in subdivision (n). This
39 information shall remain confidential and subject to the
40 confidentiality requirements of subdivision (f) of Section 4903.

1 (w) When a comprehensive assessment is conducted or updated
2 pursuant to Section 4418.25, 4418.7, or 4648, a regional center is
3 authorized to provide the assessment to the regional center clients'
4 rights advocate, who provides service pursuant to Section 4433.

5 (x) For purposes of this section, a reference to a “medical
6 examiner, forensic pathologist, or coroner” means a coroner or
7 deputy coroner, as described in subdivision (c) of Section 830.35
8 of the Penal Code, or a licensed physician who currently performs
9 official autopsies on behalf of a county coroner’s office or a
10 medical examiner’s office, whether as a government employee or
11 under contract to that office.

12 (y) To authorized personnel who are employed by the
13 Employment Development Department as necessary to enable the
14 Employment Development Department to provide the information
15 required to be disclosed to the State Department of Developmental
16 Services pursuant to subdivision (ak) of Section 1095 of the
17 Unemployment Insurance Code. The Employment Development
18 Department shall maintain the confidentiality of any information
19 provided to it by the Department of Developmental Services to
20 the same extent as if the Employment Development Department
21 had acquired the information directly.

22 (z) *To authorized personnel who are employed by the State
23 Department of Social Services as necessary to enable the
24 department to provide the information required to be disclosed to
25 the State Department of Developmental Services pursuant to
26 Section 10850.6. The State Department of Social Services shall
27 maintain the confidentiality of any information provided to it by
28 the State Department of Developmental Services to the same extent
29 as if the State Department of Social Services had acquired the
30 information directly.*

31 SEC. 2. Section 10850.6 is added to the Welfare and
32 Institutions Code, to read:

33 10850.6. Notwithstanding the provisions of Section 10850, the
34 State Department of Social Services shall enable the State
35 Department of Developmental Services to obtain CalWORKs and
36 CalFresh eligibility and enrollment data for consumers served by
37 the State Department of Developmental Services for the purposes
38 of monitoring and evaluating employment outcomes to determine
39 the effectiveness of the Employment First Policy, established
40 pursuant to Section 4689. This information shall be provided to

1 the extent permitted under applicable federal statutes and
2 regulations.

O