

# State and Federal Civil Rights Agencies Can Intervene When DDS Funds Regional Center Services That Violate the ADA

By Thomas F. Coleman  
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Regional centers receive state funding through contracts with the Department of Developmental Services (DDS). This funding pays for various types of services provided to individuals with intellectual and developmental disabilities.

These contracts require regional centers to render services “in accordance with applicable federal and California statutes.” Government Code Section 11135 requires agencies receiving state funds to comply with the Americans with Disabilities Act in the delivery of services. Probate Code Section 1827.5(a) requires regional centers to use a qualified individual to conduct assessments and submit reports to the probate court for clients who are respondents in limited conservatorship proceedings. Welfare and Institutions Code Section 4646.5 describes how assessments shall be conducted.

Clients will only receive the full benefit of properly performed services, as required by the ADA, if regional centers use a qualified professional to conduct an assessment in each of the seven areas of decision-making and solicit the views of the full list of informants listed in Section 4646.5. Cutting corners to save time or money, knowing that clients cannot complain due to the nature of their disabilities, is a form of disability discrimination under the ADA.

Normal complaint procedures are not available to clients in conservatorship proceedings because they don’t know their rights, and even if they did they would not be able to initiate or participate in a complaint procedure. Therefore, it is necessary for DDS to monitor compliance by regional centers with Section 11135, Section 1827.5(a), and Section 4646.5. Failure to perform this monitoring function becomes a Title II ADA violation by DDS.

It appears that DDS is not providing guidance or engaging in oversight of regional centers with respect to their conservatorship assessment and reporting services. This must be corrected.

Spectrum Institute recently had a meeting in Sacramento with representatives of DDS and the state Health and Human Services Agency. DDS suggested that it lacked the authority to regulate and monitor regional centers in connection with their conservatorship assessment and reporting duties. This position is plainly wrong and is contrary to current law.

Welfare and Institutions Code Section 4629 requires DDS to enter into contracts with regional centers. The contracts must include provisions requiring regional centers to render services in accord with applicable laws. The statutes mentioned above are applicable laws. The contracts must include annual performance objectives and shall specify steps to be taken to ensure contract compliance. The contracts place regional centers under an obligation to comply with the ADA (Section 11135).

By denying its responsibility to provide guidance and oversight to regional centers for these conservatorship assessment and reporting services, DDS is failing to conduct the oversight service contemplated by the Legislature. It is essential for DDS to perform this function in order to ensure that clients receive proper services from regional centers in this regard.

The remedy? Spectrum Institute may initiate an internal grievance procedure with DDS as authorized by Title II of the ADA. If that fails, a class-based complaint may be filed with the state Department of Fair Employment and Housing under Section 11135. If that fails, a complaint may be filed with the federal Department of Justice or the Department of Health and Human Services for systemic ADA violations.

Many regional centers are not conducting conservatorship assessments as required by law. DDS needs to conduct its own investigation to verify the extent of compliance or noncompliance by each regional center. Corrective actions should then follow. ♦♦♦

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## **Statutory Duties of DDS and Regional Centers Regarding Limited Conservatorship Assessments and Reports to the Probate Court**

### **California Welfare and Institutions Code Section 4629**

- (a) The state **shall** enter into five-year contracts with regional centers, subject to the annual appropriation of funds by the Legislature.
- (b) The contracts **shall include** a provision requiring each regional center to render services **in accordance with applicable provision of state laws** and regulations.
- (c)(1) The contracts **shall** include annual performance objectives . . .
- (2) **In addition** to the performance objectives developed pursuant to this section, the department **may specify** in the performance contract additional areas of service and support that require development or enhancement by the regional center. . .
- (d) Each contract with a regional center **shall** specify steps to be taken to ensure contract compliance . . .

*Comment: Probate Code Section 1827.5 is an applicable state law that must be complied with by regional centers.*

### **Probate Code Section 1827.5(a)**

In the case of any proceeding to establish a limited conservatorship for a person with developmental disabilities, within 30 days after the filing of a petition for limited conservatorship, a proposed limited conservatee, with his or her consent, **shall be assessed** at a regional center **as provided in Chapter 5** (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. The regional center shall submit a written report of its findings and recommendations to the court.

*Comment: How “assessments” shall be conducted is defined in the following provision in Section 5 of Division 4.5 of the Welfare and Institutions Code.*

### **Welfare and Institutions Code Section 4646.5**

Assessments shall be conducted **by qualified individuals** and performed in natural environments whenever possible. Information **shall be taken from the consumer**, his or her **parents** and other **family members**, his or her **friends**, **advocates**, authorized **representative**, if applicable, **providers** of services and supports, **and** other **agencies**. The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.

## **Clauses in Contracts Between DDS and Regional Centers Regarding Client Assessments and Reports to Probate Courts in Limited Conservatorships**

### **12. Control Requirements**

The Contractor shall comply with all California statutes, laws, and regulations applicable to nonprofit corporations. Contractor shall also **render services** to persons with developmental disabilities **in accordance with applicable federal and California statutes**, regulations, ARC v. DDS (1985) 38 Cal.3d. 384 and the terms of this contract.

*Comment: Probate Code Section 1827.5(a) is a state statute that defines service duties of regional centers in connection with limited conservatorship proceedings. Government Code Section 11135 is a state statute that requires any entity that is funded by the state to comply with Title II of the federal ADA. Title II requires that recipients of services must have meaningful participation in such services and receive the full benefit of them. Therefore, it would be a violation of section 11135 if a regional center did not conduct a limited conservatorship assessment as specified by section 1827.5(a) (by a qualified professional and in a manner as described by section 4646.5).*

### **15. Nondiscrimination**

a. Contractor agrees to develop, implement, and maintain a nondiscrimination program as required pursuant to applicable State of California laws and regulations, including Title 2, California Code of Regulations (Cal. Code Regs., tit. 2), Section 8101 et seq.

b. During the performance of this contract, the recipient, Contractor and its subcontractors **shall not deny the contract's benefits** to any person on the basis of religion, color, ethnic-group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, **mental disability**, medical condition, marital status, age (over 40), or sex. Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

c. **Contractor shall comply with** the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2. Section 7285.0 et seq.), the provisions of **Sections 11135-11139.5**, Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code, and the regulations or

standards adopted by the awarding state agency to implement such article.

*Comment: Failure of a regional center to conduct an assessment for a limited conservatorship in accord with the requirements of Section 1827.5 and section 4646.5 would be a denial of benefits and denial of meaningful participation in the service activity in violation of Section 11135 and the ADA.*

## **Article V: Evaluation**

- a. **Contractor Evaluation** The Contractor's performance under this contract will be evaluated. Accordingly, the State, through its authorized representatives, reserves the right to use evaluation methods, including observations, inspections, interviews and other assessment techniques selected by the State.

*Comment: This clause gives DDS the authority to evaluate the performance of a regional center in connection with its assessment and report to a probate court in a limited conservatorship proceeding.*

### **1. Information Requests**

During the term of this contract, the State may require Contractor to furnish program and fiscal information, as the State deems necessary to assess Contractor's status or performance relative to Contractor's fiscal and/or program operations. Prior to requesting such information, the State shall confer with ARCA as to the most efficient and effective means for collecting the information.

*Comment: This clause gives DDS the authority to require a regional center to provide information to DDS about its assessment and reporting services in connection with limited conservatorship proceedings.*

**Final Comment:** *No new statutes need to be passed by the Legislature. Regional centers already have statutory duties to perform limited conservatorship assessments and file reports to the probate courts, and these duties are built into existing contracts with DDS. Likewise, DDS has statutory and contractual obligations to make sure these assessment and reporting services are done properly – in accord with state and federal laws. Everything is explicit. No “underground” regulation would occur when DDS fulfills these existing duties. In fact, failure to perform its oversight and monitoring function could deny people with disabilities full access to these services, thereby subjecting DDS to the filing of complaints with and investigations by DFEH and appropriate federal agencies for violation of the ADA and Section 11135.*

# Americans with Disabilities Act

## Title II Regulations

### **Part 35 Nondiscrimination on the Basis of Disability in State and Local Government Services** (as amended by the final rule published on August 11, 2016)

#### **§ 35.107 Designation of responsible employee and adoption of grievance procedures**

(a) *Designation of responsible employee.* A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

(b) *Complaint procedure.* A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

#### **§ 35.170 Complaints**

1. (a) *Who may file.* An individual who believes that he or she **or a specific class of individuals** has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint under this part.

#### **§ 35.190 Designated Agencies.**

(b) The Federal agencies listed in paragraph (b)(1)-(8) of this section shall have responsibility for the implementation of subpart F of this part for components of State and local governments that exercise responsibilities, regulate, or administer services, programs, or activities in the following functional areas.

(3) *Department of Health and Human Services:* All programs, services, and regulatory activities relating to the provision of health care and social services . . .

(e) When the Department [ of Justice] receives a complaint directed to the Attorney General alleging a violation of this part that may fall within the jurisdiction of a designated agency or another Federal agency that may have jurisdiction under section 504, the Department may exercise its discretion to retain the complaint for investigation under this part.

## **Authority of DDS to Monitor Regional Center Services for ADA Compliance**

### **11135.**

(a) No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. Notwithstanding Section 11000, this section applies to the California State University.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) The protected bases referenced in this section have the same meanings as those terms are defined in Section 12926.

(d) The protected bases used in this section include a perception that a person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

### **11136.**

Whenever a state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state has reasonable cause to believe that a contractor, grantee, or local agency has violated the provisions of Section 11135, Part 2.8 (commencing with Section 12900) of this code, Section 51, 51.5, 51.7, 54, 54.1, or 54.2 of the Civil Code, or any regulation adopted to implement these sections or Article 1 (commencing with Section 12960) of Chapter 7 of this code, the head of the state agency, or his or her designee, shall notify the contractor, grantee, or local agency of such violation and shall submit a complaint detailing the alleged violations to the Department of Fair Employment and Housing for investigation and determination pursuant to Article 1 (commencing with Section 12960) of Chapter 7 of this code.

### **11137.**

If it is determined that a contractor, grantee, or local agency has violated the provisions of this article, pursuant to the process described in Section 11136, the state agency that administers the program or activity involved shall take action to curtail state funding in whole or in part to such contractor, grantee, or local agency.