AGENDA

ASSEMBLY BUDGET SUBCOMMITTEE NO. 1 ON HEALTH AND HUMAN SERVICES

ASSEMBLYMEMBER HOLLY MITCHELL, CHAIR

WEDNESDAY, APRIL 17, 2013
1:30 P.M. - STATE CAPITOL ROOM 437

ITEMS TO BE HEARD

ITEMS TO BE HEARD

5160 DEPARTMENT OF REHABILITATION

ISSUE 1: BUDGET AND PROGRAM OVERVIEW AND UPDATES

DEPARTMENT OVERVIEW

The California Department of Rehabilitation works in partnership with consumers and other stakeholders to provide services and advocacy resulting in employment, independent living, and equality for individuals with disabilities.

***Vocational Rehabilitation*.** The Vocational Rehabilitation Services Program delivers vocational rehabilitation services to persons with disabilities through vocational rehabilitation professionals in district and branch offices located throughout the state. In addition, the Department has cooperative agreements with state and local agencies (education, mental health, and welfare) to provide unique and collaborative services to consumers. The Department operates under a federal Order of Selection process, which gives priority to persons with the most significant disabilities.

Persons with disabilities who are eligible for the Department's vocational rehabilitation services may be provided a full range of services, including vocational assessment, assistive technology, vocational and educational training, job placement, and independent living skills training to maximize their ability to live and work independently within their communities.

The Department also provides comprehensive training and supervision to enable persons who are blind or visually impaired to support themselves in the operation of vending stands, snack bars, and cafeterias. Prevocational services are provided by the Orientation Center for the Blind to newly blind adults to prepare them for vocational rehabilitation services and independent living.

The Department also works with public and private organizations to develop and improve community-based vocational rehabilitation services for the Department's consumers. The Department sets standards, certifies Community Rehabilitation Programs, and establishes fees for services provided to its consumers.

***Independent Living Services*.** The Department funds, administers, and supports 29 non-profit independent living centers in communities located throughout California. Each independent living center provides services necessary to assist consumers to live independently and be productive in their communities. Core services consist of information and referral, peer counseling, benefits advocacy, independent living skills development, housing assistance, personal assistance services, and personal and systems change advocacy.

The Department also administers and supports the Traumatic Brain Injury (TBI) Program. In coordination with consumers and their families, seven service providers throughout California provide a coordinated post-acute care service model for persons with TBI, including supported living, community reintegration, and vocational supportive services.

The Department also serves blind and deaf-blind persons through counselor-teacher services, purchase of reader services, and community-based projects to serve the elderly blind.

FISCAL OVERVIEW

Fund Source	2011-12 Actual	2012-13 Projected	2013-14 Proposed	BY to CY Change	% Change
General Fund	$54,527	$55,266	$56,566	1,300	2%
Traumatic Brain Injury Fund	1,062	1,132	1,002	(130)	-11%
Vending Stand Fund	681	3,361	2,361	(1,000)	-30%
Federal Trust Fund	309,216	351,168	346,672	(4,496)	-1%
Reimbursements	5,758	7,680	7,680	0	0%
Total Expenditures	**$371,244**	**$418,607**	**$414,281**	**(4,326)**	**-1%**
Positions	1,717.7	1,823.0	1,823.0	0	0%

BUDGET CONTEXT

As part of the 2012-13 Budget, the following actions were taken in the DOR area:

- Adopted the administration's proposed trailer bill language that effectuated a change in appeals processes from hearings by the Rehabilitation Appeals Board to hearings by independent hearing officers in order to establish additional safeguards of the due process rights and needs of appellants (including unrepresented parties).

- Rejected the proposed elimination of the Orientation Center for the Blind Trust Fund Committee.

TRAUMATIC BRAIN INJURY PROGRAM

Assembly Bill 398 transferred the administration of the Traumatic Brain Injury (TBI) program from the Department of Mental Health to the Department of Rehabilitation (DOR) effective January 1, 2010. The Traumatic Brain Injury Fund was established to provide coordinated service delivery including community reintegration, vocational supportive services, and supported living services to individuals with TBI, as well as to provide family and professional education. Currently there are seven sites providing these services. In 2008-2009 the sites served 975 participants, of which 160 were new intakes. In 2011-12, the sites served 871 participants, of which 238 were new intakes.

The TBI Fund is also used to match federal funding under the Vocational Rehabilitation Services grant to provide services to consumers in five of the seven sites. DOR consumers with TBI can receive services such as vocational assessment, employment preparation, placement and retention services. Since 2010, six sites partnered with the Department and increased the number of individuals served from 42 to 135, doubling the number of individuals plans developed from 15 to 30.

CHANGE IN APPEALS PROCESS

The 2012-2013 Budget eliminated the Rehabilitation Appeals Board (RAB) and provided that a fair hearing instead be held before an impartial hearing officer. These changes became operative July 31, 2012. August 1, 2012, DOR contracted with DGS, Office of Administrative Hearings (OAH) via an IA agreement, to provide fair hearings. The new regulations were approved by OAL and effective on March 5th, 2013.

DOR provides vocational services to over 100,000 individuals with significant disabilities annually and under the new fair hearing process, there were 54 (<0.1%) new requests for fair hearing and 9 carried over from the prior process. 19 were resolved prior to hearing, 35 hearings took place between 07/01/12 to 1/31/13 and 3 consumers filed 15 of these requests.

Under the RAB, cases were to be heard within 45 days but the average time from request to hearing was 70 days due to postponements or clarification of issues. Decisions were typically rendered within 30-45 days. Under the new fair hearing process, all new hearings have occurred within 60 days of the request and decisions are typically rendered within 30 days. On August 24th, OAH conducted training for ALJs who potentially would be handling DOR Fair Hearings and Mediations. DOR staff have received training that enables them to resolve issues prior to official requests for mediation or a fair hearing.

PANEL

- Anthony "Tony" Sauer, Director, and Juney Lee, Chief Deputy Director, Department of Rehabilitation
  - History and Impact of Program and Budget Changes and Discussion of Highlighted Issues
- Legislative Analyst's Office
- Department of Finance
- Public Comment

Staff Recommendation:

This issue has been included as an oversight issue and no action is necessary.

4300 DEPARTMENT OF DEVELOPMENTAL SERVICES

ISSUE 1: BUDGET AND PROGRAM OVERVIEW

BACKGROUND

The Governor's Budget includes $4.9 billion total funds ($2.8 billion General Fund) for the Department in 2013-14; a net increase of $178.7 million above the revised 2012-13 budget, a 3.8 percent increase; and $193.1 million above the 2012-13 enacted budget.

Department Description

The Department of Developmental Services (the Department) is responsible under the Lanterman Developmental Disabilities Services Act (Lanterman Act) for ensuring that approximately 258,000 persons with developmental disabilities receive the services and support they require to lead more independent and productive lives and to make choices and decisions about their lives.

The Department ensures coordination of services to persons with developmental disabilities; that such services are planned, provided, and sufficiently complete to meet the needs and choices of these individuals at each stage of their lives; and, to the extent possible, accomplishes these goals in the individual's home community. The Department's goals are to:

- Expand the availability, accessibility, and types of services and supports to meet current and future needs of individuals and their families.
- Develop systems to ensure that quality services and supports are provided.
- Facilitate the dissemination of information to improve services and supports and the lives of people with developmental disabilities.
- Ensure the Department, state Developmental Centers, regional centers, and service providers comply with all applicable federal and state laws, regulations and contracts, including accounting for their funding in an appropriate manner.

Overview of Department's Major Areas

California provides services and supports to individuals with developmental disabilities in two ways: the vast majority of people live in their families' homes or other community settings and receive state-funded services that are coordinated by one of 21 non-profit corporations known as regional centers. A smaller number of individuals live in four state-operated developmental centers and one state-operated community facility. The number of consumers with developmental disabilities in the community served by regional centers is estimated to increase from 256,872 in 2012-13 to 266,100 in

2013-14. The number of consumers living in state-operated residential facilities is estimated to decrease by the end of 2013-14 to 1,186 from the estimated 1,438 in 2012-13.

***Community Services Programs*.** Through the network of regional centers, the Department supports the development and maintenance of services for eligible persons with developmental disabilities who reside in the community. The regional centers directly provide or coordinate the following services and supports: (1) information and referral, (2) assessment and diagnosis, (3) counseling, (4) lifelong individualized planning and service coordination, (5) purchase of necessary services included in the individual program plan, (6) assistance in finding and using community and other resources, (7) advocacy for the protection of legal, civil, and service rights, (8) early intervention services for infants and their families, (9) family support, (10) planning, placement, and monitoring for 24-hour out-of-home care, (11) training and educational opportunities for individuals and families, (12) community education about developmental disabilities, and (13) habilitation services. The needs of individuals who reside in state-operated facilities are assessed and community resources are developed to assist those who can appropriately transition to the community. The Department monitors regional centers to ensure they operate in accordance with statute, regulations, and their contract with the Department.

***Developmental Centers Program*.** The Department operates four Developmental Centers: Fairview (Orange County), Lanterman (Los Angeles County), Porterville (Tulare County), and Sonoma (Sonoma County). Secure treatment services are provided at Porterville Developmental Center. In addition, the Department leases one small facility for persons who require specialized behavioral interventions: Canyon Springs, a 63-bed facility in Cathedral City. Services at all facilities involve the provision of active treatment through residential and day programs on a 24-hour basis, including appropriate medical and dental care, health maintenance activities, and assistance with activities of daily living, training, education, and employment.

The primary objectives of the Developmental Centers Program include providing care, treatment, and habilitation services in the most efficient, effective, and least restrictive manner to all individuals referred to the Developmental Centers Program by the regional centers, and/or the judicial system; and providing services to individuals that ensure increased independence, maintenance or improvement of health and welfare, and enhanced personal competence and effectiveness in all areas of daily living.

The Developmental Centers Division provides central administrative and clinical management services to the four Developmental Centers and the leased small community facility to ensure the quality of services, provided compliance with state licensing and federal certification requirements, protection of consumers and staff, and maintenance of facility structures and grounds. Areas of responsibility include the development of policy and procedures for all aspects of the Developmental Centers operations, law enforcement and protective services, facility population management, program and fiscal oversight, and facilities planning and support.

FISCAL OVERVIEW

Fund Source	2011-12 Actual	2012-13 Projected	2013-14 Proposed	BY to CY Change	% Change
General Fund	$2,556,002	$2,597,951	$2,753,780	155,829	6%
General Fund, Proposition 98	6,756	6,193	5,616	(577)	-9%
Developmental Disabilities Program Development Fund	6,203	9,553	9,553	0	0%
Developmental Disabilities Services Account	-	150	150	0	0%
California State Lottery Education Fund	89	465	465	0	0%
Federal Trust Fund	54,194	55,083	55,041	(42)	0%
Reimbursements	1,979,893	2,078,716	2,102,201	23,485	1%
Mental Health Services Fund	1,133	1,129	1,128	(1)	0%
Total Expenditures	**$4,604,270**	**$4,749,240**	**$4,927,934**	**178,694**	**4%**
Positions	5,067.9	5,528.5	5,142.5	(386)	-7%

BUDGET CONTEXT

Between 2009-10 and 2012-13, state budgets have included significant General Fund cost containment solutions related to developmental services. Taken together, the savings resulting from these changes combined to over $1.3 billion General Fund in the years they were enacted. The savings generally came from: 1) increased use of federal and other funding sources, 2) reductions in the rates of payments to regional centers and service providers (ranging from 1.25 to 4.25 percent), and 3) administrative changes, cost-control measures, and some service reductions.

In 2012-13, the budget solutions also included a series of statutory changes intended to redesign services for consumers with especially challenging needs. These changes include significant restrictions on the statutory criteria for admissions to DCs, limitations on the use of locked mental health facilities and out-of-state placements, and provisions to strengthen the capacity of the community to serve these individuals (including expanded availability of Adult Residential Facilities for Individuals with Special Health Care Needs and the creation of a statewide Specialized Resource Service).

The following chart summarizes recent budget and policy actions taken in the course of the last several budget cycles.

<table>
<tr><th colspan="2">DDS - Review of Recent Budget Reductions and Policy Changes</th></tr>
<tr><td>2012-13</td><td>

Reduction of $200 million GF: Achieved a $200 million GF reduction in 2012-13 through the policies described below. A reduction of $100 million GF in 2011-12 was triggered in December 2011 due to less than anticipated state revenues at the time. The $200 million GF reduction for 2012-13 represented an annualized amount of those savings on an ongoing basis.
Federal Funds. Maximized federal funds through aggressive enrollment in the state’s 1915(c) Medicaid Home and Community Based Services waiver ($61 million GF savings) and amendments to the state’s plan under the Section 1915(k) Community First Choice Option waiver ($7 million GF savings).
Recognized Savings from Implementation of SB 946 (Chapter 650, Statutes of 2011). This included: 1) $69.4 million GF savings from requiring health care insurers to provide coverage for behavioral health treatment for individuals with pervasive developmental disorder or autism, and 2) $10.4 million GF savings from applying the same requirement to Healthy Families and CalPERS insurance plans.
Redesigned Services for Individuals with Challenging Needs. Significantly restricted the statutory criteria for admissions to DCs, limiting the use of locked mental health facilities and out-of-state placements, and strengthening the capacity of the community to serve individuals with challenging needs (including expanded availability of Adult Residential Facilities for Individuals with Special Health Care Needs and the creation of a statewide Specialized Resource Service) ($20 million GF savings).
Redesigned Supported Living Assessments. Repealed an existing requirement for independent assessment under specified circumstances and replaced it with a standardized assessment questionnaire to be completed at specified times in the Individual Program Plan (IPP) process ($4.2 million GF savings).
Reduced Regional Center & Provider Rates by 1.25 Percent for one year. This is a lower degree of rate reduction than the 4.25 percent reduction that was in place last year. The Governor’s proposal would have made this 1.25 percent reduction ($30.7 million GF savings) permanent.
Recognized Additional Cost Savings and Efficiencies. This was derived from funds that had been earmarked for other purposes, including downsizing of Community Care Facilities and filling the gap in federal funding authority when facilities transfer ownership, as well as new uses of technology ($4.3 million GF).
November 2012 Trigger Provisions. Approved a $50 million reduction to developmental services, effective January 1, 2013, for the remainder of the 2012-13 fiscal year that would be triggered if the Governor’s November 2012 tax initiative is not passed by voters statewide.
Capital Outlay. Approved the reappropriation of $25.4 million for construction of a new main kitchen at the Porterville Developmental Center, as well as $11.4 million GF for construction costs associated with installation of automatic fire sprinkler systems in buildings at the Fairview, Porterville, and Sonoma Developmental Centers.

Other Significant Actions:

Adopted trailer bill language to require annual compiling and publishing of existing purchase of service utilization and expenditure data by regional center with respect to the race and ethnicity, age, and disability of consumers.
Approved assumed receipt of $40 million in funding for Early Start services from the California Children and Families (First 5) Commission for GF savings.

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	• Consistent with new federal regulations, adopted trailer bill language to ensure that the use of private health insurance or health care service plans to pay for early intervention services does not count against or result in a loss of benefits or serve as the basis for increased premiums. • To meet federal regulations, approved a proposed increase from $1.8 million ($881,000 GF) in 2011-12 to $10.7 million ($5.4 million GF) in 2012-13 funding for financial management services related to participant-directed services. • Approved a request for $2.9 million ($1.6 million GF) to support retention of 28 authorized staff positions and five temporary help positions at the Lanterman Developmental Center that would otherwise be eliminated under budgeting formulas that factor the resident population into the number of authorized positions. DDS indicated that this enhanced staffing was needed to support the process of closing the facility. Further, directed the Administration to identify general timeframes anticipated for the closure process.
2011-12	• ***Measures to Contain Costs and Improve Transparency and Accountability*.** The budget plan achieved $284 million in savings through a combination of measures to contain costs and improve transparency and accountability. For example, the plan implemented an annual family program fee for families with incomes above 400 percent of the federal poverty level (about $89,000 for a family of four in 2011). The budget plan also reflected about $110 million in savings from various measures to improve the transparency and accountability of the community services program. • ***Extension of Regional Center Provider Payment Reduction*.** The budget plan extended a 4.25 percent provider payment reduction that had been imposed in recent years in order to achieve $92 million in savings in 2011–12. • ***Assumption of Additional Federal Funds*.** The budget plan assumed $78 million in additional federal funds resulting from the following initiatives: (1) modifications to the state's Home and Community–Based Services program of community services for persons with disabilities ($60 million); (2) certification of Porterville Developmental Center to obtain federal Medicaid reimbursement for care provided to certain patients ($13 million), and (3) an increase in Money Follows the Person grants intended to help promote the shift of disabled persons from institutions to the community ($5 million). • ***Reduction in Funding for Developmental Centers (DCs).*** The budget plan included several reductions to the DCs for a total of $28 million in savings. These reductions reflected the consolidation of residences and programs, reductions in funding for operations, and the elimination of funding for some DC staff. • ***Trigger Reductions*.** The final 2011–12 budget included several reductions that would only be triggered if state General Fund revenue estimates are later determined to be too high. Effective January 2012, these trigger reductions included up to $100 million in unspecified savings in services for persons with developmental disabilities. DDS was able to meet the $100 million GF target for the 2011-12 using a variety of strategies, including savings attributable to caseload and expenditure adjustments, unexpended contract funds, or other administrative savings. The trigger also required an ongoing $200 million GF reduction in the DDS budget, discussed under the “2012-13 Budget.” • ***Federal ARRA Funding.*** Another major factor affecting net General Fund expenditures for DDS programs was the expiration of the enhanced FMAP provided under ARRA and subsequent legislation, which had provided about $386 million in reductions in 2010–11.
2010-11	• ***Reduced RC Provider Payments*.** Extended a 3 percent provider payment reduction that was enacted in the 2009-10 budget (for savings of $61 million), and further reduced provider payments by 1.25 percent—a total reduction of 4.25

	percent—for additional General Fund savings of $25 million. • ***Closure of Lanterman DC.*** The spending plan provided $312 million from the General Fund for the DCs, an increase of $53 million, or about 21 percent, compared to the revised prior-year spending level. This increase mostly reflected the restoration of employee compensation reductions made in the prior year. While there were no related savings in the spending plan, the Legislature adopted as part of the 2010-11 the Governor's proposal to close the Lanterman DC.
2009-10	The 2009-10 budget provided a net decrease of about $170 million, or 6.6 percent, in General Fund support compared to the revised prior-year spending level. The decrease in General Fund spending for DDS was largely due to increased federal funds provided under ARRA and the adoption of several proposals to achieve a department savings target of $334 million. These spending reductions were partly offset by increases for caseload, costs, and utilization of services. ***Components of the $334 million in savings included:*** • $60 million in savings would come from obtaining additional federal Medicaid funds for certain services. The Governor vetoed $50 million from the community programs budget for services provided to children up to age five and directed DDS to request replacement funds from the First 5 Commission. • Included savings of $26.6 million General Fund due to the availability of additional federal funds for California's Early Start program under ARRA. • Required development of a new service model that provides consumers with an "individual choice budget" that allows RC clients to choose the services they want within a fixed budget. • In the DCs, savings were achieved through delay of several capital outlay projects and from the closure of the Sierra Vista Community Facility. • Included a 3 percent provider payment reduction for RC services for 2009-10.

CURRENT PROPOSALS AND ISSUES

The Governor's Budget proposes the following for 2013-14 in the DDS area. The major proposals among these for the Subcommittee's attention and review are included in more detail in the next two sections, the first on Community and Regional Center Services, and the second on Developmental Center issues.

- **Lanterman Closure.** The Governor's Budget continues to support DC and Community efforts toward closure of the Lanterman facility. DDS, working with regional centers, anticipates the transition of approximately 110 Lanterman DC residents in 2012-13 consistent with the enacted budget. The Budget anticipates the transition of another 110 residents to community living arrangements in 2013-14. The 2012-13 Budget retains $0.7 million ($0.5 million General Fund) and 25.0 positions for Lanterman closure, and the 2013-14 proposed budget reflects a net decrease of $10.3 million ($5.7 million GF) and 178 positions.

- **Sonoma DC.** There is preliminary information from the administration that the decertification and Performance Improvement Plan issues at Sonoma DC will result in a loss of federal funding. The patient health and safety issues emerged over the course of 2012 and resulted in the removal of the Director of the DC. Details on Sonoma and related funding will be included in a future Assembly Budget Committee agenda on this subject.

- **Sunset of Provider Fee.** Assumes the scheduled sunset of the 1.25 percent regional center operations and provider payment reduction for 2013-14 and thus increases funds in DDS by $46.7 million ($32 million General Fund).

- **Co-Payments for Health Care Related Services.** Includes $15 million General Fund for 2012-13 and $9.9 million General Fund for 2013-14 to reflect increased expenditures associated with a recent regional center legal opinion that is expected to change regional center practices regarding funding of health insurance copayments and deductibles. The administration is proposing trailer bill language to limit the funding of health insurance copayments based on the family's ability to pay and prohibit the payment of deductibles.

- **Annual Family Program Fee.** Continues the Annual Family Program Fee, which was scheduled to sunset June 30, 2013, which assesses a fee of $150 or $200 per family based on family size, income, and additional criteria. The fee offsets General Fund costs by $7.2 million.

- **First 5 Support.** Assumes that $40 million is not received from the First 5 California Children and Families Commission in 2012-13 and backfills for this to provide services to children aged birth through five.

- **Caseload and Utilization.** Increases funding by $36.1 million in 2012-13 and $177.5 million in 2013-14 to reflect increases in caseload and utilization of services.

PANEL

- Terri Delgadillo, Director, Department of Developmental Services
  DDS has been asked to provide an overview of DDS programs and services, discussing how these have changed over the course of the last four budget cycles.
- Legislative Analyst's Office
- Department of Finance

Staff Recommendation:

This issue has been included as an oversight issue and no action is necessary.

ISSUE 2: COMMUNITY SERVICES PROGRAMS, REGIONAL CENTER SERVICES

The Governor's 2013-14 budget proposes a total of $4.3 billion ($2.5 billion GF) for developmental services that are anticipated to be provided to 266,100 individuals with disabilities who reside in the community. This includes an increase of $177.5 million ($89.2 million GF) due to updated caseload and expenditure information and the addition of 10,128 consumers to the caseload. Additional changes and proposals are described below.

Ninety-nine percent of DDS consumers receive community-based services and live with parents or other relatives, in their own houses or apartments, or in group homes (of various models) designed to meet their medical or behavioral needs. Once individuals qualify for services under the Lanterman Act, the state provides these supports throughout their lifetime. These services and supports range from day programs to transportation or residential services. Determination of which services an individual needs is made by an interdisciplinary team that develops an Individualized Program Plan (IPP) (or Individual Family Service Plan (IFSP) if the consumer is an infant/toddler three years of age or younger). Services that are included in these plans are entitlements and regional centers purchase them if necessary (i.e., an individual does not have private insurance that covers the service and there is no "generic" or publicly provided service available).

SUNSET OF 1.25% RATE REDUCTION

Budget Issue. The Governor's budget includes a $46.7 million ($31.9 million GF) increase in costs resulting from the scheduled sunset of a reduction of 1.25 percent to the rates paid to regional centers and community-based providers of services.

In each of the last several years, the Legislature and Governor have enacted temporary reductions to regional center Operations and Purchase of Services funding in order to save General Fund resources. In 2008-09 and 2009-10, the reduction was three percent (for estimated savings in 2009-10 of $62 million GF). In 2010-11 and 2011-12, the reduction was increased to 4.25 percent (for estimated savings of $89 million and $108 million GF, respectively). In 2012-13, the reduction was decreased to 1.25 percent (for estimated savings of $31.9 million GF). There were corresponding federal funding losses each year.

The statutory provisions creating the payment reductions also established some exemptions, including exemptions for supported employment, the State Supplementary Payment (SSP) supplement for independent living, and services with "usual and customary" rates established in regulations. Other exemptions were allowed if a regional center could demonstrate to DDS that a non-reduced payment was necessary to protect the health and safety of a consumer.

Many stakeholders indicated that these rate reductions (particularly when combined with other reductions to the developmental services system) created significant hardships for regional center staff and community-based service providers, which also impacted developmental services consumers.

The staff recommendation is to approve the continued assumption that the rate reductions which have been in effect in recent years will expire.

GOVERNOR'S PROPOSAL ON CO-PAYS

Budget Issue. The Governor's budget includes increases of $15 million GF in 2012-13 and $9.9 million GF in 2013-14 to support payments by regional centers of health insurance co-pays for services identified as necessary in the consumer's IPP. The Department's estimates of these costs include both "co-pays" that are payments made by the insured directly to a health care provider for each service or visit, as well as what is known as "co-insurance" and refers to a balance of costs for services above and beyond what is covered by insurance.

The Administration also proposes trailer bill language to specify the conditions under which regional centers would be authorized to make such co-payments going forward- i.e., when necessary to ensure that the consumer receives the service or support, when health insurance covers the service in whole or in part, when the consumer (or family if the consumer is under the age of 18) has income that does not exceed 400 percent of the federal poverty level (FPL), and when there is no third party who is liable to pay for the cost. The Department estimates that roughly 50 percent of consumers or families, as applicable, have incomes below 400 percent of FPL. The proposed trailer bill language additionally provides flexibility for regional centers to cover co-pays for consumers or families with income above 400 percent of FPL under extraordinary circumstances when needed to successfully maintain the child at home or adult consumer in the least restrictive setting. The proposed trailer bill language also prohibits payment by regional centers of insurance deductibles (the amount the insured must spend on his/her own before insurance benefits can be utilized).

Background. Legislation, including recent budget trailer bill language, has emphasized the responsibility of regional centers to reduce state costs by pursuing services or funding from entities responsible for providing or paying for services to regional center consumers. This includes payment, as applicable, by health insurers and health plans. Related recent legislation confirmed the responsibility of insurers and health plans to pay the costs of behavioral health treatment (BHT) for individuals with autism (Chapter 650, Statutes of 2011 [SB 946, Steinberg]). BHT may be required as often as 3-5 times per week, which can result in significant copayments for families with private health insurance. The increased reliance on private insurance resulting from recent budget actions and the enactment of SB 946 has raised the issue of whether families with insurance are to incur the cost of copayments or whether copayments would be paid by regional centers, which would be responsible for the full cost of these services in the absence of insurance coverage.

The Department and other stakeholders have indicated that regional center practices with respect to insurance-related co-pays and deductibles have historically varied from region to region. The Department asserts that statutory clarification is necessary to establish a clear, statewide policy. Under existing state law, regional centers are required to identify and pursue all possible sources of funding for services, including but not limited to, government services and programs, e.g., Medi-Cal, and "private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer." [Welfare & Institutions Code Section 4659(a)]. In the case of a covered service having co-pay, the entity's maximum liability is typically the cost of the service less the co-pay. The Association of Regional Center Agencies recently obtained a legal opinion from a private attorney concluding that, under current state law, regional centers are responsible not only for copayments but also for insurance deductibles for services identified in a consumer's IPP or IFSP. The legal opinion was widely circulated, and the department indicates that it will likely result in more regional centers covering these costs.

The department has indicated that administering deductible coverage could be more complex because deductibles are not as directly linked to utilization of a specific service that is included in an IPP or IFSP and may apply to an entire family, not just the developmental services consumer in particular. Some stakeholders have disagreed with this characterization and indicated that billings for deductibles can, and sometimes already do, specify both the service and the recipient of that service.

Several stakeholders have indicated a desire to see the proposed changes go further- e.g., to cover deductible payments in addition and to require, rather than authorize, coverage of co-pays and/or deductibles. Some have also indicated a desire to see coverage of co-pays be limited to behavioral health treatment for individuals with autism, while others have disagreed with that position.

Background on Other Limited Costs Borne by Consumers and Families. The state provides diagnosis and eligibility assessment services free-of-charge. Once eligibility is determined, most services and supports are also provided at no charge. However, parents whose incomes for their family sizes place them above the federal poverty level are required to pay a sliding scale share of the cost for 24-hour out-of-home placements for children under age 18. There are also co-payment requirements known as "family cost participation" for selected services, including day care, respite, and camping (which has been partially suspended in recent years), when those services are provided to a child who lives in his or her parent's home and is not eligible for Medi-Cal. Finally, an annual family fee of $150 or $200 for specified families with adjusted gross incomes at or above 400 percent of the federal poverty level was enacted in a 2011-12 budget trailer bill. These limited cost-sharing programs have exemption and/or appeal processes that take into account factors such as parental income, the family's extraordinary medical and other expenses, the number of children receiving regional center services, or demonstrated need to enable the family to maintain the child in the family home.

The staff recommendation is to hold this issue open.

PROPOSED CONTINUATION OF ANNUAL FAMILY FEE

Budget Issue. The Governor's budget assumes $7.2 million GF savings in 2013-14 from the continued payment of annual fees of $150 or $200 by families with children under the age of 18 living at home who receive services from regional centers beyond eligibility determination, needs assessment, and service coordination. As under existing law, the fees would only apply when the family has income above 400 percent of the Federal Poverty Level and the child or children do not receive Medi-Cal. There are also some specified exemptions, e.g., when necessary to maintain the child in the family home. The Administration also proposes trailer bill language to eliminate the sunset date that was enacted in 2011 of June 30, 2013, and as a result to make the program permanent.

The department estimated that 21,200 families should have been impacted by the annual fee policy in 2011-12; however, only 9,891 families were assessed a fee in that year, and the number of fees collected was even lower. The department indicates that it is working with regional centers to increase implementation of the existing requirements. Some stakeholders have expressed concerns regarding the complexities of administering the fees and their impacts on families.

The staff recommendation is to hold this issue open.

CLEAN-UP TBL ON WIC 6500

Budget Issue. DDS proposes to clarify that changes made last year to Section 6500 of the Welfare & Institutions Code were not intended to preclude court-ordered placements in settings less restrictive than developmental centers (DCs). The Department indicates that at least one public defender has misinterpreted the changes made in last year's budget trailer bills [AB 1472 (Chapter 25, Statutes of 2012) and AB 1471 (Chapter 439, Statutes of 2012)] in this manner.

The changes made in these 2012-13 budget trailer bills related to savings anticipated to be achieved within the DDS budget and included a series of statutory revisions intended to redesign services for consumers with challenging needs. These changes, which are anticipated to result in $20 million GF savings annually, include restrictions on the statutory criteria for admissions to DCs, limitations on the use of locked mental health facilities and out-of-state placements, and provisions to strengthen the capacity of the community to serve individuals with challenging needs (including expanded availability of Adult Residential Facilities for Individuals with Special Health Care Needs and the creation of a statewide Specialized Resource Service).

The staff recommendation is to approve of the proposed trailer bill language, to be refined as necessary in the trailer bill process.

DISPARITIES DATA COLLECTION TBL

Budget Issue. Last year, the Lanterman Act was amended requiring DDS and regional centers to annually collaborate to compile data relating to purchase of service authorization, utilization, and expenditure by each regional center with respect to consumer, age, race or ethnicity, primary language and disability (diagnosis) detail. The statute also requires each regional center to post the information on their website by March 31st, 2013 (and December 31st every year thereafter.) No later than three months after posting, each regional center must meet publically with stakeholders to discuss the data.

DDS worked with regional centers to develop protocols for compiling the data and testing a program developed by Alta California Regional Center that allows all regional centers to verify expenditure data provided by DDS and add authorization information. The Department transmitted Fiscal Year 2011-12 expenditure data to all regional centers in December 2012, for testing purposes and to resolve any issues. DDS sent the final expenditure information to the regional centers in January 2013.

The regional centers adopted a uniform format for displaying the data. For each grouping (or cohort), the information includes total Purchase of Service expenditures, consumer count, total authorized services, and per capita information. It also includes the number and percent of consumers who are eligible for services but are only receiving case management from the regional center. Currently, all 21 regional centers have posted the data on their respective web sites with links to each on the DDS website. Regional centers are scheduling their community meetings, to be held no later than June 30th, 2013, to discuss the posted data.

In addition to the statutory requirements, DDS included language in the regional center contracts requiring them to report to the Department any issues raised in the community meetings and their plans for addressing the issues.

Staff has included this topic as an oversight issue; no action is necessary.

EARLY START ADVOCACY

As an example of a service reduction that stakeholders continue to express serious concern about the impacts of, in 2009-10 the budget-restricted eligibility and services available to some infants and toddlers through the Early Start program. Stakeholders, some of whom will speak as part of the panel and others as part of public comment, urge prioritization of the Early Start Program eligibility criteria and services, bringing the program back to its status prior to the 2009-10 reductions, to ensure the seamless provision of services to children at this vulnerable developmental stage.

In 2009, eligibility criteria for the program was constricted and the Prevention Resource and Referral Service (PRRS) was established to provide solely case management services to children formerly eligible for full Early Start Services, including those infants and toddlers with risk factors for developmental disabilities and two year olds with significant but less several developmental delays. In response to those changes, advocates contend that families with a child presenting risk factors or delays must rely on available community resources for direct services for these young children, which may be scarce or out of reach. Advocates also state that the number of children of children receiving Early Start and PRRS assistance combined is still significantly less than the number served by Early Start prior to the eligibility criteria changes, which is suggestive of children with risk factors and more mild developmental delays going without required supports and services.

Staff has included this topic as an informational issue.

PANEL

- Terri Delgadillo, Director, and Mark Hutchinson, Chief Deputy Director, Department of Developmental Services
  - ➢ Please provide a description for each section of this issue, describing the Governor's proposals where relevant and issues that the administration has heard from advocates and stakeholders.
- Rick Rollens, Association of Regional Center Agencies
  - ➢ Discussion of priority issues in the Community and Regional Center Services area.
- Deborah Doctor, Disability Rights California
  - ➢ Discussion of priority issues in the Community and Regional Center Services area.
- Greg DeGiere, The Arc and United Cerebal Palsy in California
  - ➢ Discussion of priority issues in the Community and Regional Center Services area.
- Legislative Analyst's Office
- Department of Finance
- Public Comment on Community and Regional Center Services Issues

Staff Recommendation:

Staff recommends the following actions in this area:

- Approve the continued assumption that the 1.25% rate reduction will sunset.
- Hold open the Governor's proposal on co-payments.
- Hold open the proposed continuation of the annual family fee.
- Approve the proposed trailer bill language proposal from the administration to WIC 6500, to be refined as necessary in the trailer bill process.

ISSUE 3: DEVELOPMENTAL CENTER SERVICES

BACKGROUND

DDS operates four institutional Developmental Centers (DCs) and one smaller state-operated community facility that care for adults and children with developmental disabilities. The Governor's proposed budget for DCs includes $539 million ($279 million GF) to serve an estimated average of approximately 1,300 residents in 2013-14. Compared with last year's enacted budget, this includes an anticipated decline by 240 residents, 388 authorized state staff positions, and $11.2 million ($7 million GF) in funding.

Background. California has been reducing its use of DCs as a placement for individuals with developmental disabilities for decades (from a high of over 13,000 individuals in 1968 to around 1,500 currently). This reduction is consistent with national trends that support integrated services and reduced reliance on institutions, as well as the United States Supreme Court's 1999 decision in Olmstead v. L.C., et al. As a result, several DCs have also been closed (and as discussed below, the Lanterman DC is currently undergoing a closure process).

Under the law that existed prior to 2012 statutory changes, individuals with developmental disabilities could be placed in DCs through involuntary judicial commitment because they were deemed to be a danger to themselves or others, or in order to restore their competency to stand trial on criminal charges, or with judicial review in other circumstances, including voluntary placements. DDS data from 2011-12 indicated that approximately 100 new admissions to DCs were occurring annually in recent years. While some of these admissions were court-ordered and required for individuals who may not be able to understand criminal charges filed against them, others were considered avoidable with appropriate community resources. As a result, the 2012-13 budget included language restricting new admissions to DCs, except under specific conditions, including when individuals are committed under the state's Incompetent to Stand Trial statute and when individuals are in need of short-term care based on a judicial determination that they are dangerous to themselves or others due to a crisis. These individuals in crisis can be placed temporarily at the Fairview Developmental Center.

In part because of the large fixed costs to operate the grounds and facilities and serve remaining consumers, the budget for DCs has not declined to the same degree as the decline in the number of residents. The department determines the staffing needs of DCs by using established formulas that take into account the resident population, number of programs and units, square footage or acreage, and number of employees. Approximately 40 percent of staff are level-of-care nursing and professional staff, while the remaining 60 percent are non-level-of-care staff (e.g., medical director, groundskeeper, peace officers, housekeepers, plumbers, food service staff).

SONOMA DC ISSUES

Sonoma Developmental Center (SDC), in the town of Glen Ellen, California, has approximately 506 residents with developmental disabilities. The facility is authorized for approximately 1,502 state staff positions, 83 percent of which are currently filled. The proposed 2013-14 overall budget for SDC includes approximately $152.7 million ($79.2 million GF). This funding includes a $2.4 million increase ($1.3 million GF) that would allow the facility to hire approximately 36 additional direct care staff. The addition of these staff members would correspondingly allow staff who serve as shift leads to focus on supervision, without being counted toward required ratios of direct care staff to clients. Sonoma is the only DC where shift leads have been counted toward meeting those ratios.

Four out of 10 of SDC's Intermediate Care Facility (ICF) units, with 111 consumers who currently reside in them, were recently withdrawn from federal certification by DDS in response to notice that the federal government was moving to decertify the larger group of ICF facilities at SDC. The federal government's concerns, and DDS's resulting withdrawal of these units from certification, came on the heels of findings last year regarding multiple instances of abuse, neglect, and lapses in caregiving at SDC. DDS indicates that its decision to withdraw these specific units from certification was based on the expectation that the problems faced in these units would take longer to resolve than those impacting the remainder of the ICF units. Given how recently DDS withdrew these units from certification, the Governor's January budget did not include the impacts of associated federal funding losses of approximately $1.4 million monthly. The Administration indicates that these funds will need to be backfilled for some months in 2012-13 and for any months in 2013-14 in which the units are still not certified. The Administration has not yet determined how these resources will be identified within or as an addition to DDS's budget authority for 2012-13.

Additional Background on the Problems at SDC. In July 2012, licensing staff from the California Department of Public Health (DPH) conducted an annual state licensing and federal certification survey of SDC. During the visit, DPH staff found numerous violations. Among the findings were that SDC's management failed to take actions that identified and resolved problems of a systemic nature, failed to ensure adequate facility staffing, failed to provide active treatment, and failed to provide appropriate health care services and meet several other key requirements. According to page three of the report, "Individuals have been abused, neglected and otherwise mistreated and the facility has not taken steps to protect individuals and prevent reoccurrence. Individuals were subjected to the use of drugs or restraints without justification. Individual freedoms have been denied or restricted without justification." On four separate occasions, the team identified conditions that posed immediate jeopardy to the health and safety of patients at the facility. Among the concerns of surveyors were:

- Thirty-five incidents in which residents with a condition called pica ate non-edible items such as gloves, buttons, sunglasses, paper and other items.

- Eleven clients who bore injuries that resembled burns from a stun gun. Facility law enforcement personnel found a loaded gun and a stun gun of another type in a staff member's car.

- The sexual assault of two residents by a staff member.

- Inadequate supervision of clients resulting in falls, attacks upon other consumers, clients who ran from the facility, and heightened anxiety among some clients.

- Severe and consistent understaffing patterns which resulted in employees being forced to work consecutive shifts, units being frequently short-staffed and staff members being moved into units to care for consumers they did not know.

- The death of one client that the investigators believed was caused by acute peritonitis related to a misplaced gastrostomy tube.

Staffing at SDC. In comparison to other DCs, it is notable that SDC has the highest vacancy rate (at 17 percent) and relies disproportionately on the use of overtime, including mandatory overtime (e.g., at 20,100 total hours and close to 7,100 mandatory hours in February 2013), in order to meet required staff to client ratios. The Sonoma DC also has a larger proportion than other DCs of unlicensed staff (at 37 percent as of March 1, 2013) serving in classifications for which licensure is relevant. The Department indicates that it is in the process of hiring additional staff to fill vacancies at the facility and reduce the use of overtime.

DDS Actions. DDS removed two top executives at SDC in the wake of the systemic concerns identified and recently announced the hiring of a new Executive Director for the facility. The department also contracted with an internal monitor for ongoing evaluation, required unannounced checks, and implemented a number of new policies designed to provide closer supervision and better training for staff. In March, the department entered into an agreement with the federal government that established a Program Improvement Plan (PIP) that includes corrective actions it must take in order to retain certification of the units that have not been decertified. The PIP outlines several actions SDC must take to remain certified, including entering into a contract with an independent entity that will perform a root cause analysis, developing action plans to correct identified deficiencies, and reporting monthly progress to DPH. The department has not yet indicated the timeframe in which it anticipates seeking recertification of the units that are currently without federal certification.

LAO Recommendation. Given the recent problems at SDC, as well as other significant concerns related to DCs spanning the last decade, the LAO recommends that the Legislature consider strengthening DC oversight by creating an independent Office of Inspector General (OIG). The LAO estimates costs of $500,000 to $1 million for this function and suggests that the department identify resources that could be redirected to provide that funding.

LANTERMAN DC CLOSURE

Budget Issue. The Governor's proposed 2013-14 budget for the Lanterman Developmental Center (LDC), which is in the process of transitioning its residents into community-based placements as part of a closure process, includes $89.3 million ($46.4 million GF). This is a decline of $11 million ($6.2 million GF) from 2012-13. The proposed funding level assumes continuation of $8.2 million ($4.4 million GF) in enhanced funding for 88 staff positions that would otherwise have been eliminated as the number of residents declined, pursuant to the standard ratios of staff to residents. These positions were approved as enhanced staffing related to closure activities as part of the 2012-13 budget.

Background. LDC is in Pomona and consists of 11 client residences, one acute hospital unit, a variety of training and work sites, and recreational facilities, including a camp. At its peak, LDC housed more than 1,900 individuals. DDS submitted its plan to close LDC to the Legislature in January 2010. The plan was approved in October 2010. At the time, there were approximately 400 residents and 1,300 staff at the facility. The Department indicated then that the closure process would take at least two years. As of March 1, 2013, there were 207 residents at LDC. The department recently estimated that the transitions of residents to the community would be completed in 2014.

The majority of LDC residents have lived there for more than 30 years and are between 40 and 65 years old. 75% have profound intellectual disabilities.

The Transition Process. According to the department, the transition of each LDC resident is only occurring after necessary services and supports identified in the IPP process are available elsewhere. The closure process is thus focused on assessing those needs and identifying or developing community resources to meet them. However, of the 207 remaining residents of LDC as of March 1, the Department indicates that 70 percent have a comprehensive assessment that has been completed within the past two years (up from 55 percent on December 1, 2012). Regional centers report that nearly all LDC residents will have updated assessments by June 2013.

The department and 12 regional centers involved in the closure process use Community Placement Plans as one tool to help them identify and develop necessary community-based resources. DDS has also received recommendations from advisory groups and indicates that its staff meets regularly with parents and family members of LDC residents, LDC employees, and the involved regional centers.

The department indicates that the vast majority of former LDC residents who have moved to the community now reside in Adult Residential Facilities, which are licensed by the Department of Social Services. As part of the transition, DDS visits consumers who have moved into community residences at 5 days, 30 days, 90 days, and 6 and 12 months after the move. Regional centers also visit at regular intervals and provide enhanced case management for the first two years after the move. Special incidents, including hospitalizations and other negative outcomes, are tracked by DDS, and individuals who move from Lanterman into the community are asked to participate in a National Core Indicator (NCI) study. The NCI study uses a nationally validated survey instrument that allows DDS to collect statewide and regional center-specific data on the satisfaction and personal outcomes of consumers and family members.

One of the transition-related challenges identified by providers and regional centers is the time lags that can occur between community-based homes' licensure and their first occupancy, as well as full occupancy. DDS indicates that the average lag time between licensure and first occupancy has been 71 days for non-profit-owned homes and 120 days for other homes. The average lag between first occupancy and full occupancy has been 176 days for non-profit-owned homes and 209 days for other homes.

Anticipated Timelines. The Department has declined to give a target date for closure of the facility, indicating that the development of necessary community resources for each consumer is a continual and complex process. Some stakeholders have suggested that a closure date might help to guide the rest of the process toward more successful and timely completion; others have expressed concern that identifying such a date might create a distraction or inappropriate pressure to have consumers move before all necessary preparations have been made. In 2012, the Legislature requested for the Department to identify anticipated timeframes for the remaining transitions and steps in the closure process. The Department's response includes the following anticipated milestones and timelines:

- Completion of up-to-date comprehensive assessments for all remaining residents – June 2013

- All residential facilities that need to be developed are licensed and ready for occupancy – January 2014

- Specific living options are selected and initial transition planning meetings for all residents have been held. All new day programs are licensed and available to provide services – March 2014.

Community State Staff Program. The Department has indicated that it will continue to provide trainings and information about the Community State Staff program to DC staff, families of consumers who live at LDC, and community-based providers. The program allows LDC staff to leave the facility and work for a community-based provider serving consumers who transition into the community, while retaining their status and benefits as state staff. The program is voluntary for the employees and providers.

As of December 1, 2012, only one community-based provider and one regional center had entered into or completed the process of contracting to opt in to the program. At the same time, the regional centers serving people moving from LDC and other stakeholders indicate that there are some providers that employ former DC staff outside of the program. For example, Inland Regional Center reported to DDS knowledge of nine former LDC employees who have been hired locally outside of the program. San Gabriel/Pomona Regional Center (SGPRC) reported that over the years, providers in their area have hired fourteen former DC staff for residential and day programs, nine for direct care positions, and four as consultants to vendored programs. SGPRC also reported hiring five former DC employees themselves.

One distinction between the Community State Staff program for the Lanterman closure and the program operated for the earlier Agnews DC closure is that the retention of status and benefits for LDC staff is limited to up to two years after the closure of LDC. At one point there were 120 state staff working in the community under the program after leaving the Agnews DC. Currently (around four years after the last residents transitioned out of the Agnews DC), the department indicates that 28 state staff continue working in the community through the program. In addition to other specific comments with respect to what might allow the program to be utilized more, the Lanterman Parents Coordinating Council has requested for the Legislature to remove the two-year time limitation on the program for LDC staff.

PANEL

- Terri Delgadillo, Director, and Mark Hutchinson, Chief Deputy Director, Department of Developmental Services
    - Please provide a description for each section of this issue, describing the Governor's proposals where relevant and issues that the administration has heard from advocates and stakeholders.
- Rick Rollens, Association of Regional Center Agencies
    - Discussion of priority issues regarding Developmental Centers.
- Deborah Doctor, Disability Rights California
    - Discussion of priority issues regarding Developmental Centers.
- Greg DeGiere, The Arc and United Cerebal Palsy in California
    - Discussion of priority issues regarding Developmental Centers.
- Terry DeBell, RN, CASHPCR Developmental Center Families
    - Discussion of priority issues regarding Developmental Centers.
- Legislative Analyst's Office
- Department of Finance
- Public Comment on Developmental Center Issues

Staff Recommendation:

Staff recommends the following actions in this area:

- Hold open the requested resources for additional staffing and other issues related to the Sonoma Developmental Center.

- Remove the two-year time limitation on the Community State Staff program associated with the closure of the Lanterman Developmental Center and adopted corresponding trailer bill language that may be necessary to effectuate that action.

- Hold open the remaining issues raised related to the Lanterman Developmental Center.