

AGENDA

ASSEMBLY BUDGET SUBCOMMITTEE NO. 1 ON HEALTH AND HUMAN SERVICES

ASSEMBLYMEMBER SHIRLEY N. WEBER, PH.D., CHAIR

FRIDAY, MAY 16, 2014
9:00 A.M. - STATE CAPITOL ROOM 4202

ITEMS TO BE HEARD		
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ITEMS TO BE HEARD

4300 DEPARTMENT OF DEVELOPMENTAL SERVICES

ISSUE 1: GOVERNOR'S MAY REVISION PROPOSALS

The budget for the Department of Developmental Centers (DDS) was heard by the Subcommittee on March 19, 2014, where the current issues and Governor's Budget proposals were heard.

This agenda is dedicated to new issues in DDS pursuant to the Governor's May Revision, released on May 13, 2014.

FUTURE OF DCs TASK FORCE

There is a significant set of proposals in the May Revision related to the future of Developmental Centers in the DDS system.

Background. Health and Human Services Agency (HHS) Secretary Diana Dooley announced in May 2013 that the Agency was seeking the creation of a task force to review DC issues. The Legislature formalized this with the passage of Assembly Bill 89 (Chapter 25, Statutes of 2013), which required reports to be issued to the Legislature. HHS released a report titled "Plan for the Future of Developmental Center In California" on January 13, 2014 including six recommendations, summarized below.

- Recommendation 1: For individuals with enduring and complex medical needs, more community style homes/facilities should be developed using existing models of care, particularly Adult Residential Facilities for Persons with Special Health Care Needs. Also, support services and day programs are needed.
- Recommendation 2: For individuals with challenging behaviors and support needs, the State should operate at least two acute crisis facilities (like the program at Fairview DC), and small transitional facilities. The State should develop a new "Senate Bill 962-like" model that would provide a higher level of behavioral services. Funding should be made available so that regional centers can expand mobile crisis response teams, crisis hotlines, day programs, short-term crisis homes, new-model behavioral homes, and supported living services for those transitioning to their own homes.
- Recommendation 3: For individuals who have been involved in the criminal justice system, the State should continue to operate the Porterville Developmental Center—

Secure Treatment Program (STP) and the transitional program at Canyon Springs Community Facility. Alternatives to the Porterville STP should also be explored.

- Recommendation 4: The development of a workable health resource center model should be explored, to address the complex health needs of DC residents who transition to community homes.
- Recommendation 5: The State should enter into public/private partnerships to provide integrated community services on existing State lands, where appropriate. Also, consideration should be given to repurposing existing buildings on DC property for developing service models identified in Recommendations 1 through 4.
- Recommendation 6: Another task force should be convened to address how to make the community system stronger.

MAY REVISION PROPOSAL PER THE TASK FORCE RECOMMENDATIONS

As part of the May Revision, the Department has identified the specific steps it plans to take toward implementing each Task Force recommendation. Several of the recommendations will require funding and other legislative approval to implement them beginning in 2014-15, and they are presented as part of May Revision. Other recommendations provide a general concept or framework for the development of services. The Department has stated that it will engage stakeholders in the near future to further evaluate and add greater definition to how these recommendations should be approached.

DDS is prepared to provide testimony outlining their proposals.

Regional Centers.

Community Placement Plan (CPP) for Implementing DC Task Force Recommendations. The Department is proposing budget bill language to reappropriate \$13.0 million from remaining 2011-12 funds for the Community Placement Plan in 2014-15. The funding will be used to immediately address areas identified by the Task Force for community resource development. With this funding, DDS will be able to move forward immediately with implementation of Task Force Recommendations 1 (for complex medical needs) and 2 (for challenging behaviors).

Through the CPP process, \$11.7 million will be allocated to regional centers to fund housing projects and additional services and supports as outlined in the Task Force recommendations.

New Models of Care for Challenging Behavioral Needs. The most significant undertaking will be to develop new enhanced models of care to serve individuals with challenging behaviors.

- \$5.4 million will be used to develop six Enhanced Behavioral Supports Homes. These homes will address the need for more intensive behavioral supports in a small residential setting of no more than four consumers. The concept is that the behavioral supports will be layered and flexible to respond to the changing needs of the consumer without requiring a change in residence. Trailer bill language is proposed that will authorize emergency regulations for the implementation of these homes as a pilot.
- \$3.9 million will be used to develop Community Crisis Homes. These homes will be specialized to provide short-term crisis stabilization. The trailer bill will authorize the development of two homes, one in Northern California and one in Southern California, for no more than eight residents each. Again, the homes will be administered through emergency regulations.
- The Department will work with stakeholders for the development of these new behavioral models and the regulations that will be needed. The stakeholders will also evaluate the availability of, and access to an appropriate continuum of behavioral services system wide.

The remaining \$2.4 million of the \$11.7 million will address other Task Force recommendations for additional services and supports that do not require legislative action other than the reappropriation of funds.

- The recommendations include creating greater capacity for serving individuals with complex medical needs. Specifically, starting in 2014-15 and going forward, the Department will work with regional centers to develop Adult Residential Facilities for Persons with Special Health Care Needs and other needed services using existing models of care.
- Other examples of additional services and supports to be developed include transition homes and additional crisis response teams.

DDS will incorporate the Task Force recommendations into the Community Placement Plan guidelines, as a priority for resource development in future years.

Regional Center Staffing to Support Resource Development, Transitions and Quality Assurance. Another \$1.2 million of the total \$13.0 million in reappropriated funds will provide regional center staffing to support community development, transitions to the community, and quality assurance and monitoring activities throughout the State. Specifically, the proposal includes:

- 6.0 Quality Assurance staff to directly monitor homes and service delivery to individuals transitioning from a developmental center to the community;

- 2.0 Resource Developer staff to manage development of the new models of enhanced behavioral care;
- 2.0 Board Certified Behavior Analysts to provide expertise to development of the new models of behavioral care and then ongoing monitoring of service delivery;
- 2.0 Nurses to actively develop and provide oversight to 10 new Adult Residential Facilities for Persons with Special Health Care Needs and 4 new Intermediate Care Facilities that provide consumers with nursing care; and
- 6.4 positions to support enhanced case management at the 1:45 caseload ratio for another year. These positions will coordinate and monitor services for individuals during their second year of transition.

In a related Budget Change Proposal, 4.0 redirected positions and \$0.5 million (\$0.3 million GF) are proposed to address the workload in DDS Headquarters associated with implementation of Task Force Recommendations 1 and 2 for community resource development.

Quality Assurance for DC Residents Transitioning to the Community. DDS is proposing the commitment of \$121,000 from reappropriated funds for additional data collection that will enhance our quality assurance and risk management activities for individuals transitioning into the community. The data will enable better monitoring and assessment of service delivery year over year. Additionally, we will expand the National Core Indicators satisfaction survey to increase the sample size for persons who have transitioned from a developmental center to provide more reliable data. Working with interested stakeholders, the data will be used to evaluate performance and take steps to improve processes and services that will produce desired consumer outcomes.

Developmental Centers.

As part of the response to the Developmental Center Task Force recommendations, DDS proposes two items for the Developmental Center Program.

Acute Crisis Units at Sonoma and Fairview Developmental Centers.

- DDS is proposing modifications to two existing housing units and staffing to create a stand-alone acute crisis unit at both Fairview and Sonoma Developmental Centers to serve five residents each. This will improve crisis services at Fairview, where services are currently being provided in housing units with other DC residents. It will also establish new crisis services at Sonoma, consistent with the Task Force recommendations. Trailer bill language is proposed to authorize admissions to Sonoma DC for crisis services beginning January 1, 2015.

- To implement this proposal, 43.1 positions and funding of \$3.2 million (\$2.0 million GF) are needed.

Expand the Community State Staff Program to Supplement Community Services.

- DDS is proposing Trailer Bill Language to expand the Community State Staff Program to include any resident transitioning from a developmental center into the community. This benefit was initially developed as part of the Agnews Development Center closure, and was later expanded to the residents of Lanterman Developmental Center. The language authorizes the use of qualified developmental center employees to support former developmental center residents during transition and in their new home. A community entity, typically a service provider or a regional center, may contract for the services of qualified staff, familiar with the needs of developmental center residents. The State receives full reimbursement via the contract for these services.
- Because utilization during the early stages of the program is expected to be small, no increase in reimbursement authority is proposed for 2014-15.

Other DDS Commitments Without a Fiscal Impact.

DDS is actively addressing other benefits and services that will support residents of developmental centers who will be moving to the community.

Transition Planning. DDS will be evaluating the transition planning now occurring at the remaining developmental centers, and making improvements to support a comprehensive process. Transition planning is the process by which critical decisions are made about the needs of an individual, and the appropriate services are identified and arranged to meet those needs. A meaningful, person-centered process will enable careful evaluation of community living options that may meet the resident's needs.

In the future, stakeholders will be engaged at each location to evaluate the effectiveness of the planning efforts. No budgetary impact is associated with this activity.

Managed Care. Working with the Department of Health Care Services, DDS is considering how to expand special statutory provisions for managed care to other developmental center residents. Key benefits include: the enhanced case management and coordination between the regional center and the managed care health plan; specialty services that are developed to address the needs of the individuals (such as home visits by the Primary Care Physician); processes that expedite eligibility and enrollment prior to the resident leaving the developmental center; and compensation for the health plan for the specialized care that is provided.

Further work needs to be done to determine whether and how an expansion of the special provisions should occur.

Stakeholders will continue to play a critical role in evaluating service delivery and defining the path for the future. Stakeholders will be involved in the following initiatives identified by the Task Force:

- Utilization of developmental center land for development of community housing through public/private partnerships, similar to Harbor Village at Fairview Developmental Center.
- Development of one or more health resource centers using developmental center resources.
- Evaluation of transitional and competency restoration services for sufficient capacity and delivery options that may be available.
- Exploration of current issues affecting the broader community system and how to make the community system stronger.

OTHER MAY REVISION PROPOSALS

Community Services Program.

FY 2013-14

- To provide services and support to 265,216 persons with developmental disabilities in the community, the May Revision updates FY 2013-14 funding to \$4.4 billion total funds (\$2.5 billion GF). The May Revision includes updated expenditures of \$18.5 million total funds (\$6.5 million GF) above the FY 2014-15 Governor's Budget, but within the FY 2013-14 Budget Act allocation, for regional center operations (OPS) and purchase of services (POS) to reflect updated caseload and utilization as follows:
- -\$1.1 million (-\$1.1 million GF) decrease in OPS to reflect updated caseload and expenditure data; and \$19.6 million (\$7.6 million GF) increase in POS to reflect updated caseload, utilization change and expenditure data.

FY 2014-15

- The May Revision projects the total community caseload at 274,696, as of January 31, 2015, and assumes an increase of 9,480 consumers over the updated FY 2014-15 Governor's Budget caseload. The May Revision proposes FY 2014-15 funding for services and support to persons with developmental disabilities in the community at \$4.7 billion total funds (\$2.6 billion GF), an increase of \$35.2 million (\$12.0 million GF) over the FY 2014-15 Governor's Budget. The regional center budget changes include:

Caseload and Utilization

- -\$0.5 million (-\$3.3 million GF) decrease in OPS to reflect updated caseload and expenditure data, including additional Home and Community-Based Services Waiver enrollment; and
- \$24.2 million (\$11.8 million GF) increase in POS to reflect updated caseload, utilization change, and expenditure data.

Federal Funds for Early Start

- \$1.8 million increase in Early Start, Part C in Other Agency Costs to reflect updated grant award amount.

Minimum Wage Increase

- -\$3.6 million (-\$9.6 million GF) decrease in POS from the FY 2014-15 Governor's Budget for Assembly Bill 10, Chapter 351, Statutes of 2013 which increases the minimum wage from \$8.00 to \$9.00 effective July 1, 2014 to reflect:
- Increase of \$0.9 million (-\$6.1 million GF decrease) due to updated expenditures, consumer information, and percentage of expenditures eligible for federal financial participation used to estimate the impact of minimum wage increase; and
- Exclusion of Supported Employment (Individual and Group) in determining impact to services which rely on employees that are paid minimum wage. The Department in the November 2013 Estimate of the FY 2014-15 Governor's Budget included an estimate of \$4.5 million (\$3.5 million GF) for the impact of the minimum wage increase for these services.

Federal Overtime Change

- \$0.3 million (\$0.2 million GF) increase in POS to reflect updated expenditures in estimating the impact of changes in the Fair Labor Standards Act (FLSA) due to provider rate increases based on the administrative costs required to comply with the federal regulation, effective January 1, 2015.

Developmental Center Program.**FY 2013-14**

- To provide services and support for 1,333 residents in developmental centers (average in-center population) the May Revision updates FY 2013-14 funding to \$556.0 million (\$305.2 million GF), a decrease of -\$20,000 (-\$9,000 GF) over the FY 2014-15 Governor's Budget.
- To address the Fairview, Porterville and Lanterman DC Program Improvement Plan (PIP), DDS has executed a contract for an Independent Consultative Review Expert (ICRE) to conduct a root cause analysis and establish an Action Plan that will acknowledge improvements already made, as well as the steps still needed to bring Porterville, Fairview and Lanterman DCs back into compliance with the federal certification requirements. The contract amount for FY 2013-14 is \$2.1 million (\$1.2 million GF), and will be absorbed by DDS via redirection of estimated salary savings as a result of delays in filling 42.5 positions associated with the Sonoma PIP.

FY 2014-15

- For FY 2014-15, the May Revision provides services and support for 1,112 residents (average in-center population) in developmental centers, an increase of 2 residents over the FY 2014-15 Governor's Budget. Funding increased to \$528.2 million (\$276.0 million GF); an increase of \$2.2 million (\$1.5 million GF). Authorized positions decreased to 4,461.1; a decrease of -3.4 positions below the FY 2014-15 Governor's Budget. By the end of FY 2014-15, 1,052 individuals are expected to reside in state operated facilities. DC costs are also adjusted for Lanterman DC closure activities that will continue after the facility closes. Adjustments to the FY 2014-15 Governor's Budget for the developmental centers include:

Federal Certification for Fairview, Lanterman, and Porterville DCs. \$1.5 million (\$0.9 million GF) increase for continuing costs into FY 2014-15 related to the ICRE contract for the Porterville, Fairview and Lanterman PIP.

Population Staffing Adjustments (Excluding Lanterman). Net decrease of -\$0.1 million (-\$0.07 million GF) and -1.0 position for population staffing adjustments at the DCs; +3.0 for Level of Care (LOC) and -4.0 for Non-Level of Care (NLOC).

Lanterman Closure Activities. Net decrease of -\$2.5 million (-\$1.4 million GF) and of -45.5 positions for Lanterman closure activities as detailed below.

Lanterman Plan Closure Update. The May Revision continues to support Developmental Center and Community Services efforts towards the statutorily required closure of the Lanterman facility on December 31, 2014. The Department, working with regional centers, anticipates the transition of approximately 120 Lanterman DC residents in FY 2013-14. The May Revision anticipates the transition of another 22 residents to community living arrangements in FY 2014-15 with the anticipated resident population being zero on December 31, 2014.

The May Revision reflects a net decrease in FY 2014-15 of -\$2.5 million (-\$1.4 million GF) and -45.5 positions to reflect the following staffing adjustments:

- -\$0.7 million (-\$0.4 million GF) decrease and -24.5 NLOC position reduction due to Lanterman DC staffing update and consolidation of an ICF unit;
- -\$0.5 million (-\$0.3 million GF) decrease and -12.0 NLOC position reduction reflecting previously requested Enhanced Staffing reductions, based upon further review of staffing needed for closure related activities;
- -\$1.0 million (-\$0.5 million GF) decrease to correct an error in the -40.0 position (25.0 LOC and 15.0 NLOC) reduction of Lanterman DC Enhanced Staff in the November 2013 Developmental Centers Estimate for FY 2014-15, page D - 2.6; and
- -\$0.3 million (-\$0.2 million GF) and -9.0 position (1.0 LOC and 8.0 NLOC) decrease reflecting reductions of previously requested positions associated with Lanterman DC Closure Plan Update, specifically in the areas of Warm Shutdown, the Primary Care Clinic, the Administrative Closure Team, and Community State Staff.

Capital Outlay. The May Revision does not include any new Capital Outlay requests.

Headquarters.

FY 2013-14

- The May Revision contains no changes for FY 2013-14 Headquarters' operations funding of \$39.8 million (\$25.3 million GF).

FY 2014-15

- The May Revision proposes Headquarters operations funding for FY 2014-15 of \$41.1 million (\$26.3 million GF), this is an increase of \$0.5 million (\$0.3 million GF) from the FY 2014-15 Governor's Budget, to fund 4.0 redirected positions to address workload associated with implementation of the recommendations in the Developmental Centers Task Force "Plan for the Future of Developmental Centers in California".

PANEL

- California Health and Human Services Agency
- Santi Rogers, Director, Department of Developmental Services
- Nancy Bargmann, Deputy Director, Community Services Division, Department of Developmental Services
- Patricia Flannery, Deputy Director, Developmental Centers Division, Department of Developmental Services
- Legislative Analyst's Office
- Department of Finance
- Public Comment

Staff Recommendation:

Staff recommends holding open the May Revision proposals pending further consideration by the Subcommittee.

0530 HEALTH AND HUMAN SERVICES AGENCY**ISSUE 1: MAY REVISE PROPOSAL ON CREATION OF AN OFFICE OF INVESTIGATIONS AND LAW ENFORCEMENT SUPPORT**

The California Health and Human Services Agency (CHHS) is requesting to establish the Office Investigations & Law Enforcement Support (the Office) and requesting \$1.8 million General Fund, which includes resources for 9.0 permanent positions and \$600,000 in one-time funding for contracting services. The Office will be based within the California Health & Human Services Agency.

This proposed office will provide internal investigations at the Agency level and support to the two law enforcement services at the Department of Developmental Services and the Department of State Hospitals. The initial 9 positions will establish the Office and begin drafting and implementing policy with a potential staffing augmentation request at a later date.

Background and Justification From the Administration.

The Department of Developmental Services (DDS) and the Department of State Hospitals (DSH) currently both maintain in-house law enforcement and investigative services, known as the Office of Protective Services (OPS) at each, to provide security and criminal investigations at the Developmental Centers and State Hospitals. Both departments have been the subject of federal interventions and continuing concerns, particularly with the performance and oversight of protective service personnel. CHHS, with the assistance of a retired Assistant Chief of the California Highway Patrol, engaged in an analysis of the issues with both law enforcement and investigative units at DDS and DSH. This process included reviewing several previous audits of these units, discussions with department executives and law enforcement employees, engagement with patient and consumer advocates, meetings with union representatives and consultation with other law enforcement experts. After extensive analysis, CHHS has developed a proposal to create an Agency-level office to ensure quality investigations, training, oversight, recruitment, policy development and employee discipline.

This proposal addresses concerns identified by the law enforcement expert retained by CHHS, previous audits of these units, and external stakeholders. These law enforcement functions have drawn scrutiny from the Legislature and external stakeholders, specifically targeting long investigation times and the quality of enforcement action. Approval of this proposal will ensure that issues surrounding law enforcement and investigations functions are resolved for both departments. This proposal also ensures that an Agency-level office will review and evaluate serious investigations from both departments to ensure a high standard of quality and timeliness with operations. The approval of this proposal will increase efficiency, reduce legal liability, improve the safety of patients, consumers and staff at these facilities.

DDS and DSH both face similar challenges with the law enforcement and investigative units within each department. Both departments require improvement in investigations, training, oversight, recruitment, policy development and employee discipline within their police services. DDS has been under intense scrutiny for a lack of investigative oversight involving acts of abuse, neglect, and mistreatment towards residents of the developmental centers for many years. Developmental center residents are arguably the most vulnerable members of our society. Many have no physical means of defending themselves or seeking assistance through verbal communications. A majority of abuse allegations are either reported by employees who witness the acts or are a result of visible injuries to the resident that are sustained over, sometimes, a significant period of time.

The Office of Protective Services (OPS) is the law enforcement branch responsible for investigating criminal acts of misconduct involving staff. Over the course of many years OPS has been under critical review for failing to properly investigate serious allegations. Furthermore, although there is a law enforcement structure located in headquarters at DDS, quality control and oversight has improved only marginally. Previous audits have identified many issues, including a lack of overall law enforcement policies directing police operations, training is sporadic and inconsistent, investigative format is often subject to individual opinion, reports often do not reach a logical investigative conclusion, there is a lack of understanding when criminal investigations should be referred to the district attorney, there is no bifurcation between criminal and administrative investigations, and there is no formal recruitment plan.

There have been many issues associated with improperly investigating allegations of abuse resulting in intense negative public opinion and media scrutiny. Most of these problems were raised by the Department of Justice in 2002 and again in July 2013, following a BSA audit. In order to correct the deficiencies in police leadership, DDS recently entered into a reimbursable services contract with the CHP to provide a CHP Chief to oversee OPS. This effort has proven promising and improvements are being made. However, without a system-wide and cultural change within the organization there is a lack of confidence that the changes being made will be sustained following the contract with the CHP.

The DSH has five separate mental hospitals and three psychiatric programs. Within each hospital there is a law enforcement branch that is responsible for providing hospital security and investigating criminal, and at times, administrative acts of misconduct. Historically, each hospital operated largely independently, and as such police policies are different at each hospital. This creates a significant liability for the department considering that the policies have not been legally reviewed for compliance with current case law and there is no known procedure in place for ensuring policies are updated and staff are trained following important changes in law.

DSH headquarters has not had a direct law enforcement structure overseeing the hospital police chiefs and law enforcement operations. Each hospital has their own hiring practices, different policies, different training standards, inconsistent supervisory training, and no separate and consistent disciplinary process. These inconsistencies expose the DSH to substantial liability.

The overall lack of consolidation and uniformity increases liability and cost at both departments. Placing these functions at Agency also allows for greater critical oversight. To achieve the oversight, support, quality and consistency necessary for quality law enforcement operations at both departments, it is necessary to establish an oversight and support office at CHHS.

PANEL

- California Health and Human Services Agency
- Department of Developmental Services
- Legislative Analyst's Office
- Department of Finance
- Public Comment

Staff Recommendation:

Staff recommends holding this May Revision proposal open pending further consideration by the Subcommittee.