

**AGENDA****ASSEMBLY BUDGET SUBCOMMITTEE NO. 1 ON HEALTH AND HUMAN SERVICES****ASSEMBLYMEMBER HOLLY MITCHELL, CHAIR****WEDNESDAY, MAY 9, 2012  
1:30 P.M. - STATE CAPITOL ROOM 444**

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## ITEMS TO BE HEARD

### 4300 DEPARTMENT OF DEVELOPMENTAL SERVICES

#### ISSUE 1: CURRENT AND BUDGET YEAR TRIGGER REDUCTIONS

##### PRIOR SUBCOMMITTEE REVIEW

The Subcommittee heard these issues in depth at its March 28, 2012 hearing. Please see that agenda for background on the DDS budget and specific budget components, some of which are revisited in this agenda.

Actions were taken on several features of the DDS budget, however the issue of the 2012-13 trigger reductions was held open with encouragement to DDS and the administration to work toward submitting proposals for how to achieve the \$200 million reduction to the Legislature and stakeholders by May 1, 2012. Cross-department collaboration was also encouraged in examination of available federal funding under the Community First Choice Option.

##### CURRENT YEAR TRIGGER REDUCTION

At the time of the March 28 hearing, DDS had just released its list of components of the \$100 million savings associated with the trigger. Below is the information that was released by DDS:

#### **Plan to Achieve Trigger Savings of \$100 Million**

Due to lower than anticipated revenue projections, the Department of Finance announced on December 13, 2011, that the DDS budget would be reduced by \$100 million General Fund (GF) in accordance with Assembly Bill 121 (Committee on Budget), Chapter 41, Statutes of 2011. In addition, Senate Bill 73 (Committee on Budget and Fiscal Review), Chapter 73, Statutes of 2011, directed DDS to consider a variety of strategies including savings attributable to caseload and expenditure adjustments, unexpended contract funds, or other administrative savings to meet this target. DDS identified the following savings to meet the reduction target.

#### **Downsizing Funding Reduction - \$1.0 M GF**

Services provided in large community residential care facilities are not eligible for federal funding unless they have less than 16 beds or are determined "home-like" under federal standards. The use of funding available to downsize facilities or help them meet the federal "home-like" standards was less than anticipated for \$1.0 M in GF savings in 2011-12.

#### **Gap Funding Reduction - \$0.3 M GF**

The DDS budget includes funding to address the time period when an Intermediate Care Facility for Developmental Disabilities (ICF-DD) has changed ownership and is in the transition period before they are certified to be a Medi-Cal provider. The use of this funding was less than anticipated for \$0.3 M in GF savings in 2011-12.

**Delayed Implementation of Program to Access Denti-Cal System for Regional Center Funded Services - \$4.3 M GF**

With the elimination of adult dental services as a Medi-Cal benefit, DDS entered into an interagency agreement with the State Department of Health Care Services (DHCS) that allows Regional Centers to use the expertise and system for reviewing treatment plans and approving claims for dental services consistent with the DHCS Denti-Cal program. Delays in program implementation reduced the need for \$4.3 M in one-time GF savings in 2011-12.

**Delays in “Start-Up” of Community Placement Plan Resources – \$5.1 M (GF)**

Under the Community Placement Plan (CPP) process, each Regional Center provides an annual plan to DDS based on necessary resources, services and supports for consumers moving from a Developmental Center, as well as the resources needed to prevent Developmental Center admissions. One component of the plans is the cost of development of new resources (“start-up”) to meet the consumers’ needs. As part of this process, Regional Centers must forecast when community resources will become available. Delays in development of new resources from the 2009-10 CPP plans result in \$5.1 million in one-time GF savings.

**Additional Home and Community Based Services Waiver Funding - \$20.0 M GF**

The Medicaid Home and Community Based Services (HCBS) Waiver program enables DDS to provide a broad array of services to eligible individuals who, without these services, would require the level of care provided in an Intermediate Care Facility for Developmental Disabilities (ICF-DD). Service costs for individuals under the HCBS Waiver are higher than anticipated resulting in additional federal funding and \$20.0 M in one-time GF savings in 2011-12.

**Actual Increase in HCBS Waiver Funding in Prior Years - \$7.3 M GF**

Service costs for individuals under the HCBS Waiver were higher than anticipated resulting in additional federal funding and one-time GF savings in 2009-10 (\$2.3 M) and 2010-11 (\$5.0 M).

**New and Updated 1915(i) State Plan Amendment Funding in Prior Years - \$42.0 M GF**

Under a “1915(i)” Medicaid State Plan Amendment, services for individuals enrolled in Medi-Cal but not eligible for the HCBS Waiver could receive federal funding participation. Through negotiation with the Federal Centers for Medicare and Medicaid Services, new services not identified in the initial application have been added for 2009-10 and 2010-11. This, along with updated expenditures in those years, will result in additional federal funding and \$42.0 M in one-time GF savings.

**Unexpended Regional Center Contract Funds - \$20 M GF**

DDS contacts with 21 Regional Centers to provide community based services to individuals with developmental disabilities in California. Unexpended contract funds from 2009-10 will achieve \$20 M in one-time GF savings.

(Note: Savings from additional federal funding as noted above takes into account potential losses in federal funding associated with other areas.)

**BUDGET YEAR TRIGGER REDUCTION**

DDS underwent a stakeholder process to gather input on how to achieve the \$200 million savings goal in 2012-13. The administration has indicated that it will release the details and trailer bill language associated with the proposal at May Revision, which is May 14, 2012. Given the extremely limited time period for the Legislature and public to review proposals toward the \$200 million, DDS was encouraged to release information early. This hearing is an opportunity for public discussion of where DDS is at and what they will propose as part of the May Revise.

**PANEL**

- Department, please review the components of the \$100 million for current year and discuss changes that being made to the savings list identified, if any, and progress toward implementing these.
- Department, report on the components of the \$200 million as anticipated to be proposed as part of the May Revise.
- Department and HHS Agency, what is the status of discussions with DHCS and DSS on the Community First Choice Option?
- DOF, please offer any additional comment.
- LAO, please offer any additional comment.
- Public Comment

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**Staff Recommendation:**

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Staff recommends that the administration be prepared to provide full trailer bill and analyses to the Legislature and public by May 14 to allow for the fullest vetting possible.

**ISSUE 2: REPORT FROM THE OFFICE OF STATE AUDITS AND EVALUATIONS****BACKGROUND AND SCOPE**

Pursuant to Assembly Bill 104 (Committee on Budget), Chapter 37, Statutes of 2011, the Department of Finance's Office of State Audits and Evaluations (OSAE) analyzed the 2011-12 and 2012-13 fiscal year's budget methodology for the four Developmental Centers (DCs), including relevant data, formulas, and cost assumptions used in determining the annual statewide budget for DC services. Conclusions were developed based on OSAE's review of documentation made available and interviews with DDS management and key staff directly responsible for developing the budget estimates. The review was conducted during the period of December 2011 through April 2012.

The DC client population has decreased by 3,916 (69 percent) in the last 17 years (from 5,713 in September 1994 to 1,797 as of December 2011).

**RECOMMENDATIONS**

After its review, OSAE made the following recommendations:

- Because some of the staffing standards and Operating Expenditures and Equipment (OE&E) client costs were developed 10 to 30 years ago, DDS should consider whether the Level of Care (LOC) and Non-Level of Care (NLOC) staffing standards and OE&E per client costs used to develop the DC budget should be adjusted to reflect current DC client needs.
- Modify the CDER program for budgetary purposes, or use another tool, to reliably classify the current clients at the DCs in the correct preferred program.

**PANEL**

- OSAE, please provide an overview of the report, including the concerns regarding the DC budget that prompted it and your major findings.
  - What are the factors that contribute to DC costs deflating at a slower rate than the census decline?
- Department, please provide your responses to the recommendations offered by OSAE in the report.
  - What are the major issues with CDER, what accounts for the use of outdated data, and how has this been addressed going forward? What is the budgetary impact of modifications to CDER?
  - Is there any effort toward updating the staffing standards, clients' costs, and costs per unit that are admittedly antiquated at the Department?
- DOF, please offer any additional comment.
- LAO, please offer any additional comment.

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**Staff Recommendation:**

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**Staff has no recommendation at this time.**

**ISSUE 3: SB 962 HOMES****BACKGROUND**

As discussed in the March 28 Subcommittee agenda, there is an overall trend of decreased reliance on DCs as residential placements for individuals with developmental disabilities. At the same time, there are still 1,500 to 1,800 individuals residing in developmental centers and a number of new admissions to DCs each year. In 2009-10, 126 consumers were admitted to DCs (even while in the aggregate the number of DC residents decreased because of others moving out). In 2010-11, 108 consumers were admitted to DCs. While all DCs have admitted consumers in the last five years, the largest number of these admissions was to the DC in Porterville (including 99 of the 2009-10 admissions and 85 in 2010-11).

**Background on Porterville DC.** The Porterville DC is unique in that it houses a secure treatment facility as well as a transition treatment program and serves up to 230 residents with developmental disabilities who have been judicially committed to a developmental center because of their behavior in the community and involvement with the criminal justice system. A limit of 230 residents at Porterville was enacted in trailer bill as part of the 2011-12 budget. Prior to that change, there was a cap of 297 residents. Although many of the individuals who reside at Porterville are Medi-Cal eligible, the state does not currently receive federal Medicaid funding for the Secure Treatment Program because this portion of the facility has not been certified by the federal Centers for Medicare and Medicaid Services. The 2011-12 budget assumed savings of \$13 million GF from obtaining this certification so that federal funds can be used for the care of some residents in the secure treatment population at Porterville. The Governor's 2012-13 budget assumes an erosion of \$2.2 million GF of these savings due to delays in the certification process.

**Some Characteristics of Recent Admittees to DCs.** In general, the vast majority of individuals admitted to DCs in recent years have co-occurring intellectual disabilities, behavioral issues, and/or psychiatric disorders. More specifically, 65 percent of the individuals assessed to need and/or admitted to a DC between July 2008 and December 2011 were diagnosed to have a mild intellectual disability, with most of the remaining individuals identified as having intellectual disabilities ranging from moderate (11 percent) to severe (four percent) or profound (three percent). The majority (56 percent) were also diagnosed with a psychiatric disorder. Ninety-seven percent had identified behavioral issues that included serious assaultive behavior (observed in the cases of 44 percent of these individuals), vandalism or property destruction (34 percent), maladaptive sexual behavior (29 percent), habitual theft (19 percent), and attempted suicide in recent years (13 percent). Additionally, 20 percent of these consumers had experienced challenges with drug and alcohol abuse and 17 percent experienced abuse or neglect as a child.

**Alternative Residential Options in the Community.** Consumers of DDS services who do not live with their parents or other relatives, in their own houses or apartments (sometimes with supported living services), or in group homes may reside in a number of facilities besides DCs, including intermediate care facilities, acute or sub-acute care facilities, or skilled nursing homes. Consumers who have moved from the Agnews or Lanterman DCs into the community may also reside in homes that were specifically created in order to fill voids in the spectrum of available housing options. Between July 1, 2004 and March 27, 2009, a total of 327 Agnews residents transitioned to living arrangements in the community and 20 residents transferred to other DCs.

The Bay Area Housing Plan enabled the involved Regional Centers to acquire and control an inventory of stable and permanent homes in the community for use by these former Agnews residents. The array of housing options under the Plan include family teaching homes and specialized residential homes licensed by the Department of Social Services which are designed to serve consumers with behavioral challenges or intensive health care needs. According to DDS, the average costs borne by Regional Centers for individuals who moved out of Agnews and into specialized residential homes is just over \$232,000 annually. Some advocates have suggested that an increased use of these and other community-based options could further reduce the state's reliance on DCs (potentially including its reliance on Porterville to meet forensic treatment needs).

#### SB 962 HOMES

One set of specialized homes created during the Agnews closure process is called "Adult Residential Facilities for Persons with Special Health Care Needs" (commonly referred to as "SB 962" homes). SB 962 homes were established as a pilot project to be implemented at first only for regional centers involved in the closure of the Agnews DC. Given the success of the pilot project, in 2010-11 budget trailer bill, the Legislature and Governor extended the use of these homes to Regional Centers involved in the closure of the Lanterman DC. SB 962 homes provide 24-hour special health care and intensive support services in a home setting that is licensed to serve up to five adults with developmental disabilities. The kinds of special health care needs that are included are nursing supports for feeding and hydration, such as total parenteral feeding and gastrostomy feeding, cardiorespiratory monitoring, tracheostomy care and suctioning, special medication regimes including injection and intravenous medications and other specified services. Intensive support services are defined as when an individual needs physical assistance in performing four or more activities of daily living that include eating, dressing, bathing, toileting, and continence. A licensed nurse or psychiatric technician is required to be awake and on duty 24-hours a day, 7 days per week.

An evaluation published by the University of California, Davis Extension's Center for Human Services in 2010 found that SB 962 homes were cost effective when compared with the costs of placement in a DC (saving around \$41,000 per individual consumer per year). The evaluators also found that consumers living in SB 962 homes were receiving high quality care and had good access to health care. Further, the report indicated that the SB 962 model contributed in meaningful ways to consumers' health, quality of life, level of functioning, and overall happiness.

#### PANEL

- Department, please describe the options available in the community for individuals with complex needs who reside in developmental centers today.
  - How do specialized residential facilities, including SB 962 homes, fit into the continuum of options needed?
- Department, on the DC issues, stakeholders have weighed in with comments on the DC budget that enter into the conversation about the \$200 million reduction. Please answer the following questions to give additional information on these issues in light of what the Legislature may be reviewing and contemplating as part of May Revise:

- Please describe the DC budget over the past three years and its changes from year to year.
- What type of inflow are we seeing into DCs and what is accounting for this?
- What is expected closure date for Lanterman DC?
- DOF, please offer any additional comment.
- LAO, please offer any additional comment.

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**Staff Recommendation:**

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Staff recommends that the Subcommittee direct the Department to continue working with stakeholders to identify and build upon ways that the state can safely and appropriately reduce its reliance on and new admissions to DCs. As one component of this ongoing work, staff recommends that the Subcommittee adopt placeholder trailer bill language to expand the geographic availability of SB 962 homes statewide, consistent with action taken in the Senate.



**4300 DEPARTMENT OF DEVELOPMENTAL SERVICES**  
**8885 COMMISSION ON STATE MANDATES****ISSUE 1: PROPOSED REPEAL OF MANDATE RELATED TO COUNSEL IN CONSERVATORSHIP PROCEEDINGS****BACKGROUND**

Under existing law, courts are required to appoint the public defender or private counsel to represent the interests of conservatees, proposed conservatees, or individuals alleged to lack legal capacity in specified legal proceedings if: a) they are unable to retain legal counsel and request appointment of counsel, b) the court determines that the appointment of counsel would be helpful or is necessary to protect the individual's interests, or c) the proceeding is about the establishment of a limited conservatorship. The court is then required to set a reasonable sum for compensating counsel and to determine whether the person can pay some or all of that amount (including payment out of the proceeds of community property at issue in the proceeding, if applicable). When the person lacks the ability to pay counsel, the county is required to do so.

The administration proposes trailer bill language to repeal these requirements, which it indicates have been suspended since 2009. According to the administration, these requirements are now standard operating procedures, and the mandate for local jurisdictions to meet them is no longer necessary. If the mandate is not suspended or repealed, the Department of Finance indicates that the state would incur costs of \$349,000 GF.

**PANEL**

- Commission and Department, please explain which aspects of the statutes proposed for repeal create the mandate(s) at issue.
  - How often are courts appointing counsel that is paid for by counties pursuant to these provisions? What, if any, changes in local practice have occurred since the suspension of these statutes in 2009?
  - If these statutes are repealed as proposed, would conservatees, proposed conservatees, or individuals alleged to lack legal capacity continue to be entitled to the appointment of counsel under the circumstances specified in these statutes?
- DOF, please offer any additional comment.
- LAO, please offer any additional comment.

**Staff Recommendation:**

Staff recommends holding this issue open.

**5180 DEPARTMENT OF SOCIAL SERVICES****ISSUE 1: UPDATES ON AUTOMATION-RELATED ISSUES****BACKGROUND**

The Subcommittee considered the DSS automation issues at its March 21, 2012 hearing. On the Statewide Automated Welfare System (SAWS) and the Statewide Fingerprint Imaging System (SFIS), the Subcommittee took the following actions:

**SAWS:**

1. Adopt the LAO recommendation and direction to the administration to conduct regularly scheduled briefings between the administration and legislative staff as LRS progresses and as the administration goes forward with its migration planning. The frequency of this will be a subject of the first meeting, to be conducted prior to May 15, 2012.
2. Issue a request to the administration to provide a written update to the Subcommittee on any policy decisions made by the Health Exchange Board describing how it may affect SAWS, applicant, and recipient access to programs, including Medi-Cal benefits, and those expanded under the Affordable Care Act, CalWORKs, and CalFresh.

**SFIS:**

Approve the SFIS budget for 2012-13. As part of this action, require a written update by May 1 on specific steps the administration has taken to implement AB 6 and on what schedule, noting areas still under development and a timeline for plans for continuing implementation.

**PANEL**

- The administration has been asked to report back to the Subcommittee at this hearing on any updates it has regarding the actions taken at the March 21 hearing.
  - What briefing schedule for LRS is recommended and when would the first meeting take place?
  - What are the implications for SAWS in the advent of federal healthcare reform?
  - When can a written update on the implementation of the elimination of the fingerprinting requirement in CalFresh be provided to the Legislature and stakeholders?
- DOF, please offer any additional comment.
- LAO, please offer any additional comment.

**Staff Recommendation:**

This item is included for oversight purposes. No action is required.

## VOTE-ONLY ITEMS – OPEN ISSUES

### 5160 DEPARTMENT OF REHABILITATION

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#### ISSUE 1: GOVERNOR'S PROPOSAL TO PROVIDE ELIMINATE THE REHABILITATION APPEALS BOARD

##### BACKGROUND

The Subcommittee heard this issue at its April 11, 2012. Please see that agenda for details.

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##### Staff Recommendation:

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Staff recommends approving the administration's proposal to change the appeals process so that impartial hearing officers' review appeals, rather than the Rehabilitation Appeals Board. Correspondingly, staff also recommends approving modifications to the proposed trailer bill language intended to safeguard the due process rights and needs of appellants (including unrepresented parties). The language, which would be refined as part of the trailer bill process and would rely in large part on examples from statutes that apply to developmental services and special education appeals processes, would:

- Provide for appeals to be heard by impartial hearing officers who have no conflict of interest and who are knowledgeable about federal and state laws and regulations applicable to DOR services and the Vocational Rehabilitation program.
- Require DOR to contract with another department, office, or entity for the provision of independent hearing officers.
- Provide that the time and place of the hearing be agreed upon by the appellant and the hearing officer and be reasonably convenient to the appellant and their designated representative, if applicable. This may include conducting all or part of the fair hearing by alternatives other than in person, if agreed upon by the appellant and if the alternative means allows for full participation.
- Provide, among other procedural allowances and requirements, that the hearings will not be conducted according to the technical rules of evidence and those related to witnesses and that all testimony shall be under oath.
- Outline basic procedural and adjudication expectations for hearing officers, including the consideration of presentation of viewpoints about the issues of disagreement, examination of the evidence presented during the hearing, and issuance of a decision including findings and grounds to the parties within 30 days of the completion of the hearing.
- Provide for training of hearing officers to include, but not be limited to, information on protecting the rights of consumers at administrative hearings, emphasizing how to fully develop the appeal record with consumers who are representing themselves or who are represented by another who may also require additional support.
- Permit implementation by emergency regulations until January 1, 2014, after which time implementation should be completed using the regular rule-making process and review by the Office of Administrative Law.

**5175 DEPARTMENT OF CHILD SUPPORT SERVICES**

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**ISSUE 1: GOVERNOR'S PROPOSAL TO PROVIDE EXPLICIT INVESTMENT AUTHORITY FOR NON-NEGOTIATED CHILD SUPPORT PAYMENTS****BACKGROUND**

The Subcommittee heard this issue at its April 18, 2012. Please see that agenda for details.

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**Staff Recommendation:**

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Staff recommends adoption of the proposed trailer bill language for 2012-13 only, with review after the one year regarding its extension or permanent nature. In addition, staff recommends that the Subcommittee direct the administration to begin a discussion with Banking and Finance policy staff regarding this issue to obtain counsel and advice on the propriety of the proposal in budget, and whether such a change should and can be permanently sought as part of a policy bill.

**5180 DEPARTMENT OF SOCIAL SERVICES**

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**ISSUE 1: GOVERNOR'S PROPOSAL ON DISTRIBUTION OF CHILD HEALTH AND SAFETY FUND****BACKGROUND**

The Subcommittee heard this issue at its April 18, 2012. Please see that agenda for details.

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**Staff Recommendation:**

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Staff recommends that the Subcommittee approve the Governor's proposal to redirect \$501,000 in Child Health & Safety Fund resources to support day care licensing activities. Correspondingly, staff recommends making technical changes to the proposed trailer bill language to specify this dollar amount and to embed the change into the section of the statute that currently addresses other licensing activities. As a result, specified licensing activities would receive 50 percent plus \$501,000 in funding before remaining funding would be distributed to the other specified programs. The intent of the action is to provide for the savings sought by the administration while maintaining the basic framework in fund allocation.

**ISSUE 2: GOVERNOR'S PROPOSAL TO ELIMINATE FINGERPRINT LICENSING FEE EXEMPTIONS****BACKGROUND**

The Subcommittee heard this issue at its April 18, 2012. Please see that agenda for details.

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**Staff Recommendation:**

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Staff recommends approval of the administration's proposal to the extent that it continues to lift the statutory prohibition on charging this fee in 2012-13, but reject the proposal to make that change permanent. This conforms to action taken in the Senate.