

**AGENDA
ASSEMBLY BUDGET SUBCOMMITTEE NO. 1
ON HEALTH AND HUMAN SERVICES**

ASSEMBLYMEMBER GILBERT CEDILLO, CHAIR

**MONDAY, APRIL 8, 2002
STATE CAPITOL, ROOM 127
4:00 P.M.**

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ITEM 4110 ORGANIZATION OF AREA BOARDS

ISSUE 1: LIFE QUALITY ASSESSMENTS REAPPROPRIATION**BACKGROUND:**

The Department of Developmental Services, pursuant to Section 4596.5 of the Welfare and Institutions Code, contracts with the area boards through the Organization of Area Boards for the conduct of Life Quality Assessments. The assessments are for persons with developmental disabilities who reside in out-of-home placements, supported living arrangements, or independent living arrangements. The assessments must be conducted at least once every three years.

The Department is required, as a part of the contract, to provide the boards with a list of individuals eligible for Life Quality Assessments over the contract period. The Life Quality Assessments are designed to coincide with each individual's triennial development of the Independent Program Plan.

It is impossible to assure that one-third of the eligible individuals will be assessed in any given fiscal year. In order to assure resources are available to meet the total number of individuals eligible over the contract period, the unexpended funds from the 2001-2002 fiscal year need to be re-appropriated for the budget year. With the re-appropriation of the funds the area boards will be able to assure that all eligible individuals are provided the opportunity to receive a Life Quality Assessment every three years.

COMMENTS:

Adopt budget bill language to re-appropriate current year funds for the budget year?

ITEM # 4300 DEPARTMENT OF DEVELOPMENTAL SERVICES**ISSUE 1: PURCHASE OF SERVICES STATEWIDE STANDARDS – REDUCTION AND TRAILER BILL LANGUAGE**

CURRENT YEAR	PROPOSED CHANGE	PROPOSED BUDGET EXPENDITURES
\$1,784,329,000.00	\$52,000,000.00	\$1,836,329,000.00

BACKGROUND:

The Regional Centers budget is projected to total over \$2.2 billion in the 2002-2003 fiscal year, up nearly \$200million from the 2001-2002 fiscal year projected total of \$2 billion. The Regional Centers Purchase of Services budget is projected to grow \$178.6 million to \$1.836 billion from \$1.658 billion. The budget contains a proposal to implement statewide standards for the Purchase of Services by Regional Centers. The statewide standards are projected to save \$52 million. The budgeted increase for the Purchase of Services after the imposition of the statewide standards, is \$126.6 million, down \$52 million from the projected \$178.6 million.

The Regional Centers purchase services for individuals who have been diagnosed with mental retardation, cerebral palsy, autism or a disabling condition requiring treatment similar to that required for mental retardation. To qualify for services, individuals' disabilities must have originated before the age of 18, and they must constitute a substantial handicap. The services for which the Regional Centers contract are residential, day programs, transportation and other services including health and respite care and support services.

The proposed budget assumes that the individual entitlement to services and support remains. The Department will establish statewide Purchase of Service standards pursuant to trailer bill language included as part of the proposal. The purposes of the statewide standards are twofold: to identify savings opportunities; and to improve the consistency of services provided throughout the state.

The trailer bill language would have the Department issue emergency regulations within 90 days of the effective date of the adoption of the language. The Department is required to consult with the stakeholders about the development of the regulations. The regulations would remain in place until July 1, 2005, and as of January 1, 2006 are repealed unless a later enacted statute that becomes effective January 1, 2006 deletes or extends the dates on which it becomes inoperative and is repealed.

The regulations for the Purchase of Services would be founded upon three principles:

1. Inclusion in the individual program of only those services and supports directly related to the individual's developmental disability;
2. A family's responsibility for providing those services and supports to a minor child with a developmental disability that are provide to a child without a disability; and

3. Services and supports purchased pursuant to the consumer's individual program plan shall:
 - (a) Be consistent with the current standard of community or professional practice;
 - (b) Have a payment rate that is competitive with similar services rates within the regional center service area; and
 - (c) Be the least costly option available that will meet the consumer's need as identified in his/her individual program plan

Protection and Advocacy has raised fundamental objections to the principles. Among them: Principle 1 would limit the services and supports to those directly related to the disability. The basic question arises is how would one distinguish those services and supports that are "directly related" to the individuals developmental disability? It also effectively limits the Lanterman Act entitlement. Principle 3 (a), the limitation to current standard of community or professional practice could be construed to limit the introduction of "cutting edge" services. Principle 3(c), adoption of the least costly option contravenes Welfare and Institutions Code 4648.5 which provides the cost of services must be one among several factors to be considered in selecting a provider of services.

Finally, the Department reported to the Legislature in April 1999 on the variation in the purchase of services per capita by regional Center. A conclusion was reached that an additional study be undertaken to focus on a detailed analysis of the regional variance factors identified in the report. The Legislature appropriated the funds and the Purchase of Services Study II was undertaken. The results of the statistically sophisticated study are to be available in the budget year. An expectation of the study is a better understanding of the variation in the services delivered between regions and what are possible explanatory reasons for the variation.

COMMENTS:

- Department, please tell the Subcommittee how long would it take to implement non-emergency regulations? Would there be any budget year savings if regulations were issued under non-emergency circumstances?
- Department, please tell the Subcommittee when the Department is planning to meet with the stakeholders on the development of the emergency regulations?
- Department please provide the Subcommittee a brief history and description of the purposes of the Purchase of Services I and Purchase of Services II studies commissioned by the Department.
- Department, please advise the Subcommittee what role the Purchase of Services II study will play in the development of the statewide standards?

ITEM #4300 DEPARTMENT OF DEVELOPMENTAL SERVICES**ISSUE 2: HOME AND COMMUNITY-BASED SERVICES WAIVER – FINANCE LETTER**

CURRENT YEAR	PROPOSED CHANGE	PROPOSED BUDGET EXPENDITURES
\$294,056,000	\$155,189,000	\$449,245,000

BACKGROUND:

The Home and Community-Based Services Waiver program enables the Department of Developmental Services to provide a broad array of home and community-based services to eligible individuals who, without these services, would require the level of care provided in an intermediate care facility for the mentally retarded. California had a waiver for persons with developmental disabilities since July 1, 1981

The state has federal authorization to place up to 50,754 Regional Center clients on the Medi-Cal Home and Community-Based Services Waiver. Under the waiver, the state obtains federal funding to pay for services provided to clients who are eligible for Medi-Cal. The Department's budget estimate is the state will end the current year with 32,771 clients on the Home and Community Based Waiver. The budget projects the state will end the budget year with 32,906 clients on the waiver. Adding Regional Center clients to the waiver up to the enrollment limit would allow the state to significantly reduce General Fund expenditures.

The January budget did not project an increase in the number of clients served in the budget year because Regional Centers were reporting increasing difficulty in meeting existing mandates because of under-funding in their operations. The inadequacy of Regional Centers' operations budgets has long been noted. The resulting operations staff limitations limit the number of clients that can be shifted to the Waiver. The Department said the inadequate funding is expected to affect the Regional Centers' ability to add and maintain eligible consumers to the Home and Community-Based Services Waiver.

However, in an April Finance Letter, the Department significantly raised the estimated number of persons to be covered by the waiver. The Department expects to add 13,524 in the current year and 422 in the budget year. The first year of the waiver the state is permitted 45,094 under the waiver. The second year total is 46,447, the third year total is 47,840, the fourth year total is 49,275 and the final year of the waiver is 50,754.

As a result of the placement of Regional Center clients on the federal waiver, the State will realize a net reduction in General Fund expenditures of \$129.5 million in the current year and budget year. The state will receive a net increase in reimbursements from the Federal Government of \$155.2 million. The projected budget year and current year General Fund savings are \$89.9 million and \$39.6 million

The Department of Developmental Services would add 12 positions to accomplish the objectives of the Waiver expansion. The Regional Centers would add 26.25 positions to the core-staffing model to accomplish the expansion of the waiver.

The Finance Letter does not appropriate the \$129.5 million in General Fund savings other than for some waiver related administrative purposes of the Department and Regional Centers.

COMMENTS:

- Department, please provide the Subcommittee with an overview of the Finance Letter.
- LAO, please provide the Subcommittee with your perspective on the Finance Letter.
- Department, please outline for the committee how the General Fund savings will be appropriated.

ITEM #4300 DEPARTMENT OF DEVELOPMENTAL SERVICES**ISSUE 3: COMMUNITY PLACEMENT PLAN****BACKGROUND:**

Since the 1994, when the Department settled the Coffelt v. Developmental Services lawsuit, the Department has had a Community Placement Plan to assist the Regional Centers in moving clients from the Developmental Centers to the community. In addition, the plan is to help deflect admissions from the Developmental Centers by ensuring the adequacy of community programs through the Regional Resource Development Project. Over the last few years the rate of placement of clients of the Developmental Centers in the community has slowed.

Beginning in the 2002-2003 fiscal year, the Department proposes to change the way it estimates funding for the Community Placement Plan. In the past, the Purchase of Services estimate (the number of consumers being placed in the community, the residence type and average cost per person) was based on the number of placements projected by the Regional Centers and historical expenditure data. The Department proposes to estimate the Community Placement Plan through the use of more detailed and individualized information, it will not rely on average costs. The estimate is based on projected costs and historical experience from individualized assessments of community services and supports needs, and reflects what is actually needed to place an individual from a Developmental Center into the community and to deflect individuals who have been referred to the Developmental Center for potential admissions.

COMMENTS:

The LAO expresses a concern that the estimate of the Department does not factor in the availability of federal funds. The LAO asserts the complex medical and behavioral problems of the affected persons would surely qualify them for being covered by the Home and Community-Based Services and waiver funds could be substituted for General Funds.

- LAO, please review your analysis for the Subcommittee.
- Department, do you concur with the LAO's analysis that the state can save General Fund money by shifting the Community Placement clients to the waiver?

The LAO states that over the last three years not all of the funding for the Community Placement Plan was used for that purpose and some was redirected to other community services.

- LAO please outline for the Subcommittee your analysis of the residual funds in the Community Placement Plan.

- Department, please respond to the LAO's conclusion that residual Community Placement Plan funds have been redirected to other community services.

- Department, to what purposes have the funds been applied?

ITEM #4300 DEPARTMENT OF DEVELOPMENTAL DISABILITIES

ISSUE 4: REGIONAL CENTER INCENTIVE PAYMENTS**BACKGROUND:**

The state contracts with Regional Centers for the provision of services to persons with developmental disabilities. State law requires that those contracts include incentive payments to Regional Centers that meet or exceed established performance standards. The Department of Developmental Services has in practice provided these incentives to qualifying Regional Centers by re-appropriating up to one-half of a Regional Center's budget savings. In recent years, these re-appropriations have ranged collectively from \$4 million to \$11 million annually. Suspending the incentive payments would result in a savings to the state General Fund, but could affect the provision of Regional Center services.

COMMENTS:

- LAO, please briefly describe for the Subcommittee your reasoning for suspending of the Regional Center payments?
- Department, please briefly describe for the Subcommittee how the incentive funds are spent by the Regional Centers.
- Department, please outline for the Subcommittee the consequences to the Regional Centers and their clients the consequences of not providing the Regional Centers the incentive funds.

ITEM 4300 DEPARTMENT OF DEVELOPMENTAL SERVICES**ISSUE 5: LANTERMAN SECURITY IMPROVEMENT PROJECT**

CURRENT YEAR	PROPOSED CHANGE	PROPOSED BUDGET EXPENDITURES
\$0	\$0	\$0

BACKGROUND:

The Department operates five developmental centers and two leased facilities. The budget includes \$3.8 million for one capital project at Lanterman Developmental Center. The funding is for the construction phase of the Security Improvement Project.

In the 1998-99 budget the project was appropriated \$4.992 million. The project was to house 75 forensic patients and 53 behavioral patients. The community surrounding Lanterman Regional Development Center objected to the housing of the forensic patients at Lanterman. After months of negotiations the Department decided not to house the forensic patients at Lanterman. The 128 beds were to be used for behavioral patients.

The Department withdrew the forensic elements from the proposal and requested the State Public Works Board to amend the scope of the project scope to remove the project components related to the forensic patients. In October, 2000 the State Public Works Board amended the project to remove the forensic components.

In November 2001, the Department determined it needed the guard control building to house the perimeter alarm system and provide security services to the Lanterman Developmental Center. The project scope was amended again.

In January working drawings were continuing to be developed. The Environmental Impact Review Process was delayed pending the proposed scope change approval. The construction phased is delayed pending the outcome of the scope change and pending public meetings. The Department states that it stays in close contact with the local community advisory group and law enforcement to keep them apprised of all the issues with the security improvements.

The Department does not expect to begin construction until at least November of 2002.

COMMENTS:

Department please respond to the following:

- Please explain the reasons for the delay in seeking environmental review/compliance of the project.

- Please describe the status of the project.
- Please describe what actions have been taken to assure the project will begin construction in 2002-2003.
- LAO, what are your conclusions concerning the Lanterman Capital Project?

ITEM #4300 DEPARTMENT OF DEVELOPMENTAL DISABILITIES

ISSUE 6: EARLY START**BACKGROUND:**

The Early Start program, jointly administered by the State Department of Education and the Department of Developmental Services (DDS), provides early intervention services to children under age three who have disabilities, or who are at risk of having disabilities, in order to enhance their development and to minimize the potential for developmental delays. Costs of early intervention services incurred by DDS have exceeded the federal funding provided under Part C of the Individuals with Disabilities Act. This proposal would shift all of the General Fund cost of the program to Proposition 98, thus permitting a net reduction in non-Proposition 98 General Fund expenditures.

Shifting only those costs associated with the federal program would result in a net savings of \$45 million. The LAO analysis indicates these expenditures could appropriately be considered an education program supported by Proposition 98 similar to childcare and development. These savings presume that the state does not overappropriate the Proposition 98 minimum guarantee. Adopting this option would result in a reduction in funding for other K-14 educational programs proposed in the 2002-03 Governor's Budget, unless the estimated minimum funding guarantee increases in the May Revision as a result of new personal income data to be released by the federal government in the spring. As discussed in the Analysis of the 2002-03 Budget Bill, the minimum funding guarantee could increase by as much as \$900 million.

COMMENTS:

- LAO, please review for the Subcommittee your analysis and savings estimate.
- Department, please review for the Subcommittee your thoughts about shifting the Early Start program from the Government Code to the Education Code?
- Department, please review for the Subcommittee any possible alternatives for achieving the same result?

ITEM #4300 DEPARTMENT OF DEVELOPMENTAL DISABILITIES

ISSUE 7: PURCHASE OF SERVICE POLICIES – TRAILER BILL LANGUAGE**BACKGROUND:**

The Department proposes to amend Section 4434 of the Welfare and Institutions Code. The amendments would repeal the Department's responsibility for the review of Regional Centers' purchase of service policies. The Department would further amend Section 4434 to require the Regional Centers to provide the Department their operating policies and procedures and supplemental board materials. The Department would also require the Regional Centers to follow a schedule for filing the material with the Department.

COMMENTS:

- Department, please describe for the Subcommittee the purposes of the mandatory review.
- Regional Center Purchase of Services policies by the Department. What will be lost and gained with their repeal?
- Department, will Regional Centers be able to promulgate purchase of service policies that will be monitored irrespective statewide purchasing standards?
- Department, please describe for the Subcommittee the benefits of such a policy review?

ITEM #4300 DEPARTMENT OF DEVELOPMENTAL SERVICES

ISSUE 8: COMMUNITY MEETINGS – TRAILER BILL LANGUAGE**BACKGROUND:**

The trailer bill language would repeal Section 4847 of the Welfare & Institutions Code. Section 4847 requires the Department of Developmental Services to co-ordinate or require each Regional Center to co-ordinate a meeting within each Regional Center catchment area between the regional center, local health facility providers, Department of Health Services and the Department of Developmental Services. The requirement was adopted in Chapter 1043 of the Statutes of 1998.

COMMENTS:

Department please describe for the Subcommittee the purposes and benefits of the annual meetings between the individual Regional Centers, providers, Department of Health Services and Department of Developmental Services staff?

Department, how will the organized co-ordination of services and supports occur in the absence of the meetings?

ITEM 4300 DEPARTMENT OF DEVELOPMENTAL SERVICES

ISSUE 9: CONSUMER COMPLAINT PROCESS – TRAILER BILL LANGUAGE**BACKGROUND:**

In the 2001 budget process Protection and Advocacy sought an amendment to Section 4731 of the Welfare and Institutions Code that relates to Denial of Rights complaints. Under the system then in place, the Clients' Rights Advocate took the initial complaint from the regional center or developmental center consumer and had ten days to investigate the issue and propose a resolution. The matter was then referred to the Regional Center or the Developmental Center director, who had ten days to investigate the issue and propose a resolution.

Under Protection and Advocacy's amendments that were included in the Health Budget Trailer Bill, the initial complaint is filed with the Regional Center or Developmental Center director, who has 20 days to act. The Department of Developmental Services continues to have authority to issue a written administrative decision as the final step to the process. The Clients' Rights Advocates are able to assist the consumer in drafting and filing the complaint.

The budget trailer bill language proposes to repeal Section 4731 and rely on Section 50540 of Title 17 of the California Code of Regulations for the consumer complaint process. According to Protection and Advocacy, the regulation came under criticism because its reference to "facility" was interpreted as limiting the procedure to complaints against providers (e.g., residential care and day program providers). It was not seen as providing a mechanism for lodging complaints against a regional center. Section 4731 contains broader language to encompass those reviews.

COMMENTS:

- Department, is it fair to characterize hearings under Section 50540, among other things, as hearings on what level of service to provide and hearings under Section 4731, among other issues, as failure to provide services?
- Department, doesn't a grievance process that is less than a full blown state hearing, Section 4731 hearings, have an important role to play in the Regional Center system?

ITEM #4300 DEPARTMENT OF DEVELOPMENTAL SERVICES**ISSUE 10: INDIVIDUAL PROGRAM REVIEW – TRAILER BILL LANGUAGE****BACKGROUND:**

The Department is required to annually review a random sample of individual program plans at each Regional Center to assure the plans are developed and modified according to Sections 4646.5 and 4646 of the Welfare and Institutions Code. The extant trailer bill language would require the Department to do the sampling every other year rather than every year that is the current standard. Section 4847 was enacted as part of major amendment to the Lanterman in 1998, Chapter 1043 of Statutes of 1998, SB 1038 (Thompson)

COMMENTS:

Department please respond to the following questions:

- Would the reduced review equally affect clients under the HCBSW as well as those who are not under the waiver? Or would the review every two years be only for IPPs under the Federal Waiver?
- Will there be any loss to the clients of the Regional Center system?

ITEM 4300 DEPARTMENT OF DEVELOPMENTAL SERVICES**ISSUE 11: PRE-ADMISSION SCREENING AND RESIDENT REVIEW – FINANCE LETTER****BACKGROUND:**

The Department is requesting resources for the Department through the Regional Centers to conduct Pre-admission Screening and Resident Review (PASRR) Level II screening of nursing facility residents for mental retardation. The Omnibus Budget Reconciliation Act of 1987 (OBRA of '87) Nursing Home Reform (NHR) requires the state to conduct initial PASSR mental retardation screening on all nursing facility residents without regard to payer source. In August 2001 the Centers for Medicare and Medicaid Services (CMS) told the state that its PASRR State Plan Amendment (SPA) would be denied for failure to comply with OBRA '87. The state plan was denied because the SPA did not include a Department of Health Services requirement for Level I PASRR screening for nursing facility residents admitted with a payer source other than Medi-Cal. CMS will disallow federal financial participation for the administration of PASRR on a prospective basis, beginning September 1, 2001 until CMS is assured that DHS and DDS are in full compliance with OBRA '87 NHR regulations. CMS will also likely seek a retrospective fiscal recovery from DHS for non-compliance with OBRA '87 NHR regulations.

The Finance Letter requests the needed resources for DDS to bring California into compliance with OBRA '87 NHR regulations with respect to persons who have developmental disabilities.

COMMENTS:

Department, please outline the Fiance Letter for the Subcommittee.