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*California's protection and advocacy system*

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**DISABILITY RIGHTS CALIFORNIA'S TESTIMONY TO THE LEGISLATURE  
ON DEPARTMENT OF DEVELOPMENTAL SERVICES PROPOSALS AND  
TRAILER BILL LANGUAGE TO ACHIEVE \$174 MILLION GENERAL FUND  
SAVINGS**

**May 25, 2011<sup>1</sup>**

Disability Rights California thanks the Legislature for the opportunity to testify on the Department of Developmental Services (DDS) workgroup process and the trailer bill language developed by the Department to implement the \$174 million in General Fund reductions. We also thank each of you for your efforts to minimize the reductions to the developmental disabilities system during these difficult budget times, and particularly applaud the efforts to minimize the reduction to community based services, keeping many of these cuts away from consumers and families. We understand that the Department had a daunting task to minimize reductions to consumer services through additional administrative and other reductions. This includes the identification of \$55.6 million General Fund available in FY 2011-12 from expenditure savings, \$30 million of one-time savings in the current year from delays of the various proposals, and \$39.3 million associated with contract savings administered by the Department. After considering these reductions, \$79.1 million remains to be achieved through other proposals.

Disability Rights California remains concerned that over the last three years, the community budget for Californians with developmental disabilities has been reduced by approximately over \$1 billion in state funds, not including the loss of additional federal matching funds. While we appreciate the Department's efforts to seek new federal funds through the 1915 (k) Community Living Options, and efforts to receive additional funding through the Department's Home and Community-Based Waiver, the 1915(i) Special Plan Amendment (SPA), and the federal Money Follows the Person Grant (MFP), the cumulative impact of the \$1 billion in reductions make it more difficult for consumers to receive the services they need to lead independent and productive lives in the community.

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<sup>1</sup> For more information, contact Evelyn Abouhassan 916-497-0331

To protect consumers' rights, we urge the following:

- 1) Any changes to services must be done through the Individual Program Process (IPP) process with the involvement of members of the IPP team.
- 2) Any reduction to services must include a reasonable exception/exemption process;
- 3) The regional center must provide consumers and their families with notice of the exception/exemption.
- 4) Individuals must maintain the right to appeal any decision of the IPP team with respect to their services pursuant to WIC 4700 et seq.
- 5) The Department of Developmental Services and Legislature must carefully monitor the impact of the reductions. Specific examples follow.

**DISABILITY RIGHTS CALIFORNIA COMMENTS ON THE DDS  
STAKEHOLDER PROCESS, SPECIFIC PROPOSALS AND TRAILER BILL  
LANGUAGE:**

Disability Rights California recognizes the ongoing fiscal crisis in the State and commends the Department of Developmental Services (DDS) for its efforts to seek public input to achieve \$174 million in general fund reductions in its development of "Purchase of Services Best Practices." We found the process useful, inclusive and transparent. We applaud the Department for including a wide array of stakeholders in this process and are pleased that DDS considered the input of the workgroups. We noticed that many of the proposals reflect ideas generated from that process.

Many of the proposals promote additional flexibility, choice in how services are provided, and the integration of individuals with disabilities into the community. For example:

- The Individual Choice Day Services proposal would allow for alternatives to traditional day programs which promote choice for consumers and flexibility in delivery;
- For consumers for whom the regional center purchases specialized transportation services or vendored transportation services, the development of transportation access plans addressing barriers to the most integrated transportation services, developed at the time of the IPP, would address the services needed to assist the consumer in developing the skills to access the most inclusive transportation option that can meet the consumer's needs;
- Maximizing resources for behavioral services by allowing regional centers

to contract with qualified paraprofessionals at a lower rate who would provide the same quality and consistency of services acting under the supervision of a trained professional in behavioral intervention.

We offer specific comments to the proposals and the trailer bill language below.

**Annual Family Program Fee:**

DDS proposed an annual family program fee in the amount of \$150 or \$200, depending on family income, to be assessed for families of consumers receiving services from the regional centers where:

- The child is under age 18.
- The child lives at home.
- The child is not eligible for Medi-Cal.
- The family's income is at or above 400 percent of the Federal Poverty Level (FPL) based upon family size.
- The child or family receives services beyond eligibility determination, needs assessment, and case management.

Families of consumers who only receive respite, day care, and/or camping services are also excluded under the Annual Family Program Fee if assessed separately in the Family Cost Participation Program (FCPP).

Disability Rights California is pleased that the trailer bill language implementing the Annual Family Program Fee will be assessed on a per family basis rather than a per consumer basis. This takes into account situations where a family may have multiple children with disabilities with significant needs where multiple annual fees would possibly cause a financial hardship on the family. We are also pleased that the language includes an exemption from the annual program fee which allows for:

- A catastrophic loss that would temporarily limit the ability of the parents to pay and create a direct economic impact if the amount of the annual family program fee were not reduced. Unavoidable and uninsured catastrophic losses may include, but are not limited to, natural disasters, an accident or major injuries to an immediate family member, or extraordinary medical expenses; or
- The intensity of the consumer's care and supervision needs are such that any additional fees would make it difficult to keep the consumer living at home; or
- There is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer.

We believe that any Annual Program Fee should be time limited to address the current fiscal crisis in the state so that DDS and the Legislature can assess the impact of the proposal on families and that individuals maintain the right to appeal any decision of the IPP team, pursuant to WIC 4700 et seq. This right should be included in the proposed TBL implementing this proposal.

### **Enhancing Community Integration and Participation-Development of Transportation Access Plans**

For consumers for whom the regional center is purchasing specialized transportation services or vendored transportation services, DDS proposed the development of transportation access plans which address barriers to the most integrated transportation services, developed at the time of the IPP, to address the services needed to assist the consumer in developing the skills to access the most inclusive transportation option that can meet the consumer's need. While we are supportive of the proposal, we offer the following amendments to ensure the safety of consumers:

Section 4646.5 of the Welfare and Institutions Code is amended to read:

(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

(6) A review of the transportation needs of the consumer. A transportation access plan shall be developed pursuant to Section 4648.35 for a consumer **only** when:

(1) the regional center is purchasing private, specialized transportation services or services from a residential, day or other provider, excluding vouchered service providers, to transport the consumer to and from day or work services;

(2) the planning team has determined that a consumer's community integration and participation could **be safe and safely** be enhanced through the use of public transportation services; and

(3) the planning team has determined that such generic transportation services are available and accessible.

This proposed change ensures that the team considers two factors: safety and enhancement of community integration. Furthermore, as noted earlier, it must be clarified in the language that individuals maintain the right to appeal any decision of the IPP team, pursuant to WIC 4700 et seq. The right to appeal the decision of the IPP team should be clarified in the proposed TBL of this proposal as well.

**Maximize Utilization Of Generic Resources - Education Services:**

For consumers 18 to 22 who remain eligible for services through the public school system, this proposal requires consumers to use generic education resources in lieu of regional center services that purchases day program, work/employment, independent living, or related mobility training and associated transportation services on their behalf. Regional centers may also encourage schools to use existing vendors to meet consumer needs.

Disability Rights California generally agrees that generic resources should be used whenever possible, particularly during these difficult economic times. We also agree that school districts have an obligation to serve eligible consumers up to age 22. However, there are significant problems with the transition of young adults between regional centers and schools, which we worry will increase the number of consumers that drop out of school and not receive services from regional centers until after their 22 birthday.

To mitigate these concerns, we recommend the following:

- 1) A regional center service coordinator attend the consumer's annual IPP meetings beginning at age 16 to ensure receipt of appropriate special education services, including transition services;
- 2) The exemption language be strengthened as identified below. This language mirrors the use of generic services language included in the 2009 TBL found in the current WIC section 4659. This section applies to the following generic services: Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, federal supplemental security income, the state supplementary program, and private entities to the extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer. Our proposed amended exemption language also eliminates the vague phrase "extraordinary".

Section 4648.55 is added to the Welfare and Institutions Code to read:

**(d)** An exemption to the provisions of this section may be granted on an individual basis in **extraordinary** circumstances to permit purchase of a service identified in (a). **The granting of an exemption shall be made through the individual program plan process and based on a determination that the generic service is not appropriate to meet the consumer's need or if the student exhausts his due process rights**

**and is unable to secure an appropriate educational program.**

**(1) Regional centers may pay for educational services during the following periods:**

**(a) while an educationally appropriate program is being pursued, but before a denial is made.**

**(b) pending a final administrative decision on an administrative appeal if the student has provided to the regional center verification that an administrative appeal is being pursued.**

**(c) until the commencement of and appropriate educational program.**

**(2) When necessary, the consumer or family may receive assistance from the regional center, the Clients' Rights Advocate funded by the department, or area boards on developmental disabilities in pursuing these appeals. The consumer shall be informed of the exemption and the process for obtaining an exemption.**

3) The development of an inter-agency dispute resolution procedure to quickly resolve conflict between school districts and regional centers, so that the consumer is not left without services while the two agencies are trying to determine which one has financial responsibility. This could be achieved through an expansion of Section 4659 et seq. of the Lanterman Act. Welfare and Institutions Code Section 4659 et seq. provides for regional centers to pursue generic service agencies to secure benefits for consumers. Section 4659.5 provides for regional centers to pursue settlement of claims on behalf of consumers when there is a dispute as to which agency is responsible. Unfortunately, this provision only applies to children under 6 years of age. This process could be expanded to enable regional centers to more quickly secure services for regional center clients ages 18-22 through the educational system.

4) Careful monitoring of the impact of this language which would require the regional centers and DDS to report information about students 18 to 22 who have left school, and are not receiving services through the educational system or the regional center system and the reason that such services are not provided.

Finally, it should be noted that individuals retain the right to appeal any decision

of the IPP team with respect to their services pursuant to WIC 4700 et seq. The right to appeal the decision of the IPP team should be clarified in the proposed TBL as well.

### **Maximizing Resources for Behavioral Services**

We support DDS' proposal to maximize resources for behavioral services by allowing regional centers to contract with qualified paraprofessionals at a lower rate that would provide the same quality and consistency of services acting under the supervision of a trained professional in behavioral intervention. The proposal would also require parents to verify receipt of Behavioral Services provided to their child.

We are pleased to see language in the trailer bill that protects consumer rights and clarifies that the failure of the parents or legally appointed guardians of a minor consumer to submit a verification of services to the vendor shall not be a basis for terminating or changing behavioral services to the minor consumer. The language also properly notes that any changes to behavioral services shall be made by the consumer's planning team pursuant to Section 4512.

We recommend that the parental verification form be provided in the parent's primary language and alternative formats when necessary as a reasonable disability accommodation so that those parents who need such formats can adequately comply with these provisions.

Disability Rights California notes that there is a current bill, AB 1205 (Berryhill), pending before the State Legislature (in Assembly Appropriations) that would require the Board of Behavioral Sciences (BBS) to license behavioral analysts (BA) and assistant BAs, on and after January 1, 2015 if the bill passes and is implemented. The bill sets forth standards for licensure including specified higher education and training, fieldwork, passage of relevant examinations, and national board accreditation. The bill also requires the licensure program to be supported through fees on licensees. While it is still unclear who this bill applies to given the potential interplay between AB 1205, current law, and regulatory requirements<sup>23</sup>, we strongly recommend that DDS to review the language in this

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<sup>2</sup> Currently educational staff that provide behavioral interventions are not required to be licensed to provide such services. There is no indication that the Education Code would be modified to require licensure. There is also no indication as to how school district staff would/could comply with the licensure requirements. See 5 CCR 3065, Staff Qualifications - Related Services including Designated Instruction and Services [http://www3.scoe.net/speced/laws\\_search/searchDetailsLaws.cfm?id=729&keywords=behavior%20intervention](http://www3.scoe.net/speced/laws_search/searchDetailsLaws.cfm?id=729&keywords=behavior%20intervention)

14 GC 95021- Vendor Who Provides Applied Behavioral Analysis  
[http://www3.scoe.net/speced/laws\\_search/searchDetailsLaws.cfm?id=938&keywords=behavior%20intervention](http://www3.scoe.net/speced/laws_search/searchDetailsLaws.cfm?id=938&keywords=behavior%20intervention)

bill and existing law and regulation to ensure that any language developed to implement this proposal correspond with the requirements set forth in AB 1205, to the extent that the measure passes. This will limit confusion and assist in ease of implementation of the proposed TBL.

### **Supported Living Services: Maximizing Resources**

Supported Living Services (SLS) is a community living option that supports adult consumers who choose to live in homes they control through ownership, lease, or rental agreement. In supported living, a consumer pays for living expenses (e.g. rent, utilities, food, and entertainment) out of Social Security Income, work earnings or other personal resources. The regional center pays the vendor to provide the SLS. The consumer may also receive other kinds of publicly-funded services like Medi-Cal, mental health services, vocational services, and In-Home Supportive Services (IHSS).

DDS proposes prorated payment for shared tasks. As to this concept, we suggest the following amended language to ensure use of the Lanterman Act language which recognizes consumer choice:

SECTION 1. Section 4689 of the Welfare and Institutions Code is amended to read:

(o) For consumers receiving supported living services who share a household with one or more adult(s) receiving supported living services, efficiencies in the provision of service may be achieved if some tasks can be shared, meaning the tasks can be provided at the same time while still ensuring that each person's individual needs **and choices** are met. Such tasks shall only be shared to the extent they are permitted under the California Labor Code and related regulations, including but not limited to Industrial Welfare Commission minimum wage order No. 15. The planning team as defined in subdivision (j) of Section 4512, at the time of development, review or modification of a consumer's individual program plan (IPP), for housemates currently in a supported living arrangement or planning to move together into a supported living arrangement,

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Behavioral service providers are loosely defined in the special education context. The Hughes Bill requires that a behavioral intervention case manager with documented training in behavior analysis including positive behavioral intervention(s) be assigned when a behavioral intervention plan is being developed. The Hughes Bill further specifies that behavioral intervention plans shall only be implemented by, or be under the supervision of, staff with documented training in behavior analysis, including the use of positive behavioral interventions. See 5 CCR § 3052(a)(1) and 5 CCR § 3052(a)(2)

<sup>3</sup> Regional centers have defined vendorization codes that specify requirements for behavioral services providers, See 17 CCR 54342(a)(11), 17 CCR 54342(a)(8), 17 CCR 54342(a)(13), 17 CCR 54342(a)(12)

or for consumers who live with a housemate not receiving supported living services who is responsible for the task, shall consider, with input from the service provider, whether any tasks, such as meal preparation and clean up, menu planning, laundry, shopping, general household tasks, or errands can appropriately be shared. If tasks can be shared, the regional center shall purchase the prorated share of the activity. Upon a determination of a reduction in services pursuant to this section, the regional center shall inform the consumer of the reason for the determination, and shall provide a written notice of fair hearing rights pursuant to Section 4701.

DDS also proposes independent needs assessment for all consumers currently receiving, or initially entering, supported living that have supported living services' costs, or have an initial recommendation for service costs that exceed 125% of the annual statewide average cost of supported living services, as published by the department commencing June 30, 2011. The assessment would be completed by an entity other than the SLS agency providing service and be used during IPP meetings to determine if the services provided are necessary and sufficient and that the most cost effective methods of service are utilized.

We propose that subsection (1) of the current proposed 4689 (p) also be amended to add additional items which may be reviewed during the independent assessment as a means of ensuring that the assessment will look at all areas of consumer need. We also propose amending subsections (2) and (3) to maximize consumer choice by ensuring that a consumer could change providers to the one performing the independent assessment after one year and ensuring that the consumer, rather than the regional center, decides who performs the independent assessment. Thus, the amended language would be as follows:

- 1) Supported living service providers conduct comprehensive assessments for the purpose of getting to know the consumer they will be supporting and developing a support plan congruent with the choices and needs of the individual and consistent with the principles of supported living set forth in this section and in Subchapter 19 of Chapter 3 of Title 17 of the California Code of Regulations section 58600 et seq. The independent assessment required by this subsection is not intended to take the place of or repeat the service provider's comprehensive assessment. The purpose of the independent assessment is to provide an additional look at whether the supported living services being provided, or being proposed for a person initially entering supported living, are necessary, sufficient and/or cost-effective to meet the person's choices and needs as determined by the

comprehensive assessment and the planning team. The independent needs assessment may include, but not be limited to: use of natural and generic support, technology that provides support otherwise necessary through direct staffing hours, shared housing, support alternatives, learning methods, lifting and transferring, bathroom, grooming, meals, communication, transportation, mobility, emergency procedures, medication management, household responsibilities, personal needs, and interpersonal *relationships and behavioral, medical and overnight supports.*

- 2) A consumer shall not be excluded from or found no longer eligible for supported living services based solely on an independent assessment.
- 3) The entity or individual conducting independent assessments shall not be an employee of a regional center or the person's service provider. Current supported living providers may conduct independent assessments for consumers being supported, or about to be supported, by other providers, however a provider may not provide direct services to a consumer it has assessed pursuant to this subsection unless a subsequent independent assessment has been completed by another assessor. ***who conducts an independent assessment may not provide direct services to a consumer it has assessed, for a period of one year.*** Each regional center shall publicly identify the entity(s) and/or individual(s) it will use to conduct independent assessments. Regional centers shall ensure there are sufficient independent assessors so that assessments can be provided when required without undue delay. ***A consumer may choose the entity or individual to do their independent assessment from those with whom the regional center has identified.***

Furthermore, in our experience, some regional centers currently require an independent assessment that can delay the entry into supported living by 6 months or more. There is no reason for the regional center to require an independent assessment if the State will require an assessment to be completed when the services reach the dollar threshold. Multiple independent assessments simply use funds that the DD system does not have.

Finally, any changes to services must be done through the IPP process with the involvement of members of the IPP team. Additionally, there must be an appropriate exemption process to ensure that people remain in their own homes and do not end up in a more restrictive or less integrated setting because of the assessment process. Individuals must maintain the right to appeal any decision of the IPP team with respect to their services pursuant to

WIC 4700 et seq.

Therefore, we propose the following amendments:

No proposed changes to items in proposed section WIC 4659 (p) 4-10 so text not repeated here.

11) Nothing in this section precludes the completion of an independent assessment for other purposes.

**(q) Regional centers shall not require independent assessments for consumers currently receiving, or initially entering, supported living except as required by subsection (p) above unless the consumer requests an independent assessment.**

**(r) Implementation of the provisions in this section shall not result in the consumer moving to a more restrictive or less integrated setting.**

#### **OTHER GENERAL COMMENTS:**

While we have no specific comments about the trailer bill language or proposals implementing changes to the following areas, we do offer the following general comments:

#### **Maintaining the Consumer's Home of Choice-Mixed Payment Rates in Residential Facilities with Alternative Residential Model (ARM) Rates**

We support this proposal to allow a lower payment rate for a consumer whose needs have changed but want to maintain their residency in the home, without impacting the facility's ARM service level designation. This proposal maintains the consumer's preferred living arrangement and minimizes possible transfer trauma. We believe that any changes to service level for the consumer must be agreed to by the consumer, the regional center and service provider, and any service changes must continue to meet the needs of the consumer. Such decisions must be made via the IPP process and individuals must maintain the right to appeal any decision of the IPP team with respect to their services pursuant to WIC 4700 et seq. The right to appeal the decision of the IPP team should be clarified in the proposed TBL. Additionally, we do not think this should apply to consumers who are moving to a residential program for the first time.

#### **Individual Choice Day Services**

We support the Individual Choice Day Services proposal which allows for alternatives to traditional day programs that promote choice for consumers and flexibility in delivery and appreciate that DDS allows proposals to be developed at the local level between Regional Centers and providers. We also agree with the language in proposed WIC section 4690.6 (c) that allows a regional center

to change the length of the declared and approved program day for a specific consumer in order to meet the needs of a consumer, upon the recommendation of the individual program planning team. As with any change to services, this must be done through the IPP process with the involvement of members of the IPP team. Individuals must maintain the right to appeal any decision of the IPP team with respect to their service services pursuant to WIC 4700 et seq. This should be made clear in the proposed TBL.

### **Administrative Efficiency-Electronic Billing Process for All Providers**

Disability Rights California supports the implementation of provider electronic billing. We agree with the exception language in proposed Government Code section 95020.5 (a) (2) WIC section 4641.5 (a)(2) that takes into account demonstrated instances where electronic billing may cause a financial hardship for a vendor or provider.

### **Transfer of the Prevention Program to the Family Resource Centers**

We believe that the best solution is for as many infants and toddlers as possible to be included in the federal Early Start program, as that program provides access to the full array of services. However, given our understanding of the statewide data that there are very few infants and toddlers in the new prevention program, and that there is no consistent way of providing follow-up, we generally support the transfer of the Prevention Program to the Family Resource Centers. The Family Resource Centers are organizations where families of infants and toddlers who qualify for the Prevention Program can access resources, advocacy skills, and family supports from qualified professionals. While we support the transfer, we also believe that follow-up with families is important and that language should be crafted which mandates follow-up with families who contact the Family Resource Centers for services.

### **Community Placement Plan Funding:**

The Department of Developmental Services (DDS) has statutory and legal obligations pursuant to the Lanterman Act, the Olmstead decision, and the Capitol People First settlement agreement to ensure that individuals with developmental disabilities live in the least restrictive setting appropriate to their needs. The law establishes a Community Placement Plan (CPP) process designed to assist regional centers in providing the necessary services and supports for individuals to move from developmental centers. It also provides resources necessary to stabilize the community living arrangements of individuals who are at risk of institutionalization.

We have concerns that the proposed \$10 million in reductions to the CPP may impact the ability of people to move from a developmental center into the

community, and the ability of people at risk of institutionalization to remain in their community homes. We will be closely monitoring developmental center placement and admission numbers to ensure that the Department and the State are meeting their obligations under the Lanterman Act, Olmstead, and the Capitol People First Settlement to prevent the unnecessary institutionalization of people with developmental disabilities.

**Additional Administrative Reductions:**

The Clients' Rights Advocacy Contract will be held at the current year funding level of \$5.295 million for a savings of \$250,000 (\$200,000 GF). Even though the Office of Clients' Rights Advocacy (OCRA) has experienced a double-digit increase in requests for assistance during each of the past two years, we are neutral as to this proposal given the current fiscal crisis.

Quality Assessment: This project will be reduced to \$3.235 million. In FY 2009-10, the Department achieved GF savings of \$2.287 million by consolidating the Life Quality Assessment and Movers Study into one improved quality assurance project. This proposal will save \$530,000 (\$424,000 GF). The Mover's Study has provided valuable information about consumers who move from developmental centers. We encourage a separate report on data about individuals who move from developmental centers particularly in light of the proposed closure of Lanterman.

Office of Administrative Hearings: The current year level of funding \$3.15 million will be maintained. We encourage oversight to ensure that OAH does not unilaterally delay hearings, which has occurred during the past two years.

Please contact me if you have any questions about our comments.

Sincerely,



Evelyn M. Abouhassan  
Senior Legislative Advocate  
Disability Rights California