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California's protection and advocacy system

**Positions on FY 2009-2010 State Budget Proposals
Affecting People with Developmental Disabilities ***

Disability Rights California recognizes California's unprecedented budget deficit and realizes that no easy solutions exist to resolve State's fiscal crisis. Even in these difficult times, however, any decisions about how the State spends its resources reflect our State's set of values.

Budget decisions must reflect the values of inclusion, independence, and self-reliance for people with disabilities and not disproportionately impact people with disabilities or disproportionately target community services -- especially supports for living in one's own home or participating in community work and activities. Cuts that result in people going into institutions move California backwards in complying with the integration mandates of the Lanterman Act and Americans with Disabilities Act Olmstead decision and will result in higher costs to the State.

The proposed permanent cuts to the Developmental Disabilities (DD) community system of \$657 million¹ are too extreme and will cause irreparable harm to some of California's most vulnerable residents. **THE CUTS MUST BE MINIMIZED.** Any cuts taken to address the unprecedented budget deficit must **NOT BE PERMANENT.**

Budget solutions must look first to enhancing the State's revenues by both taxes and increased federal funding. The DD system must be given credit for the federal funding it will generate as a result of the anticipated increase in the FMAP percentage as part of the federal stimulus package.

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¹ Includes: Special Session proposal for permanent total funds cuts of \$117 million from POS and \$40 million from Regional Center operations. Governor's FY 09-10 proposal for permanent unallocated cut of \$334 million general funds which does not account for the loss of federal reimbursements. Considering both the state *and* federal reimbursement dollars, a cut of \$334 million represents an actual loss to the DD community system of close to \$500 million.

In deciding on the necessary TEMPORARY CUTS during this difficult time, policy makers must make values based decisions and look to positive cost-savings measures that ensure cuts do not result in expanded use of outdated congregate service models.

Disability Rights California Recommends the Following Values-Based Cost-Savings and Revenue Enhancements for the Developmental Disabilities System

The Governor and the Legislature must act to ensure implementation of positive cost-savings and revenue enhancements to offset the need for drastic cuts to the community services system. While some of the savings may not be immediate, the State must begin NOW so that savings can be realized in the near future. If the State does not choose positive proactive cost savings measures and revenue enhancements, freezes and cuts to direct community supports – in the form, for example, of reduced rates, lack of start-up funding, moves away from individualized supports to group models and unreasonable service coordinator caseloads -- will cause community system and the promise of the Lanterman Act to be irretrievably broken.

Disability Rights California believes the following are critical first steps to ensure the availability of community services necessary to protect the inclusion, health and welfare of Californians with developmental disabilities.

Reduce costly institutional expenditures and increase the movement of individuals with developmental disabilities to quality community living arrangements.

- Consolidate Fairview and Lanterman DCs. While the ultimate goal is to develop community living arrangements for DC residents in the interim the State should consolidate these DCs and use the savings to offset other cuts to the DD community system.
- Plan to close one additional developmental center and using a planned and thoughtful approach move DC residents to quality community homes. This is a fiscally sound policy that will save the state money because it costs less to provide serves and supports in the community than in an institution. It also ensures that California meets its Lanterman Act and *Olmstead* obligations.
- Immediately expand the geographic availability of Homes for People

with Special Health Care Needs (962 Homes) which include substantial nursing supports. These homes are being used for people who move from Agnews DC but there are many residents of the other DCs or who reside in other arrangements who need this type of small facility. While more costly than other community options, 962 Homes are less costly than DC care and provide a better life for their residents.

- Expand the Intermediate Care Facility – Developmentally Disabled Continuous Care Nursing waiver. ICF-DD-CN homes can support in the community people whose health care needs are even more substantial than the 962 Homes address. California is now limited to approximately 10 such homes. There are residents of DCs and sub-acute facilities who need this type of small facility. ICF-DD-CN Homes are less costly than DC care and provide a better life for their residents.

Increase Other Funds To Pay for DD Services

- Consider leasing the land from a closed or consolidated DC for housing development which would include a mixed-use development including housing for individuals with developmental disabilities.
- Expedite the conversion of community care facilities that serve 16 or more people with developmental disabilities -- increasing federal funds and complying with *Olmstead*. Federal waiver reimbursements are not allowable for facilities that serve 16 or more people unless certain standards are met. DDS has estimated savings of approximately \$10.7 million general fund due to increased FFP.
- Look at alternative ways to fund California's Early Start Program, such as Prop 10 funding.
- Maintain regional center expertise in areas such as special education and housing. When regional centers have expertise in these areas they can assist their consumers to access generic services reducing developmental disabilities system expenditures.
- Finalize a State Medicaid Plan Amendment to obtain \$44 million in federal money for the day program services used by people who live in Intermediate Care Facilities for the Developmentally Disabled.
- Require Supported Living Services to loan individuals money to meet

the costs of care during the initial period of time waiting to qualify for IHSS. IHSS will reimburse the cost of the loan once the person becomes eligible. It is estimated that there would be a \$6,790 savings for each new person in supported living.

- Update the Parental Fee Program applying to parents of children under the age of 18 who live in any out-of-home care arrangement, whether community or DC. The current fee was last fully adjusted in 1989. The proposed adjustment would provide relief from the fees to the lowest income families while adjusting the amounts billable to other families based on current data.

Look at New and Creative Ways to Provide Services and Supports for Individuals with Developmental Disabilities

- Create a state only self directed services program for individuals with developmental disabilities modeled after the waiver pilot program. This program would provide funding at 90% of the cost of the individual's current services and provide the individual with increased flexibility about how to spend those funds including the use of non vendored services.
- Eliminate multiple licensing requirements by the Department of Social Services and the Department of Health Services and consider making the Department of Developmental Services and the regional centers responsible for this function (including the authority to take corrective actions against providers when necessary). This is done successfully for supported living services and family home agencies. This will save state dollars by reducing state bureaucracy as well as improving life quality for people with disabilities.
- Review ways to reduce regional center operations costs including sharing administrative and fiscal functions such as electronic billing and funds transfer, communication, accounting, human resources, purchasing, training, insurance, etc.
- Review the way in which DDS conducts its quality assessment and eliminate redundancies such as the Annual Movers Study. This repetitive study performed every year on persons moved from the developmental center could be eliminated.
- Mandate the transition of consumers, who currently participate in site-based programs, into integrated community jobs which are accessed

through public transportation if at all possible.

- **Require Mediation to Resolve Regional Center Disputes.** To settle a dispute, it is generally cheaper to use a mediator than to go through administrative hearings, which involve more time and costs associated with a judge and attorneys. Mediation can help keep good relationships among consumers, families and regional center. By using more part-time mediators, the state could handle mediations and hearings more efficiently and save money. Currently mediation is optional for both consumers and regional centers – the law should be changed to make mediation mandatory for all.

Disability Rights California Supports Cost-Effective Budget Proposals Related To Movement from & Avoidance of Institutions

Disability Rights California supports the following proposed budget expenditures that make it possible for California to continue the process of assisting people to move from and avoid placement in the costly and segregated state operated developmental centers (DCs):

- The Community Placement Plan, budgeted for approximately the same amount as last year - \$78 million. - reflects what is actually needed to place individuals from the DCs to quality community homes and to deflect individuals at risk of DC admissions.
- Additional funding of \$3 million dollars is proposed to enhance regional center service coordinator staffing so that regional centers can participate in DC residents annual program plan meetings, visit and communicate with their DC consumers.²
- Mental Health Services Fund expenditures of \$740,000 to implement services to more effectively address needs of consumers who are dually diagnosed and experience high levels of institutionalization.

The Proposed Level of Permanent Cuts Will Cause Irrevocable Harm to the to the Community System and Are Contrary to the Obligation California Undertook to Its Residents with Developmental Disabilities

The Governor's proposed special session cuts of \$157 million total funds

² This proposal is associated with the Proposed settlement Agreement for *Capitol People First et. al. v. DDS et. al.* which was agreed to by the parties and is pending Court approval.

and the proposed FY 09-10 \$334 million dollars of general fund cuts (effectively \$500 million in services cuts when federal match dollars are included) to the DD budget, particularly when combined with proposed cuts to IHSS, Medicaid and other health and human services budgets, significantly increase the risk of abuse, neglect and harm to people with developmental disabilities living in the community. If enacted, these multiple and significant cuts will make it more difficult, if not impossible, for people with to live in their own homes, be independent and productive, work and participate in their communities.

Even if the state completely eliminated *all transportation services*,³ or *all in-home and out of home respite services*,⁴ or *all habilitation services*⁵ this would still not meet the proposed \$334 million general fund amount in the Governor's FY 09-10 proposal.

The Special Session proposal of a 3% Payment Reduction for Purchase of Services means community service providers who have been subject to frozen and capped rates since 2003 are additionally impacted and may go out of business, leaving regional center clients with fewer or no options for needed services. With fewer community services available, more people will be at risk for institutional placement, at a greater cost to the state.

The Special Session proposal of a 3% reduction to regional center operations achieved through eliminating service coordinator ratios for many consumers will result in caseloads of a size that will not allow service coordinators to do adequate person-centered planning and address the needs of many of their consumers. Further, lifting requirements for regional centers to have expertise in areas such as special education and housing is not cost-effective as it reduces opportunities to assist consumers to access generic services reducing DD system expenditures.

It appears that the requirement for regional centers to employ at least one consumer advocate who is a person with developmental disabilities would also be lifted. This is contrary to the values of the Lanterman Act and contrary to the First Lady's Employment Initiative.

While the 3% cuts will be harmful in the short run they may be necessary

³ \$208,664,000, November Estimate, Local Assistance for Regional Centers, 2009-10 Governor's Budget, Department of Developmental Services, January 10, 2009, p. A-1.

⁴ \$290,767,000, *Id.*

⁵ \$148,897,000 *Id.*

for 18 months in these difficult times. But there is no excuse for making the over \$157 million a year cuts permanent. To do so in combination with the \$334 million and the loss of related federal reimbursements will make it impossible to honor California's commitment to people with developmental disabilities as set forth in the Lanterman Act.

The DD Community System Budget Is Not Out-of-Control

Comments have been made that the DD community system budget growth is "out-of-control" or "too steep". Disability Rights California disagrees. Since 2003 the developmental disabilities system has experienced continuing rate freezes, lack of start-up funds for new services and underfunding of existing community services. Salaries for direct care staff are already insufficient to hire and retain staff with the ability to provide quality care. Additionally, services are not provided in the most integrated settings as required by both the Lanterman Act and ADA.

The need for growth in the DD community system budget is not solely responsive to the increase in total population of people with developmental disabilities. For example:

- Current DD population growth reflects the extraordinary increase⁶ in children with autism who often need intensive early intervention services that are very cost effective as they reduce the need for intensive services later in life.
- The current DD population includes many individuals⁷ who are approaching the age of transition from school services funded by the Education budget to adult services funded by the DD budget. Many of these young people and their families experienced full inclusion and community participation during their school years. They want community-based services and employment opportunities as they transition. They do not intend to move to group homes or work in sheltered workshops. Expanded supported living and supported work services required to meet the needs of these individuals contributes to budget growth.

⁶ For example, according to the October 2008 DDS Factbook, in June of 1995 there were 387 4-year olds in CA with autism. In June of 2007, there were 2,482 4-year olds with autism.

⁷ In June of 2007 there were 6,761 individuals in CA between the ages of 14 and 21 with autism (DDS Factbook, October 2008)

- The Governor's office as well as consumers, families and professionals in the DD system all speak to the benefits – social and economic – of people with developmental disabilities moving from segregated, sheltered day services to typical employment with needed supports. This shift is cost-effective in the long term but as with any system “retooling” an upfront cost exists. Once California is beyond its current economic emergency there must be funding for “start-up” of and/or conversion to new program models to meet this need.
- Moving people from the DCs to quality community care is cost-effective, however, these individuals often need intensive levels of support increasing the community services budget which is separated from the DC budget.

The Proposed Cuts Place A Disproportionate Burden on Community Services

There is a drastic imbalance of funding to the state institutions as opposed to community services for people with developmental disabilities. Quality community care can be provided at significantly less cost than institutional care thus it is fiscally unsound for California to continue reliance on this outdated model for providing needed services. In FY 09-10 California is projected to spend, on average, over \$286,000 dollars per person for the 2,404 DC residents. The proposed DC budget of \$689 million is 14% of the State's total budget for people with developmental disabilities (\$4,916,335,000)⁸. This extraordinary amount is expended on less than 1% of the developmental services case load, while funding for the 240,000 people receiving community services is further reduced. Moreover, the DCs are only being reduced by \$30 million from the FY 08-09 budget amount as compared to over \$600 million that is proposed to be permanently cut from the community.

The outdated nature of DC care and the current fiscal crisis makes it particularly inappropriate to expend \$32 million in capitol outlays for infrastructure modifications at the facilities. For example, the State proposes to expend close to \$4 million to install oxygen piping in the walls for care of medically-fragile consumers at Sonoma DC. Oxygen is currently provided without the piping. It is more appropriate to expend this \$4 million on the expansion of community 962 homes that can meet the needs of

⁸ Based on DDS' November Estimate Budget Year 2009-10 figures.

consumers who have special medical needs including the need for oxygen.

Similarly, while the Governor proposes to further cut payments to community care providers, it simultaneously proposes to provide an increase in rates to nursing homes – another model of institutional care.

The fact that quality community care can be provided at substantially less cost than institutional care is a primary reason why continued reliance on this outdated service model is fiscally unsound. But the key reason for developing alternatives to institutionalization across the nation is not cost; it is the value placed on quality of life and inclusiveness.

Disability Rights California recommends that in addressing the current budget shortfalls, the Governor and the Legislature ensure that the state institutions bear their fair share of the cuts and that the overall imbalance of funding be addressed.

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