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California's protection and advocacy system

**Disability Rights California's Proposals for
Values-Based Cost Savings in the Developmental Disabilities System**

Disability Rights California commends the recent efforts to reduce cuts to the developmental disabilities system to \$100 million. The original proposal to cut \$334 million in general fund (amounting to over \$600 million with the loss of federal matching dollars and on top of the 3% cuts to provider reimbursements and regional center operations) was too deep. We are hopeful that all stakeholders will be able to identify and agree to cost savings proposals that will avoid the imposition of additional cuts to provider reimbursements which will irreparably harm the community service system.

Disability Rights California urges DDS to consider the following principles and specific values-based cost savings measures in determining how to achieve the \$100 million reduction.

Budget decisions must reflect the values of inclusion, independence, and self-reliance for people with disabilities. Cuts that result in institutionalization and segregation result in higher costs to the State and move California in the wrong direction; such cuts do not advance compliance with the integration mandates of the Lanterman Act, Americans with Disabilities Act, and the *Olmstead* decision.

Budget decisions must not disproportionately target community services -- especially supports for living in one's own home or participating in community work and activities; instead reductions must be shared equally between the developmental center and community services budget.

Disability Rights California supports cost-savings measures that reorganize service system functions to eliminate unnecessary bureaucracy and administration. We are hopeful that the system, within the exigencies and realities of California's evolving fiscal situation, will continue to fulfill the promise of the Lanterman Act and while maintaining its entitlement to services.

While some of our suggestions will not result in *immediate* cost savings, we urge DDS to adopt and begin to implement these policies NOW so that savings can be realized in the near future. The failure to implement positive proactive structural reform measures NOW will result in ongoing service reductions, an inability to move the system forward towards employment, failure to address the needs of the expanding and maturing autism population and a system that is irretrievably broken.

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

- Create a voluntary, individual choices budgeting program that would provide capitated funding based on individual needs and increased flexibility about how to spend those funds including the use of non-vendored services.
- Increase Employment Options for Consumers. Require regional centers to assess all their adult consumers for employment and link them to appropriate resources to secure work opportunities, including state employment. See, *Controlling Regional Center Costs*, p. 87-88.¹ Reduce expenditures on non-employment related and segregated day programming. See, *Controlling Regional Center Costs*, p. 71-72.
- Shift the Ways In Which Transportation Services are Provided. Regional centers spend about \$200 million annually for transportation services. Substantial savings should be achievable in this area. See, *Controlling Regional Center Costs*, p. 72-74.
 - Require 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. See, *Controlling Regional Center Costs*, p. 74.
 - Mandate that a regional center can only vendor a newly developed or relocated program that has a site that is easily accessible to public transportation routes, or where arrangements have been made with the local public transit

¹ CONTROLLING REGIONAL CENTER COSTS, *Report to the Legislature, Submitted to fulfill the requirements of Section 102.5, Chapter 188, Statutes of 2007*, Prepared by the Department of Developmental Services, December 2007

authority to provide service to the new location. Disability Rights California believes exceptions must be possible in special circumstances where public transportation cannot be made available. See, *Controlling Regional Center Costs*, p. 73.

- Mandate that regional centers use the competitive-bid process for securing transportation services from a provider where the potential contract amount exceeds a specified dollar threshold. See, *Controlling Regional Center Costs*, p. 73.
- Require all adults to first be assessed for their ability to safely use publicly- funded transportation services before funding regional center contracted services. Consumers having the ability to use public transportation would be funded for mobility training, if needed, but would not be eligible for regional center contracted transportation services. See, *Controlling Regional Center Costs*, p. 73.
- Prohibit regional centers from purchasing contracted, door-to-door transportation when a residential and/or day program provider is available and has the potential to provide the transportation services for the provider's consumers. Regional centers would reimburse the providers for the cost of this additional service but at a rate less than traditional regional center-funded fixed-route contract services. See, *Controlling Regional Center Costs*, p. 74.
- Consolidate state licensing functions. Eliminate DSS and DHS licensing of programs/facilities for people with developmental disabilities and place streamlined versions of those functions within DDS and regional centers (including the authority to take corrective actions against providers when necessary). This is done successfully for supported living services and family home agencies where agencies contract to provide services without being licensed. Quality monitoring and quality assurance can be provided through DDS/regional centers/service providers/families and consumers. This will save state dollars by reducing state bureaucracy, as well as improving life quality for people with disabilities.
- Leverage Developmental Center Land to Expand Housing for Consumers Living in the Community. There is an increasing need for

affordable housing for consumers who are able and interested in living in their own homes or apartments. Such housing is more cost effective than receiving services in staff-operated, 24-hour licensed residential living arrangements. Under this model, used with Harbor Village at Fairview DC, existing surplus state land is made available to develop community housing that includes units restricted for consumers. Upon expiration of the land lease, the state takes full ownership of the entire community complex. The state would use the value of the lease payments to subsidize rents and to make them accessible for prospective residents. Advantages of this option include (1) increasing the availability of affordable housing for consumers to meet future demand, (2) creating an affordable housing stock that will be available to consumers in perpetuity, (3) maintaining stability in consumers' living arrangements whenever a service provider is unable or unwilling to continue providing services, (4) reduce long-term General Fund expenditures for consumers' living arrangements and significant appreciation of state assets, and (5) promoting the intent of the *Olmstead* decision. See, *Controlling Regional Center Costs* p.90-92.

- **Require Mediation to Resolve Regional Center Disputes.** It is generally cheaper to settle disputes through a mediator than to go through administrative hearings, which involve more time and costs associated with a judge and attorneys. Mediation can also 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.

Increase Other Funds to Pay for DD Services

- 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. The advantages of this option include (1) ensuring families with resources are reimbursing the state actual costs for which they would otherwise be responsible if their children were living with them, and (2) creating a disincentive for

some families who otherwise may place their children out-of-home in costly publicly- funded living arrangements but for the liability of the parental fee. See, *Controlling Regional Center Costs*, p. 75.

- Loan individuals in Supported Living 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.

Institute Administrative Efficiencies for Regional Centers and Vendors

- Limit Regional Centers and vendors to administrative overhead of no more than 16%. Require regional centers and vendors to consider whether operations costs can be reduced by means including sharing administrative and fiscal functions such as electronic billing and funds transfer, communication, accounting, human resources, purchasing, training, insurance, etc.
- Establish an interagency dispute resolution process to resolve issue of who is payer of last resort and to get funding to the consumer while the issue is being resolved. There needs to be clarification of who pays for services between education, social services, mental health, and the developmental services system. See, *Controlling Regional Center Costs*, p. 95-96.
- Review the way in which DDS conducts certain quality assessment review activities. The repetitive Annual Movers Study performed every year on persons moved from the developmental center since 1993 could be eliminated. The Life Quality Assessment Process could be refined. Disability Rights California believes it is important to collect outcome-based information about service provision - not just satisfaction data. We do not want to see quality review resources lost which would be better redirected. It will be necessary to have stakeholder planning before taking savings in this area. See, *Controlling Regional Center Costs* p. 61-62.

Increase Federal Financial Participation that shifts the financial burden from being solely on the state general funds. Maximizing the use of federal funds is beneficial of all involved in California's developmental disabilities system

- Expedite the conversion or downsizing of community care facilities that serve 16 or more people with developmental disabilities -- increasing federal funds, providing affected consumers more integrated and homelike living arrangements and all the benefits such environments confer and complying with Olmstead. Federal waiver reimbursements are not allowable for facilities that serve 16 or more people unless certain standards are met. Specifically, impose a statutory requirement (1) prohibiting, prospectively, regional centers from vendoring, or placing consumers into, any large (greater than 15 beds) Department of Social Service-licensed facilities that do not qualify for Waiver reimbursement, and (2) mandating that existing large facilities ineligible for Waiver reimbursement to downsize or reconfigure their facilities to become Waiver certifiable within 36 months, or to face specified sanctions. DDS estimated savings of approximately \$10.7 million general fund due to increased FFP. See, *Controlling Regional Center Costs*, p. 69 -71.
- Finalize a State Medicaid Plan Amendment to obtain ongoing yearly savings of \$44 million in federal money for the day program services used by people who live in Intermediate Care Facilities for the Developmentally Disabled.
- Increase the number of people who can be served on California's Home and Community Based Waiver. Eligibility for waiver services needs to be expanded as broadly as possible; DDS needs to make certain the waivers maximize the number and variety of services that may be billed for FFP. Then, California must bill for all allowed services such as transportation.
- Ensure that every waiver slot is filled – As of October 1, 2008, the number of DD waiver slots is 85,000. It's scheduled to go up to 90,000 slots on October 1, 2009. DRC understands that there are generally about 5000 fewer people enrolled than the maximum number of waiver slots. Ensure that each regional center utilizes the waiver to the full extent possible.

- 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, draw down FFP and provide a better life for their residents.
- Determine as early as possible if consumers eligible under Early Start “status 2” are eligible under the Lanterman Act and thus can be added to the Home and Community Based waiver and thus generate FFP.

Reduce Costly Institutional Expenditures and Increase the Movement of Individuals With Developmental Disabilities to Quality Community Living Arrangements.

- Although the developmental centers (DCs) technically have a separate budget, funds saved in the developmental centers should be used to offset cuts required in the community services system.
- 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 two DCs. 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)². This 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. Disability Rights California requests that an assessment of the process for and savings possible from consolidation of two DCs be completed expeditiously.
- 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

² Based on DDS' November Estimate Budget Year 2009-10 figures.

the community than in an institution. It also ensures that California meets its Lanterman Act and *Olmstead* obligations.

- Delay or discontinue all capital expenditures in the DCs and use these funds to offset cuts required in the community services system.
- 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 current DC residents in the community people whose health care needs are even more substantial than the 962 Homes can address. (See section on “Increase Federal Financial Participation.”)
- Expedite reduction in the size of some institutional community care facilities for people with developmental disabilities – this will also increase federal funds. DDS estimated savings of approximately \$10.7 million general fund due to increased FFP. (See section on “Increase Federal Financial Participation.”)
- Develop a unified budget for all services purchased for people with developmental disabilities. Regional centers should receive and pay monies for the cost of placement regardless of type of placement, e.g. developmental center, skilled nursing facility, etc. The budget needs to be “unified” regarding DCs, ICFs and SNFs. This would encourage and support regional centers in moving people out of developmental centers and other 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:
 - 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. (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.)
- 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.

Budget Cuts Which Narrow Eligibility for Regional Center Services, Limit Consumer Choice and Opportunities and Impair the Provision of Inclusive Supports such as Homes of One's Own, Employment and Community Participation Should Be Resisted.

Disability Rights California **firmly opposes** the following cost containment options.

- Reduce or Eliminate Clients Rights Advocacy services. See, *Controlling Regional Center Costs p. 63-64*. To ensure access to supports and protect consumers' legal rights to services in a challenging fiscal climate, the independent advocacy services provided by the Office of Client's Rights Advocacy (OCRA) are essential. This program ensures statutory obligations are met to uphold the rights of persons with developmental disabilities, and that laws, regulations, and policies on the rights of person with developmental disabilities are observed and protected for those person's in society who are the least capable of advocating for themselves. OCRA served, on the average, one out of 10 regional center consumers during the past six months, either through access to generic or regional center services or training.
- Limit regional center eligibility by eliminating the fifth category or

redefining substantial disability. See, *Controlling Regional Center Costs* p. 66-67.

- Adopt statewide cost-containment regulations, or otherwise limit the scope of allowable regional center purchases. See, *Controlling Regional Center Costs* p. 68-69. Developmental disabilities uniquely impact each individual. The Legislature understood this reality and wisely decided that a system that supports people with developmental disabilities would, by definition, have flexible, creative and innovative services and give each consumer and their families a voice in the choice of type of service and service providers. The system is also based on the concept of locally responsive regional centers with local boards.
- Apply means testing to all consumers and services. See, *Controlling Regional Center Costs* p. 77.
- Limit regional center funding to consumers enrolled in the waiver and /or Cap enrollment and establish waiting lists for regional center services and/or eliminate services to school-age children. See, *Controlling Regional Center Costs* p. 80-82, 84-86. These proposals would eliminate the entitlement to Lanterman Act services for many Californians with developmental disabilities.
- Limits on Eligibility and Availability for Supported Living Services – either through the long impending regulations or other methods. See, *Controlling Regional Center Costs* p. 55-56. Supporting people with all levels of severity of disability in homes of their own is consistent with the Lanterman Act and *Olmstead*. Supported Living Services must be funded and regulated in a manner which ensures statewide availability for people at all levels of disability. However, we believe that there are cost-efficiencies that can be made in some areas such as requiring small providers to share overhead expenses and providing the opportunity for consumers to share supports where they choose to do so.

Disability Rights California has significant concerns with proposals for the following cost-containment options, although we would be willing to work towards acceptable proposals in these areas.

- Establishing a definition of cost-effectiveness. See, *Controlling*

Regional Center Costs, p.64. We are concerned that the definition crafted would subvert the individualized needs determination process by overwhelming other relevant considerations during the planning process and could result in group or segregated options prevailing over a person's choice of a more inclusive option if they are considered to be in the same area of service. While cost-effectiveness is required by the Act, the use of least costly service options that do not meet an individual's needs and choices and are not the least restrictive, most integrated options is not supported by the language of the Act. The Lanterman Act preference for supporting people to live as their peers without disabilities do in typical inclusive environments must not be weakened.

- Revise the Family Cost Participation Program. See, *Controlling Regional Center Costs, p. 76.* The Family Cost program was increased last year, thus, any further increases must be done with great caution so that families are not unduly burdened and as a result consumers do not get the supports they need.
- Rate and Service Code Standardization including regulations defining miscellaneous service codes. See, *Controlling Regional Center Costs, p. 53.* While the uniform availability of types of supports across the state has some attraction, Disability Rights California firmly opposes any standardization efforts that amount to bringing all services down to the lowest common denominator. We further oppose regulations that restrict regional centers from having the flexibility under miscellaneous vendor codes to provide the supports people actually want and need. Flexible supports are often more cost-effective and undue statewide limits will prevent these locally created and cost-effective models from being developed in the future and utilized as they now exist.