



**LEGISLATION &  
COMMUNICATIONS UNIT**

1831 K Street  
Sacramento, CA 95811-4114  
Tel: (916) 504-5800  
TTY: (800) 719-5798  
Intake Line: (800) 776-5746  
Fax: (916) 504-5807  
[www.disabilityrightsca.org](http://www.disabilityrightsca.org)

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May 18, 2020

The Honorable Joaquin Arambula, MD, Chair  
Assembly Budget Subcommittee #1 on Health and Human Services  
California State Capitol Sacramento, CA 95814

The Honorable Richard Pan, MD, Chair  
Senate Budget Subcommittee #3 on Health and Human Services  
California State Capitol Sacramento, CA 95814

Re: Governor's May Revision Proposals

Dear Dr. Arambula and Members of Subcommittee #1 and Dr. Pan and  
Members of Subcommittee #3:

We appreciate and recognize the enormous challenge associated with economic and budgetary impact resulting from the COVID-19 pandemic and the challenge that it presents to maintain services for those who have been most impacted by the pandemic itself, such as persons with disabilities, the elderly, persons of color and low-income individuals and families. Unfortunately, we believe that many of the proposed program reductions, whether they are proposed as reductions or "trigger" reductions, fall squarely on those individuals who have disproportionately borne the impact of the COVID-19 virus on their health and lives thus far. The proposed reductions will, quite simply, and disproportionately, impose more harm on the most vulnerable on top of the ongoing harm they continue to suffer.

We have not been able to fully analyze the proposed trailer language, where posted, but we make the following recommendations and offer our positions:

**Community Adult Based Services (CBAS)/Multipurpose Senior Services Program (MSSP) – Oppose.** The May Revision proposes to eliminate the CBAS program effective January 1, 2021 and MSSP July 1 for a full year GF savings of \$255.8 million and a loss of the equivalent FFP. **We are strongly opposed to this proposal.**

CBAS is a community-based health program that provides health and social services to seniors and adults with disabilities who are at risk of institutional placement. CBAS serves approximately 36,000 people, 34,679 of whom are Medi-Cal eligible. Participants in the program are individuals with Alzheimer's dementia, serious psychiatric disabilities, other cognitive disabilities and/or significant health issues such as heart disease, cancer or Parkinson's disease. Most participants require care and supervision by family members and other caregivers around the clock; for every CBAS participant, there is an estimated 1-2.5 family caregivers who are involved in their lives and care. CBAS provides both the medical care and supports needed for these individuals to remain at home. If services are not provided seamlessly, in accordance with existing plans of care, these individuals will be forced into nursing facilities or face hospitalization, or even death.

The MSSP waiver program provides home and community-based services to Medi-Cal eligible individuals who are 65 years or older and have disabilities, as an alternative to nursing facility placement. MSSP has an enrollment cap of 12,000 people and provides community-based case management, linkages to other needed services, and can fund or purchase some services needed to help participants remain in their homes.

The CBAS and MSSP programs serve extremely vulnerable seniors and people with disabilities who must be at risk of institutional placement in order to participate. These programs are an essential component of California's home and community-based services system and help the state to ensure compliance with the United States Supreme Court's Olmstead decision. They are a lifeline for thousands of seniors and people with disabilities; elimination of these programs will decimate community supports for people who need them most, at a time when institutional placement is a deadly alternative.

There could hardly be a more short-sighted reduction included in the May Revision. CBAS programs continue to provide one of our state's primary alternatives to skilled nursing facility placement and institutionalization.

Nearly half of all deaths related to COVID-19 in California are linked to elder care facilities according to the LA Times.

<https://www.latimes.com/california/story/2020-05-08/california-coronavirus-deaths-nearly-half-linked-to-elder-care-facilities>. Forcing individuals into institutions at this time, or even into the future, is not only fiscally imprudent but it is dangerous. We are inflicting additional harm onto the individuals who have already borne the greatest part of the health risks and deaths.

Not only are these cuts short-sighted but they are also illegal. Following the same proposed reductions in 2009, DRC was one of the counsel that represented CBAS participants in class action challenges to proposed cuts to, and eventual elimination of the Adult Day Health Care Medi-Cal benefit (now the CBAS program). In issuing two separate preliminary injunctions, the federal court, budget problems notwithstanding, found the state could not abdicate its duty to ensure continuing compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act and that restrictive eligibility standards would likely violate comparability and reasonable standards requirements under Medicaid law, in addition to violating the ADA and Section 504. The case was settled creating the CBAS program. We will provide the subcommittee under separate cover a further analysis of that litigation.

### **Intellectual and Developmental Services**

We recognize and are appreciative that the May Revision maintains the entitlement to services for individuals with developmental disabilities. However, the spending proposals that are being withdrawn, such as better regional center (RC) caseload ratios for children and provider rate adjustments, as well as the trigger cuts in the absence of additional funding, cannot be viewed in isolation. Individuals with intellectual and developmental disabilities and their families – already in vulnerable positions made worse by the pandemic – will also face a combination of cuts from the other publicly funded programs on which they depend.

- **Provider Rates.** The May Revision proposes a \$300 million provider rate reduction unless the state receives additional federal funds that would trigger this reduction. Stakeholder engagement will be a critical

component of this process, especially if the \$300 million in cuts associated with provider rates and expenditure trends must be realized. A framework for these cuts must also be developed: one which reflects the principles of community integration, employment, autonomy, and choice at the heart of the Lanterman Act. Care must be taken not to worsen the purchase of service disparities that impact communities of color. Opportunities for federal funding must be maximized. Home and community-based services must be shielded from cuts, and California must accelerate its transformational efforts to move away from the large congregate programs that will not qualify for federal funding under the home and community-based settings rules.

- **Regional Centers Operations Budget.** The May Revise proposes a \$30 million cut in Regional Center operations in 20-21 and \$55 million ongoing along with TBL that requires consumers and families have necessary information to access needed services; service needs are well coordinated and timely; cultural and linguistic values are honored; and person-centered outcomes and consumer and family life quality and satisfaction are achieved. We believe that TBL should also provide that reductions should be made in a transparent process and ensure minimal impact on services to consumers. To that end, cuts should not eliminate service coordinator positions or direct consumer services.
- **Maximizing Federal Funding Opportunities.** The May Revise proposes to save GF costs between \$27 and \$40 million by requiring all consumers to apply for all funding sources for which they are eligible. The proposed TBL focuses on expanding Medi-Cal and waiver eligible services. While we support maximizing FFP eligible services, the proposed TBL places all obligations on consumers and their families and provides no due process protections while ignoring the actual barriers causing the failures to establish federal Medicaid eligibility. Preliminarily, the major concerns with the TBL include:
  - The process does not include any meaningful obligation on the RCs to provide assistance, as needed, to consumers in making and pursuing the Medi-Cal application;
  - The process does not include any good cause exceptions for consumers in circumstances when they should not be forced to apply;

- The failure to apply for Medi-Cal benefits within 90 days results in the consumer being forced to reimburse the Department the federal portion of the cost of any services received after the ninetieth day by the consumer that would have received Medi-Cal waiver funding. **We are opposed to any requirement that would place on the consumer the federal costs** especially when there are no due process protections including notice or hearing rights built in to the statute;
- There has been no documentation that substantiates where the barriers for making Medi-Cal applications either for Medi-Cal or institutional demining benefits have resulted in unclaimed benefits. Before imposing the application requirement, we should understand the barriers that have resulted in unclaimed benefits such as bureaucratic limitations in the RCs and county Medi-Cal offices, lack of RC assistance, and fears and beliefs of the impacts of filing for federal benefits.
- See also, *Increasing Uptake of Federal Funding to Support California's Regional Center System*, Stanford Intellectual and Developmental Disabilities Law and Policy Project, 2019, pp. 51-56 for additional strategies and protections. <https://www-cdn.law.stanford.edu/wp-content/uploads/2019/07/FEDERAL-LANTERMAN-FUNDING-REPORT-7-10-19-FINAL.pdf>
- **Porterville Developmental Center Bed Expansion – Oppose.** The January budget and TBL proposed a temporary 20-bed expansion of institutional care at Porterville Developmental Center. This proposal unnecessarily shifts funding away from vital community programs. This proposal is neither adequate or necessary to solve the problem we collectively seek to address: the increasing numbers of individuals with intellectual and developmental disabilities languishing in jail while awaiting admission to Porterville, who have been found incompetent to stand trial.

Rather than expanding the capacity at Porterville to admit individuals in jail waitlisted for admission, the Department must instead ensure that individuals who are ready to be discharged from Porterville can return to their communities without further delay, creating space for new admissions.

We have also provided committee staff language to give courts the additional discretion to divert individuals with intellectual and developmental disabilities from being inappropriately funneled into jails in the first place.<sup>1</sup> Today, diversion is more important than ever as jails and other detention facilities remain among the most dangerous places for mass transmission of COVID-19. Outbreaks among people in custody and detention facility staff have already occurred in multiple jurisdictions, including in San Francisco, Riverside County, Orange County, and Santa Barbara County.

## **IHSS**

**7% Reduction in Service Hours - Oppose.** We share in the comments submitted by UDW letter submitted to the subcommittee. As they noted, reinstating the 7% reduction in services hours will be devastating for IHSS consumers. It is important to note that consumers, in order to be eligible, must submit certification by a licensed health care professional that without IHSS they would be at risk of placement in out-of-home care. A consumer assessed by a county social worker as needing the average number of monthly hours (116) will lose 8 of those hours – time which is needed for laundry or bathing or grocery shopping. A consumer who is assessed as needing the maximum number of hours (283) will lose 20 hours of services per month. We know from past experience IHSS clients will have to make choices about their care that no person should ever have to make. Providers and their clients will have to rush care or decide if they have enough hours available in a given day for a client to receive help with bathing or eating a meal. Additionally, the 7% reduction in service hours will result in 696 IHSS providers in the counties represented by UDW losing

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<sup>1</sup> Diversion is a well-recognized process to mitigate entry and reentry into the criminal justice system while protecting public safety, as well as to reduce the number of referrals to state-operated competency restoration programs. In 2018, the Legislature adopted Assembly Bill No. 1080, expanding the scope of diversion for defendants with mental health disabilities to include misdemeanor or felony offenses. This moved the focus of diversion away from the specific condition of the person or offense and instead towards a tailored inquiry about if the person could benefit from diversion. However, diversion of individuals with intellectual and developmental disabilities remains unnecessarily restrictive, only covering individuals with certain developmental disabilities who are charged with low-level misdemeanor offenses. [Return to Main Document](#)

their health insurance because they no will longer be working the minimum number of hours to remain eligible.

**Medi-Cal.** The budget revision withdraws a series of provisions from the January budget and includes additional trigger cuts contingent on federal funding.

- The proposals withdrawn include:
  - Full Scope Medi-Cal to Undocumented Older Adults – **Oppose.**
  - Medi-Cal Aged, Blind, and Disabled Income Level Expansion and the Part B Medicare disregard. – **Oppose.**
  - Postpartum Mental Health Expansion – **Oppose.**
  - Hearing Aids for Children up to 600 percent of Poverty – **Oppose.**
- The proposals subject to a trigger contingent on federal funds include:
  - Adult Dental and Optional Benefits – **Oppose.**
  - Estate Recovery – **Oppose.**
  - Skilled Nursing Facilities to Support COVID Response – **Support.**

**SSI/SSP - Oppose.** The budget revision includes no increase for the State Supplemental Payment (SSP), which was reduced over 12 years ago to the federal minimum of \$156 a month unless a restoration is triggered by increased federal funding. It proposes to withhold and absorb the anticipated federal January 2021 cost-of-living adjustment to the SSI portion of the SSI/SSP portion of the grant. That will result in \$33.6 million fewer benefits going to persons with disabilities and the elderly, those currently most impacted by the COVID pandemic.

We appreciate your consideration of our positions and look forward to working with your staff on these issues.

Very truly yours,



Curtis Child  
Legislative Director  
Disability Rights California

CC: Members of Assembly Subcommittee #1  
Members of Senate Subcommittee #3  
Nicole Vasquez, Deputy Chief Consultant, Assembly Budget Committee  
Andrea Margolis, Consultant, Assembly Budget Committee  
Gail Gronert, Consultant, Speaker's Office  
Agnes Lee, Consultant, Speaker's Office  
Renita Polk, Consultant, Senate Budget Committee  
Scott Ogus, Consultant, Senate Budget Committee  
Mareva Brown, Consultant, Pro tem's Office  
Marjorie Schwartz, Consultant, Pro tem's Office  
Daphne Hunt, Deputy Secretary, Health and Human Services Agency  
Marko Mijic, Deputy Secretary, Health and Human Services  
Richard Figueroa, Deputy Cabinet Secretary, Office of Governor Newsom  
Tam Ma, Deputy Legislative Secretary, Office of Governor Newsom  
Nancy Bargmann, Director, Department of Developmental Services  
Bradley Gilbert, Director, Department of Health Care Services  
Kim Johnson, Director, Department of Social Services  
Kim McCoy Wade, Director, Department of Aging