



**LEGISLATION & PUBLIC
INFORMATION 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

**Assembly Budget
Subcommittee #1: Health and Human Services
Evelyn Abouhassan
March 1, 2017**

About Disability Rights California

Disability Rights California (DRC) is the federally mandated protection and advocacy system and works to advance dignity, equality, independence, and freedom of Californians with disabilities. DRC would like to thank the Administration for including budget proposals in the January budget that strengthen the community system such as: broadening the use of community placement funds to develop services for individuals with complex needs; and proposals that promote employment for individuals with developmental disabilities by allowing school-aged regional center consumers access to paid internships. We appreciate the opportunity to provide testimony before the Assembly Budget Subcommittee #1 on Health and Human Services today.

Continuing to Ensure a Comprehensive Community Safety Net and Trailer Bill to Expand use of CPP Funds

As we move away from institutional care with the closure of Developmental Centers, the community will be the safety net for the nearly 318,000 regional center consumers in 2017-18. We support mechanisms to strengthen the community safety net and the Governor's trailer bill proposal to expand Community Placement Plan (CPP) funds to address the need for services and supports for consumers living in the community.

Specifically, DRC recommends the following:

1. A range of supports, not just crisis services and residential placement, is necessary for a well-functioning safety net system.

Prevention should be the primary focus of California's safety net, and California should address enhancements to current systems where necessary. For example:

- a. Clients with dual diagnosis need appropriate treatment by mental health professionals. These professionals need training in working with people with developmental disabilities both during their initial schooling and in continuing education.
- b. We recommend funding for dental coordinators at each regional center way as a way to increase access to dental services, by either assisting consumers or families in accessing Denti-Cal or by quickly determining that the regional center can fund these services when Denti-Cal cannot.
- c. We also suggest changes to the Denti-Cal program that will better meet the needs of regional center consumers, such as increasing the rates for anesthesia dental care and common preventive dental care. We also support "desensitization fees" similar to that offered by some other states for dentists who become certified. This fee would compensate dental providers for the additional time or expertise required in serving consumers with disabilities

2. Strengthening crisis capacity for individuals with developmental disabilities

- a. Continuing the state's role in the operating or overseeing small, time-limited crisis homes is important. The state-run, short-term acute crisis units have been very successful as a placement of "last resort," in part because the state has demonstrated a commitment to ensuring that all steps are taken to resolve the crisis and to return individuals to the community, including removing bureaucratic barriers to community placement. We recommend a continuation of this model during and after the developmental centers close and suggest considering small state-operated facilities in local areas.
- b. Additional crisis capacity, meaning non-state run, should also exist throughout the state so individuals are not traveling long distances during a crisis. However, we are concerned that the state has yet to

issue regulations governing community crisis homes, which must be developed prior to the operation of these homes.

- c. Lastly, individuals must be able to access residential-based crisis services without fear of losing their current placement when they are ready to return home. Mechanisms should be developed to ensure that placements are held unless or until there is a determination through the individualized program planning process that the person is unable to return to their former placement.

3. Broaden the use of CPP funds to enhance the safety net.

- a. We support the Governor's budget proposal to broaden the use of CPP funds to include additional community resources, and hope this will provide a mechanism that allows startup, support, and innovation in a way that enhances California's community supports and safety net services.
- b. Priority should be given to proposals that create resources that help maintain individuals in their current home, such as mobile crisis support, wrap-around services, or enhanced rates or staffing. These funds should also assist individuals who reside in "community institutions." DRC continues to be concerned about the lack of movement of individuals from mental health facilities including Institutes of Mental Disease (IMDs). Too often regional centers do not develop plans or move individuals in IMDs within the statutory timelines.

4. Modify the median rate exception process to reflect the immediate needs of people who are in crisis.

The process to secure rates that exceed the statewide median does not meet the needs of individuals in crisis because it is too lengthy and cumbersome, requiring the approval of both the regional center director and the Department of Developmental Services (DDS). This process must move faster or be modified to address the immediate needs of people who are in crisis.

To this end, we recommend median rate exemptions for people in crisis or who are otherwise at risk of placement (or who live) in costly institutional settings. Alternatively, the regional center should be able to make individualized median rate adjustments when similar exceptional circumstances exist.

5. *Reducing service coordinator caseloads for individuals who are living in restrictive settings or receiving residential crisis services.*

DRC encourages reduced service coordinator caseloads for individuals who are receiving crisis services and are placed in IMDs or crisis units. These individuals are likely to be the same individuals who would have been placed at developmental centers.

Current law requires a reduced case load for individuals who are moving from developmental centers to the community. This has been an important element for their successful transition and we encourage a similar approach for individuals who are in crisis or locked facilities in the community.

DRC Positions on Other Proposed Budget Trailer Bill Language

Home- and Community-Based Services (HCBS) Waiver Authority

DDS is proposing trailer bill language to issue policy directives in advance of emergency regulations to align state and federal HCBS regulations prior to the March 2019 deadline. Compliance with the HCBS regulations by March 2019 is required for continued federal funding. DRC supports the Administration's proposal to issue guidance. We are concerned that the federal regulations could be repealed and suggest adding key elements of the federal requirements to the Lanterman Act. Those would include the definition of person-centered planning and the settings requirements specifically around consumer choice.

Trailer bill language that allows consumers aged 18-22 to participate in paid internships

The Administration's proposed trailer bill allows consumers aged 18-22, who are still receiving educational services, to participate in paid internships for the purpose of gaining experience in competitive, integrated job placement. DRC supports this change as data from the most recent 2015 National Report on Employment Services and Outcomes shows a decline in the number of individuals served in integrated employment from 15% in 2007 to 12% in 2014.

Current law prohibits regional centers from purchasing a number of services including those related to employment, for a consumer 18 to 22 years of age, if the consumer is eligible for special education; and has not received a diploma or certificate of completion, unless the individual

program plan (IPP) planning team determines the consumer's needs cannot be met by the educational system or an exemption is granted. The proposed trailer bill language makes changes to the law and allows consumers 18 to 22 years who are receiving educational services to also participate in a paid internship.

Increasing competitive integrated employment outcomes for individuals with developmental disabilities is consistent with the Lanterman Act, the state Employment First Policy and Employment Blueprint developed by the Department of Developmental Services, Department of Rehabilitation and the Department of Education. In addition to supporting the proposed trailer bill language, we also encourage the Administration to broaden the proposal to allow regional centers to purchase other services that are currently prohibited from purchase pursuant to Welfare & Institutions Code section 4648.55(a), if they are needed by the consumer.

DRC also proposes that unspent purchase of service (POS) funds, which the Department of Developmental Services proposes to use for developmental center disallowed costs instead be redirected to fund and develop employment programs that meet the state Competitive Integrated Employment Blueprint and Workforce Innovation Opportunity Act (WIOA) standards.

Trailer bill language regarding reports of employment outcomes by regional centers

The Administration's proposal requires regional centers to include consumer employment outcomes in their annual performance contracts to assist the state in measuring progress towards increasing competitive integrated employment opportunities for individuals with developmental disabilities.

While we support the Department's efforts to require regional centers to "measure progress, and report employment outcomes," the proposed trailer bill language only addresses two elements of the Blueprint. The trailer bill also creates confusion because the language ties it to Employment First language rather than Work Force Innovation Opportunity Act language in the Blueprint.

DRC suggests the additional measures from Competitive Integrated Employment Blueprint developed by the Department of Developmental Services, the California Department of Education and the Department of

Rehabilitation be included in these outcome measures. The number of consumers who:

- have a goal in their individualized program plan to obtain integrated competitive employment.
- are receiving integrated competitive employment.
- are age 24 or younger in a job earning subminimum wage, or lower and,
- are in an employment setting that does not meet the Medicaid HCBS regulations found at 42 Code of Federal Regulations (CFR) 430 et seq.

Trailer bill language that updates service rates for supported employment and vouchered community-based training services that increased under the provisions of ABX2-1.

Proposed trailer bill language updates the rates for supported employment and vouchered community-based training services that were adjusted as a result of the special session in March 2016 in AB 2X-1.

The proposed trailer bill will update the hourly rate for individual and group supported employment to \$36.57; current statute indicates the rate is \$34.24. Additionally, the proposed trailer bill will update the hourly rate for vouchered community-based training services to \$14.99; current statute indicates the rate is \$13.47. DRC supports this proposal.

Trailer bill language that exempts from federal funding requirements for enhanced behavioral supports homes and community crisis homes with secured perimeters

Proposed trailer bill allows for the development of enhanced behavioral supports homes and community crisis homes with secured perimeters. The proposal amends current law to allow DDS to approve, at the discretion of the director, enhanced behavioral homes and community crisis homes to be developed with the utilization of delayed egress devices and secured perimeters, thus making them ineligible for federal HCBS funding.

Current law caps the size of licensed homes with delayed egress devices and secured perimeters at six beds. Community Crisis Homes (CCH) may be licensed for up to eight beds. Therefore, the proposed trailer bill language would also create an exception to the Health & Safety Code to

allow DDS to approve up to one third of CCHs with delayed egress devices and secured perimeters to exceed the six-bed limit.

DRC believes that the language needs to be strengthened to ensure that the secure perimeter/community crisis homes are within the current statutory cap. We propose that community crisis homes that use delayed egress and secured perimeter be no more than six beds rather than the eight proposed by the Administration.

Trailer bill language which transitions state employees to vendors

The Administrations trailer bill proposed language to clarify the point at which a DDS employee must terminate state employment when they enter into an agreement to develop a service and become a regional center vendor. DRC understands the proposal provides needed clarity regarding the employment of current state employees in the community facilities and supports the change.

Other Issues of Concern for Consideration

Use of seclusion and restraint in community facilities

Last year, the Legislature amended Health and Safety Code section 1180.4 to prohibit the use of physical restraint or containment in Enhanced Behavioral Support Homes for more than 15 consecutive minutes unless regulations are issued authorizing an exception to the 15 minute maximum. In February 2017, the Department of Social Services filed these regulations through the emergency rulemaking process. As submitted, they govern the use of restraint and seclusion in a large array of licensed community settings, including Enhanced Behavioral Support Homes. While an improvement over prior drafts, we remain concerned that the regulations do not set maximum time limits for the continuous use of restraint or seclusion or multiple restraint or seclusion events in a 24-hour period. For example, as currently drafted, a facility administrator can approve extending a restraint or seclusion event indefinitely in 15 minute increments, without any outside limit. We have provided the Department of Social Services with proposed language to implement safeguards and would be happy to share the information with legislative staff as appropriate.

Reduction in purchase of services disparities

Purchase of service disparities are an ongoing concern in the regional center system. The most important action steps we can take is to ensure

that consumers from ethnic and language distinct communities have access to culturally and linguistically competent services. We suggest removing the suspension of social recreation and eliminating the respite cap. These often are the services most requested by low-income families and families from traditional minority communities. In the alternative, we also suggest exploring the ability to limit the lifting of that suspension to families who are exempt from the annual family program fee. To the extent the regional centers are not able to spend the funds dedicated for bilingual differentials, we believe those funds could be used for this purpose.

Ensure access to appropriate medical or dental Care without the necessity of pursuing a Medi-Cal appeal

During the 2009 economic crisis, the law was changed to prohibit a regional center from purchasing medical or dental services for a consumer three years of age or older unless the regional center is provided with documentation of a Medi-Cal denial, absent an appeal by the family. As a result, families are required to appeal any decisions denying their child access to critical occupational or physical therapy, speech and language services, or dental services before regional centers will agree to pay for the service. This happens even though the state will not save any money since the services are Medicaid eligible regardless of which agency provides the services.

The unintended consequence is that low-income families that use Medi-Cal do not have the time, resources or skills to appeal an adverse Medi-Cal decision and thus forego the service—which results in savings to the state. DRC recommends a legislative change which would forgo the requirement that families who are Medicaid eligible appeal the denial of a Medicaid service when the consumer's IPP team determines that the service would not be effective to meet the consumer's needs.