



November 4, 2010

Honorable Carol Liu, Chair
Senate Human Services Committee
1020 N Street, Room 521
Sacramento, CA 95814

Honorable Jim Beall, Chair
Assembly Human Services Committee
1020 N Street, Room 124
Sacramento, CA 95814

Dear Senator Liu and Assemblyman Beall:

Thank you for inviting me to represent the Association of Regional Center Agencies (ARCA) today at the joint hearing of the Assembly and Senate Human Services Committee. The role of our organization is to represent the twenty-one independent, nonprofit regional centers that serve over 240,000 of California's children and adults with developmental disabilities and their families. We serve as a vital link between the regional centers who serve as private contractors to the state and the Department of Developmental Services (DDS). ARCA allows for the DDS to communicate with one entity rather than work independently with each of the 21 regional centers.

The ARCA Board of Directors is comprised of all 21 regional center directors and a board member from each of the 21 centers. Our 42-member board includes consumers, parents, family members and community volunteers.

Overview of the developmental services system

The Lanterman Developmental Disabilities Services Act entitles a person with developmental disabilities to life-long supports and services so long as the Legislature appropriates the funds to do so. The Legislature mandated a statewide network of regional centers in 1969 as a community-based alternative to more costly state institutions. The charge and mission of the regional centers has been to maximize the potential of an individual with developmental disabilities and help ensure they can live full, inclusive lives in their communities. Over forty years later, we continue to take that charge seriously even in the midst of a growing population of people with developmental disabilities in California and their needs, coupled with our state's years-long fiscal crisis.

While all regional centers serve the same population as defined in statute and regulation and share a common mission, regional centers are private independent, nonprofit corporations. They are not satellite field offices of the Department. Each center is governed independently by its own board of directors. The composition of the board is mandated by statute to have at least 50% of its membership be family and people served by the regional center. However, one commonality all regional centers share is how activities and operations are highly regulated and governed by the Lanterman Act.

With me today is Tresa Oliveri, parent and board member of Regional Center of Orange County as well as immediate past president of ARCA. In the audience we are also joined by a number of regional center directors and their board members, who are also consumers, parents and family members.

The role of the regional center board is one that volunteer board members take seriously. They are the holders of the regional center's contract with the state and DDS. Regional center boards also govern the center's activities, operations, and policies to implement the Lanterman Act and all related statutes and execute personnel authority over the employment of the regional center's executive director. Regional center board meetings are governed by statute in Welfare and Institutions Code and open to the public, providing transparency and opportunities for community input on regional center activities.

Welfare and Institutions Code recognizes the uniqueness of regional centers and in fact states: "The Legislature finds that the service provided to individuals and their families by regional centers is of such a special and unique nature that it cannot be satisfactorily provided by state agencies. Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers." This public-private partnership has served the state well for the past 40 years by saving the state millions of dollars by among other things coordinating services with generic agencies, deflecting consumers from being placed into costly developmental centers and ensuring services are provided in the most cost-effective, cost-efficient way.

From its inception, the original intent of the Lanterman Act was that the regional centers would be different from one another, each reflecting the needs and values of its community. California is a large and diverse state in its geography, populations, and economies. This diversity is reflected in how regional centers operate and in what services are provided.

Over the past forty years, we have seen the developmental services system evolve and change in how we deliver services, the type of people we are serving, and the level of care required to meet individual needs. Along with these changes in service delivery came increased oversight and regulation of the regional centers through statute, regulation and annual amendments to the regional center contract with the state. Amendments to the Lanterman Act and regulation have increased mandates to regional centers over the years as additions have been made providing protections to all parties connected with the regional center system.

General response to the Bureau of State Audits report on the Department of Developmental Services

We wish to thank the committee for this opportunity to address the findings of a recent audit of the Department of Developmental Services conducted by the Bureau of State Audits as well as respond to additional questions posed to ARCA by committee staff. Regional centers are committed to working with the Department and the Legislature to address findings and recommendations addressed in the report. The regional centers view this audit as an opportunity to make positive changes and are taking steps to improve their systems and procedures where needed.

We appreciate the efforts of the Bureau to conduct a thorough review of the regional centers, their programs, policies and procedures. In surveying the regional centers, we were surprised at the low rate of response by both regional center staff and service providers to the Bureau's survey questions. Of the over 37,000 non-family vendored service providers, only 3,000 were surveyed and of those 3,000, the Bureau received only 254 responses. We concur with the Bureau that they were not indicative of systemic issues with the regional center system. The Bureau "did not uncover any systematic pressure to select favored, yet less qualified, vendors at any of the regional centers."

While the response rate was slightly higher for the regional center employee survey, it was important for us to note that only six of the twenty-one centers were surveyed. Although one of the highest number of respondents was 148 from Inland Regional Center (where approximately 600 staff work) it was our understanding that there were no controls in place to prevent an employee or former employee from responding to the survey more than once. Given the low response rate, we believe some of the concerns expressed may not entirely be representative of the over 6,500 employees of the regional center system.

Least costly vendor and vendor selection process¹

Given the high level of oversight from the state through the Department and other state and federal entities, regional centers are still independent corporations. According to the 1985 California Supreme Court decision, *Arc v. Department of Developmental Services*, "...the regional centers and DDS have distinct responsibilities in the statutory scheme: that of the regional centers to provide each developmentally disabled person with the services to which he is entitled under the Act; that of DDS is to promote the cost-effectiveness of the operations of the regional centers, but not to control the manner in which they provide services." ARCA believes this ruling places the direct responsibility of providing services on the regional centers with clear, cost-control oversight from the Department.

While the BSA report seeks solutions addressing what it purports to be flaws in the regional center rate-setting process, ARCA believes that increased requirements will decrease regional center flexibility to work with providers to continue serving consumers in this difficult fiscal environment. Not all areas of the state have the same providers; service availability and variability differ from region to region around the state.

The family members who participated in the design of the regional center service delivery model were building a decentralized model that did not mimic the state-hospital system. They were seeking an alternative to the "one size fits all" life offered by the developmental centers. As a result of this philosophy, the heart of the service delivery system is the Individual Program Plan, or IPP. During this process consumer and their families meet with the regional center service coordinator to discuss the consumer's progress, their needs, and to determine which services should be purchased by the regional center and which can be provided by a generic agency. In choosing a service provider, there are a number of factors considered only one of which is the "least costly" factor. Of primary importance is the service provider's ability to meet the needs of the consumer as stated in the IPP.

It is important to note that on the issue of "least costly vendor," that determination can only be made based on information as it is available and submitted to the regional center for cost comparison purposes. At times, the information submitted by the vendor makes it difficult, if not impossible to do a valid comparison to ascertain which comparable service costs less. Some programs are not an exact duplication because there are elements that may better meet a consumer's needs not available in another program offering similar services.

The developmental services system has been subject to numerous budget reductions over the last decade. As a result of these reductions, regional center service coordinator caseloads have risen far beyond ideal limits for quality consumer services. Given the current caseloads, requiring overextended service coordinators to document rates of all possible programs and the reason for choosing one program over the others in a consumers' IPP, as recommended in the BSA report is an unrealistic expectation.

Vendor selection process

Vendor selection is a multifaceted concept. As described above, vendors are selected to provide specific services to a consumer in the IPP process. Vendor selection as it pertains to which service providers a regional center shall vendorize is a different matter. Under current regulations, regional centers are required to vendor any service provider who meets the minimum requirements for the services they are offering whether or not any consumers require that service. Regional centers purchase services to meet the needs of the consumers, not the needs of the service providers. Just because a service provider is vendored, there is no guarantee that consumers will need or want those services.

¹ In response to Question #3 – "What is ARCA's interpretation of least costly provider and how are regional centers implementing this provision?"

In certain circumstances, when a regional center is soliciting the creation of a new service to meet specific unmet needs, a regional center may use a Request for Proposal (RFP) process. A majority of regional centers had written procedures for their RFP process before the BSA audit was performed. Recent contract amendments have clearly outlined a new process by which contract opportunities will be made public and the remaining regional centers are developing RFP procedures which will be approved by their respective Boards and posted on their respective web sites.² Aside from this process, there are many service providers who develop services and seek vendorization from the regional centers unsolicited and outside the RFP process. In those cases, as noted above, regional centers must vendor them so long as they meet the minimum requirements.

It is important to note that while the RFP process may and can be used in certain instances to solicit creation of a new program or service, this process could result in the delay in vendorizing or timely implementation of a critical service to meet consumer needs.

The regulations contained in Title 17 describe how rates are set for various providers. The vast majority of residential homes are paid rates set by the Department. Most day programs have their rates set by the Department using cost statements, a detailed accounting of a program's actual costs; this document is developed by the providers and submitted to the Department. Most specialists and medical services are paid according to the Schedule of Maximum Allowances (SMA) set by the State. There are other services whose rates are the vendor's usual and customary rate as defined in Title 17 or, if the vendor does not have an established usual and customary rate, a negotiated rate pursuant to regulation.

In the past few years, negotiated rates have been subjected to the median rates established by the Department. New providers cannot be paid a rate that is more than the lesser of the regional center's median rate or the statewide median rate for that service. Exceptions to the state median rate require approval from the Department.

Unfortunately, this has made it more difficult to attract new care providers to the system. With the changing face of consumers in our system and the complexity of needs due to evolving technology, old models of service are not always the most cost-efficient; however the existing rate setting methodology doesn't lend itself to attracting new care providers to meet changing needs.

The current service code system and accompanying rate setting methodologies allows some flexibility in how a regional center may provide needed services. As discussed earlier, not all areas of the state have the same availability of service providers. Regional centers have utilized this flexibility in vendoring service providers to secure critical services needed by consumers. Loss of this flexibility and increased restrictions could result in consumers not getting the services identified in their IPP.

A few residential homes developed through the Community Placement Plan are of a specialized nature and are eligible for a negotiated rate. The Community Placement Plan process, in these cases, provides a standardized methodology for determining what the negotiated rate should be.

Best practices at regional centers

ARCA does not have formally established statewide standards as uniform activities are dictated primarily through statute and regulation.

² In response to Question #12 – "What have regional centers done to implement DDS' new policy?" and Question #4 – "What new fiscal practices will regional centers put into place this coming year or in the future, including any implementation of audit recommendations?"

Discussion of and ideas around “best practices” in regional center-related activities, policies and information, are often shared at regional center directors meetings and meetings of the regional center administrators and chiefs of case management services. There is also a free-flow of information exchanged amongst all the regional centers as they work together and collaborate to best meet the needs of consumers.³ At the request of a regional center, ARCA will conduct surveys of other regional centers regarding best practices for a specified topic and disseminate this information accordingly. How this “best practice” may be implemented or administered is at the sole discretion of the regional center.⁴

The binding tie of common practices among all the regional centers is what is negotiated and mutually agreed upon in the regional center standard contract between the regional centers and DDS.⁵

The regional center system is highly regulated. The Lanterman Act and regulations control many aspects of how regional centers operate from the way their board are comprised and how they run their meetings, to the way IPP meetings are conducted, what services may be provided to consumers, how service providers are vendored and how they are paid. Both statute and regulations also describe the procedures to be followed if a consumer or vendor wants to appeal decisions by the regional center and also outline rights and restrictions regarding access to certain information due to consumer confidentiality laws.

Regional center transparency and accountability

On the subject of regional center records, consumers and their legal representatives have always had the legal right to access their case records. The public has had the legal right to review a regional center’s audited financial reports and tax returns. Regional centers also engage in common business practices and while much of their financial information is available for public review, some information remains proprietary and is not available.⁶ Depending on the number of requests for information, ARCA estimates there would also be a significant workload increase for staff time to process those requests, at a considerable cost. In addition to the regional center contract, statute and regulatory requirements outline the extraordinary amount of information regional centers are required to submit and report to the Department such as detailed expenditure data, employee position salary information, number of consumers served, consumer demographic information, vendor and rate information, purchase of service policies, and copies of annual audits by Certified Public Accountants (CPAs). In addition to providing this information to the Department, some regional centers also publish financial and other information on their websites for public review. Statute requires at minimum an annual public meeting by each regional center to review the regional center performance contract.⁷

Whistleblower protection

Regional centers highly value the employees that daily interact with our consumers. While no workplace is perfect, regional centers have taken and will continue to take measures to ensure staff feel their environment encourages openness and transparency in the event problems or situations arise that warrant attention from the board of directors or administrative levels.

Prior to the BSA report, seventeen regional centers already had whistleblower protections policies in place. We believe regional center employees are currently protected from retaliation and intimidation in regards to

³ In response to Question #2 – What uniformity exists in employing of or sharing information on “best fiscal practices”?

⁴ In response to Question #2 – What uniformity exists in employing of or sharing information on “best fiscal practices”?

⁵ In response to Question #2 – “What uniformity exists in employing of or sharing information on “best fiscal practices”?

⁶ In response to Question #5 – “What is the justification for current regional center policies on denying requests for information from the public? Is there any uniformity among regional centers in this policy?”

⁷ In response to Question #6 – “What changes will regional centers make in providing information to the public?”

whistleblower activities by the California Labor Code and that all regional centers have a grievance procedure in place as part of their personnel policy.⁸

The regional centers appreciate DDS' recent direction and guidance with the recent additions in contract amendments that clarify what should be included in the regional centers' whistleblower protection policies. Regional centers are developing, if they do not already have them in place, internal procedures to address whistleblower activities and whistleblower protection against retaliation. These guidelines in the contract include a policy whereby regional center employees have access to their board of directors when filing complaints, allows for multiple employees within the regional center to accept complaints, a process ensuring there will not be retaliation against any complainant, and outlines a process to investigate and take appropriate action on complaints, including complaints of retaliation.

Regional centers have posted the Department's Whistleblower Complaint Process to their respective websites⁹

These policies have been approved by their respective Boards and posted to their respective websites. All regional centers are now in full compliance with posting this new Department policy on their websites.¹⁰

DDS and legislative activity¹¹

We appreciate the opportunity to continue working with DDS and the Legislature on improvements to the regional center service delivery system. There are several key areas where partnership and guidance from DDS would greatly improve our efficiency while also providing services to the people we serve.

With the increased use of technology to streamline processes, we would appreciate the opportunity to work with DDS on computerizing more of our information systems. Incorporating modern-day technology and practices will help us respond more quickly to consumer needs while also being able to merge consumer information with fiscal data, giving DDS more timely accounting of expenditures. New technology will also allow regional centers to respond quickly to changes in law, such as recent trailer bill amendments and implement those changes to ensure compliance.

Regional centers would also greatly appreciate guidance on the issue of new programs and therapies. There are a number of emerging treatments being brought to regional centers and families requesting payment. With clear direction from DDS on what is approved, as determined by an independent panel of experts it would decrease the number of fair hearings and appeals regarding what services are covered by regional centers.

The Department could also help address the issue of vendorization. Currently, Title 17 outlines the requirements for vendorization, which has led to an overabundance of certain types of vendors in areas around the state.

When the need for those providers is not there, vendors may misinterpret the lack of referrals as something other than lack of need from consumers in that given geographic area.

ARCA and the regional centers would also greatly appreciate legislation that would require payment to regional centers absent the passage of a timely state budget. This continuous funding would allow regional centers to

⁸ In response to Question #10 – What is ARCA's interpretation of current law with respect to retaliation, intimidation and whistleblower activities and how do regional center policies implement or go further than current law?"

⁹ In response to Question #11 – What is ARCA's response to DDS' recent directives on its new whistleblower/complaint process?"

¹⁰ In response to Question #9 – "What uniformity exists in employing or sharing information of these best practices?"

¹¹ In response to Question #7 – "What additional technical support should DDS be providing to regional centers?" and Question – "Are there any issue with respect to regional center fiscal policies and practices and/or DDS oversight of regional centers that may require legislative clarification?"

avoid costly borrowing, using scarce resources that could be better invested towards direct services to the people we serve. This unsecured borrowing also exposes our volunteer board members to potential personal liability. When the state budget is delayed and funds are not available to the regional centers, borrowing is not an optional activity despite the expense incurred through interest on the funds. The services we provide to our consumers and families are not ones that can be postponed or delayed until the budget is resolved by the Legislature as their very lives, health and safety would be in jeopardy.

Conclusion

Regional centers find themselves looking into the future with a growing number of consumers, a higher rate of demand for services and a closed-end budget. With limited resources and the changing, evolving needs of our consumers, regional centers take very seriously the charge and responsibility of ensuring first the health and safety of these individuals, but also to help improve their quality of life by providing opportunities for full inclusion in their communities. In an ever-growing and dynamic service delivery system currently serving approximately 240,000 people and their families, with over 6,500 regional center employees, and about 37,000 non-family vendors there will be areas where the system will not always operate perfectly. We look forward to the opportunities to continue improving our system and building on the promise of the Lanterman Act of ensuring people with developmental disabilities can live, work, and recreate in our communities.

Again, we appreciated your invitation to provide our response to the committees' questions and the Bureau of State Audits report. ARCA looks forward to working with the Department and the Legislature to ensure quality lives for people with developmental disabilities.

Sincerely,



Robert J. Baldo
Executive Director

Cc: Members, Senate Human Services Committee
Members, Assembly Human Services Committee
Assemblymember Hector De La Torre