



California's protection and advocacy system

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**Senate Committee on Human Services and
Assembly Committee on Human Services**

**Oversight of California's Regional Centers:
Ensuring integrity, transparency, and best practices
in a challenging fiscal environment**

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About Disability Rights California

Disability Rights California, the federally mandated protection and advocacy system, works to advance the rights of Californians with disabilities with a goal of creating a barrier free and inclusive society. In addition to our federally required services, we provide clients' rights advocates at the 21 regional centers. In fiscal year 2010, we provided services to 26,695 individuals including 12,076 individuals with developmental disabilities. We provide advocacy assistance through information and referral, short-term assistance, peer/self-advocacy trainings, investigations of abuse and neglect and direct representation in legal proceedings. In 2010, our staff participated in 1,050 trainings and outreaches reaching 159,662 consumers and family members a majority of whom were from underserved ethnic and language distinct communities. Additionally, our systems advocacy and class action cases benefited hundreds of thousands of Californians with disabilities.

The Lanterman Act

The Lanterman Developmental Disabilities Services Act (Lanterman Act), provides a comprehensive system designed to ensure that each individual with a developmental disability receives the services necessary to meet their unique needs and choices with the goal of ensuring that individuals will live as independently as possible and participate fully in the community

in which he or she lives. The California Supreme Court in 1985 in the Association for Retarded Citizens-California (ARC) vs. Department of Developmental Services (DDS)¹ held that the Lanterman Act, "...defines a basic right and a corresponding basic obligation... [T]he right which it grants to the developmentally disabled person is to be provided with services that enable him to live a more independent and productive life in the community; the obligation which it imposes on the state is to provide such services." This obligation is generally referred to as the "entitlement".

To achieve these purposes, the Lanterman Act requires that a interdisciplinary team, convened by the regional center, develop an Individual Program Plan (IPP) which reflects an assessment of the consumer's abilities, goals and objectives based on the needs, preferences, and life choices of the consumer and family, and the services and supports necessary to achieve the goals and objectives. The Legislature has made clear that regional centers have the obligation to provide cost-effective services and more recently in 2009 required regional centers to provide the least costly comparable services. WIC 4648(a)(6)(D). Even with imposition of these requirements, the fundamentals of consumer choice and the IPP process remain intact.

Impact of the Fiscal Crisis on the DD System

During the past three years, the State has faced an unprecedented fiscal crisis. The fiscal crisis has required the Administration and Legislature to make difficult decisions on how to increase revenue and how to spend the state's limited resources. In the 2009-10 budget, the Department of Developmental Services was required to reduce general fund expenditures by \$334 million dollars. These reductions were continued into the 2010-11 year and the budget imposed an additional 1.25% reduction on regional centers and providers. In achieving the \$334 million dollars in reductions, DDS used a more transparent process that allowed for significant public participation. While time constraints posed challenges, it is rare that a state agency seeks extensive input from its stakeholders and that effort should be commended. In addition, DDS did a good job of posting clear, consumer/family friendly material on its website about the changes in the law.

¹ 38 Cal.3d 384 (1985).

While DDS achieved good results in identifying ways to increase federal reimbursement and achieving other savings, the impact of these cuts on individual consumers should not be minimized. Moreover, implementation of those reductions was challenging. The 2009-10 budget was passed after the fiscal year had begun and some of the reductions appeared to be retroactive. While DDS and the regional centers were obligated to ensure that the savings were achieved, the law appropriately required that any reductions to individual consumers be made through the Individual Program Plan process. In our experience, while some regional centers did a good job of responding in the manner contemplated by the law, other regional centers did not always hold IPP meetings, provide the proper notice, advise parents or consumers of their due process rights, or ensure the receipt of aid-paid pending. Sometimes, inaccurate standards were used and parents were not advised of the exceptions to the standards. While we are pleased that we were able to resolve many of these issues with regional centers, we continue to negotiate with one regional center about a systemic failure to provide appropriate notice, use the correct standards, and tell consumers and their families about exemptions and exceptions. Based on our negotiations, we remain hopeful that we will reach a resolution that fairly addresses past violations and ensures proper procedures are followed in the future.

Because of our concerns about the failure of some regional centers to notify consumers of exceptions, we worked with ARCA, DDS and budget staff to develop language which makes clear that regional centers are obligated to provide notice of exceptions and exemptions. We are pleased that this language was included in the 2010 Budget Trailer bill and is now codified at Welfare & Institutions Code Section 4701.1.

DDS and Regional Center Responsibilities during a Fiscal Crisis

The 1985 California Supreme Court decision in ARC provides clear direction about the respective roles of DDS and regional centers in carrying out the State's obligation to provide services to individuals with developmental disabilities. In the 1981-82 fiscal year, the DDS Director issued priorities designed to ensure that the regional centers would not exhaust their appropriations before the end of the fiscal year. The priorities, in effect, required the regional centers to cut back services without regard to the individual client's IPP.

The Court held:

The regional centers and DDS have distinct responsibilities in the statutory scheme: that of the regional centers is to provide each developmentally disabled person with the services to which he is entitled under the Act; ...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.²

The Court's decision remains relevant during the current fiscal crisis in defining the responsibilities of DDS and regional centers in carrying out the State's responsibility to individuals with developmental disabilities.

The Bureau of State Audits Findings Which Impact Regional Center Consumers

The audit in many ways brings to the forefront, the tension between California's current fiscal climate and the Lanterman Act's entitlement to consumer directed services. The Bureau of State Audits conducted a review of the developmental disabilities systems for the purpose of determining if there are ways to improve the cost-effectiveness of regional center services. While we agree that it is important for all service systems to operate in a cost-effective manner, any discussion of the BSA report must also recognize the cornerstones of Lanterman Act. Those cornerstones, which remain unchanged even during these difficult times, are: consumer choice; decision making through an Individual Program Plan; and, protecting consumers' due process and other Lanterman Act rights.

We are concerned that the Audit did not interview consumers and their families. As the beneficiaries of the developmental disabilities system, consumers and family members have valuable input both about the impact of the budget reductions as well as how well the system implements other Lanterman Act mandates such as the IPP process, availability of services and supports that meet their needs and provision of services in the least restrictive setting. We encourage that future audits always include interviews with consumers and families.

² Id at 391.

Some of the findings and recommendations directly impact regional center consumers and it is those findings that Disability Rights California addresses today. The Auditor reviewed changes to regional center service coordinator caseload standards and found:

State law previously established caseload standards, but many of these standards are currently not binding. Commencing in 2004, the Lanterman Act required the regional centers to maintain an average caseload of 66 consumers for each service coordinator, depending on the type of consumer. However, the Legislature passed, and the governor signed, amendments exempting the regional centers from this requirement effective February 1, 2009, through June 30, 2011. Although this exemption may have been necessary in light of particular budget reductions, survey responses indicated that it has placed a significant strain on service coordinators throughout the State.

Disability Rights California is concerned that changes to the caseloads impacts the consumer's ability to obtain the services they need in the least restrictive setting and may ultimately impact the quality of services received. Regional center consumers often have complex needs and even in the best of times have difficulty obtaining services to meet their needs. Accessing services is even more challenging during difficult fiscal times when the available services frequently changes due to budget cuts to other health and human services programs.

For example, during the past two years, there have been reductions to Medi-Cal, IHSS, SSI, mental health services, and most other generic services which the Lanterman Act anticipates that service coordinators will help consumers access. Thus, at a time when it is critical that service coordinators be familiar with not only the service caps and other changes to the Lanterman Act, but also with the multitude of changes to generic resources, it is unfortunate that service coordinator caseloads have increased. Given these increases, it is increasingly difficult for service coordinators to help consumers access the services they need, provide information about the array of services available, ensure that services are provided in the least restrictive environment, and monitor the quality of programs provided.

Increases in service coordinator caseloads, while perhaps fiscally prudent, may have the unintended consequence of limiting access to generic services, delaying the development of new, more cost-effective and often more integrated service models, and adversely impact the quality of services available. None of these outcomes, even during difficult fiscal times, are desirable.

The Auditor also made findings and recommendations concerning recently added statutory requirements concerning the selection of the least costly vendor.

The Auditor concluded:

Although it is true that the Lanterman Act does describe other factors that should be considered when developing an Individual Program Plan, for only one of these factors, the least costly available provider of comparable service, does it specifically state “shall be selected”.

The Auditor recommended:

1. That DDS require the regional centers to document the basis of any IPP-related vendor selection and specify which comparable vendors (when available) were evaluated; and,
2. Review a representative sample of this documentation as part of its biennial waiver reviews or fiscal audits to ensure that regional centers are complying with state law and particularly with the July 2009 amendment requiring selection of the least costly available provider of comparable service.

At the outset, it is important to note that the statutory language concerning least costly comparable service is complex and requires, at a minimum, an individual analysis of the factors identified in the definition.

Welfare and Institutions Code Section 4648(a)(6)(D) provides:

The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected. In determining the least costly provider, the availability of federal financial participation shall be considered. The consumer shall not be required to use the least costly provider if it will result in the consumer moving from an existing provider of services or supports to more restrictive or less integrated services or supports.

This section alone requires an IPP team to review the following factors: 1) whether the services offered are comparable and consistent with the needs of the consumer and family as specified in the IPP; 2) total cost of the service including transportation costs; 3) the availability of federal financial participation for the service; and, 4) prohibits the use of a less expensive vendor if it would result in the consumer moving to a more restrictive or less integrated services or from an existing provider.

The Auditor's recommendation is of concern because it will necessarily result in an emphasis on least costly rather than the other factors which necessarily must go into a decision about whether or not services are appropriate and comparable. In making the recommendation, the Audit, while noting that services must be comparable, did not for example, recognize the specific criteria included within 4648(a)(6)(D). In addition, other provisions in the Lanterman Act requires that regional centers use a person-centered planning approach in making decisions as part of development, review, or modification of the Individual Program Plan (IPP). Thus, it is the IPP team that determines the appropriate and least costly vendor, not the regional center.

In deciding which services an individual with developmental disabilities needs, the IPP team is required to consider the following factors: 1) the availability of generic resources (WIC § 4646.4); 2) a family's responsibility for providing services (WIC § 4646.4); 3) a provider's ability and success in

delivering quality services or supports which can accomplish all or part of the consumer's IPP (WIC § 4648, subd. (a)(6)(A)); 4) the cost of providing services or supports of comparable quality by different providers (WIC § 4648, subd. (a)(6)(D)); 5) whether services or supports are provided in the least restrictive and integrated setting (WIC § 4648, subd. (a)(5)); and, 6) consumer choice (WIC § 4648, subd. (a)(6)(E).

As regional center service coordinators face increased caseloads, adding requirements that a complete analysis and documentation of the many factors that go into what are comparable services followed by an analysis and documentation of which providers offer the least costly services, will simply result in less direct services to consumers, less time to develop new programs to meet consumer's needs and less capacity to help consumers and families identify generic resources that may meet their needs rather than services paid for by the regional center.

Moreover, we are concerned that requiring DDS to review whether regional centers are following the least costly requirements will insert DDS into the IPP process in ways that are contrary to the careful balance of responsibilities set forth in the Lanterman Act. This will result in an unintended pressure to simply identify the least costly vendor, rather than the vendor who can meet the unique needs of the consumer and provide those services in the most integrated setting possible.

How We Can Best Ensure That Californians with Developmental Disabilities during the Current Fiscal Shortfalls

We offer the following recommendations about how DDS and the regional centers can continue to meet their respective obligations even in these difficult budget times and ensure high quality, cost-effective services.

We encourage the following:

1. As noted by the ARC decision, one of DDS' obligations is to continue to provide guidance to regional centers about how they may spend the funds appropriated to them in the most cost-effective manner. We urge DDS to provide clear policy guidance about any changes in the Lanterman Act, as well as changes to generic services, and to also provide guidance to regional centers of their obligations to follow the Lanterman Act IPP processes and due process rights including,

the rights to notice, the right to have materials available in other languages, and the right to an administrative hearing, including aid-paid pending. For example, following the 2009 Budget reductions, DDS summarized the changes to the law and posted those changes on its website. This was a helpful way for families and consumers to obtain information about the changes, and time permitting, we believe that more specific written guidance to regional centers would have better ensured consistent application of the IPP processes and due process rights.

2. DDS to provide guidance about the processes regional centers should follow when implementing the least costly comparable vendor. In the past, for example, DDS has developed an IPP manual which explained the person centered planning process. Updating this manual to provide guidance about the legal requirements and best practice ways of implementing the least costly comparable service requirements could be of assistance.
3. DDS and regional centers must monitor the way in which any budget reductions are implemented by:
 - a. Requiring the development of written plans about the procedures regional centers will use to implement any reductions, ensuring that those plans protect the IPP process and due process rights, and requiring reviewing of those plans;
 - b. Developing quality assurance processes for ensuring that the Lanterman Act requirements are met and expanding those reviews to IPPs for consumers whose services are not provided through the Medicaid waiver.
4. Provide standardized training for regional center service coordinators about changes in regional center services and generic services so that coordinators have a place to obtain accurate information about changes.
5. Update the standard notice forms to ensure that new legal requirements, including notice of exemptions and exceptions, are met; translate the forms into other languages and develop a mechanism to ensure that these forms or forms which convey each of these requirements are consistently used.

6. Continue to develop innovate service models which promote inclusion, increase the use of generic services and federal funds and promote consumer choice. The development of these models will not only promote the values of the Lanterman Act, but should in the end save the state general fund dollars. As a result of the fiscal climate, DDS has undertaken some good initiatives in this area. It has closed or has plans to close more expensive state run institutions and it has applied for waivers which will increase federal Medicaid reimbursement for services. In addition to these, DDS and regional centers should continue to work with consumers and families to develop service models which promote employment and post-secondary education rather than reliance of more segregate work opportunities and develop cost-effective models of self directed services which promote consumer choice.

Thank you for the opportunity to address the Committees today. We look forward to continuing the discussion about how to ensure that, even in this difficult fiscal environment where accountable is an important focus, consumer choice, least restrictive setting and IPP decision making remain equally important measures of the system's success.