

**DEVELOPMENTAL SERVICES TASK FORCE:
STRENGTHENING THE COMMUNITY SYSTEM**

Wednesday, October 28, 2015 – 10:00 am to 3:00 pm

**State Building & Construction Trades Council
1231 “I” Street, Suite 303 – Large Meeting Room
Sacramento, CA 95814**

WELCOME AND INTRODUCTIONS

Diana S. Dooley, Secretary of the California Health and Human Services Agency (CHHS), welcomed everyone to the meeting. She introduced Jim Burton, Executive Director of the Regional Center of the East Bay and welcomed him as a new member of the Task Force. She then asked the meeting attendees to introduce themselves.

The Secretary briefly reminded the audience of their history and purpose. Initially the work began with the Task Force on the Future of the Developmental Centers, because a moratorium had been placed on admissions to developmental centers and developmental centers were facing issues of decertification. This Developmental Services Task Force (DS Task Force) followed, since the issues are very much related—the challenges in the community delivery of services are very much related to the services provided in the developmental centers. The focus of the DS Task Force is how to strengthen the delivery of services in the community. Today we will talk about the various workgroups, clarify how we move forward, and provide her with a full understanding of the issues while we are in the process of putting the January budget together. She thanked the DS Task Force for serving as an advisory group around the delivery of services broadly, and providing valuable advice to her personally. The DS Task Force is made up of a cross-section of individuals committed to the care of people who depend on us for these services, and she sincerely appreciates using the DS Task Force as a resource.

The Secretary then announced that Santi Rogers, Director of the Department of Developmental Services (Department or DDS), is retiring as of December 1, 2015. She indicated he was ready to retire two years ago when, instead, he stepped up to transition the leadership of the Department when the previous Director, Terri Delgadillo, retired. Santi embodies the commitment of the Lanterman Developmental Disabilities Services Act (Lanterman Act), and was there at its foundation. The Secretary will proceed to fill the position, first in the interim and then permanently, and invited everyone to communicate their ideas for the next generation of leadership. She expressed her sincere appreciation for all that Santi has done.

Santi shared his perspective on the Lanterman Act, its genesis with “the moms” who were “Here to speak for justice...,” and the significance of it happening in our lifetime. He described his experience as a 12 year old visiting Porterville State Hospital, and how that instilled in him a compelling value of service. He is honored to be a part of the system, which will be a forever relationship for him. He is retiring to be more engaged with his family. He thanked everyone for the honor of working with them.

The Secretary then returned to introductions from those individuals who were participating in the meeting by telephone.

Budget Overview

The Secretary described the continuous nature of the budget cycle, and that work is already being done to prepare next year’s budget. She reflected on recent budget activities and shared her previous expression of disappointment regarding the non-passage of the Managed Care Organization Tax. The federal government had indicated to California that the structure of the tax was unacceptable, which ends in July 2016. The Administration tried to restore the tax through a new proposal last January; however, the tax is very complicated and different from other health care financing taxes, and the proposal was not successful. Conversations continue with regard to how to replace the loss of revenue, and the Special Session is still open. However, without action, the Governor’s Budget in January 2016 cannot presume the tax will continue, and it will suggest how we live without \$1.1 billion in Medi-Cal. She noted that the DDS program is largely funded by Medi-Cal, and emphasized the seriousness of this issue.

In terms of the process, the Governor’s Budget will address the loss of revenue in January 2016, and the budget will be acted upon in June by the Legislature and enacted July 1. It is a two-thirds vote issue. If we are unable to get bipartisan support to increase revenue, there will be very unpleasant consequences.

Status of the Overtime Regulations

Turning to the overtime regulations, California has budgeted for two years for implementation of the regulations, pending their effective date. After various court challenges, the regulations will now take effect in mid-November, subject to a challenge before the Supreme Court. We do not expect to know the outcome until November 13, 2015; specifically whether the Supreme Court will grant certiorari (a review of the case by the Supreme Court) and issue a stay, or whether the regulations will go into effect. The State is in a position of not implementing the regulations until we are required to.

The Secretary opened the meeting to questions and discussion. A question was raised about whether the overtime regulations for regional center services would be implemented retroactively, as is anticipated for In Home Supportive Services (IHSS). Additionally, it was suggested that: stakeholders be brought together to look closely at

situational/implementation issues and solutions; there is a need for communication from the State to resolve current confusion; and that providers need time to ramp up.

The Secretary clarified that retroactivity would only be to the effective date of the regulations (e.g., November 12th), and that in the absence of change, people should continue to do what they have always done, which is operate under the personal care exemption. When there is a change, we will need the procedural ability to capture the necessary records. We are working very hard to be prepared, but for IHSS it means changes to an information technology record-keeping system, which can't be ready until February 1, 2016. She understands there is ambiguity around the effective date of the regulations, given that enforcement was suspended, but there are other issues driving implementation and the goal is to allow time for an orderly transition.

Further discussion around the regulations indicated that some providers have received legal advice that October 13, 2015, was the implementation date. Some providers are moving ahead with implementation, and they cannot wait for payment from DDS.

Regarding the process for communicating information about implementation of the overtime regulations, it was suggested that something like an "All County Letter" be posted on the DDS website and that others in the system will further transmit the information. Everyone wants to do the right thing, but they need to hear what that is.

Developmental Center Closures

The Secretary reported on the status of developmental center closures. Consistent with the May Revision, the Department filed its Plan for the Closure of Sonoma Developmental Center on October 1, 2015. There will be public hearings on the Plan, and we will be working further with the Sonoma Coalition, local officials and other stakeholders on Plan issues. We are performing physical plant assessments, determining where services are needed in the community, and coordinating service development throughout the area.

The priority for closure is how we meet the needs of the individuals at Sonoma Developmental Center (SDC). Also important are the people that serve them and the future use of the land. The 900-plus acres of land present very different issues than land involved with other closures. We recognize the Plan is very ambitious given the identified time frame of closing SCD by December 2018. We will be working with the Centers for Medicare and Medicaid Services (CMS) for extended funding if the time frame necessitates it.

There are decertification actions now pending at Fairview Developmental Center (Fairview) and Porterville Developmental Center (Porterville). We will be negotiating a resolution with CMS using the SDC settlement agreement as a template. There are

many challenges ahead to complete this transition away from the historic congregate care that we provided in developmental centers.

Santi added that we will be utilizing many years of experience for providing the best services possible as we close facilities, emphasizing especially the Individual Program Plan as the driving force for each individual. Each day is a new lesson, but staff and parents are respectful of the spirit, and regional centers exemplify the spirit and have experience from prior closures.

John Doyle, Chief Deputy Director of the Department, added that we now have an oversight contractor for SDC closure, as required by the CMS agreement. We have a combined contract for H&W and Mission Analytics to provide oversight services effective October 26, 2015.

Additionally, John provided a brief update on the new residential models. The first Delayed Egress/Secured Perimeter home is now licensed in Visalia. Others are in development. Also, the emergency regulations for the Enhanced Behavioral Supports Homes will be out soon, with this month as the target.

A question was raised about the dates for developing the formal closure plans for Fairview and Porterville. John responded that we have begun discussions with CMS. We are on track for a 2016 May Revision timeline, although it could be impacted by CMS. We are likely to experience concurrent closures, especially considering how rapidly the Fairview population is transitioning.

The Secretary added that CMS made it very clear during negotiations that it was the State's decision to close developmental centers. For SDC, the circumstances were far more complicated and there was no consideration of time, hence the December 2018 date versus December 2021 for Fairview and Porterville. Our primary focus will be on SDC, and we are still negotiating the others. We are trying to be ready to have closure plans for Fairview and Porterville by April 1, 2016, consistent with statutory requirements. Like SDC, we expect we will be working with an interval of federal financial participation. At this time, these are directional thoughts that could change.

Additional discussion about the developmental center closures indicated families are very concerned and anxious about the need for a safety net, or facilities that "can't say no." For those considering the community, and in the absence of a safety net, what is the recourse if the community placement is unsuccessful? This issue could affect how families feel about early placements.

Rates

The Secretary began the discussion about rates by sharing the many challenges the Rates Workgroup has been facing. At some point we expect to propose (shared as information, not a commitment) the need to engage a large, sophisticated rate study, based on the experiences shared by other states. Looking at the whole rate structure is an expensive undertaking and one that takes a long time. The Secretary recognized the pressures the system is under, which may not withstand a two to three year process. Therefore, we will be pursuing two tracks: applying funds in the upcoming budget to the areas of greatest, immediate need; and pursuing a comprehensive rate study.

John shared that, based on the Rates Workgroup's recommendations, DDS reached out to the National Association of State Directors of Developmental Disabilities Services (NASDDDS) to obtain their thoughts on what types of qualities and skill sets we should be looking for in a contractor. We talked with them about what the workgroup in general was looking for. The contractor would need to explore ways to achieve equity, fairness and resolve complexity in our current system. Also, we have the issue of geographic differences and affordability. We are also interested in how we incentivize providers and encourage independence, and how to make rates understandable and transparent.

NASDDDS advised us that we should be looking for an entity:

- With strong analytical and actuarial skills;
- That is very familiar with the regional center system and California's unique nature; and
- That understands the Home and Community-Based Services (HCBS) regulations, as well as the Fair Labor Standards Act/overtime regulations, and how rates may be affected.

John explained that this will not be a quick process given the complexities of our system. A rate study could take two to three years. While we are cognizant of the immediate needs, the rate study is still an important endeavor.

Kristopher Kent, Assistant Secretary, CHHS, added that the procurement process for a contractor could take several months, and advised that the Task Force will be kept informed and engaged in the process.

Comments and discussion from the Task Force members included:

- It is important to underscore the new tracks—target emergency circumstances and pursue a study that includes a sense of realism (who is being served and

trends, tying policy direction/philosophy for HCBS, and budgetary considerations).

- It was suggested that there could be incremental steps toward dealing with rate issues rather than waiting until the end of the three years. Consideration needs to be given to tactical changes along the way.
- Historically, rates have been used to limit the level of expenditures, which leads to unintended consequences. The study needs to look at other alternatives as well as incorporate data on population trends (aging, autism, etc.) to know the cost impact of different scenarios.
- The basis of how services are provided in the community is important, specifically, how we measure outcomes and how we pay for performance. The report needs to be in the context of value-based accountability/service delivery. However, it is hard to value-base services, for example, for the population that is aging.
- The two tracks will be an important distinction for the Legislature: 1) service provider relief; and 2) rate reform.

The Secretary responded that we face a difficult budget in January due to the revenue side. Lots of thought has been given to targeted relief, but don't expect a significant increase without the revenue issue being resolved.

The Secretary then opened the microphone for public comment:

- Concern was expressed regarding the potential liability of providers for not paying overtime. It would be good if funding became effective at the beginning of November 2015. Also, clarification is needed on whether overtime is paid based on a 40-hour workweek, or an eight-hour day.
- Targeted increases should be considered at the point the revenue issue is resolved. For example, consider the exempt overtime payments tied to the minimum wage increase, and consider compensation for staff going forward.
- Payment of overtime has been mandated by the government. Documentation supporting the October 13 effective date exists and will be provided. This is a wage and benefit mandate, not a rate increase, and funding is needed as a pass-through to pay employees.
- The current rate system has significant inequalities. Rate processes over the last 20 years have produced no solutions. There are simple approaches that can be done faster than a rate study, such as paying the same rate for the same service. The 10% rate relief is still needed, and providers can't wait for relief—programs are closing every day.
- Union contracts also require pay increases, which is not taken into account in the minimum wage rate analysis. Union contracts are another source of mandated payments for which funding is needed.

- Alarm was expressed regarding the time required for a rate study, since there have been no rate increases over the past eight to ten years. Periodic increases are needed rather than a study. Providers are just trying to keep the doors open and hire better staff. If rates are not cost-based, then it may be better to just patch the current system.
- Providers are doing everything they can just to keep their doors open. There will be no community infrastructure in place if providers have to wait three years.

The Secretary ended the morning by responding that the structure of the rate system is the subject of the review; that relief is a separate issue. Immediate relief is not contingent on the rate study and we are doing everything we can to fill the hole. The Secretary expressed her appreciation for the input provided by the public participants.

Workgroups

The Secretary began the afternoon by reminding the members that the efforts of the Task Force started by creating four distinct workgroups. Two are ongoing and have been actively addressing the priority work dealing with rates and regional center operations. Two workgroups were set aside: one on Medical and Mental Health Services and Supports, and the other on Housing and Employment. We will continue to discuss the status of the active workgroups, and then consider when and how we should add the two outstanding areas of work.

John provided an update on the Regional Center Workgroup. The Workgroup is looking at the types of issues that are creating problems for the regional center budgets. Areas of focus are the core staffing formula and the case management ratios. The Association of Regional Center Agencies (ARCA) is currently analyzing these areas and will provide input.

As a related issue, Jim Knight, Assistant Deputy Director, Community Services Division, DDS, provided an update on the HCBS Advisory Group. They met yesterday and continued their work toward implementing the new CMS regulations that were issued in March 2014, which focused on expectations for community integration and choice. When issued, CMS understood that the regulations would drive the need for changes, and therefore required the states to determine where they are at currently, what regulations they are in compliance with, and for those areas where changes are needed, how they will get there. These elements make up the statewide Transition Plan that has been submitted by California and 49 other states to CMS. To date, no state Transition Plan has received CMS approval.

California is working with the HCBS Advisory Group to determine the steps we will take to define where we want to go and achieve compliance by March 2019. As expressed by the Advisory Group on October 27, 2015, their desire is for clear direction from DDS

as soon as possible regarding what services should look like or what qualities DDS intends to buy to achieve program compliance. We need to know where we are today, what the preferred future is, and then allow flexibility for providers to get to those goals.

The discussion that followed included:

- Information must be understandable. The person-centered plan is much more than just the Individual Program Plan. This is an area we can focus on while waiting for direction on the HCBS regulations.
- The direction for HCBS changes should be reflected in the Governor's Budget (such as clarifying the regulations, setting the philosophical/policy direction and preferred future, and identifying services that are outside of this direction for public reaction). There is a lot of confusion about where these regulations are going and what it means to the community.
- The HCBS Advisory Group needs to be connected to this Task Force, as the regulations will impact all of the areas we are working on. Separating issues may not be helpful—they need to merge somewhere. Both the housing and employment areas have ties to the HCBS regulations and they need to be linked before we can move forward.
- Regarding regional center operations, case management vacancies are affecting services for people today, and there are significant issues of replacing staff knowledge as turnover occurs. There are also huge geographic disparities, especially for small communities, and we need to promote opportunities to grow, live independently and move out of poverty through employment.
- It was suggested that we need a workgroup now on behavioral health issues, as significant amounts of time and energy are being spent on this very difficult to serve (even dangerous) population. Behavioral health is a more inclusive term than mental health services and supports, since it includes mental health, forensics, people in the criminal justice system, individuals with serious drug and alcohol issues, etc. Our most challenging cases have a mental health component, and good quality services are difficult to find.
- The most difficult cases are those with a mental health component, or even a medical component, because it is very hard to find good quality services and people that understand the population. Finding good services would provide significant relief from a case management perspective. We also need greater housing options and, instead, vendors are closing. Relief is needed so that meaningful choices can be provided for person-centered planning and we are better prepared to move forward with implementation of the HCBS regulations.
- There was also support for a workgroup on housing, since the issue is becoming bigger as our population ages out of the family home into restrictive settings. It is also a significant percentage of the payments for services (15 to 20%).

- A smaller group should work on bringing information and ideas together for the contractor for the rate study (e.g., what is working and what is not working), and for the ARCA effort on regional center operations.
- Employment is also an area we need to focus on. There are many incremental steps we could take to create opportunities and move toward more integrated settings.
- There needs to be a flexible approach and ways to try out ideas, such as pilots to test ideas on a small scale and in different areas and locations, especially for addressing the HCBS settings, and taking a different approach from the measurable outcomes that licensing focuses on.

The Secretary continued the meeting by indicating that the Task Force, operating as a whole, is powerful given its mix of experience, skill sets and perspectives. The Task Force will be considering services that are essential, and what the next generation of services should be. Also important are how those services should be provided and where the crisis areas are that need to be addressed as soon as an opportunity in the budget process presents itself.

The Secretary summarized the work in three buckets:

1. She is hearing that the HCBS work is very important and should be integrated with and not distinct from the work of the Task Force, as it may govern some of the answers. However, the HCBS Advisory Group has some very technical things to address for implementation, while the Task Force needs policy integration. We will take this information back, consider policy direction and how we should have the right conversation, so that we can plan accordingly. We will find a way to get the right conversations around the right people.
2. The Rates Workgroup will continue to provide information and structure for the rate study.
3. The work that is being done by ARCA around regional center operations will come back to the Regional Center Workgroup. The Secretary is also interested in the evolution of the role of the regional center and their governance.

The Task Force provided additional comments, expressing that there is urgency around the HCBS regulations, but the HCBS Advisory Group is not scheduled to meet again until April 2016. There is also urgency to get information to the Secretary before the January 10 Governor's Budget. The array of services and needs for persons with developmental disabilities go far beyond the regional center system.

The Secretary invited additional public comments:

- There is legal ambiguity regarding the implementation date for the overtime regulations (October 13 versus November 12). Clarification is needed from the California Department of Labor. Some providers have already implemented the overtime requirements and are incurring the costs, and funding is needed now to protect fragile community service providers. The issues are complicated by treating IHSS differently than regional center services, and it is very difficult to explain this to the employees who are impacted.
- The HCBS regulations present an opportunity to do really great things. Although those who attend the Task Force meetings are well informed, the general population has no idea. Communication is needed (such as an All Vendor Letter) to give people a general idea of what is coming.
- A workgroup is needed to focus on affordable housing and developing housing specifically for individuals with developmental disabilities. We need to work with other agencies on policies and ways to maximize tax advantages.
- Developmental centers should be closed and the funding invested in the community. There is a difference in pay between developmental center staff and community staff, and increases in pay are needed in the community.
- There are 20 to 30 cities implementing minimum wages. A simple way is needed to pass through funding for this purpose but, instead, providers must go through a wrenching process. Now with the overtime, we don't even know when it starts. There are many government levels giving mandates. DDS needs to work with these government agencies to implement changes without crushing the vendors and regional centers.

The Secretary closed the meeting by thanking the participants again for their incredibly valuable service. She has very important information to take away from the meeting. She thanked everyone for their leadership and diligence. She expects that the next meeting of the Task Force will be in spring, and information will be shared regarding our next steps.