



California Association for the Retarded

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April 5, 2005

The Honorable Denise Moreno Ducheny, Chairperson
Senate Budget Subcommittee #3 on Health and Human Services
State Capitol
Sacramento, CA 95814

Hearing of Senate Budget Subcommittee #3 - **April 11, 2005**
Item 4300- Department of Developmental Services

Dear Senator Ducheny:

On behalf of the California Association for the Retarded, I urge you to **REJECT** the Governor's Budget proposals to (a) maintain existing funding restrictions for regional center services and (b) execute additional new cost containment requirements that would reduce or eliminate the availability of services and severely limit consumer choice. CAR is a nonprofit statewide organization with 10 local units that include family advocacy organizations, operators of day programs, and parent groups at state developmental centers.

LOOK AT THE BIG PICTURE

In passing the Lanterman Act, the Legislature and the State made a commitment to fund safe and stable supports and services for people with developmental disabilities. In looking at the Governor's Budget, however, we realize that the Governor has made spending commitments to many other groups, and that people with disabilities simply are getting what is left over.

It is impossible for us to sit back quietly and be told to accept our budget hits because "times are bad." If times are so bad, we question how so many other groups continue to see their bottom lines improved. These groups include correctional officers, state employees, teachers, and local government employees (including police and firemen) who continue to benefit from funding increases as well as certain businesses and "special interests" who continue to benefit from expanded tax expenditures.

While many of these sectors of government complain that their budget increases are too small, people with disabilities have to spend their time fighting off reductions. We have little time or energy left to press for increases.

ESTABLISH SPENDING PRIORITIES THAT PROTECT THE MOST VULNERABLE

In looking at the history of state spending, it is apparent the State has under-funded many pieces of the developmental services system for years. Once again, the Governor's Budget for 2005-06 proposes to a) continue rate and cost freezes for a variety of community programs, b) not provide funds to start up new facilities in the community unless they are for people coming out of developmental centers, and c) continue unallocated reductions in regional center operations and purchase of services. These cost-cutting mechanisms are devastating to the system.

Our network of community programs is made up of many service providers, some of them non-profit, who simply cannot absorb the escalating costs of running programs without additional state funds. Most community workers are paid low wages with few, if any, added benefits. The state needs to remember these employees are the heart of the developmental disabilities system. We ask that you reject proposed budget reductions for services for people with developmental disabilities before you consider wage and benefit increases for other groups. **Specifically, we recommend that you augment Item 4300 by a minimum of \$83 million (or the amount needed) to eliminate existing rate and cost freezes and by an additional \$14 million (\$10.5 million General Fund) to restore additional proposed service reductions.**

MAKE RATE-SETTING ADJUSTMENTS A NUMBER ONE PRIORITY

The Legislative Analyst discusses the inadequacy of the existing rate setting system for many developmental disabilities programs. To address these deficiencies, the Legislature authorized funds to the department in 2004-05 for a rate study which, unfortunately, will take several years to complete. Our bookshelf is full of unfunded rate studies, and it is now time to move rate reform to the front burner. **We support the Analyst's recommendation that you ensure that rate reform proceeds on schedule and results in meaningful changes to existing methodologies.**

We differ from the Analyst, however, in seeing rate reform as necessarily slowing future spending growth for some categories of programs and services. We would caution that it is unrealistic to anticipate rate savings when so many programs have not had increases for years. In situations where this has happened, program quality has deteriorated simply because managers have not received sufficient funds to attract and retain competent staff.

The experience of Work Activity programs (WAPs) provides a good illustration of the cumulative effect of past reductions and freezes. Existing law requires regional centers to pay rates established by the state based on the reasonable cost of services as determined by state audits. WAPs received their last cost increase, however, in July 2000 based on Department of Rehabilitation-audited cost statements for 1998-99. The 2002-03 state budget, however, suspended the statutory provision that would have increased the rate and instead froze the rate at the 1998-99 level.

To make matters worse, the 2003-04 budget reduced rates by an additional 5 percent effective July 1, 2003. Subsequent budgets and the Governor's Budget for 2005-06 have

proposed to continue to suspend statutory authorization and funding for any rate adjustments or increases for WAPs based on audited cost statements. This example should serve as a caution to those who would equate rate reform with rate reduction.

INTEGRATE AGNEWS TRANSITION SERVICES WITH REST OF COMMUNITY

We recognize regrettably that the existing program at Agnews Developmental Center may be discontinued for a variety of reasons. The state needs to realize, however, that in closing Agnews it is losing a critical safety net in a major metropolitan area. As a state-operated developmental center, Agnews has provided an integral and stable placement option for clients who have complex needs and are difficult to place within the existing community system. The state's budget process protects developmental centers by reimbursing them at actual cost. In addition, because they are state employees, workers at developmental centers also have benefited from periodic increases in wages and benefits and have not had to experience the wage and hour freezes of community workers. As a result, developmental centers have been better able to provide stability and continuity that has been difficult to replicate for the more poorly-funded community system.

As it approaches the process of dismantling Agnews, it is critical that the Administration address four important issues:

1. Protect the well-being of those people who will move out of Agnews. We commend the Department of Developmental Services for its efforts to plan for a safe transition of Agnews clients to the community and to make an array of services available to them. We will be closely following proposed legislation regarding Agnews carried by Assemblyperson Sally Lieber (AB 1378 and 1379) and related legislation carried by Senator Wesley Chesbro (SB 962).
2. Replace the old safety net with a new one. There still will be a need for service options for individuals when existing community placements are unsuitable or inadequate. As part of the extended use of Agnews employees proposed by the Administration, we also need to consider a community resource center that provides a source of specialized medical and dental care, custom-fitted equipment, emergency intervention and/or crisis services that otherwise would be unavailable in the community. The department needs to ensure that trained staff be retained to provide these specialty services and that people already living in the community also have access.

In addition to the Administration's proposal (SB 962) to establish a new licensure category for adults with special health care needs, we also need to provide for the establishment of six-bed facilities for people in crisis (behavioral, medical, or otherwise) and for whom no other appropriate placements are available. It is important that we not put our crisis management issues onto the judicial or mental health systems that are ill-equipped to deal with people with developmental disabilities.

3. Work to eliminate the characteristics of the two-tiered system that exists between developmental center and community employees and developmental center and community clients. We are dismayed that the department is not working to extend planned benefits and services proposed for Agnews clients to other regional center clients already living in the Agnews/Bay Area catchment area, many of whom have

diagnoses and conditions the same as or similar to those of people coming out of Agnews. We need to ensure that the Agnews closure is part of a larger effort to address community deficiencies and needs. We also need to begin to apply developmental center funding principles to community programs if we want to eliminate the extremes of funding and service quality within our system. As we pointed out, the existing rate setting mechanisms and resulting levels of funding for the community system are woefully inadequate and threaten the quality and continuity of many programs.

Last year, CAR supported the Administration's legislation (Chapter 831, Statutes of 2004 – AB 2100) that authorizes three regional centers (San Andreas Regional Center, Golden Gate Regional Center and Regional Center of the East Bay) to pay for the leases for housing for people with developmental disabilities. We also supported the Administration's 2004-05 budget proposal for \$11.1 million to develop community-based living options for current residents of Agnews. This approach is beneficial because the state only needs to pay for housing once rather than having to repurchase housing year after year at the most current rate. This arrangement also is beneficial to consumers by providing more stable living arrangements. The state needs to extend this law to allow this funding mechanism to be available for all clients in the regional center system.

4. Retain the Agnews land as a resource for future use by developmental disabilities and other needed state or local public programs. DDS' closure plan states that once Agnews clients are moved, the property will be treated as "declared surplus" with the Department of General Services taking the lead in determining its future and to market the property for the "highest and best use." Proceeds would be deposited in the state fund recently established by ballot proposition to offset the state deficit.

We believe the state should retain the land for possible alternative public uses such as a Bay Areas resource center for those with developmental disabilities, a north state forensic facility for people with developmental disabilities involved with the criminal justice system, programs for individuals with behavioral or mental health issues, or juvenile justice programs. Given the location and cost of the land, it is not reasonable to assume that the state will be able to repurchase it or an equivalent if and when a future need arises.

PROTECT PRESCRIPTION BENEFITS FOR MEDICARE/MEDI-CAL "DUAL-ELIGIBLES"

The Legislature already has begun hearings on the effects of the prescription drug benefit provisions of the federal Medicare Modernization Act (MMA) that will go into effect January 1, 2006. Part D of the MMA requires that individuals who are eligible for both Medicaid (Medi-Cal) and Medicare (so called "dual eligibles") will need to enroll in a prescription drug plan or Medicare Advantage plan by December 31, 2005.

According to the Legislative Analyst, those who do not voluntarily enroll will automatically be enrolled and assigned a prescription provider, generally without review as to whether a drug plan's formulary is the most appropriate one for them. DDS estimates as many as 40,000 of the 200,000 regional center clients can be classified as "dual eligible." As a

result a significant portion of clients are going to be affected by MMA's prescription provisions.

We are concerned that regional center clients in the community or in developmental centers who are on a stable regimen of medications may be forced to change to a prescription provider whose formulary may not be able to accommodate their prescription needs. **As a result, we recommend that DDS report on what steps it is taking to identify the program and fiscal effects of the new Medicare prescription drug benefit program on regional center clients.**

Thank you for considering our concerns and recommendations.

Sincerely,

Marion Lieberman,
President

cc: Senator George Runner
Senator Tom Torlakson
Department of Developmental Services