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Overview of Developmental Services Issues

LEGISLATIVE ANALYST'S OFFICE

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Assembly Committee on Public Health and Developmental Services
Second Extraordinary Session
Hon. Rob Bonta, Chair

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Overview of Presentation

- ☑ **Background on Department of Developmental Services (DDS) Programs**
- ☑ **The Rate Structure in the Regional Center (RC) System**
- ☑ **Major DDS Budget Solutions Affecting the Community Services Program—2003-04 to 2015-16**
- ☑ **New Federal Home and Community-Based Services (HCBS) Waiver Regulations May Require Program and Service Redesign**
- ☑ **Developmental Center (DC) Closure Plan Will Require Development of New Community Resources**
- ☑ **Developmental Services Task Force Examines Community Services Rates and RC Operations Funding Formula**

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Background on DDS Programs

☑ ***The Community Services Program.*** Community-based services are coordinated through 21 nonprofit organizations known as RCs, which assess eligibility and—through an interdisciplinary team—develop individual program plans for eligible consumers. The department provides the RCs with an operations budget in order to conduct these activities. The department also provides RCs with a budget to purchase services from vendors for consumers—estimated at 290,000 in 2015-16. The RCs purchase more than 100 services from vendors on behalf of consumers including housing, day programs, transportation, and support services. As the payer of last resort, RCs generally pay only for services if an individual does not have private health insurance or if the RC cannot refer an individual to so-called "generic" services such as (1) other state-administered health and human services programs for low-income persons, or (2) services that are generally provided to all citizens at the local level by counties, cities, school districts, or other agencies. We note that the majority of consumers receiving services through the Community Services Program are enrolled in other state-administered programs such as Medi-Cal, California's federal-state Medicaid health program for low-income individuals.

☑ ***DCs Program.*** The DDS operates three 24-hour facilities known as DCs—Fairview DC in Orange County, Porterville DC in Tulare County, and Sonoma DC in Sonoma County—and one smaller leased facility. Together, these facilities provide care and supervision to approximately 1,030 consumers in 2015-16. Each DC is licensed by the Department of Public Health, and certified on behalf of the federal Centers for Medicare and Medicaid Services (CMS), as skilled nursing facilities, intermediate care facilities for the developmentally disabled, and general acute care hospitals.

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The Rate Structure in the RC System

☑ ***How Are RC Vendors Compensated?*** Vendors receive a rate for the provision of services. Vendor rates are set in several ways, in some cases based on statutory guidance, depending on the type of service provided by the vendor.

- ***DDS Sets Some Rates.*** Some vendor rates are set by DDS, such as through cost statements or rate schedules. For example, DDS sets the rates for community care facilities and work activity programs.
- ***Some Rates Are Established by Medi-Cal.*** If a service is provided under Medi-Cal, then RCs may pay a provider no more than the Medi-Cal rate for the same service. For example, RCs pay no more than the Medi-Cal rates for dentistry, physical therapy, and registered nurse care.
- ***Usual and Customary Rates.*** Many services purchased by RCs are provided by businesses that serve people without developmental disabilities. Where at least 30 percent of a business' customers are not RC consumers or their families, then the RC may pay for the service at the same rate the business regularly charges the general public. These services include sports clubs, diaper service, and translators.
- ***Rates Established by the California Department of Social Services (DSS).*** Out-of-home respite services that are provided in facilities with rates established by DSS will have their respite rate set based on the rate set by DSS.
- ***Some Rates Set Based Upon RC Mileage Reimbursement.*** Certain transportation services such as transportation by a family member have rates that can be set based upon what the RC reimburses its own employees for travel.

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The Rate Structure in the RC System *(Continued)*

- ***Some Rates Set Through Negotiation Between the RC and the Provider.*** If none of the methods for establishing a rate described above apply, then the rate is determined through negotiation between the RC and the provider. Beginning in July 2008, an upper limit was established for *new* providers of services with negotiated rates. This limit was set as the median of all rates in place at the time for each service.

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Major DDS Budget Solutions Affecting the Community Services Program—2003-04 to 2015-16

Over the past decade, DDS implemented numerous budget solutions. Here, we have highlighted major budget solutions—focusing on the subset of budget solutions affecting the RC operations budget and RC vendor rates—that generally yield annual estimated savings of $10 million General Fund or more.

☑ ***Restrictions on Vendor Rates.*** Since 2003-04, several restrictions on rates paid to RC vendors were implemented as a means of achieving budgetary savings. These restrictions generally fall into the following categories: (1) rate freezes, (2) implementation of median rates, and (3) provider payment reductions.

- ***Rate Freezes Began in 2003-04.*** Some vendor services, including community-based day programs and in-home respite, supported living services, and transportation experienced rate freezes beginning in 2003-04. By 2008-09, all vendors with rates negotiated with RCs experienced rate freezes with some limited exceptions.
  - ***Some Rate Increases Have Been Provided.*** Vendors of specified RC services received a 3 percent rate increase in 2006-07.
  - ***Rate Increases for Minimum Wage.*** Certain RC vendors received rate increases directly related to increases in the state's minimum wage in 2006-07, 2007-08, and 2014-15.
  - ***Health and Safety Exemptions.*** Some vendors have exercised their ability to request an exemption from the rate freeze if a consumer's health and safety is at risk.

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Major DDS Budget Solutions Affecting the Community Services Program—2003-04 to 2015-16 *(Continued)*

- ***Implementation of Median Rates Implemented Beginning in 2008-09.*** When negotiating rates with *new* vendors, the RC is required to negotiate a rate that does not exceed the statewide median rate or the RC median rate for the service—whichever is lower. In 2011-12, a new survey was conducted that resulted in lower median rates, and therefore avoided costs that would have otherwise occurred if the median rate remained higher.
- ***Provider Payment Reductions Implemented Beginning in 2009-10, but With Full Funding Restored by 2013-14.*** In addition to the rate freezes and implementation of median rates, provider payment reductions affected all vendors except supported employment providers (SEP) and providers with usual and customary rates. Beginning in 2009-10, the percentage amount of the provider payment reduction was set year to year. A 3 percent provider payment reduction was implemented in 2009-10 and was increased to 4.25 percent in 2010-11. By 2013-14, however, funding lost from previous levels of payment reductions was fully restored. (Note that SEP providers received a 24 percent rate increase in 2006-07, but in 2008-09 received a 10 percent rate reduction, for a net increase of 14 percent.)

☑ ***Reduced RC Operations Funding.*** The RC operations budget experienced a number of reductions between 2003-04 and 2015-16. For example, in 2009-10 the RC operations budget was reduced by $10.5 million General Fund (ongoing) and then again in 2011-12 by an additional $14.1 million General Fund to eliminate the funding for office relocations and community placement plan staff and impose unallocated reductions.

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New Federal HCBS Waiver Regulations May Require Program and Services Redesign

☑ ***The HCBS Waiver Is a Major Source of Federal Funds.*** In 2015-16, the DDS budget plan assumes the state will draw down more than $1.4 billion in federal funds under the HCBS waiver that is used to pay for services for RC consumers and for RC operations.

☑ ***CMS Published New Regulations in 2014.*** The CMS published final regulations in early 2014 that enhance the quality of HCBS and provide additional protections to individuals receiving these services. The State of California is embarking on a multiyear process to implement the specific requirements of the regulations. Full compliance with the regulations must be achieved by March 17, 2019.

☑ ***New Rules Amend HCBS Waiver Regulations in Several Important Ways.*** The new rules are designed to improve the quality of services for individuals receiving HCBS.

- ***Home and Community-Based Settings Requirements.*** The rule creates a more outcome-oriented definition of home and community-based settings, rather than one based solely on a setting's location, geography, or physical characteristics.
- ***States Offering HCBS Under Existing Medicaid Waivers Must Develop Transition Plans.*** States will need to evaluate the settings currently in their waivers and if there are settings that do not meet the final regulation's home and community-based settings requirements, work with CMS to develop a compliance plan.
- ***Some Programs or Services May Need to Be Redesigned.*** Many questions arise when applying the new federal regulations to existing systems of services. Some programs or services may need to be redesigned if they are to qualify for continued Medicaid HCBS waiver funding.

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New Federal HCBS Waiver Regulations May Require Program and Services Redesign *(Continued)*

☑ ***Program and Services Redesign May Drive Rate Adjustments.*** To the extent that HCBS programs and services need to be redesigned in order to comply with the new federal rules, this may drive the need to adjust rates to ensure that providers can adequately meet federal requirements to provide services in order to remain eligible for continued HCBS waiver funding.

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DC Closure Will Require Development of New Community Resources

☑ ***Governor Proposes DC Closures.*** As part of the May Revision budget proposal, the administration proposed to close Sonoma and Fairview DCs, and phase out the general treatment area at Porterville DC over the next six years. In response to the Governor's proposal, the Legislature took several actions, including modification of the administration's proposed trailer bill language to ensure legislative oversight over the closure process as it moves forward.

☑ ***DC Closure Will Require Development of New Community Resources.*** The Legislature approved $46.7 million General Fund for development of new community-based resources for persons moving from Sonoma DC into the community. The movement of DC consumers into the community will require the development of new community resources as DC residents typically have complex needs.

☑ ***Rate Setting Will Be Part of Part of Developing New Community Resources.*** Part of the development of new community resources, such as supported living services, crisis services, and transportation support services and homes, will be establishing rates for the vendors providing these services. The department must be able to establish rates that will attract vendors to provide the services required by individuals moving from DCs into the community. Otherwise, lack of qualified vendors willing to provide services may slow progress in shutting down DCs.

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Developmental Services Task Force Examines Community Services Rates and RC Operations Formula

☑ ***Health and Human Services Secretary Convenes Task Force.*** The Secretary of the California Health and Human Services Agency convened a Developmental Services Task Force charged with examining services for the developmentally disabled in the community and in the DCs. The task force is developing recommendations to strengthen the community system in the context of a growing and aging RC caseload, resource constraints, and availability of community resources to meet the specialized needs of RC consumers.

- ***Rates Workgroup Examining RC Vendor Rates.*** As part of the Developmental Services Task Force, a workgroup is meeting to discuss rate reform for RC vendors and to develop recommendations on how to restructure rates.
- ***RC Workgroup Examining RC Operations Funding Formula.*** As part of the Developmental Services Task Force, a workgroup is meeting to discuss reform of the RC funding formula, also known as the core staffing formula.

☑ ***Workgroup Recommendations Could Inform Long-Term Reforms.*** The workgroups on rates and RC operations funding are developing recommendations that could help guide long-term reform in these areas. It is anticipated that these workgroups may present their recommendations sometime in late 2015 or early 2016 so that they can be considered during the development of the 2016-17 budget plan.