Senate Budget and Fiscal Review—Mark Leno, Chair
SUBCOMMITTEE No. 3 **AGENDA**

Chair, Senator Holly J. Mitchell
Senator Jeff Stone, Pharm. D.
Senator William W. Monning

May 19, 2015
10:30 a.m.
John L. Burton Hearing Room 4203

PART A

Staff: Peggy Collins

4300 Department of Developmental Services (DDS)

PROPOSED VOTE ONLY

DISCUSSION ITEMS

Developmental Centers

Community Services

PLEASE NOTE: Only those items contained in this agenda will be discussed at this hearing. Please see the Senate Daily File for dates and times of subsequent hearings. Issues will be discussed in the order as noted in the agenda unless otherwise directed by the Chair.

Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling 916-651-1505. Requests should be made one week in advance whenever possible. Thank you.

4300 DEPARTMENT OF DEVELOPMENTAL SERVICES (DDS)

May Revision Overview

The May Revision includes $5.9 billion ($3.5 billion GF) in the budget year, a net increase of $456.7 million above the updated current year budget, an increase of 8.3 percent.

BUDGET SUMMARY *(Dollars in Thousands)*	**Updated 2014-15**	**2015-16**	**Difference**	**Percent of Change**
TOTAL FUNDS				
Community Services	$4,891,976	$5,389,415	$497,439	10.2%
Developmental Centers	557,693	515,579	-42,114	-7.6%
Headquarters Support	42,484	43,850	1,366	3.2%
TOTALS, ALL PROGRAMS	**$5,492,153**	**$5,948,844**	**$456,691**	**8.3%**
GENERAL FUND				
Community Services	$2,803,150	$3,203,828	$400,678	14.3%
Developmental Centers	310,131	295,127	-15,004	-4.8%
Headquarters Support	27,043	28,341	1,298	4.8%
TOTALS, ALL PROGRAMS	**$3,140,324**	**$3,527,296**	**$386,972**	**12.3%**

PROPOSED VOTE ONLY ISSUES

Issue 1: Foster Grandparent and Senior Companion Program Transfer from Developmental Centers Program to the Community Services Program – May Revision Adjustment

Background: The Foster Grandparent and Senior Companion Program was established to provide person-to-person relationships between low-income seniors and residents of developmental centers. As the developmental centers have closed, corresponding resources have been transferred to regional centers to provide the same services in the community. DDS has 567 volunteers serving out of Central Valley Regional Center, Fairview Developmental Center, Kern Regional Center, Porterville Developmental Center, San Andreas Regional Center, Sonoma Developmental Center, Tri-Counties Regional Center and Valley Mountain Regional Center.

Volunteers in the program receive orientation and training, a tax-free stipend, partial reimbursement for travel expenses, a meal each day they volunteer or partial reimbursement toward a meal, an annual physical, and recognition for volunteer service.

The Governor's 2015-16 budget provides $1.4 million ($1.2 million GF) in the developmental center budget, and $2.5 million ($1.7 million GF) in the community services budget, for this program.

Budget Proposal: The May Revision proposes a decrease of $103,000 ($68,000 GF) in the current year to reflect the closure of Lanterman Developmental Center (LDC). A corresponding increase is proposed in the Community Services Program budget, where the program now resides following the closure of LDC.

Staff recommendation: Approve May Revision.

Issue 2: Lanterman Developmental Center Community State Staff Program – Issue 509-MR, 609-MR

Background: The Community State Staff (CSS) Program allows developmental center employees to work in the community with former developmental center residents, or community residents at risk of placement in an institution or hospital, through a contract with a regional center or direct service provider, while remaining state employees.

May Revision Proposal: The May Revision proposes a net reduction of $42,000 ($22,000 GF increase) to correct an error within the salary and wages calculation, and the realignment of the funding for the program as the positions do not meet the federal Centers for Medicare and Medicaid Services guidelines for federal funding participation as a Medi-Cal eligible expenditure.

Staff Recommendation: Approve May Revision.

Issue 3: DC Population Staffing Adjustments - Issue 507-MR, 508 MR, 608-MR

The May Revision proposes a net decrease of $0.4 million ($0.1 million GF increase) and a net reduction of 18.7 positions in the budget year, due to an update of operational needs at each developmental center, while managing an increase of 25 in the average in-center population, compared to the Governor's January budget.

Staff Recommendations: Approve May Revision.

Issue 4: Fairview Developmental Center – Shannon's Mountain Development – May Revision Proposed Trailer Bill

Background: In 2008, the Department of General Services (DGS) issued a request for proposals (RFP) for a second housing development on the FDC grounds, called Shannon's Mountain. The project moved forward, albeit at a slow pace, but in 2013 the project halted due to new concerns raised by DGS. Efforts to resolve these new issues were unsuccessful and the project has languished since 2013. Earlier this year, legislative staff met with representatives of DDS, DGS, the Health and Human Services Agency and the Government Operations Agency. At that time, staff was advised that productive discussions were occurring and that the Administration was hopeful the project would move forward.

May Revision Proposal: The May Revision proposes trailer bill language, developed in collaboration between DDS and DGS, which would allow this project to move forward. The language is as follows:

Add Government Code Section 14670.36 as follows:

(a) Notwithstanding any other provision of law, the Director of General Services, with the consent of the Director of the Department of Developmental Services, may let in the best interests of the state at a price which will permit the development of affordable housing for people with developmental disabilities, to any person or entity, real property not exceeding 20 acres located within the grounds of the Fairview Developmental Center for a period not to exceed 55 years.

(b) Notwithstanding any other provision of law, the lease authorized by this section:

(1) May be assignable subject to approval by the Director of General Services, with the consent of the Director of the Department of Developmental Services.

(2) Shall provide housing for individuals who qualify based upon criteria established by the Department of Developmental Services. A minimum of twenty percent of the housing units developed shall be available and affordable to individuals with developmental disabilities served by a regional center pursuant to Welfare and Institutions Code Section 4500, et seq. When filling vacancies, priority for housing shall be given to individuals transitioning from a developmental center or **at risk of institutionalization**.

(3) Shall allow for lease revenues or other proceeds received by the state under the lease for projects authorized by this section and Government Code Section 14670.35, to be utilized by the Department of Developmental Services to support individuals with developmental disabilities, including subsidizing rents for such individuals.

(4) Shall include provisions authorizing the Department of Developmental Services, or its designee, to provide management oversight and administration over the housing for individuals with developmental disabilities and the general operations of the project sufficient to assure the purposes of the lease are being carried out and to protect the financial interests of the State.

(c) The Department of Developmental Services may participate in proceeds, if any, generated from the overall operation of the project developed pursuant to this section. All proceeds received from the project authorized by this section and the project authorized by Government Code Section 14670.35 in accordance with the terms of the lease shall be deposited in the Department of Developmental Services Trust Fund, hereby created in the State Treasury for the purpose of providing housing and transitional services for people with developmental disabilities. Any expenditure from the Fund shall be allocated in the annual Budget Act. Any funds not needed to support individuals with developmental disabilities shall be transferred to the General Fund upon order of the Department of Finance.

(d) The Director of General Services, with the consent of the Director of the Department of Developmental Services, may enter into a lease pursuant to this section at less than market value, provided that the cost of administering the lease is recovered.

(e) The project and lease, including off-site improvements directly related to the housing project authorized by this section, shall not be deemed a “public works contract” as defined by Public Contract Code section 1101. However, any construction project contemplated by the lease authorized by this section shall be considered as a “public works” as defined by Labor Code section 1720, subdivision (a)(1), for the purpose of prevailing wage requirements.

Staff Recommendation: Approve May Revision, as modified.

Issue 5: Sonoma Creek Pump Station Project – January Budget Proposal

Background: The Governor's January budget requested $1.6 million GF ($900,600 for preliminary plans; $695,500 for working drawings) for Phase 1 of a project to replace the Sonoma Creek Pump Station Intake System located at SDC. The Department of General Services estimates that an additional $2 million GF will be needed for the construction portion (Phase 2) of this project. At the May 7th hearing of this subcommittee, DDS testified that the Administration was rethinking this project due in light of the proposed closure plan. The May Revision offers no changes to the proposal.

Staff Comments: Although the May Revision is silent of this proposal, staff has been informed that the project is not expected to move forward as proposed.

Staff Recommendation: Reject the January proposal.

COMMUNITY SERVICES

Issue 1: Sick Leave – Governor's Proposal – Issues 515-MR, 616-MR

Background: Assembly Bill 1522 (Gonzalez), Chapter 317, Statutes of 2014, enacts the Healthy Workplaces, Healthy Families Act of 2014. This new law requires that, by July 1, 2015, an employee who works in California for 30 days or more in a calendar year, is entitled to paid sick days that will accrue at a rate of no less than one hour for every 30 hours worked, and may be used beginning on the 90th calendar day of employment, with certain limitations.

May Revision Proposal: The Governor's budget proposes a $25.3 million increase ($16.2 million GF) in purchase-of-services, to reflect the costs associated with the implementation of AB 1522 for community-based programs that do not currently provide sick leave benefits to employees. The May Revision proposes an increase of $1.7 million ($0.9 million GF decrease) in POS to reflect updated costs. Additionally, the Administration has proposed trailer bill language to implement this provision, as follows:

> SEC. 2. Section 4681.6 of the Welfare and Institutions Code is amended to read:
>
> 4681.6 (a) Notwithstanding any other law or regulation, commencing July 1, 2008:
>
> (1) A regional center shall not pay an existing residential service provider, for services where rates are determined through a negotiation between the regional center and the provider, a rate higher than the rate in effect on June 30, 2008, unless the increase is required by a contract between the regional center and the vendor that is in effect on June 30, 2008, or the regional center demonstrates that the approval is necessary to protect the consumer's health or safety and the department has granted prior written authorization.

(2) A regional center shall not negotiate a rate with a new residential service provider, for services where rates are determined through a negotiation between the regional center and the provider, that is higher than the regional center's median rate for the same service code and unit of service, or the statewide median rate for the same service code and unit of service, whichever is lower. The unit of service designation shall conform with an existing regional center designation or, if none exists, a designation used to calculate the statewide median rate for the same service. The regional center shall annually certify to the department its median rate for each negotiated rate service code, by designated unit of service. This certification shall be subject to verification through the department's biennial fiscal audit of the regional center.

(b) Notwithstanding subdivision (a), commencing July 1, 2014, regional centers may negotiate a rate adjustment with residential service providers regarding rates that are otherwise restricted pursuant to subdivision (a), if the adjustment is necessary in order to pay employees no less than the minimum wage as established by Section 1182.12 of the Labor Code, as amended by Chapter 351 of the Statutes of 2013, and only for the purpose of adjusting payroll costs associated with the minimum wage increase. The rate adjustment shall be specific to the unit of service designation that is affected by the increased minimum wage, shall be specific to payroll costs associated with any increase necessary to adjust employee pay only to the extent necessary to bring pay into compliance with the increased state minimum wage, and shall not be used as a general wage enhancement for employees paid above the minimum wage. Regional centers shall maintain documentation on the process to determine, and the rationale for granting, any rate adjustment associated with the minimum wage increase.

(c) Notwithstanding subdivision (a), commencing July 1, 2015, regional centers may negotiate a rate adjustment with residential service providers regarding rates that are otherwise restricted pursuant to subdivision (a), if the rate adjustment is necessary in order to implement Section 246 in Chapter 1 of Part 1 of Division 2 of the Labor Code, as amended by Chapter 317 of the Statutes of 2014. The rate adjustment may only be applied if a minimum of 24 hours or three days of paid sick leave per year was not a benefit offered to employees on or before June 30, 2015 and shall be specific to payroll costs associated with any increase necessary to compensate an employee up to a maximum of 24 hours or three days of paid sick leave in a year of employment.

~~(c)~~(d) For purposes of this section, "residential service provider" includes Adult Residential Facilities for Persons with Special Health Care Needs, as described in Section 4684.50.

~~(d)~~(e) This section shall not apply to those services for which rates are determined by the State Department of Health Care Services, or the State Department of Developmental Services, or are usual and customary.

SEC. 2. Section 4691.6 of the Welfare and Institutions Code is amended to read:

4691.6. (a) Notwithstanding any other law or regulation, commencing July 1, 2006, the community-based day program, work activity program, and in-home respite service agency rate schedules authorized by the department and in operation June 30, 2006, shall be increased by 3 percent, subject to funds specifically appropriated for this increase in the Budget Act of 2006. The increase shall be applied as a percentage, and the percentage shall be the same for all providers. Any subsequent increase shall be governed by subdivisions (b), (c), (d), (e), (f), (g), ~~and~~ (h), (i), and (j), and Section 4691.9.

(b) Notwithstanding any other law or regulation, the department shall not establish any permanent payment rate for a community-based day program or in-home respite service agency provider that has a temporary payment rate in effect on June 30, 2008, if the permanent payment rate would be greater than the temporary payment rate in effect on or after June 30, 2008, unless the regional center demonstrates to the department that the permanent payment rate is necessary to protect the consumers' health or safety.

(c) Notwithstanding any other law or regulation, neither the department nor any regional center shall approve any program design modification or revendorization for a community-based day program or in-home respite service agency provider that would result in an increase in the rate to be paid to the vendor from the rate that is in effect on or after June 30, 2008, unless the regional center demonstrates that the program design modification or revendorization is necessary to protect the consumers' health or safety and the department has granted prior written authorization.

(d) Notwithstanding any other law or regulation, the department shall not approve an anticipated rate adjustment for a community-based day program or in-home respite service agency provider that would result in an increase in the rate to be paid to the vendor from the rate that is in effect on or after June 30, 2008, unless the regional center demonstrates that the anticipated rate adjustment is necessary to protect the consumers' health or safety.

(e) Notwithstanding any other law or regulation, except as set forth in subdivisions (f) and (i), the department shall not approve any rate adjustment for a work activity program that would result in an increase in the rate to be paid to the vendor from the rate that is in effect on or after June 30, 2008, unless the regional center demonstrates that the rate adjustment is necessary to protect the consumers' health and safety and the department has granted prior written authorization.

(f) Notwithstanding any other law or regulation, commencing July 1, 2014, the department may approve rate adjustments for a work activity program that demonstrates to the department that the rate adjustment is necessary in order to pay employees who, prior to July 1, 2014, were being compensated at a wage that is less than the minimum wage established on and after July 1, 2014, by Section 1182.12 of the Labor Code, as amended by Chapter 351 of the Statutes of 2013. The rate adjustment pursuant to this subdivision shall be specific to payroll costs associated with any increase necessary to adjust employee pay only to the extent necessary to bring pay into compliance with the increased state minimum wage, and shall not constitute a general wage enhancement for employees paid above the increased minimum wage.

(g) Notwithstanding any other law or regulation, commencing July 1, 2014, community-based day program and in-home respite services agency providers with temporary payment rates set by the department may seek unanticipated rate adjustments from the department due to the impacts of the increased minimum wage as established by Section 1182.12 of the Labor Code, as amended by Chapter 351 of the Statutes of 2013. The rate adjustment shall be specific to payroll costs associated with any increase necessary to adjust employee pay only to the extent necessary to bring pay into compliance with the increased state minimum wage, and shall not constitute a general wage enhancement for employees paid above the increased minimum wage.

(h) Notwithstanding any other law or regulation, commencing January 1, 2015, the in-home respite service agency rate schedule authorized by the department and in operation December 31, 2014, shall be increased by 5.82 percent, subject to funds specifically appropriated for this increase for costs due to changes in federal regulations implementing the federal Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.). The increase shall be applied as a percentage, and the percentage shall be the same for all applicable providers.

<u>(i) Notwithstanding any other law or regulation, commencing July 1, 2015, the department may approve rate adjustments for a work activity program that demonstrates to the department that the rate adjustment is necessary to implement Article 1.5 (commencing with Section 245) in Chapter 1 of Part 1 of Division 2 of the Labor Code, as added by Chapter 317 of the Statutes of 2014. The rate adjustment may only be applied if a minimum of 24 hours or three days of paid sick leave per year was not a benefit offered to employees as of June 30, 2015 and shall be specific to payroll costs associated with any increase necessary to compensate an employee up to a maximum of 24 hours or three days of paid sick leave in each year of employment.</u>

(j) Notwithstanding any other law or regulation, commencing July 1, 2015, community-based day program and in-home respite services agency providers with temporary payment rates set by the department may seek unanticipated rate adjustments from the department if the rate adjustment is necessary to implement Article 1.5 (commencing with Section 245) of Chapter 1 of Part 1 of Division 2 of the Labor Code, as added by Chapter 317 of the Statutes of 2014. The rate adjustment may only be applied if a minimum of 24 hours or three days of paid sick leave per year was not a benefit offered to employees as of June 30, 2015, and shall be specific to payroll costs associated with any increase necessary to compensate an employee up to a maximum of 24 hours or three days of paid sick leave in a year of employment.

SEC. 2. Section 4691.9 of the Welfare and Institutions Code is amended to read:

4691.9 (a)Notwithstanding any other law or regulation, commencing July 1, 2008:

(1) A regional center shall not pay an existing service provider, for services where rates are determined through a negotiation between the regional center and the provider, a rate higher than the rate in effect on June 30, 2008, unless the increase is required by a contract between the regional center and the vendor that is in effect on June 30, 2008, or the regional center demonstrates that the approval is necessary to protect the consumer's health or safety and the department has granted prior written authorization.

(2) A regional center shall not negotiate a rate with a new service provider, for services where rates are determined through a negotiation between the regional center and the provider, that is higher than the regional center's median rate for the same service code and unit of service, or the statewide median rate for the same service code and unit of service, whichever is lower. The unit of service designation shall conform with an existing regional center designation or, if none exists, a designation used to calculate the statewide median rate for the same service. The regional center shall annually certify to the State Department of Developmental Services its median rate for each negotiated rate service code, by designated unit of service. This certification shall be subject to verification through the department's biennial fiscal audit of the regional center.

(b) Notwithstanding subdivision (a), commencing July 1, 2014, regional centers may negotiate a rate adjustment with providers regarding rates if the adjustment is necessary in order to pay employees no less than the minimum wage as established by Section 1182.12 of the Labor Code, as amended by Chapter 351 of the Statutes of 2013, and only for the purpose of adjusting payroll costs associated with the minimum wage increase.

The rate adjustment shall be specific to the unit of service designation that is affected by the increased minimum wage, shall be specific to payroll costs associated with any increase necessary to adjust employee pay only to the extent necessary to bring pay into compliance with the increased state minimum wage, and shall not be used as a general wage enhancement for employees paid above the increased minimum wage. Regional centers shall maintain documentation on the process to determine, and the rationale for granting, any rate adjustment associated with the minimum wage increase.

(c) Notwithstanding any other law or regulation, commencing January 1, 2015, rates for personal assistance and supported living services in effect on December 31, 2014, shall be increased by 5.82 percent, subject to funds specifically appropriated for this increase for costs due to changes in federal regulations implementing the federal Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.). The increase shall be applied as a percentage, and the percentage shall be the same for all applicable providers. As used in this subdivision, both of the following definitions shall apply:

(1) “Personal assistance” is limited only to those services provided by vendors classified by the regional center as personal assistance providers, pursuant to the miscellaneous services provisions contained in Title 17 of the California Code of Regulations.

(2) Supported living services” are limited only to those services defined as supported living services in Title 17 of the California Code of Regulations.

<u>(d) Notwithstanding subdivision (a), commencing July 1, 2015, regional centers may negotiate a rate adjustment with existing service providers for services where rates are determined through negotiation between the regional center and the provider, if the rate adjustment is necessary to implement Article 1.5 (commencing with Section 245) of Chapter 1 of Part 1 of Division 2 of the Labor Code, as added by Chapter 317 of the Statutes of 2014. The rate adjustment may only be applied if a minimum of 24 hours or three days of paid sick leave per year was not a benefit offered to employees as of June 30, 2015 and shall be specific to payroll costs associated with any increase necessary to compensate an employee up to a maximum of 24 hours or three days of paid sick leave in a year of employment.</u>

~~(d)~~<u>(e)</u> This section shall not apply to those services for which rates are determined by the State Department of Health Care Services, or the State Department of Developmental Services, or are usual and customary.

LAO Recommendation: The LAO recommends the Legislature approve the Governor's proposed augmentation, and adopt supplemental report language to require DDS to provide the actual general fund costs for these proposals.

Staff Recommendation: Approve May Revision and proposed trailer bill language. Adopt LAO recommendation for supplemental report language to require DDS to provide the actual general fund costs for these proposals.

Issue 2: Minimum Wage Increase – Issues 511-MR, 611-MR

Background: Assembly Bill 10 (Alejo), Chapter 351, Statutes of 2013, increased the state minimum wage from $8.00 to $9.00 per hour, effective July 1, 2014; and increases it again to $10.00 per hour on January 1, 2016. The 2014 budget act included funding to allow minimum wage adjustments to rates paid to work activity programs, community-based day programs, in-home respite service agencies that can demonstrate to DDS that they employ minimum wage workers, and providers who have a rate negotiated with a regional center if they demonstrate to the regional center that they employ minimum wage workers.

May Revision Proposal: The Governor's budget proposes a $62.4 million increase ($36.6 million GF) to $10.00, effective January 1, 2016. The May Revision proposes a decrease of $31.2 million ($16.5 million GF) in POS in the current year to reflect actual costs (the initial estimate was $106.5 million ($59.7 million GF). In the budget year, the May Revision proposes a decrease of $31 million ($16.4 million GF), to reflect the current year adjustment.

LAO Recommendation: The LAO recommends the Legislature approve the Governor's proposed augmentation, and adopt supplemental report language to require DDS to provide the actual General Fund costs for these proposals.

Staff recommendation: Approve May Revision. Adopt LAO recommended supplemental report language.

Issue 3: Early Start Program – Restoration of Eligibility Criteria; GF Backfill for Reduced Federal Grant – Issues 520-MR, 516-MR, 525-MR

Background: The Early Start Program was established in 1993, in response to federal legislation that intended to ensure that early intervention services to infants and toddlers with disabilities and their families are provided in a coordinated, family-centered system of services that are available statewide. Provided services are based on a child's assessed developmental needs and the family's concerns and priorities, as determined by each child's individualized family service plan (IFSP) team. In 2009, the Legislature adopted significant changes to the Early Start Program in order to reduce expenditures by $41.5 million (GF), including removing "at-risk" infants and toddlers under 24-months from eligibility. In the 2014-15 Budget Act, the Legislature restored eligibility for the Early Start Program to the level in place prior to the 2009.

May Revision Proposal: The May Revision proposes a $9.8 million GF increase in the budget year to reflect full-year costs of expanded eligibility, for a total budget year augmentation of $15.3 million GF. Additionally, the May Revision requests a General Fund backfill of $0.5 million to reflect a reduction in the Early Start, Part C grant for POS due to a reduction in the state's share of the children under three years of age.

Staff Recommendation: Approve May Revision.

Issue 4: Behavioral Health Treatment – Issues 517-MR, 617-MR

Background: SB 946 (Steinberg), Chapter 650, Statutes of 2011, requires insurers and health plans to provide coverage of behavioral health treatment (BHT) for persons with autism spectrum disorders, effective July 1, 2012. The January budget assumed General Fund savings of $80 million, in both the 2012-13 and 2014-13 fiscal years. However, the department now assumes an annual savings of only $35.7 million General Fund, beginning in 2014-15. The Department of Finance has provided notice to the Joint Legislative Budget Committee of its intent to pursue funding for the current year deficiency in a supplemental deficiency bill.

SB 870 (Committee on Budget and Fiscal Review), Chapter 40, Statutes of 2014, directed BHT be provided under the Medi-Cal program for individuals under 21 years of age, to the extent it is required by federal law. Once implemented, the retroactive date of this new Medi-Cal service is July 1, 2014. The Governor's proposed 2015-16 budget assumes a $2 million decrease ($1 million GF) over the current year budget to reflect a reduction in POS expenditures for an estimated 292 new consumers who would receive BHT services through the DHCS as a Medi-Cal benefit.

On September 30, 2014, DHCS submitted a state plan amendment to CMS seeking approval for BHT to be added as a Medi-Cal benefit for individuals under the age of 21. Consistent with DHCS' interim policy guidance, issued on September 15, 2014, all individuals receiving BHT services on September 14, 2014, through a regional center will continue to receive those services through the regional center until such time that DHCS and DDS develop a transition plan.

The May Revision proposes to decrease POS by $3 million ($1.5 million GF) to reflect an update of caseload information.

Staff recommendation: Approve May Revision. The subcommittee took action yesterday in the Department of Health Care Services budget to modify the proposed provision language in order to ensure that the departments to provide more information about the transfer amount.

PROPOSED DISCUSSION ISSUES

Proposed Developmental Center Closures

Issue 1: May Revision Overview

The Governor proposes to initiate the closure of the state's developmental centers. Under the Governor's proposal, Sonoma Developmental Center would close by the end of 2018; Fairview Developmental Center and the non-secure treatment portion of Porterville Developmental Center would close by 2021. The Governor provides $49.3 million ($46.9 million GF) to begin the development of resources necessary to support Sonoma Developmental Center residents in the community and for closure activities. According to the Governor's May Revision summary, the department will convene a task force to discuss alternative uses for the Sonoma Developmental Center property.

As discussed at the May 7th subcommittee hearing, many factors are contributing to the challenges facing developmental centers. These include the loss of federal funding due to significant licensing and certification violations, a decreasing population, difficulty in the recruitment and retention of qualified staff, and an aging infrastructure. Additionally, numerous changes in federal and state law and various court rulings have served to move California away from institutional care in favor of community-based services and supports.

On January 13, 2014, the Secretary of the California Health and Human Services Agency released her "*Plan for the Future of Developmental Centers in California*" (plan). While the plan did not provide a time-specific roadmap for transitioning away from the developmental center model in California, it did put forth six consensus recommendations to develop the community resources necessary to serve individuals with enduring and complex medical needs and/or challenging behaviors and support needs, like those currently living in a developmental center. The Secretary's plan serves as the foundation of the May Revision proposal.

LAO Comments: The Legislative Analyst's Office raises the following issues for legislative consideration:

> ***Proposed Schedule for DC Closures Faster Than Prior Two DC Closures.*** *The state has successfully closed Agnews DC—over the five-year period from 2004-05 to 2008-09—and Lanterman DC—over the six-year period from 2009-10 to 2014-15. The proposed closure of Sonoma and Fairview DCs and the general treatment area at Porterville DC over six years is a shorter time period than the eleven-year period it took to close both Agnews and Lanterman DCs one at a time. Given the proposed time line calls for a faster closure than the prior two DC closures, it will be important to put comprehensive measures in place to ensure the health and safety of the residents as they transition from the DCs to the community.*

> ***Some Closure-Related Activities Are Not Allowed Until Legislature Approves Closure Plan.*** *Under state law, a DC closure plan submitted to the Legislature shall not be implemented without the approval of the Legislature. Therefore, it is important that DDS limit its closure-related activities to those allowable under state law prior to legislative approval of a closure plan. This will ensure the Legislature will have a chance to weigh in on the DC closure plans and modify them to meet legislative priorities and objectives.*

LAO Recommendations: The LAO makes the following recommendations:

- **Require the Department to Report on Allowable Closure Activities.** The timing of legislative approval of a closure plan may affect the department's ability to go forward with certain closure activities, potentially delaying the ultimate closure of a DC. We recommend the Legislature require the department to report at budget hearings regarding which closure activities are allowable under current law prior to legislative approval of a closure plan and which closure-related activities are contingent upon legislative approval of a closure plan.

- **Require the Department to Report on Consumer Health and Safety Measures.** We recommend the Legislature require the department to report at budget hearings on the measures that will be put in place to safeguard the health and safety of DC residents transitioning to community placements given the time line proposed for closure is faster than prior closures.

Staff Recommendation: Adopt the LAO recommendations as supplemental reporting language.

Issue 2: Community Placement Plan (CPP) Funding – Headquarters –Issue 521-MR; BCP MR 1

The May Revision requests that Item 4300-001-0001 be increased by $1,271,000 and seven positions be transferred from the developmental centers to headquarters to support the transition of residents from SDC to the community. These positions will assist in the development of community resources, and provide training and legal services during the development of community projects.

DDS estimates that approximately 132 homes will need to be acquired or renovated to support the current residents of Sonoma Developmental Center (SDC) in the community; 55 of these are currently under development. Additionally, non-residential resources will need to be developed. The nature of both residential and non-residential resources developed to support SDC movers is driven by needs identified in individual comprehensive assessments of developmental center residents and consumer and family choices.

The following seven positions are requested:

- One research program specialist II to ensure accountability and oversight of CPP funds and that the compilation, display and reporting of data for the closure of SDC is timely and accurate. Presently, there are 350 active CPP projects under development.

- Two nurse consultant III to provide the necessary support and oversight for the additional development of Adult Residential Facilities for Persons with Special Health Care Needs

(ARFPSHN). Nurse consultants are utilized in the planning of home development for consumers with complex medical needs and assist with actual transitioning into the community to ensure safeguards are in place. In addition, nurse consultants monitor consumers in ARFPSHN homes regularly. Finally, nurse consultants provide training and technical assistance to regional centers in the development and oversight of ARFPSHNs.

- Two community program specialist II (CPS II) to support the immediate planning of resource development for residential, day and ancillary supports, for individuals who are transitioning from SDC. In addition to technical assistance, the CPS II positions will be responsible for monthly updates regarding comprehensive assessments and resource development.

- One community program specialist IV (CPS IV) to provide oversight of all risk management activities related to SDC closure, provide ongoing technical assistance to regional centers and service providers, and facilitate stakeholder meetings to review data and obtain input regarding the quality of services and supports provided to the individuals who have transitioned to the community.

- One staff services manager III (SSM III) to provide oversight and management of the developmental center closure and Headquarters (HQ) CPP development team, facilitate and participate in frequent stakeholder meetings and work with regional center leadership regarding the development and implementation of their closure CPP plans. Additionally, the SSM III will work with HQ leadership, regional centers, SDC executive team and other state agencies in reviewing milestone achievements and troubleshooting any barriers to community development and/or closure.

Additionally, this augmentation includes $118,000 for an interagency agreement with the Department of Social Services (DSS) to provide one dedicated staff position to expedite the licensing of new facilities and an external services contract for legal consultation on matters of housing acquisitions.

Staff Comments: The requested positions will facilitate the development and monitoring of appropriate services and supports and help ensure a collaborative closure process.

LAO Recommendation: Approve.

Staff Recommendation: Approve May Revision.

Issue 3: Additional Community Placement Plan (CPP) Funding for the Closure of Sonoma Developmental Center – Issues 519-MR, 619-MR

May Revision Request: The May Revision proposes an augmentation of $48 million GF in POS for costs associated with the closure of Sonoma Developmental Center. Of these funds, $46.7 million GF is for start-up and placement costs; $1.3 million is for regional center operational costs to coordinate activities and placements.

Staff Comments: The requested funds will facilitate the development of appropriate services and supports for persons moving from Sonoma Developmental Center to the community.

LAO Recommendation: Approve.

Staff Recommendation: Approve May Revision. Approve a technical correction to schedule $46.7 million GF in the purchase-of-services budget and $1.3 million in the regional center operations budget.

Issue 4: Extension of Lanterman Developmental Center (LDC) Positions-Governor's January Proposal

The Governor's January budget made the following request related to the closure of LDC.

13.0 positions for the post-closure period in the budget year, and beyond, for transitioning of consumers into the community. Specifically, the budget requests:

- Retain six positions to extend the Regional Resource Development Projects (RRDP) to ensure LDC movers have successfully transitioned to the community. The positions would include one community program specialist IV; two community program specialists II; two community program specialists I; and, one office technician, at a cost of $600,000 ($400,000 GF).

- Retain two positions, now housed at Fairview Developmental Center, for the administration of the Community State Staff program. The positions would include a program director and one personnel specialist I, at a cost of $283,000 ($219,000 GF).

- Extend the program reauthorization of five positions, at a cost of $591,000 ($459,000 GF). These positions include:

    - One CEA, Level A position will serve as the primary liaison between DDS and families of remaining residents at the developmental centers.

    - One research program specialist and one research analyst II will continue to monitor and provide oversight of ARFPSHN's homes.

    - One associate information systems analyst will continue to perform IT functions related to the closure of Lanterman Developmental Center and transition to perform similar functions related to the closure of the remaining developmental centers.

    - One associate personnel analyst will continue to perform work related to employee layoffs at Lanterman Development Center and transition to similar duties related to the remaining developmental centers as they downsize.

Staff Comments: The requested positions will facilitate the development and monitoring of appropriate services and supports and help ensure a collaborative closure process.

Staff Recommendation: Approve as budgeted.

Issue 5: Developmental Center Closures: May Revision Trailer Bill Proposal

Background: Current law requires DDS to submit a closure plan for a developmental center not later than April 1 immediately prior to the fiscal year in which the plan is to be implemented, as part of the Governor's budget. Current law also describes the actions the department must take in the development of the plan, and what must be included in the plan.

The May Revision includes proposed draft trailer bill, as follows:

> ***Add Section 4474.11 to the Welfare & Institutions Code, as follows:***
>
> *4474.11. (a) Notwithstanding any other law, the Department of Developmental Services shall submit, on or before October 1, 2015, a plan or plans to close one or more developmental centers. The department may develop community resources and otherwise engage in activities for transitioning developmental center residents to the community utilizing funds allocated for that purpose as part of the approved 2015-16 Budget. Implementation of a plan following the 2015-16 fiscal year is contingent on legislative approval of the plan as part of the budget process for the 2016-17 fiscal year.*
>
> *(b) A plan submitted to the Legislature pursuant to this section may be subsequently modified during the legislative review process.*
>
> *(c) In developing a plan pursuant to this section, the department shall meet the requirements of subdivisions (c) through (f) of Section 4474.1.*

LAO Recommendation: Approve as placeholder trailer bill language.

Staff comments: The subcommittee may wish to amend the proposed trailer bill to provide greater assurances for a smooth and collaborative process. Staff recommends the subcommittee approve the Administration's language as placeholder trailer bill. Staff further recommends the subcommittee adopt additional placeholder trailer bill to amend Welfare and Institutions (WIC) Code Section 4474.1 to include:

- Consideration of utilizing developmental center staff for mobile health and crisis teams.
- Requiring the department to confer with stakeholders on alternative uses of developmental center property.
- Requiring a closure plan include:
    - A description of stakeholder input, including at least one public hearing in the county in which the developmental center is located.

- A description of unique and specialized services provided by the developmental center and the viability of transferring these services to support persons living in the community.
- A description of resident characteristics, including but not limited to age, gender, ethnicity, family involvement, years of developmental center residency, developmental disability and other factors that will determine service and support needs.
- Estimates on the location and nature of services and supports that will be delivered to residents moving to the community.
- A description of how the department will transition client rights advocacy services from the developmental center to the community client rights advocacy program.
- A description of how the department will monitor the movement of residents to the community.
- A description of local issues, concerns and recommendations regarding the proposed closure, including alternative uses of developmental center property.

- A requirement that the department provide quarterly updates to the Legislature throughout the closure process.

Staff Recommendation: Adopt proposed May Revision language, with additions described in staff comments, at placeholder trailer bill language.

Issue 6: Enhanced Behavioral Supports Homes – May Revision Trailer Bill Proposal

Background: The 2014-15 budget included authority and funding for DDS to develop up to six enhanced behavioral supports home in the community, limited to four residents each, to serve persons with significant behavior challenges moving from developmental centers.

May Revision Proposal: The May Revision proposes trailer bill language to remove the six facility limit on these homes, as follows:

> **Amend Welfare and Institutions Code Section 4684.81 as follows:**
>
> (a) The department shall implement a pilot project using community placement plan funds, as appropriated in the State Department of Developmental Services annual budget, to test the effectiveness of providing enhanced behavioral supports in homelike community settings. The enhanced behavioral supports homes shall be for purposes of providing intensive behavioral services and supports to adults and children with developmental disabilities who need intensive services and supports due to challenging behaviors that cannot be managed in a community setting without the availability of enhanced behavioral services and supports, and who are at risk of institutionalization or out-of-state placement, or are transitioning to the community from a developmental center, other state-operated residential facility, institution for mental disease, or out-of-state placement.

(b) An enhanced behavioral supports home may only be established in an adult residential facility or a group home approved through a regional center community placement plan pursuant to Section 4418.25.

(c) ~~No more than six e~~Enhanced behavioral supports homes may be approved by the State Department of Developmental Services each fiscal year in which the pilot program is in effect and to the extent funding is available for this purpose, each for no more than four individuals with developmental disabilities. The homes shall be located throughout the state, as determined by the State Department of Developmental Services, based on regional center requests.

(d) Each enhanced behavioral supports home shall be licensed as an adult residential facility or a group home pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code) and certified by the State Department of Developmental Services, shall exceed the minimum requirements for a Residential Facility Service Level 4-i pursuant to Sections 56004 and 56013 of Title 17 of the California Code of Regulations, and shall meet all applicable statutory and regulatory requirements applicable to a facility licensed as an adult residential facility or a group home for facility licensing, seclusion, and restraint, including Division 1.5 (commencing with Section 1180) of the Health and Safety Code, and the use of behavior modification interventions, subject to any additional requirements applicable to enhanced behavioral supports homes established by statute or by regulation promulgated pursuant to this article and Article 9.5 (commencing with Section 1567.61) of Chapter 3 of Division 2 of the Health and Safety Code.

(e) A regional center shall not place a consumer in an enhanced behavioral supports home unless the program is certified by the State Department of Developmental Services and the facility is licensed by the State Department of Social Services.

(f) The State Department of Developmental Services shall be responsible for granting the certificate of program approval for an enhanced behavioral supports home.

(g) The State Department of Developmental Services may, pursuant to Section 4684.85, decertify any enhanced behavioral supports home that does not comply with program requirements. Upon decertification of an enhanced behavioral supports home, the State Department of Developmental Services shall report the decertification to the State Department of Social Services. The State Department of Social Services shall revoke the license of the enhanced behavioral supports home that has been decertified pursuant to Section 1550 of the Health and Safety Code.

(h) If the State Department of Developmental Services determines that urgent action is necessary to protect a consumer residing in an enhanced behavioral supports home from physical or mental abuse, abandonment, or any other substantial threat to the consumer’s health and safety, the State Department of Developmental Services may request that the regional center or centers remove the consumer from the enhanced behavioral supports home or direct the regional center or centers to obtain alternative or additional services for the consumers within 24 hours of that determination. When possible, an individual program plan (IPP) meeting shall be convened to determine the appropriate action pursuant to this section. In any case, an IPP meeting shall be convened within 30 days following an action pursuant to this section.

(i) Enhanced behavioral supports homes shall have a facility program plan approved by the State Department of Developmental Services.

(1) The facility program plan approved by the State Department of Developmental Services shall be submitted to the State Department of Social Services for inclusion in the facility plan of operation.

(2) The vendoring regional center and each consumer s regional center shall have joint responsibility for monitoring and evaluating the services provided in the enhanced behavioral supports home. Monitoring shall include at least quarterly, or more frequently if specified in the consumer s individual program plan, face-to-face, onsite case management visits with each consumer by his or her regional center and at least quarterly quality assurance visits by the vendoring regional center. The State Department of Developmental Services shall monitor and ensure the regional centers compliance with their monitoring responsibilities.

(j) The State Department of Developmental Services shall establish by regulation a rate methodology for enhanced behavioral supports homes that includes a fixed facility component for residential services and an individualized services and supports component based on each consumer s needs as determined through the individual program plan process, which may include assistance with transitioning to a less restrictive community residential setting.

(k) (1) The established facility rate for a full month of service, as defined in regulations adopted pursuant to this article, shall be paid based on the licensed capacity of the facility once the facility reaches maximum capacity, despite the temporary absence of one or more consumers from the facility or subsequent temporary vacancies created by consumers moving from the facility. Prior to the facility reaching licensed capacity, the facility rate shall be prorated based on the number of consumers residing in the facility.

When a consumer is temporarily absent from the facility, including when a consumer is in need for inpatient care in a health facility, as defined in subdivision (a), (b), or (c) of Section 1250 of the Health and Safety Code, the regional center may, based on consumer need, continue to fund

> individual services, in addition to paying the facility rate. Individual consumer services funded by the regional center during a consumer's absence from the facility shall be approved by the regional center director and shall only be approved in 14-day increments. The regional center shall maintain documentation of the need for these services and the regional center director s approval.
>
> (2) An enhanced behavioral supports home using delayed egress devices, in compliance with Section 1531.1 of the Health and Safety Code, may utilize secured perimeters, in compliance with Section 1531.15 of the Health and Safety Code and applicable regulations. No more than two enhanced behavioral supports homes using delayed egress devices in combination with secured perimeters may be certified by the State Department of Developmental Services during the first year of the pilot program, one in northern California and one in southern California, and no more than one additional home using delayed egress devices in combination with a secured perimeter may be certified by the State Department of Developmental Services in each subsequent year of the pilot program. No more than six enhanced behavioral supports homes that use delayed egress devices in combination with a secured perimeter shall be certified during the pilot program. Enhanced behavioral supports homes shall not be counted for purposes of the statewide limit established in regulations on the total number of beds permitted in homes with delayed egress devices in combination with secured perimeters pursuant to subdivision (k) of Section 1531.15 of the Health and Safety Code. The department shall make reasonable efforts to include enhanced behavioral supports homes within the statewide limit.

Staff comments: This new model is designed to more appropriately meet the housing and support needs of some persons moving from developmental centers.

Staff recommendation: Approve May Revision as placeholder trailer bill.

Issue 7: Delayed Egress/Secured Perimeter Homes – May Revision Trailer Bill Proposal

Background: Trailer bill language to the Budget Act of 2012 permitted the development of certain community care and intermediate care facilities with delayed egress devices in combination with secured perimeters. However, the trailer prohibited the placement of children under the age of 10 or foster children under the jurisdiction of the juvenile court in these facilities. Criteria was established to guide regional centers in making placement decisions for these facilities and facilities were limited to 15 residents who are eligible for federal Medicaid funding. However, if such a home is also an enhanced behavioral supports home, the capacity is limited to four residents.

May Revision Proposal: The May Revision proposes trailer bill language that would eliminate the requirement for federal funding. The department argues that secured perimeter facilities are not eligible for federal funding, although they intend to continue to discuss this model with CMS through their transition planning process related to new federal home and community-based waiver regulations.

DDS has identified this model as necessary to serve some movers from developmental centers and as an alternative for persons placed in the secure treatment program at Porterville Developmental Center (discussed later in the agenda).

The proposed language follows:

Amend Health & Safety Code Section 1531.15, as follows:

1531.15.

(a) A licensee of an adult residential facility or group home for no more than 15 residents, that is ~~**eligible for and serving clients eligible for federal Medicaid funding and**~~ utilizing delayed egress devices pursuant to Section 1531.1, may install and utilize secured perimeters in accordance with the provisions of this section.

(b) As used in this section, “secured perimeters” means fences that meet the requirements prescribed by this section.

(c) Only individuals meeting all of the following conditions may be admitted to or reside in a facility described in subdivision (a) utilizing secured perimeters:

(1) The person shall have a developmental disability as defined in Section 4512 of the Welfare and Institutions Code.

(2) The person shall be receiving services and case management from a regional center under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code).

(3) (A) The person shall be 14 years of age or older, except as specified in subparagraph (B).

(B) Notwithstanding subparagraph (A), a child who is at least 10 years of age and less than 14 years of age may be placed in a licensed group home described in subdivision (a) using secured perimeters only if both of the following occur:

(i) A comprehensive assessment is conducted and an individual program plan meeting is convened to determine the services and supports needed for the child to receive services in a less restrictive, unlocked residential setting in California, and the regional center requests assistance from the State Department of Developmental Services’ statewide specialized resource service to identify options to serve the child in a less restrictive, unlocked residential setting in California.

(ii) The regional center requests placement of the child in a licensed group home described in subdivision (a) using secured perimeters on the basis that the placement is necessary to prevent out-of-state placement or placement in a more restrictive, locked residential setting and the State Department of Developmental Services approves the request.

(4) The person is not a foster child under the jurisdiction of the juvenile court pursuant to Section 300, 450, 601, or 602 of the Welfare and Institutions Code.

(5) An interdisciplinary team, through the individual program plan (IPP) process pursuant to Section 4646.5 of the Welfare and Institutions Code, shall have determined the person lacks hazard awareness or impulse control and, for his or her safety and security, requires the level of supervision afforded by a facility equipped with secured perimeters, and, but for this placement, the person would be at risk of admission to, or would have no option but to remain in, a more restrictive placement. The individual program planning team shall determine the continued appropriateness of the placement at least annually.

(d) The licensee shall be subject to all applicable fire and building codes, regulations, and standards, and shall receive approval by the county or city fire department, the local fire prevention district, or the State Fire Marshal for the installed secured perimeters.

(e) The licensee shall provide staff training regarding the use and operation of the secured perimeters, protection of residents' personal rights, lack of hazard awareness and impulse control behavior, and emergency evacuation procedures.

(f) The licensee shall revise its facility plan of operation. These revisions shall first be approved by the State Department of Developmental Services. The plan of operation shall not be approved by the State Department of Social Services unless the licensee provides certification that the plan was approved by the State Department of Developmental Services. The plan shall include, but not be limited to, all of the following:

(1) A description of how the facility is to be equipped with secured perimeters that are consistent with regulations adopted by the State Fire Marshal pursuant to Section 13143.6.

(2) A description of how the facility will provide training for staff.

(3) A description of how the facility will ensure the protection of the residents' personal rights consistent with Sections 4502, 4503, and 4504 of the Welfare and Institutions Code, and any applicable personal rights provided in Title 22 of the California Code of Regulations.

(4) A description of how the facility will manage residents' lack of hazard awareness and impulse control behavior.

(5) A description of the facility's emergency evacuation procedures.

(g) Secured perimeters shall not substitute for adequate staff.

(h) Emergency fire and earthquake drills shall be conducted on each shift in accordance with existing licensing requirements, and shall include all facility staff providing resident care and supervision on each shift.

(i) Interior and exterior space shall be available on the facility premises to permit clients to move freely and safely.

(j) For the purpose of using secured perimeters, the licensee shall not be required to obtain a waiver or exception to a regulation that would otherwise prohibit the locking of a perimeter fence or gate.

(k) This section shall become operative only upon the publication in Title 17 of the California Code of Regulations of emergency regulations filed by the State Department of Developmental Services. These regulations shall be developed with stakeholders, including the State Department of Social Services, consumer advocates, and regional centers. The regulations shall establish program standards for homes that include secured perimeters, including requirements and timelines for the completion and updating of a comprehensive assessment of each consumer's needs, including the identification through the individual program plan process of the services and supports needed to transition the consumer to a less restrictive living arrangement, and a timeline for identifying or developing those services and supports. The regulations shall establish a statewide limit on the total number of beds in homes with secured perimeters. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Amend Welfare & Institutions Code Section 4684.80, as follows:

4684.80. (a) "Enhanced behavioral supports home" means a facility certified by the State Department of Developmental Services and licensed by the State Department of Social Services pursuant to Section 1567.62 of the Health and Safety Code as an adult residential facility or a group home that provides 24–hour nonmedical care to individuals with developmental disabilities who require enhanced behavioral supports, staffing, and supervision in a homelike setting. An enhanced behavioral supports home shall have a maximum capacity of four consumers, <u>and, with the exception of facilities developed pursuant to Health and Safety Code section 1531.15</u>, shall conform to Section 441.530(a)(1) of Title 42 of the Code of Federal Regulations~~,~~ <u>and</u> ~~shall~~ be eligible for federal Medicaid home– and community–based services funding.

Staff Comments: Given that the department continues to discuss the viability of this model with CMS, it seems premature to fully remove the requirement that all such facilities be eligible for federal funding. It is possible that program design modification could result in federal approval. Additionally, it is not clear, in the absence of a closure plan, what number of current developmental center residents would require this level of restriction. However, use of this model as an alternative to placement in the secure treatment program at Porterville Developmental Center does have merit, especially in light of the proposal to expand the program discussed later in the agenda.

The subcommittee may wish to consider adopt placeholder trailer bill language and directing subcommittee staff to work with the Administration, policy committee staff and advocates on additional language that will clarify admittance criteria and program design components for both a forensic and non-forensic population, including criteria and program design for children. This language should include, but not limited to: a clear definition of the populations to be served; within the existing statewide cap, the number of beds that should be dedicated exclusively for persons who meet the criteria for admission to the secured treatment program at Porterville Developmental Center; the bed capacity limit per facility for each population to be served; the establishment of appropriate placement criteria; the development of an individual program plan and review process to ensure the delivery of appropriate services and supports and the continued need for this level of care; specific standards for placing children in these facilities; training requirements related to use of seclusion and restraints; access to client rights advocacy services; and whether the removal the federal funding requirement for these beds should be limited to specified populations. To the extent the proposed language includes the removal of the requirement for federal funding participation, how the health and safety safeguards required by federal funding participation will still be met. (Note that additional recommendations regarding the secure treatment program at Porterville Developmental Center are made later in the agenda).

Staff Recommendation: Adopt placeholder trailer bill language and direct subcommittee staff to work with the Administration, policy committee staff and advocates on additional language, as described in staff comments.

Issue 8: Statewide Self-Determination Program – Governor's January Proposal and Legislative Proposal

Background: SB 468 (Emmerson), Chapter 468, Statutes of 2013, establishes a statewide self-determination program (SDP), under which consumers are provided with individual budgets and the ability to purchase the services and supports they choose that are consistent with their individual program plan (IPP) and with the assistance of a financial manager.

Budget Proposal: The Governor's January budget proposed new provisional budget bill language to allow the transfer of up to $2,800,000 from local assistance to state operations, once federal approval occurs. This represents the estimated General Fund savings in purchase-of-services associated with the SDS program that would be used to offset the administrative costs incurred by the department, including the costs of required criminal background checks. Under the proposed language, the Department of Finance would be required to notify the Joint Legislative Budget Committee within 10 working days after such approval is made.

Legislative Proposal: The Self-Determination Program may be the preferred model for some persons moving from a developmental center, or by their family or conservator. However, the existing waiver is limited to 2,500 participants statewide. If the program were to be expanded to designate slots for persons moving from a developmental center, it would be advised to do so in a manner that allows the currently pending waiver application to be approved first so as to not slow implementation of the program.

Staff Comments: The Administration's proposed language is necessary to appropriately fund the administrative costs associated with the program. However, as this is a new program it may be prudent to require legislative notification prior to the transfer of funds.

Staff Recommendation: Approve the Administration's proposed provisional language, modified to require notice to the Joint Legislative Budget Committee 30 days prior to the transfer of funds. Approve placeholder trailer bill language to require the Administration, upon approval of the self-determination program waiver, to seek an amendment to the waiver to expand participant slots for up to 250 additional slots so that up to half of the total slots are reserved for persons moving to the community.

DEVELOPMENTAL CENTERS

Issue 1: Expansion of Secured Treatment Program (STP) at Porterville Developmental Center (PDC) – Issue 503-MR

Background: Porterville Developmental Center (PDC) currently serves 169 residents[1] in the Secure Treatment Program. The program is statutorily limited to 230 beds, consisting of 170 beds in the secure area and 60 beds available as transition beds in the general treatment area. These individuals have been judicially committed as incompetent to stand trial (IST). Although some of these individuals may be Medi-Cal eligible, DDS does not receive federal matching funds for the STP population due to lack of federal certification because of the "correctional-type" of setting in which services are provided. As a result, the STP is 100 percent GF supported.

As of January 7, 2015, there are an estimated 52 individuals who have been issued court orders to receive competency training and are currently in jail, pending space becoming available in the STP. According to DDS, superior courts have begun issuing "orders to show cause" to DDS, requiring legal counsel to appear in court. All individuals admitted to the STP, or awaiting admittance, have been charged with a violent and/or sexual offense and all have been determined to be incompetent to stand trial (IST). Admittance in the STP is for the purpose of restoration of competency or a clinical determination that competency cannot be restored.

Budget Request: The Governor's January budget requested $9.0 million GF and 92.3 positions in the current year; and, $18.0 million GF and 184.5 positions in the budget year, related to a proposed expansion of the STP by 32 beds, for a total of 202 beds. The May Revision updates this request by proposing a current year decrease of $2 million GF and a reduction of 19 positions to reflect an update of the estimated number of admissions from 32 to 20. In the budget year, the Administration proposes an increase of $0.8 million GF and a reduction of 2.5 positions (an increase of 22 Level of Care staff and a reduction of 24.5 non-level of care staff) and further proposes to increase the number of beds in the STP to 211 beds and prohibit the placement of children in the STP.

The Administration also proposes changes to the statutory requirements related to delayed egress – secure perimeter community facilities that could reduce the need for placement in the STP (see Issue 6 under Proposed Developmental Centers Closure).

Proposed Trailer Bill Language: The May Revision includes proposed trailer bill, as follows:

> **7502.5.**
> ~~(a) The total number of developmental center residents in the secure treatment facility at Porterville Developmental Center, including those residents receiving services in the Porterville Developmental Center transition treatment program, shall not exceed 230.~~
> ~~(b) As of the effective date of this subdivision, the State Department of Developmental Services shall not admit any persons into the secure treatment facility at Porterville Developmental Center unless the~~

[1] Based on the April 29, 2015 census.

~~population of the secure treatment facility is less than 230 persons, including 60 residents receiving services in the transition treatment program.~~

An individual may be admitted to the secure treatment facility at Porterville Developmental Center, as provided in paragraphs (1) and (3) of subdivision (a) of Section 7505, only when all of the following conditions are satisfied:

(a) The unit to which the individual will be admitted is approved for occupancy and licensed.

(b) The population of the secure treatment facility is less than 211 persons.

(c) The individual is at least eighteen (18) years old.

7505.

(a) Notwithstanding any other law, the State Department of Developmental Services shall not admit anyone to a developmental center unless the person has been determined eligible for services under Division 4.5 (commencing with Section 4500) and the person is:

(1) ~~Committed~~ An adult committed by a court to Porterville Developmental Center, secure treatment program, pursuant to Section 1370.1 of the Penal Code.

(2) Committed by a court to the acute crisis center at Fairview Developmental Center, or the acute crisis center at Sonoma Developmental Center, pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 due to an acute crisis, pursuant to Section 4418.7.

(3) ~~Committed~~ An adult committed by a court to Porterville Developmental Center, secure treatment program, pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 as a result of involvement with the criminal justice system, and the court has determined the person is mentally incompetent to stand trial.

(4) A person described in Section 4508.

Staff Comments. As discussed above, this proposal contains both a current year and budget year request. The Administration proposes to address the current year request in a supplemental appropriation bill. Typically, this bill is approved by the Legislature as a part of the budget package. However, the department has begun necessary modifications to accommodate more residents in the secured treatment program through use of discretionary funds in the Porterville Developmental Center budget. At this time, 20 of the 41 requested new beds are ready for occupancy.

In addition to increasing the limit on the number of persons who can reside in the STP and prohibit the placement of children in the program, the Administration's proposed trailer bill language would remove the limit on the number of persons who can be served in the transitional treatment program. The subcommittee may wish to consider if the process for ensuring that transitions occur in a timely fashion should be clarified and codified, especially if the cap on the number of transitional beds is raised or eliminated.

At its May 7th hearing, the subcommittee expressed concern about the growth in the Secure Treatment Program, in the absence of sufficient strategies to reduce the need for this level of care. The subcommittee may wish to direct the Administration and committee staff to work with stakeholders and policy committee staff to explore other statutory changes that would reduce the demand on STP and transitional beds, including but not limited to, exploring alternative locations for the provision of IST services, strategies for improving the delivery of services in the STP and transitional beds, and strategies for reducing placements and the length of stay in the STP and transitional beds.

Staff Recommendation: Staff recommends the subcommittee approve half of the requested funding and positions for the budget year - $9 million GF and 92.3 positions, as a placeholder amount; and direct subcommittee staff to work with the Administration, stakeholders and policy committee staff to make recommendations for the appropriate number of beds in the secure treatment program and transitional beds in the general treatment program, and other statutory changes that would reduce the demand on STP and transitional beds, including but not limited to alternative locations for the provision of IST services, improving the delivery of services in the STP and transitional beds, and other strategies for reducing placements and the length of stay in the STP and transitional beds.

Issue 2: Sonoma Developmental Center Four Intermediate Care Facilities (ICF) Units - General Fund Backfill – Issues 505-MR, 605-MR

Background: As discussed at the May 7th subcommittee hearing, four of eleven ICF units at SDC have been decertified since January of 2013, foregoing federal matching funds and relying solely on the GF for their operations. The Governor's January budget requested $8.8 million GF to offset lost federal funding for the four decertified units at SDC for the first eight months of the current year, as the 2014-15 budget assumed these units would be recertified as of July 1, 2014.

May Revision Proposal: The May Revision proposes an additional $4.4 million GF, and a corresponding decrease in federal funds, to backfill for the loss of Medi-Cal reimbursement for an additional four months (March through June 2015). In the budget year, the Administration proposes an increase of $13.2 million GF, and a corresponding decrease in federal funds, to reflect the Administration's conclusion that these four units will not regain certification or federal funding.

Staff Comments: Although the Governor's budget does not presume the restoration of federal funding for these four units, the budget assumes full federal funding for the remaining ICF units at SDC and the other developmental centers (except for in the Secure Treatment Program at Porterville Developmental Center). However, these ICF units have now lost their certification and it is unknown if the current discussion between the Administration and CMS will result in a continuation of federal funding for these facilities or if the state will be required to repay the federal funding received since the decertification occurred. The subcommittee may wish to have DDS notify the Legislature on the status of any changes in federal funding.

Staff Recommendation: Adopt placeholder budget bill language to require the department to provide the Joint Legislative Budget Committee, and the appropriate legislative budget and policy committees, within 5 days of receipt, a copy of any communication from CMS regarding federal Medicaid funding for the developmental center relative to the eligibility status of developmental center residents or certification status of any housing unit. This notice shall include the amount of federal Medicaid funding that must be repaid as a result of decertification. Approve supplemental report language that requires DDS to provide, within 90 days of a determination that federal funding will not be continued for ICF units in state developmental

centers, a discussion of any PIP components that may be discontinued without risk to resident care or safety, in order to reduce the General Fund impact; and how the loss of federal funding will impact the crisis homes at Sonoma and Fairview developmental centers.

Issue 3: Staffing Adjustments for Acute Crisis Units – Issue 607-MR

Background: As discussed above, the 2014 budget included \$3.2 million (\$2 million GF), and trailer bill language, to establish two acute crisis centers at Fairview and Sonoma developmental centers. Each acute crisis center will house up to five individuals at a time. The budget assumed federal funding participation for these units. However, a survey of the seven certified ICF units at SDC occurred in May of 2014, and these units were found to be out-of-compliance in four out of eight conditions, resulting in their decertification. CMS has extended the date on which federal funding for these units will be withdrawn several times, while they have been engaged in active conversation with the Administration. Last week the date was extended to June 6, 2015.

Following the decertification of the additional seven ICF units, the subcommittee has been repeatedly assured that the Sonoma Developmental Center crisis home would not be opened until the issue of federal funding had been resolved. However, in early April, the crisis home was opened. DDS has argued that the extension of the date on which federal funding would be withdrawn, constituted “resolution” in their opinion.

Budget Request: The Governor’s budget requests \$0.2 million (\$0.1 million GF) and 3.5 positions (net increases) associated with level of care (LOC) staffing adjustments for these units, and \$0.3 million (\$0.2 million GF) and 4.5 positions associated with non-level of care (NLOC) staffing adjustments, in the current year.

Staff Comments: Should federal funding be withdrawn at Sonoma or Fairview developmental centers, these crisis units will become solely reliant on General Fund.

Staff Recommendation: Approve May Revision. The previous action includes a requirement that DDS report to the Legislature regarding the potential discontinuation of federal funding.

Issue 4: Program Improvement Plans for Fairview and Porterville Developmental Centers – Issues 506-MR, 606-MR

Background: As discussed at the May 7th subcommittee hearing, significant GF resources have been invested in the Administration’s efforts to make the improvements necessary to regain, or maintain, certification of the ICF units at SDC and the other developmental centers. The scope and nature of these improvements are determined through a program improvement plan (PIP) that DDS has entered into with the state Department of Public Health. Prior to implementation of the PIP, DDS was required to contract with independent consultants to develop a root-cause analysis and the PIP. These consultants have also provided on-going consultation and monitoring as the PIPs are implemented, and assist DDS in preparing for recertification surveys. Over three years, nearly \$40 million has been budgeted to pay for PIP implementation and consultant contract costs.

May Revision Proposal: For the current year, the Governor's budget requests $11.9 million ($7.5 million GF) and an increase of 119.7 positions, to cover eight months of costs to implement two PIPs at the Fairview and Porterville developmental centers that were entered into with the state Department of Public Health on January 15, 2015. The May Revision proposes a decrease of $3.1 million ($1.9 million GF) and a reduction of 46.1 positions. According to DDS, this is necessary "as recruitment and retention efforts have demonstrated slow progress in hiring key positions at both FDC and PDC." For the budget year, the May Revision requests that a $1.2 million decrease in reimbursement authority in the Governor's budget be offset by GF.

Staff Comments: Significant General Fund has been invested without the desired outcome of federal funding participation restoration.

Staff Recommendations: Approve May Revision. The previous action includes a requirement that DDS report to the Legislature regarding the potential discontinuation of federal funding.

Issue 5: Lanterman Developmental Center Land Transfer – Legislative Proposal

Background: In December, 2014, the last resident of Lanterman Developmental Center moved to the community. This marked the end of a closure process that was approved by the Legislature as a part of the Budget Act of 2010. The "Future of Developmental Centers in California" report issued by the state Health and Human Services Agency included a recommendation that the state *"should enter into public/private partnerships to provide integrated community services on existing State lands, where appropriate."*

The Governor's budget assumes that DDS will be in possession of the LDC property until June 30, 2015, and that the LDC property will transfer to the California State University (CSU) System on July 1, 2015. At its May 7th hearing, the subcommittee expressed interest in ensuring that any future housing developed on the LDC property after it is transferred to the CSU system includes housing opportunities for persons with developmental disabilities.

Staff Recommendations: Staff recommends that the subcommittee communicate to Senate Budget Subcommittee No. 4 that the transfer should require a minimum of 20 percent of any housing developed by the CSU or one of its affiliates, auxiliaries, or other party through transfer, lease or sale, shall be available and affordable to individuals with developmental disabilities served by a regional center pursuant to WIC 4500 et al.

Issue 6: Fire Alarm System Upgrade at Porterville Developmental Center - Capital Outlay Project – January Budget Proposal

Background: According to DDS, the existing fire alarm system is comprised of subsystems of varying ages, all of which are outdated and well beyond useful life. The system is not integrated and there are gaps in coverage and functionality, and the older systems do not meet current fire codes. According to DDS, the existing systems fail at an unacceptable rate, and the majority of alarm triggers are the result of false alarms caused by system malfunctions.

Budget Request: $0.8 million GF, through the Capital Outlay process, to prepare preliminary plans ($309,000) and working drawings ($493,000) for a high priority fire, life, and safety project at the Porterville DC (Phases 1 & 2).

Staff Comments: According to the Department of General Services, Phase 3 of the project, construction, would cost an estimated $7.2 million GF and will be requested for the 2016-17 fiscal year. The total project cost, over two years, is estimated at $8.0 million GF. A rough estimate to limit this project to the Secure Treatment Program and the administration building would reduce the project cost to $6.4 million. The general treatment area of the developmental center will likely be closed by 2021 (see previous discussion).

Staff Recommendation: Given the announced intent of the Administration to close the general treatment area of Porterville Developmental Center, staff recommends the subcommittee approve this request but limit the project to the Secure Treatment Program and the administration building.

Issue 7: Deferred Maintenance Projects – January Budget Proposal

Background: According to the Governor's Five-Year Infrastructure Plan, DDS estimates the currently identified deferred maintenance projects at the developmental centers would cost approximately $386.7 million GF to complete. This does not include ongoing repair projects, or other projects that DDS absorbs within its discretionary developmental center funds, such as the work already completed to prepare for the expansion of the STP at Porterville Developmental Center.

Budget Request: Control Section 6.10 of the Governor's budget proposes that the Department of Finance (DOF) may allocate $125 million GF to various state departments to address a portion of deferred maintenance needs, including $7.0 million GF to DDS. DOF must provide their approved list of projects to be funded through the authority granted in this Control Section to the Joint Legislative Budget Committee (JLBC) 30 days prior to the allocation of these funds. Additionally, any change to the list must be approved by DOF, subject to a 30 day review by the JLBC. Note that proposed Control Section 6.10 is being considered in Senate Budget Subcommittee No. 4 on State Administration and General Government.

On April 29, 2015, the Legislature was supplied with an initial list of projects proposed for funding pursuant to Control Section 6.10. For DDS, the following projects at Porterville DC were included:

- Repair of groundwater wells for an estimated $225,000.
- Replacement or retrofit of existing boilers for an estimated $5,410,000.
- Security camera upgrade in the STP for an estimated $400,000.
- Re-key the entire facility to a master/submaster key schedule for an estimated $750,000.

Staff Comments: The replacement or retrofitting of the existing boilers at Porterville DC was proposed last year and rejected by the Legislature. DDS testified at the May 7th hearing that the cost of fines they are subjected to due to the emissions for the existing boilers are well under the cost of replacement.

Staff Recommendation: Staff recommends the subcommittee make a recommendation to Senate Budget Subcommittee No. 4 and the Joint Legislative Budget Committee, that the boiler retrofit not be approved.

COMMUNITY SERVICES

Issue 1: Current Year Deficiency and Budget Year Increase – May Revision – Issues 510 MR, 610-MR

May Revision Request: The Governor's January budget proposed a current year increase of $6.2 million (-$2.1 million GF) above the 2014-15 enacted budget for regional center operations, reflecting increases in caseload and utilization in the current year. The May Revision proposes to increase the Governor's current year budget by an additional $1.6 million ($4.6 million GF decrease) to reflect updated caseload. For the 2015-16 budget year, the Governor's budget provides an increase of $30.3 million ($22.5 million GF) for regional center operations over the 2014-15 enacted budget, reflecting projected increases in caseload and utilization in the budget year. Additionally, the Governor's budget proposes a $1.9 million increase ($1.6 million GF) in regional center operations in the budget year to adjust the budgeted salaries for account clerks and secretary I positions to reflect the increase in the state minimum wage from $9.00 to $10.00 an hour, effective January 1, 2016. The May Revision proposes an increase of $2.7 million ($9.1 million GF decrease) in the budget year. The increase updates caseload and expenditure estimates, adjusts increases in federal funding, updates contracts for client rights' advocacy and direct support professional training, and corrects an error relative to the minimum wage increase impact on the regional centers' core staffing formula.

Regional Center Purchase-Of-Services (POS)
The Governor's budget projects a current year increase of $104.6 million ($58.1 million GF) in POS, reflecting increases in caseload and utilization. The May Revision updates the current year budget proposal with an increase of $41.8 million ($46.3 million GF) to reflect updated caseload and expenditure growth.

In the 2015-16 budget year, the Governor proposes additional increases over the enacted 2014-15 budget. The May Revision updates the budget year with an increase of $245 million ($221 million GF) to reflect caseload and expenditure growth.

LAO Recommendation: The LAO has completed its analysis of the May Revision regional center caseload estimate and they are not recommending any adjustments at this time. They find that year-over-year increase of 10,748 RC consumers (from 279,453 in 2014-15 to 289,931 in 2015-16) or 3.75 percent is in line with historical caseload growth and recent caseload trends.

However, in February, the LAO identified issues with the department's estimate of costs associated with greater utilization of services under the community care facilities (CCF) and supported living services (SLS) purchase of services categories. For these two categories, the LAO found that the 2015-16 estimated costs proposed for General Fund expenditures that do not draw down federal Medicaid matching funds (known as non-matched General Fund) far outpace recent trends in cost growth. Based upon their review of the *Regional Center Local Assistance 2015 May Revision of the 2015-16 Budget*, the LAO continues to find that non-matched General Fund expenditures for CCF and SLS outpace recent trends in cost growth. In discussions with the LAO, the department indicated that in prior years the budget estimate likely underestimated non-matched General Fund (or conversely, overestimated the amount of General Fund that would be matched with federal funds). According to the department, the estimated amount of federal matching funds was estimated based upon historical trends that did not adequately take into account changes to the provision of services that have been implemented over the past several years such as cost-saving measures. The DDS has indicated that it will work to improve its estimate methodology to better align its estimate of the amount of federal matching funds it will draw down with program changes. The LAO does not recommend an adjustment to the DDS budget at this time. However, they will continue to monitor the department's estimates and advise the Legislature if they believe this issue warrants further legislative action.

Staff Recommendation: Approve May Revision, adjusted for any actions adopted elsewhere in the agenda. Request that DDS and LAO report back to the subcommittee next year on the issue of the federal matching funds estimate methodology.

Issue 2: Continuation Costs for Residents Transitioning from a Developmental Center into the Community - Issues 512-MR, I612-MR

May Revision Proposal: In the current year, the May Revision increased POS by $21.4 million ($15.7 million GF) to reflect the continuing costs of persons who, under CPP, transitioned from a developmental center into the community in 2013-14. For the budget year, there is an increase of $37.9 million ($29.9 million GF) to reflect the costs of residents who moved to the community, under CPP, in 2014-15. The costs for residents who move under CPP have their costs funded through POS in subsequent years. DDS notes that the continuation costs for residents who transitioned in 2012-13 and 2013-14 are significantly higher than in prior years-a trend that is expected to continue for movers as remaining developmental center residents have more challenging needs.

Staff Recommendation: Approve May Revision.

Issue 3: General Fund Offset Due to Reduction in Revenues from the Program Development Fund (PDF) – Issue 513-MR

Background: The Program Development Fund (PDF) provides resources needed to initiate new programs, consistent with approved priorities for program development in the state plan. PDF is funded through fees paid through the Parental Fee Program, which assess a fee for the cost of out-of-home residential care for a child; and the Annual Family Program Fee, which assesses an annual fee for children who are receiving qualifying services through a regional center.

At its March hearing, this subcommittee discussed the January, 2015 report of the State Auditor, who found the process for assessing the fees under the Parental Fee Program is "woefully inefficient and inconsistent." The auditor has made recommendations intended to improve accountability. DDS has accepted some of these, is reviewing statutory and regulatory authority relative to other recommendations, and has modified implementation of others. Notably, DDS does not agree to pursue a fiscal penalty for regional centers who fail to provide DDS with the required monthly placement reports and copies of information letters sent to parents.

May Revision Proposal: The May Revision proposes a GF backfill of $1.3 million to reflect a corresponding decrease in PDF revenue, to reflect updated population, assessments and payment information associated with the Parental Fee Program (PFP) and the Annual Family Program Fee (AFPF). In the budget year, the May Revision proposes a GF backfill of $1.4 million for the same purpose. According to DDS, revenue decreases by $0.3 million in the current year and $0.4 million in the budget year for the AFPF, due to a lower number of eligible children, fewer assessments by regional centers, and updated collection information. Revenue decreases by $1.0 million in the current year and $1.0 million in the budget year for the PFP, due to lower than expected collections and a dely in credit card payment implementation.

Staff Recommendation: Approve the May Revision. Ask DDS to report back at 2016 budget hearings on the status of its implementation of the State Auditor's recommendations.

Issue 4: Federal Overtime Changes – Issues 514-MR, 614-MR

Background: In September 2013, the United States Department of Labor made regulatory changes to federal Fair Labor Standards Act (FLSA) by revising the definition of "companionship services" and requiring overtime compensation for service providers previously exempt. Among the services purchased by regional centers, supported living programs, in-home respite programs, and personal assistance services would have been impacted by this change. The 2014 Budget Act provided a 5.82 percent rate increase, at a cost of $9.5 million ($5.2 million GF), to in-home respite services, supported living services and personal assistants, and trailer bill language, to reflect the cost of complying with Federal Labor Standards Act change.

On December 31, 2014, a federal district court delayed implementation of the revised definition of "companionship services" and on January 14, 2015, the court vacated the revised definition. The U.S. Department of Labor appeal of this ruling was heard on May 7, 2015. Pending an outcome of that appeal, DDS rescinded the rate increase and has recouped the funds appropriated for this purpose that were previously allocated to the regional centers.

The FLSA issue had a corresponding impact on in-home supportive services (IHSS) workers. However, unlike the solution adopted for DDS-funded services, the IHSS solution included both funding for overtime costs and a limitation on the amount of overtime that could be worked by an IHSS provider. Implementation of the IHSS changes associated with the FLSA issue has also been delayed.

Should the U.S. Department of Labor decision be upheld in appeal, the state changes to the IHSS and DDS-funded services will be implemented.

May Revision Proposal: The Governor's January budget proposes to increase current year funding related to the implementation of the FLSA overtime regulations by $3.7 million ($1.9 million GF). In the budget year, the Governor's January budget proposes $24.4 million ($13.1 million GF) to reflect the full year implementation of this policy. The May Revision proposes a reduction of $20.7 million ($11.2 million GF) in the current year as the FLSA regulation was not implemented. For the budget year, the May Revision proposes an increase of $2 million ($0.9 million GF decrease) to correct an error.

LAO Recommendation: The LAO notes that there is uncertainty surrounding when the appeals court will make its decision on the FLSA regulations, how the court will decide the case, whether the case will be appealed further, and thus whether a full year of funding in the budget year will ultimately be necessary.

Staff Comments: Concerns have been raised since the passage of the 2014 budget that for regional center consumers who rely on both IHSS and a regional center-funded service, most notably supported living services (SLS), that utilize the same worker, implementation may be particularly complex. Specifically, there is ongoing concern that the overtime rule may apply accumulatively for workers who are employed as both an IHSS provider and SLS provider (otherwise referred to as the "dual employer" issue). Additionally, because state law requires regional centers to utilize generic services prior to purchasing DDS-funded services, the cap on allowable hours for IHSS recipients, along with the cap on allowable overtime for IHSS providers, will likely push significant overtime costs onto the DDS-funded SLS system, where there is no statutory cap on recipient hours or cap on allowable overtime for SLS providers.

Staff Recommendation: Adopt trailer bill language that, in the event the FLSA regulation is implemented in California, DDS shall work with legislative staff, providers and advocate organizations, and the Association of Regional Centers to establish and implement a strategy for monitoring the impact of the regulation on consumers and providers and present the findings of the monitoring during the 2016 budget subcommittee process.

Issue 5: Prior Years General Fund Shortfall – Issue 518-MR

May Revision Proposal: The May Revision requests $61.5 million GF in POS to reflect unrealized savings and offsetting federal funds in prior year expenses, resulting in a need to repay outstanding GF loans. Specifically, DDS has identified a shortfall of $15.6 million GF in fiscal year 2011-12 and $46 million GF in 2012-13. These shortfalls are the result of an overestimate of reimbursements not adjusted for cost-containment proposals enacted during those fiscal years and lower than anticipated savings from the private insurance coverage of behavioral health therapy. The May Revision proposes provisional language to specify that these funds are to be used only for prior year shortfalls.

Staff Recommendations: Approve May Revision.

Issue 6: Stability of Community-Based Services and Supports System - Legislative Proposal

Background: At is March hearing, the subcommittee discussed at length, and took extensive public comment on, the growing lack of stability of community-based services and supports due to the lack of significant rate adjustments for most community-based service providers since 2006. The 2014 budget approved by the Legislature included budget bill language to require DDS to work with stakeholders to develop a proposal relative to rate-setting methodologies for community-based services and supports. However, the Governor vetoed this language and instead directed the Health and Human Services Agency to convene a work group to review this issue, along with the regional center core-staffing formula discussed above. The agency convened its first Developmental Services Work Group meeting in December 2014. Concurrently, a Home and Community-Based Services Advisory Group on February 17, 2015 was established by the Administration to analyze issues, identify steps and processes, and develop policy recommendations involved with implementing federal home and community-based settings requirements.

May Revision: The May Revision included no proposed increases in provider rates.

Staff Comments: In both the legislative and policy committee arenas, members have expressed deep concerns about the impact of a prolonged rate freeze on the quality, stability, and accessible of services and supports in the community. While the agency-led advisory and work group process underway is commendable, it is not clear when this will result in tangible recommendations.

Staff Recommendation: Hold open.

Issue 7: Disparities in Service Delivery – Legislative Proposal

Background: DDS and regional centers are required to annually collaborate to compile data in a uniform manner relating to POS authorization, utilization and expenditure by regional center and by specified demographics including: age, race, ethnicity, primary language spoken by consumer, disability, and other data. This information is also to include data on individuals eligible for, but not receiving, regional center services. Regional centers are required to hold public hearings on this data and DDS is required to provide oversight, through their contract agreements with the regional centers, by requiring specified activities and establishing annual performance objectives.

In April of 2012, and following a 2011 Los Angeles Times series that reported significant disparities in access to regional center services based on race and ethnicity, income level and socio-economic community, the Senate Autism and Related Disorders Select Committee held an informational hearing to examine what disparities exist in the provision of services to persons with autism spectrum disorders. Following the hearing, Senate Majority Leader Darrell Steinberg established a 20-member taskforce to make recommendations relative to these issues.

According to the 2011 Los Angeles Times series, in 2010, “For autistic children 3 to 6, a critical period for treating the disorder, the state Department of Developmental Services last year spent an average of $11,723 per child on whites, compared with $11,063 on Asians, $7,634 on Latinos and $6,593 on blacks.” The series also reported, “Last year, the system served 16,367 autistic children between the critical ages of 3 and 6, spending an average of $9,751 per case statewide. But spending ranged from an average of $1,991 per child at the regional center in South Los Angeles to $18,356 at the one in Orange County.”

Staff Comment: Concerns about the disparities in access to services based on the socio-economic status of a family are not new or unique to the developmental disabilities system. However, multiple efforts to address these concerns and reduce the disparities have not proven to be particular successful. While some clarification of existing requirements may be valuable, especially in terms of language access; in the long run, the Administration should take a leadership role in determining the root causes of these disparities and devising a strategy to address them. The subcommittee may wish to adopt the following placeholder trailer bill language.

> Amend WIC Section 4646.5(a)(10)to add (a)(10):
>
> <u>At the end of the individual program plan meeting, the regional center shall provide the consumer, his or her parent, legal guardian or conservator, or authorized representative a written list of agreed upon services, including the amount and anticipated start date, in their native language.</u>

Amend WIC Section 4646.5(a)(5):

(5) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The individual program plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services. <u>A written copy of the individual program plan shall be provided to the consumer and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative within 45 days of the meeting in their native language.</u>

Amend WIC Section 4646.5 to add (a)(9) to include:

Each consumer and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative shall be provided with a list of services provided by the regional center and information about the appeal and complaint process in their native language at the start of each individual program plan meeting.

Amend WIC Section 4519.5 to add (g):

By ***, the Health and Human Services Agency shall convene a workgroup to do the following: review data produced pursuant to section 4519.5, identify barriers to the provision of equitable services, develop recommendations to help reduce purchase of service disparities including the identification of incentives that would reduce disparity and promote equity, the development and expansion of culturally appropriate services, service delivery and service coordination and best practices to reduce disparity and promote equity. The taskforce shall be composed of consumers and families that reflect the ethnic and language diversity of consumers served by the regional centers, representatives of the regional centers, advocates, the protection and advocacy agency pursuant to Section 4901and from the university centers for excellence in the state, pursuant to Section 15061 et seq. of Title 42 of the United States Code and other stakeholders. The Department shall provide the workgroup's recommendations to the policy and fiscal committees of the Legislature by ****.

Amend WIC Section 4629 to add (g):

The department shall establish performance contract guidelines and measures to improve equity and reduce disparity in regional center POS expenditures.

Staff Recommendation: Adopt placeholder trailer bill language to accomplish the following:

- **Clarify that the written list of agreed upon services that is provided to consumers or families at the end of an IPP meeting, be provided in a language the consumer or family understands.**

- **Provide a deadline of 45 days, by which a copy of the IPP in the consumer or family member's native language must be provided.**

- **Specify that consumers and family members be provided a list of services, including information about the appeal and complaint process, in their native language at the start of an IPP meeting.**

- **Require the Health and Human Services Agency to convene a workgroup to review existing data on service disparities and make recommendations to the Legislature on ways to reduce them.**

- **Require the department to include in regional center performance contracts, guidelines and measurements to reduce disparity in regional center POS expenditure.**