

Senate Budget and Fiscal Review—Nancy Skinner, Chair

SUBCOMMITTEE NO. 3

Agenda

Senator Susan Talamantes Eggman, Ph.D, Chair
Senator Melissa Melendez
Senator Richard Pan, M.D.



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1021 O Street - Room 2100

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PUBLIC COMMENT

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4300 DEPARTMENT OF DEVELOPMENTAL SERVICES (DDS)

The Department of Developmental Services is responsible for administering the Lanterman Developmental Disabilities Services Act (Lanterman Act). The Lanterman Act provides for the coordination and provision of services and supports to enable people with developmental disabilities to lead more independent, productive, and integrated lives. Additionally, the Early Start Program provides for the delivery of services to infants and toddlers at risk of having a developmental disability. The department carries out its responsibilities through contracts with 21 community-based, non-profit corporations known as regional centers (RCs), as well as through state-operated homes and facilities.

Issue 1: Division of Community Assistance and Resolutions

Spring Finance Letter (SFL)/Budget Change Proposal (BCP). The department requests \$4.4 million (\$3.7 million General Fund) ongoing and 20 permanent positions to establish a new Division of Community Assistance and Resolutions. The request includes \$915,000 for an interagency agreement with the Department of General Services (DGS) to partner on improvements to the state hearings process.

Background. According to the department, the new division would enable DDS to improve the management of community and whistleblower complaints, reform appeals and state hearings, create an Ombudsperson Office for all programs, and enhance the department's resources for quality assurance and risk management in support of critical initiatives that ultimately will enable quality person-centered individual outcomes. These functions would be led by a proposed Deputy Director position.

Office of Quality Assurance and Risk Management. Quality assurance and risk management are critical parts of the developmental services system and are required program components under Medicaid. Reporting and data collection, technical assistance, and other functions assure that processes are followed and that health and safety risks are addressed and mitigated. Examples of quality assurance include coordinating ongoing surveys of individuals, families, and guardians, using the four National Core Indicators (NCI) performance surveys; analyzing and disseminating data trends; and working with stakeholders to utilize the data as measures of system performance and improvement of consumer outcomes. Examples of risk management include requiring and monitoring special incident reports, doing case-specific and population-level analyses to identify issues of concern for technical assistance and prevention opportunities, and ongoing education and awareness efforts.

The proposal recommends dividing the existing single Office of Quality Assurance and Risk Management into two respective offices. Both topics have increasing importance as the developmental services system focuses on outcomes. Each office would focus on implementing foundational ongoing work necessary to successfully operationalize recent critical budget and policy initiatives while continuing to keep their oversight roles separate from program operations. These initiatives depend upon additional data analysis, improvements in the consistency and quality of data

across RCs, the establishment of baseline expectations and the identification of gaps, and the transformation of data into information that is useful for improving service delivery.

According to the department, additional resources for the Risk Management Office will implement important data collection and analysis enhancements, establish preventive strategies, and meet emerging risk mitigation priorities. The department also seeks more understandable data visualizations for DDS, RCs, and stakeholders when identifying areas of risk exposure and performance improvement. The department requests resources to measure the impact of recent program enhancements on outcomes. The department is also engaging with stakeholders to consider updates to the regulations for required special incident reporting and to clarify and modernize what is reported. The work done by this office will provide fundamental information for the system's efforts to protect the health and safety of individuals receiving services and their families.

For quality assurance, current staff are focused on federal reporting, oversight, and production of NCI surveys, and making sure that reports and appropriate processes are in place. The restructured Office of Quality Assurance would be responsible for managing the development of the new Quality Incentive Program. The office would also manage all NCI efforts, including analyzing and using NCI data to inform program activities and policies.

Ten new positions are proposed for expanding the time-sensitive work of the two proposed offices. Funding is also requested to change the level of the existing Career Executive Assignment A position to Level B over the Office of Risk Management.

Fair Hearings and Appeals. The existing fair hearings process was designed to resolve disagreements about eligibility for RC services and service disputes between RCs and consumers. It is intended to give individuals (or their representatives) an opportunity to appeal regional center decisions through an impartial party. Disagreements may be about services, eligibility, or any action of the regional center. This process, with hearings conducted by the Office of Administrative Hearings (OAH) within the DGS, was developed in the 1970s and has not been subject to any significant subsequent reforms.

The process for resolving a disagreement can begin with an informal meeting between the consumer and their authorized representative and the regional center before moving to a fair hearing. The consumer may decline this informal meeting. If the issue remains following an informal meeting, the consumer may request mediation or proceed directly to a fair hearing. Mediation is intended to be an informal, non-adversarial meeting where the parties have the opportunity to agree on a resolution. If both parties agree to mediation, then a mediator provided by the OAH conducts an informal mediation. A consumer/family/representative may withdraw at any time from the mediation process and proceed to a fair hearing.

A consumer/family/representative must file a request for a fair hearing in writing within 30 days after notification of the decision or action that is the subject of a disagreement. The fair hearing includes the presentation of evidence, testimony under oath, and closing arguments. The Administrative Law Judge (ALJ) then makes a decision based on the facts, evidence, and relevant laws. If the decision is unfavorable to the claimant and results in the denial of services, the decision will not be implemented until 10 days after the claimant/family/representative receives the decision.

DDS has been re-examining the developmental services system's fair hearings process for over a year. The review was initiated, in part, due to concerns shared by self-advocates and family members that the current process can be intimidating, difficult to navigate, and experienced as "unfair," particularly for individuals whose preferred language is not English. DDS is looking comprehensively at due process issues including ease of access, equity, best practices for alternative and informal dispute resolution, hearing processes and timelines, notices of proposed action (NOAs), adequacy of interpretation and translation, training of hearing officers, adequacy of representation in the process, and sufficiency and timeliness of data collected. According to the department, revisions to the fair hearing process will result in due process that is more culturally and linguistically responsive to individuals and families, increase consumer and family awareness, and be more efficient and responsive to the needs of the community.

To help inform this concept, DDS engaged the community through six community stakeholder meetings and conducted a consumer survey representing individuals who filed or accessed the fair hearing process within the last two years. DDS also received and discussed an external report prepared by several advocacy organizations regarding the hearing process, which identified several issues of concern including those identified above¹. That report questions whether the informal dispute resolution mechanisms are serving their intended purpose of equitably resolving disagreements between regional centers and consumers/families. According to the report, about 60 percent of survey respondents from 18 regional centers experienced problems with the informal hearing and/or mediation process, with many problems stemming from a lack of legal representation. These problems were reportedly more severe for non-white and/or Latinx respondents.

Staff notes that some of the authors of that report have sponsored a policy bill, Senate Bill 1092 (Hurtado), currently moving through the policy process that proposes various changes to the fair hearing process.

The budget request also includes three new permanent positions at DDS and five permanent positions at DGS.

Specific proposed changes to the fair hearings process and other related processes include:

- Strengthening opportunities for families and RCs to resolve disagreements informally before moving to formal processes. For example, the proposed trailer bill language removes the ability of the RC to decline mediation.
- Developing plain language materials across the system, including NOAs and training materials for consumers, family members, ALJs, and RC staff.
- Developing material in threshold languages, including NOAs.
- Evaluating timelines for requesting hearings and implementation of decisions.

¹ Disability Rights California, Disability Voices United, Integrated Community Collaborative, and Stanford Intellectual and Developmental Disabilities Law and Policy Project. (2021). Unfair Hearings: How People with Intellectual and Developmental Disabilities Lack Access to Justice in California. <https://www-cdn.law.stanford.edu/wp-content/uploads/2022/01/Unfair-Hearing-Report.pdf>

- Developing an information/helpline to assist families with navigating the process.
- Providing improved and ongoing training to ALJs that serve as hearing officers. Note that existing law requires the department to provide at least annual training to hearing officers on the Lanterman Developmental Disabilities Services Act and associated regulations, relevant case law, information about services and supports available to persons with developmental disabilities, the standard agreement contract between the department RCs, and information and training on protecting the rights of consumers at administrative hearings (Welfare and Institutions Code Section 4712 (b))
- Collaborating with OAH at DGS to establish an advisory board and consumer liaison.
- Enhancing data collection to identify issues and monitor hearing processes.

Ombudsperson Office. The Ombudsperson Office will provide access to neutral-party sources of information and assistance for individuals and families and the ability for DDS to learn about and identify trends for policy and practice changes. Approximately 80 percent of the individuals served through DDS are eligible for Medi-Cal and, with the recent federal approval of CalAIM, a dedicated position to liaison with DHCS is included in this request due to an expected increase in the number of individuals seeking information and assistance. Initial work will include the establishment of the office, hiring and training staff, and conducting outreach and education about the office and its services and supports. The DDS expects that this new support for individuals with IDD and their families will increase their understanding of and satisfaction with the system, provide a neutral review of different circumstances with a goal of an informal yet consistent resolution, and decrease complaints and the use of other more costly due process procedures including fair hearings or litigation. The request includes six permanent positions for the proposed Ombudsperson Office.

The full text of the proposed statutory changes associated with this proposal can be found on the Department of Finance website (<https://esd.dof.ca.gov/trailer-bill/public/trailerBill/pdf/648>).

Staff Recommendation and Comment. Hold open.

Both stakeholders, self-advocates, family members, and the department agree that changes to the fair hearings process are needed and long overdue. While the changes proposed by the department will begin creating that needed culture shift, the Legislature may want to consider additional modifications to help implement more long-term changes. For example, the Legislature may want to consider including language requiring the OAH to develop an advisory committee to provide recommendations to the fair hearings process. This committee could be modeled after an existing advisory committee within OAH, consisting of parents and those who represent parents and students, that provides recommendations to improve the special education hearing and mediation processes.

Stakeholder Input. In addition to the Department of Developmental Services, the Department of Finance, and the Legislative Analyst's Office the Subcommittee has invited the following individuals to provide comment on this proposal.

Vivian Haun, Senior Attorney, Disability Rights California

Will Leiner, Managing Attorney, Disability Rights California

Questions. The Subcommittee requests DDS respond to the following:

1. Please provide a brief overview of the proposal.
2. In regards to changes to special incident reporting mentioned in the proposal, what specific changes are the department considering to modernize reporting?
3. Describe the work that DDS has completed in the past year to re-examine the fair hearings process.
4. How will the department measure the success of the proposed changes, specifically the changes proposed for the fair hearings process? How will DDS collaborate with DGS to ensure that the changes made are having the intended effect?
5. Has the department identified any lessons learned during the setup of the Self-Determination Ombudsperson Office that can be leveraged when designing the system-wide Ombudsperson Office?

The Subcommittee requests Vivian Haun and Will Leiner respond to the following:

1. Please provide your perspective on the department's proposal.
2. Are there other changes that you would recommend that the Subcommittee consider including in this proposal?

Issue 2: Research and Data Enhancements

SFL/BCP. The department requests \$2.5 million (\$2 million General Fund) and nineteen permanent positions in 2022-23 and \$3.3 million (\$2.6 million General Fund) ongoing to enhance data collection, analysis, sharing, and reporting as well as enable sufficient technical infrastructure support for new and continuing program initiatives that emphasize person-centered outcomes and equitable access and services within the developmental services system. The department also proposes statutory changes to accompany this request.

Background. The Information Technology Division is responsible for all technology solutions implemented supporting DDS' business needs, including all technology-related security, acquisition, user support, application development, project management, network management, and data management. Growth in the department's programs has increased demands for more timely information to monitor and improve services to consumers and the overall developmental services system. The Fiscal & Program Research Section (Research Section) within the Research, Evaluation and Audits Branch was established in 2016 to support accurate, reliable, data-driven decisions and help DDS respond timely to legislative and other requests for information. The Research Section helps translate decision-makers' needs for information into targeted, timely, and impactful data analysis and reporting. The Research Section supports all DDS program implementation and oversight and consults on data availability, new data collection, and the development of meaningful, feasible performance and outcome measures.

The department believes that the requested positions for information technology and research are critical to achieving the transformation to an outcome-focused framework based upon accurate, consistent, and quality data. A more robust information technology infrastructure with strengthened data integrity and security will enable the data collection, standardization, security, and analysis required to implement and monitor initiatives that include direct support professional training, rate implementation including quality incentives, regional center performance measures, and employment efforts. With these additional requested resources, DDS will achieve an information technology infrastructure that supports data-driven decision-making to meet growing needs. Additional support staff for information technology infrastructure, cloud, and networking is also critical due to the department's integration of legacy and modern technologies.

Additional research resources will enable the development of new expertise, capacity, and processes for data collection; work with RCs to improve data consistency and integrity; consult with programs to identify the best way to meet ongoing program needs into the future; and enhance effective communication of data and information both internally and to the public, including modeling of program impacts. The requested positions will provide the foundation for an outcomes-based system and its monitoring by applying data-supported input to the development of performance and outcome measures, benchmarks, and improvement targets for new initiatives as well as provide easily accessible tracking and reporting of those metrics.

Proposed Statutory Changes. The department is also proposing statutory changes along with this funding. The proposed changes would allow the department to collect additional data regarding unemployment insurance claim data. According to the department, understanding not only earnings, but access to and utilization of unemployment benefits, will enable a better understanding of employment program outcomes, inform potential policy changes, and address any gaps in

individuals accessing available financial supports. Additionally, the proposed language would make changes to reporting requirements regarding data on children that are served by both the developmental services system and the child welfare system (“dually-served”). The proposed language strikes out the requirement for the California Department of Social Services (CDSS) and DDS to submit a joint report to the Legislature with detailed data regarding “dually-served” children and instead post information on their respective department websites. The full text of the proposed changes can be found on the Department of Finance website (<https://esd.dof.ca.gov/trailer-bill/public/trailerBill/pdf/640>).

Staff Recommendation and Comment. Hold open.

The trailer bill language associated with this proposal would strike the requirement for the CDSS and DDS to submit a joint report to the Legislature, and instead require both departments to post the information on their respective websites. While public transparency is essential there is a benefit to having all the information in one place and submitted to the Legislature. The Subcommittee may want to consider modifying the language to require each department to include a link to the other department’s website so that interested parties can easily find all the relevant data.

Questions. The Subcommittee requests DDS respond to the following:

1. Please provide an overview of the proposal.
2. Please explain the rationale for the suggested changes regarding the submission of data reports on children served by both the developmental services and child welfare systems.

Issue 3: Resources for e-Signature/e-Forms and Accounting Support

SFL/BCP. The department requests \$436,000 (\$409,000 General Fund) ongoing and position authority for four permanent positions and consulting resources in 2022-23 (\$300,000) for the implementation and maintenance of an electronic form (e-Form) and signature (e-Signature) system.

Background. Currently, many processes require the use of paper documents. Manual processes and paper documentation prevent quick adaptation to meet changing needs and requirements. This may disrupt the provision of services which could impact individual well-being and safety in emergencies. Recent disruptive events, including wildfires and the COVID-19 pandemic, have made it necessary to utilize more flexible and electronic-based solutions across the department, ensuring continuity of services. Additionally, the implementation of an e-Signature and e-Forms solution is required to meet state regulation, "which requires all forms that are designed to be completed by internal or external customers (public or private sector entities) conducting business with the State of California, whether standard or agency forms, are available in electronic format. Agencies shall use electronic signatures in place of wet signature unless prohibited by law." E-Signature and e-Forms provide a more secure method for sharing and signing sensitive documents, bypassing the need for hard copies.

According to the department, the requested resources will allow the successful navigation of a rapidly evolving service delivery landscape. Building a modernized and adaptable infrastructure that utilizes an e-Forms and e-Signature solution will help to meet the California Health and Human Services Agency (CalHHS) guiding principles of adopting a culture of collaboration and innovation, while also working to meet the California Department of Technology (CDT) Vision 2023 plan goal of using technology to meet society's goals and make progress on complex problems. Implementing an e-Forms and e-Signature solution will help DDS build a more robust information technology infrastructure, utilizing innovative solutions that support cross-functional collaboration across the organization.

The three proposed positions will help the department maintain current accounting and procurement support related to the Financial Information System for California. The remaining position and \$300,000 will be used for the purchase of e-Signature software solutions, consulting, and professional services.

Staff Comment and Recommendation. Hold open.

Questions. The Subcommittee requests DDS respond to the following:

1. Please provide a brief overview of the proposal.

Issue 4: Facility Clinical Software Replacement and Electronic Health Record Implementation

SFL/BCP. The department requests \$1.7 million (\$1.6 million General Fund) in 2022-23; \$2.2 million (\$2 million General Fund) in 2023-24; and \$223,000 (\$178,000 General Fund) ongoing, to plan for the replacement of clinical software used at state-operated residential facilities. The request includes two-year limited-term resources for one Staff Services Manager I position and two IT Specialist II positions, as well as permanent funding to support one Health Record Technician II and one Research Data Analyst I position.

Background. Approximately 300 individuals receive services through state-operated facilities. Individuals in all of DDS' facilities receive internal clinical and professional services, as well as medical/clinical ancillary services and support based on their individual needs. Services may also include the use of local community medical facilities, psychiatric/social services, specialized acute hospital services for complex medical/surgical needs, clinical laboratories, and other diagnostic services. The transfer of information between internal staff and community providers requires interoperability to facilitate coordination of care, meet immediate behavioral and medical needs, reduce duplication of services and costs, and comply with federal requirements. An electronic health record (EHR) that meets current HHS/Centers for Medicare and Medicaid Services (CMS) requirements will enhance communication and support the process of claiming federal reimbursements.

DDS' internal legacy software, developed 30 years ago, is limited only to individually identifiable data, and billing information is input using a paper process. Challenges with this process include the need to utilize multiple systems to view or enter information into clinical records (which can lead to delayed services due to incomplete or inaccurate patient information) and difficulty in providing secure telehealth as required by state and federal regulations. The requested positions would define and track the legal, regulatory, licensing, and certification requirements to support clinical functionality, reporting, and compliance efforts.

In addition to the position resources, DDS also requests funds to acquire consulting services necessary to complete project planning and preparation activities for the future clinical facility software replacement project. DDS determined the number of requested positions based on the CDT's project management best practices and recommendations from CalHHS' Office of Systems Integration. DDS has an approved Stage 1 Business Analysis for this project. Beginning in 2022-23, DDS would complete the Alternatives Analysis required by CDT's Project Approval Lifecycle (PAL). The Stage 2 process is projected to be completed in approximately 12 months, then move into Stage 3 Solution Development and, finally, to Stage 4 Readiness and Approval.

Staff Comment and Recommendation. Hold open.

Questions. The Subcommittee requests DDS respond to the following:

1. Please provide an overview of the proposal.

Issue 5: Senate Budget Priorities – Improving Services for the Intellectual and Developmental Disability (IDD) Community

The Subcommittee has asked the Legislative Analyst’s Office to present the following proposals.

Senate Budget Priorities. The Senate is considering the following proposals to improve services to the intellectual and developmental disability (IDD) community.

- Accelerating the implementation of the DDS Rate Study approved in the 2021 Budget Act by one year to address staffing shortages and service disruptions.
- Requiring regular updates to the rate models in the DDS Rate Study

Stakeholder Input. The Subcommittee has invited the following individual(s) to provide comments on the proposal.

- Jordan Lindsey, Executive Director, The Arc, and UCP California Collaboration

Background. The 2021 Budget Act included 146 million (\$89.9 million General Fund) in 2021-22, growing to \$2.1 billion (\$1.2 billion General Fund) ongoing in 2025-26, for a five-year phase-in of rate reform to achieve the rates in the 2019 DDS Rate Study. The first of several planned rate increases took effect on April 1, 2022. Subsequent rate increases are planned to take effect on July 1, 2023, and July 1, 2025. The proposal above would push forward these dates by one year. An informal survey of 103 providers in early February 2022 found that providers have 19.3 percent fewer employees than they did in March 2020 and have been unable to replace this workforce. Service providers report delays in returning to in-person services, reduced capacity, and the inability to adequately serve their existing caseloads due to understaffing. Accelerating the rate increases will help resolve these issues more quickly and provide adequate services to individuals served by the developmental services system.

The 2019 Rate Study was published before the decision to transition the IDD system from a compliance-based structure to an outcome-based system. Furthermore, the 2019 Rate Study did not include some of the innovations and new models that DDS, Regional Centers, service providers, and individuals/families have implemented to comply with the HCBS Settings Rule and ensure the continuation of federal matching funds. Additionally, there are clean-ups and fixes to various aspects of the rate models that will fine-tune and position the models to best support a modern, person-centered, outcome-based IDD system. The system needed the original 2019 rate study because rates have not been regularly updated to keep pace with inflation and minimum wage increases. Requiring ongoing rate model updates is a proactive solution to support the permanent sustainability of services to people in the IDD system.

Staff Comment and Recommendation. Hold open.

Questions.

For the Legislative Analyst’s Office:

1. Please provide a brief overview of the proposals.

For Jordan Lindsey:

1. Please describe the impact the above proposals will have on providing adequate services to individuals served by the developmental services system.