

CALIFORNIA STATE AUDITOR

Senate Committee on Human Services

OVERSIGHT/INFORMATIONAL HEARING:

The Lanterman Act in 2011 and Beyond

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A More Uniform and Transparent Procurement and
Rate-Setting Process Would Improve the Cost-Effectiveness
of Regional Centers

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BUREAU OF STATE AUDITS

BACKGROUND

Californians with developmental disabilities may obtain community-based services via California's network of 21 regional centers—private, nonprofit organizations receiving primary funding and oversight from the Department of Developmental Services (Developmental Services). In addition to helping their clients (consumers) obtain services from school districts, local governments, and other federal and state agencies, the regional centers purchase services such as transportation, health care, respite care, day programs, and residential care from a variety of private providers (vendors). The Lanterman Developmental Disabilities Services Act (Lanterman Act), originally enacted in 1969 and subsequently amended, gives the State responsibility for providing services and support to consumers and created a network of regional centers to meet this responsibility.

Each regional center is governed by a board. Twenty-five percent of the members of each board must be consumers, and an additional 25 percent must be either consumers or their parents or guardians. Additionally, the Lanterman Act requires that the boards appoint advisory committees composed of persons representing the various types of vendors. The regional centers operate under five-year contracts with Developmental Services, subject to annual appropriations by the Legislature.

State law and certain federal program provisions require Developmental Services to oversee the regional centers. Among other provisions, the Lanterman Act requires Developmental Services to monitor the regional centers' performance of contract objectives. However, under a 1985 California Supreme Court decision, there are limitations to the types of directives Developmental Services can issue to the regional centers. In particular, the 1985 decision indicated that Developmental Services cannot restrict the types of services regional centers provide to consumers, but it provides that Developmental Services can promote the "cost-effectiveness" of such services. The Lanterman Act, and the regulations created to carry it out, provides an adequate framework for ensuring that the services purchased for consumers are allowable, but this framework delegates much of the work of selecting vendors and negotiating rates to the regional centers. When approving service providers as vendors, the regional centers use a variety of sources, including state laws, regulations, and negotiations with the provider to determine the rate at which they will reimburse the provider for any services it provides to consumers.

Under state law, Developmental Services sets certain rates, including most rates for community living facilities. Additionally, Developmental Services sets rates for in home respite care and community based day programs. For other types of services, the regional centers have greater discretion to set the rate of reimbursement for the vendor and in certain instances regulations require that the rate be negotiated between the vendor and the regional center. Since July 1, 2008, negotiated rates with preexisting vendors have been frozen by statute. Additionally, rates for new vendors must be no more than the lower of the statewide or regional center median rate for all vendors in the applicable category. In July 2009 an additional amendment to the law imposed a specific requirement that the least costly available provider of comparable services be chosen.

According to Developmental Services, approximately 240,000 consumers receive services from the regional centers. In fiscal year 2009–10, Developmental Services' community-based services program was expected to spend more than \$4 billion. Of this amount, more than \$3.4 billion was for direct services purchased by the regional centers for consumers and provided by private vendors. The regional centers themselves were expected to spend approximately \$543 million for their operations, administration, and an early intervention program for children from birth to 3 years old. Developmental Services expected to spend about \$22.3 million to oversee the regional centers.

AUDIT SCOPE

As requested by the Joint Legislative Audit Committee, the California State Auditor performed an audit of Developmental Services and a sample of California's network of 21 regional centers—private, nonprofit organizations that receive primary funding and oversight from Developmental Services. We selected six regional centers to visit using the results from our survey of vendors, the size of the population served, and geographic location. The regional centers that we selected were:

- Far Northern
- Inland
- San Andreas
- Tri-Counties
- Valley Mountain
- Westside

The scope of the audit included the following:

Examining Developmental Services' oversight responsibilities for its regional centers and determining the extent to which Developmental Services performs such oversight.

For the sample of regional centers:

- Selecting a sample of invoices for the past two fiscal years (FY 2007–08 and 2008–09) at each regional center and determining if the activities for payment were reasonable and allowable under the law.
- Selecting a sample of service provider contracts for the past two fiscal years and evaluating the regional centers' policies and procedures for awarding contracts. Included in this evaluation was an assessment of how the regional centers determine that the service providers selected could satisfy the needs of consumers, whether past performance was considered, and whether or not the potential for conflict of interest existed.

For a sample of service providers:

- Conducting a survey to obtain information on whether the providers are reluctant to file complaints for fear of retaliation or believe they have experienced retaliation from the regional centers and the reasons for those perceptions.

Determining if the regional centers' procedures for allowing public access to information on operations comply with the law.

Determining if requests made in the past two fiscal years by service providers for public records were satisfied in a timely manner, within the requirements of the law, and in accordance with best practices.

AUDIT HIGHLIGHTS

During our audit of Developmental Services and the six regional centers, we noted the following:

- Developmental Services generally conducts required monitoring activities, but provides little oversight of vendor selection and how rates are negotiated or established.
- Although the regional centers' expenditures that we reviewed were generally allowable, the regional centers could improve their documentation and written procedures for purchase of services.
- Regional centers set rates using different methodologies, often do not keep documentation demonstrating how rates were set, and in certain instances gave the appearance of favoritism or fiscal irresponsibility. Of the 61 rates we examined, we found the following:
 - We could not determine how rates were set for 26, and only 18 were established using a detailed cost statement from the vendor—a method we considered a best practice.
 - Five rates set at four of the six regional centers we visited appeared to violate a rate freeze required by the law—in two instances the regional center approved rates almost twice as high as the statewide median rate for the same service.
- Regional centers have not established written protocols for determining when to use rate agreements and when to use contracts, nor do they document their rationale for selecting certain vendors.
- Of the 33 contracts we evaluated, only nine were advertised with four showing evidence of a competitive process—the type of process that ensures that the State is getting the best value.
- Almost half of the roughly 400 regional center employees who responded to our survey do not feel safe to report suspected improprieties. Also, many indicated that the regional centers do not create an atmosphere of mutual trust or establish open communication.
- Developmental Services' process for responding to complaints from regional center employees was only recently defined.

CHAPTER 1

<p>To ensure that it is providing oversight in accordance with state law and Medicaid Waiver requirements, Developmental Services should ensure that it performs audits of each regional center every two years as required.</p>	<p>Developmental services reports that it has one more audit to complete from those originally scheduled to be completed in fiscal year 2009–10. The department added that it remains on schedule to complete fiscal year 2010–11 fiscal audits.</p>	<p>Completed</p>
<p>Developmental Services should ensure that the regional centers prepare and follow written procedures for their purchase of services that detail what documents will be retained for payment of invoices. Additionally, if regional centers move to an electronic authorization process, Developmental Services should determine whether it needs to revise its regulations.</p>	<p>Developmental Services issued a directive dated August 16, 2010, to regional centers requiring them to update their administrative policies and procedures for purchasing consumer services and retain required documentation for payment of invoices.</p> <p>Developmental Services indicated that it will be filing a rulemaking package with the Office of Administrative Law within the next two months, allowing for electronic authorizations.</p>	<p>Partially complete</p>
<p>Developmental Services should ensure that the system Valley Mountain implements to correct its transportation invoicing process collects individual consumer data as necessary to ensure compliance with Medicaid Waiver requirements.</p>	<p>Based on the results of a follow-up review DDS performed in October 2010, the Valley Mountain Regional Center implemented a new invoicing process that is now in compliance with Medicaid Waiver requirements.</p>	<p>Completed</p>
<p>To ensure that negotiated rates are cost-effective, Developmental Services should:</p> <ul style="list-style-type: none"> • Require regional centers to document how they determine that the rates they negotiate or otherwise establish are reasonable for the services to be provided. • Encourage regional centers to use, when applicable, the cost statement approach exemplified by Far Northern. • Follow and refine, as necessary, its newly established fiscal audit procedures requiring a review of a representative sample of negotiated rates as part of its biennial fiscal audit of each regional center. 	<p>Developmental Services issued a directive dated August 16, 2010, to regional centers requiring them to maintain documentation on the process used to determine and the rationale for granting any negotiated rate.</p> <p>Developmental Services has also expanded its fiscal audit protocols to include a review of negotiated rates during the biennial audits.</p>	<p>Completed</p>

<p>Unless rescinded by the Legislature, Developmental Services should carry out its newly developed fiscal audit procedures for ensuring compliance with provisions of the Legislature's July 2008 rate freeze. If Developmental Services needs to streamline its current fiscal audit program to enable it to incorporate this review of rate-freeze compliance and still adhere to mandated deadlines, we encourage it to do so.</p> <p>Developmental Services should review the five instances of noncompliance with the rate freeze that we identified and require corrective action by the respective regional centers. This corrective action should include remedies for future rate payments to these vendors as well as repayment by the regional centers of any state funds awarded in a manner not in compliance with state law.</p>	<p>Developmental Services has expanded its fiscal audit protocols to include testing for compliance with the July 2008 rate freeze on negotiated rates beyond transportation, day program, and residential programs.</p> <p>Developmental Services completed audit fieldwork of the four regional centers. Draft audit reports are underway, and the final audit reports will contain the full corrective actions.</p>	<p>Completed</p> <p>Partially complete</p>
<p>CHAPTER 2</p> <p>To ensure that consumers receive high-quality, cost-effective services that meet the goals of their individual program plan (IPP) consistent with state law, Developmental Services should do the following:</p> <ul style="list-style-type: none"> Require the regional centers to document the basis of any IPP-related vendor selection and specify which comparable vendors (when available) were evaluated. Review a representative sample of this documentation as part of its biennial waiver reviews or fiscal audits to ensure that regional centers are complying with state law—and particularly with the July 2009 amendment requiring selection of the least costly available provider of comparable service. 	<p>Developmental Services issued a directive dated August 16, 2010, to regional centers requiring them to update their internal review process and associated policies and procedures.</p> <p>Developmental Services does not believe it has the legal authority to implement the recommendation, as it places the department in a role inconsistent with the intent of the Lanterman Act.</p> <p>Developmental Services also asserts that to require documentation of all vendors considered and an explanation of why the vendor selected constitutes the least costly vendor, and presumably all other factors required by law, could delay needed services to consumers and their families.</p> <p>Finally, Developmental Services asserts that if it required extensive documentation of one factor and not all factors considered in the IPP process, the likely response would be litigation that Developmental Services has overstepped its authority.</p>	<p>Not implemented: As stated in its response, Developmental Services does not believe it can or should implement this recommendation.</p> <p>As outlined in our comments on pages 85 and 86 of the audit report, we continue to disagree with Developmental Services' position and its use of the 1985 Supreme Court decision to support its conclusion that it lacks the authority to ensure compliance with the Lanterman Act.</p> <p>This decision was based on the court's reading of the Lanterman Act at that time. As we state in our report on page 12, the court's decision provides Developmental Services the ability to promote the cost-effectiveness of providing services. Moreover, subsequent modifications to the Lanterman Act, including the July 2009 amendment referred to in the recommendation, could not have been contemplated by this court decision. As a result, we believe that the department does have the legal authority to implement this recommendation.</p>

<p>To ensure that the regional centers achieve the greatest level of cost-effectiveness and avoid the appearance of favoritism when they award purchase-of-service contracts, Developmental Services should require regional centers to adopt a written procurement process that:</p> <ul style="list-style-type: none"> • Specifies the situations and dollar thresholds for which contracts, RFPs, and evaluation of competing proposals will be implemented. • When applicable, requires the regional centers to notify the vendor community of contracting opportunities and to document the competitive evaluation of vendor proposals, including the reasons for the final vendor selection decision. 	<p>Developmental Services' contract with each regional center now requires regional centers to have a board-approved policy specifying the circumstances under which the regional center will issue request for proposals, the applicable dollar thresholds, and how the submitted proposal will be evaluated.</p>	<p>Completed</p>
<p>To ensure that the regional centers adhere to their procurement process, Developmental Services should review the documentation for a representative sample of purchase of service contracts during its biennial fiscal audits.</p>	<p>Audit procedures are now in place to review the procurement policies and processes in the regional center audits conducted as of January 2011.</p>	<p>Partially complete: Developmental Services has established the audit procedures, but we could not verify their implementation because workpapers for audits conducted after January 2011 are not yet available.</p>
<p>To deter unsupported and potentially wasteful spending of state resources by the regional centers, Developmental Services should determine the extent to which Inland Regional Center needs to repay state funds it provided to a transportation vendor for an assessment of Inland's transportation conditions.</p>	<p>The audit of the Inland Regional Center and the transportation vendor is complete. The draft report is under review.</p>	<p>Partially complete</p>

CHAPTER 3

To ensure that regional center employees have a safe avenue for reporting suspected improprieties at the regional centers, Developmental Services should follow its newly documented process for receiving and investigating these types of allegations it put into writing in July 2010 and should continue to notify all regional centers that such an alternative is available.

Consistent with Developmental Services' policy when Developmental Services receives complaints about a regional center or vendor/contractor, it follows an intake and investigation process. Developmental Services has included information about its process on the Developmental Services Web site and has instructed regional centers to do the same on their Web sites. Additionally, Developmental Services instructed regional centers to provide notification to employees, board members, consumers/families, and the vendor community of the complaint process and their right to make reports of improper activity to Developmental Services.

Developmental Services verified that all 21 regional centers have provided a link to the Developmental Services' policy on each Web site.

All regional centers have posted on their Web sites Developmental Services' and their own whistleblower complaint policies.

In July 2010 Developmental Services formally documented procedures that describe how it accepts, tracks, and resolves complaints from regional center employees.

Regional centers are contractually obligated to institute a board-approved regional center Whistleblower Complaint Policy addressing the reporting of alleged improper regional center and/or vendor/contractor activities.

Completed

To ensure that appropriate action is taken in response to allegations submitted by regional center employees, Developmental Services should centrally log these allegations and track follow-up actions and the ultimate resolution of allegations, as required by its new procedures.

Partially complete: Although we have confirmed that an appropriate process is in place, we cannot, without reviewing a sample of specific department actions taken in response to allegations, confirm whether this process is resulting in better department follow-up than what we observed during the audit as highlighted in our audit report.