

Department of Developmental Services

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

August 2010 Report 2009-118



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Elaine M. Howle
State Auditor
Doug Cordiner
Chief Deputy

CALIFORNIA STATE AUDITOR

Bureau of State Audits

555 Capitol Mall, Suite 300

Sacramento, CA 95814

916.445.0255

916.327.0019 fax

www.bsa.ca.gov

August 24, 2010

2009-118

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

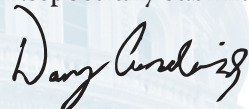
Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor's Office presents this audit report concerning the Department of Developmental Services (Developmental Services) and the regional centers—nonprofit entities the department contracts with to coordinate services for Californians with developmental disabilities (consumers). To meet the unique needs and choices of consumers entitled to services and supports under the Lanterman Developmental Disabilities Services Act, the regional centers purchase services from a variety of vendors.

Our report concludes that while most of the expenditures we reviewed for the purchase of services appeared allowable and were supported by proper vendor invoices, the regional centers could not consistently demonstrate the rationale behind their rate-setting and vendor-selection decisions or how contracts are procured. In some cases, the ways in which the regional centers established payment rates and selected vendors had the appearance of favoritism or fiscal irresponsibility and did not demonstrate compliance with recent statutory amendments attempting to control the costs of purchased services. Further, we found that Developmental Services systematically audits and reviews whether services purchased for consumers are allowable but generally did not examine how regional centers established rates or selected particular vendors for services. Lastly, a survey of employees at the six regional centers we visited identified several issues in the working environment at some regional centers, including a concern that many regional centers' employees do not feel safe reporting suspected improprieties.

After discussing our concerns with Developmental Services, it has made a number of improvements to its oversight processes, including new fiscal audit procedures designed to evaluate how regional centers establish vendor rates and to ensure compliance with a statutory rate freeze on all negotiated rates. Developmental Services also developed a written process for receiving and reviewing complaints from regional center employees.

Respectfully submitted,



DOUG CORDINER
Chief Deputy State Auditor

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Summary

Results in Brief

Although the Department of Developmental Services (Developmental Services) and the 21 nonprofit regional centers it oversees have sufficient processes for ensuring that services purchased for people with developmental disabilities (consumers) are allowable, it does not have adequate processes in place for ensuring that the costs of these services are reasonable. In the Lanterman Developmental Disabilities Services Act (Lanterman Act), enacted in 1969 and later amended, the State accepts responsibility for providing services and support to consumers and creates a network of regional centers to meet this responsibility. Although the Lanterman Act delegates to the regional centers the day-to-day responsibilities of determining eligibility and establishing consumers' individual program plans (IPPs)—documents that describe consumers' needed services—it charges Developmental Services with overseeing the regional centers. In fiscal year 2009–10, the State's budget for Developmental Services was \$4.7 billion, with \$3.4 billion of this total going toward direct services purchased by the regional centers for consumers.

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 and is generally silent as to how regional centers are to perform these functions. Similarly, Developmental Services systematically audits and reviews whether services purchased for consumers are allowable but, at the time of our fieldwork, generally did not examine how regional centers establish rates or select particular vendors for services. After we brought this issue to its attention, Developmental Services revised its procedures for audits of regional centers to include a review of how regional centers establish rates and whether these rates are in compliance with applicable state laws and regulations.

Although the regional centers could improve their documentation of procedures in a few areas, most of the expenditures we reviewed for the purchase of services appeared allowable and were supported by proper vendor invoices. However, the regional centers do not document how rates are set, why particular vendors are selected to provide IPP-related services to consumers, or how contracts are procured, nor are they required to do so. As a result, the regional centers could not consistently demonstrate the rationale behind their rate-setting and vendor-selection decisions. In some cases, the ways in which the regional centers established payment rates and selected vendors had the appearance of favoritism or fiscal

Audit Highlights . . .

Our review of the Department of Developmental Services (Developmental Services), as well as six of the nonprofit regional centers coordinating services and supports for Californians with developmental disabilities (consumers), revealed the following:

- » *Developmental Services systematically audits and reviews whether services purchased for consumers are allowable but, at the time of our fieldwork, generally did not examine how regional centers establish rates or select particular vendors for services.*
- » *Although the regional centers could improve their documentation of procedures in a few areas, most of the expenditures we reviewed for the purchase of services appeared allowable and were properly supported by vendor invoices.*
- » *Regional centers, however, do not always document how rates are set, why particular vendors are selected, or how contracts are procured; thus, in some cases, the ways in which regional centers established payment rates and selected vendors had the appearance of favoritism or fiscal irresponsibility. For example, we found the following:*
 - *A regional center procured \$950,000 in services from a transportation provider under a so-called "negotiated rate" that appears to have been calculated to incur a specific level of spending before the end of the fiscal year rather than to obtain the best value for the consumers the regional center serves.*

continued on next page . . .

- *A different regional center negotiated a rate that was considerably higher than the rate of an existing vendor performing the same type of services and the vendor owner receiving the higher rate was the sister of the regional center's assistant director who approved the rate.*

» *Responses to a survey we conducted of regional center employees of locations we visited indicated that half of the roughly 400 employees who responded do not feel safe reporting suspected improprieties to their management.*

» *We could not systematically evaluate Developmental Services' process for responding to complaints from regional center employees, because, at the time of our fieldwork, it did not centrally log or track employees' complaints or have a written process for handling such complaints.*

irresponsibility and did not demonstrate compliance with recent statutory amendments attempting to control the costs of purchased services.

For example, we found that a regional center procured \$950,000 in services from a transportation provider under a so-called "negotiated rate" that appears to have been calculated to incur a specific level of spending before the end of the fiscal year rather than to obtain the best value for the consumers the regional center serves. Furthermore, because the regional center did not contractually obligate the vendor to provide any specific deliverable, the regional center could not hold the vendor to any specific level of performance. Finally, this same vendor was later awarded a multimillion-dollar contract to become the regional center's transportation broker—the central administrator for consumer transportation routing—without any formal request for competing proposals and based on a rate structure that, in part, skirted requirements put into place by a July 2008 statutory amendment freezing certain existing rates and requiring that the rates paid to new vendors be no more than the lower of the statewide or regional center rate for all vendors in the applicable service code category. In another example, a different regional center negotiated a rate with a new vendor under circumstances giving the appearance of favoritism. The resulting rate was considerably higher than the rate of an existing vendor performing the same type of service and the vendor owner receiving the higher rate was the sister of the regional center's assistant director who approved the rate.

These and other examples of inappropriate rates, including four other instances in which regional centers did not comply with the July 2008 amendment, highlight the manner in which rate-setting and procurement practices at the regional centers affect whether costs paid by the State are reasonable. Further, the lack of a formal, transparent rate-setting and vendor-selection process invites criticism that regional centers display favoritism toward certain vendors and makes it difficult, if not impossible, for Developmental Services to ensure that the regional centers comply with a July 2009 amendment to state law requiring them to select the least costly available provider of comparable services.

Employees at six locations we visited identified several problems in the working environment at the regional centers. Responses to a survey we conducted of these six regional centers' employees indicated that almost half of the roughly 400 regional center employees who responded to the questions concerning this topic do not feel safe reporting suspected improprieties to their management. For example, employees at Inland Regional Center and Valley Mountain Regional Center disagreed, on average,

with the statement “Management has created safe mechanisms for employees to raise concerns about practices that may put the regional center’s reputation at risk.”

We could not systematically evaluate Developmental Services’ process for responding to complaints from regional center employees, because, at the time of our fieldwork, Developmental Services did not centrally log or track complaints from these employees and did not have a written process for handling such complaints. We did, however, have concerns with how Developmental Services handled a particular allegation made by one regional center employee. After we discussed these concerns with the department, in July 2010, Developmental Services formally documented procedures that describe when and how it will investigate complaints from regional center employees, and informed the regional centers of this process.

Regional center employees responding to our survey also frequently indicated that communication with management was not always positive and that rising caseloads reduce their ability to provide the highest-quality service to consumers. Although the Lanterman Act specifies that service coordinators should provide case management to an average of 66 consumers, depending on the type of consumer, the governor and the Legislature temporarily suspended this requirement effective February 2009 through June 2011. As a result, one respondent indicated that her unit averages 80 cases per service coordinator. Another respondent said that caseloads had increased by 20 percent. A program manager indicated that these rising caseloads prevent service coordinators from building and maintaining relationships with the consumers and families they serve.

Recommendations

Developmental Services should require 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.

To ensure that negotiated rates are cost-effective, Developmental Services should:

- Require regional centers to document how they determine that the rates they negotiate or otherwise establish are reasonable for the services to be provided.
- 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.

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.

To ensure that consumers receive high-quality, cost-effective services that meet the goals of their IPPs, as required by state law, Developmental Services should do the following:

- Require the regional centers to document the basis of any IPP-related vendor selection and specify which comparable vendors (when available) were evaluated.
- Follow the newly established fiscal audit procedures and 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 services.

To ensure that 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:

- Specifies the situations and dollar thresholds for which contracts, requests for proposals, 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.

To ensure that regional centers adhere to their procurement process, Developmental Services should review the documentation for a representative sample of purchase-of-service contracts during the department's biennial fiscal audits.

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

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.

Agency Comments

Developmental Services indicates that it is implementing system improvements to address our recommendations. However, it also stated that it does not believe it has the legal authority to implement our recommendation that it require regional centers to document the basis of any IPP-related vendor selections and specify which comparable vendors (when available) were evaluated.

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Introduction

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). Together these services are meant to meet the unique needs and choices of each consumer so that he or she may live as independently as possible and participate in the mainstream life of the community in which he or she resides.

In the Lanterman Developmental Disabilities Services Act (Lanterman Act), originally enacted in 1969 and subsequently amended, the State accepted responsibility for providing services and support to consumers and created a network of regional centers to meet this responsibility. The Lanterman Act defines developmental disabilities as mental retardation, cerebral palsy, epilepsy, autism, and other conditions that are closely related to or require treatment similar to that for mental retardation. Additionally, the Lanterman Act states that the disability must be a "substantial" disability that originated before the person turned 18 years old and can be expected to continue indefinitely.

According to Developmental Services, approximately 240,000 consumers receive services from the regional centers. An analysis by Developmental Services showed that as of December 2007, nearly 60 percent of consumers were 21 years old or younger. The analysis also showed that most consumers (approximately 74 percent) lived at home with a parent or guardian. About 9 percent lived in their own homes and may have received supported living services or participated in independent living programs. Sixteen percent lived in 24-hour residential facilities, such as community care facilities licensed by the Department of Social Services, or in skilled nursing facilities.

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, their 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. Figure 1 details expenditure information for community-based services provided to consumers and related administrative costs over the past 10 years. The State's budget for Developmental Services in fiscal year 2009–10 was \$4.7 billion. This amount includes \$615 million spent on state-operated developmental centers that house individuals in need of a secure environment or who have other special medical or behavioral program needs. These centers are generally outside the scope of our audit.

The growth in expenditures shown in Figure 1 has not gone unnoticed by budget analysts and the Legislature. In a June 2010 presentation to the Legislature's Conference Committee on the Budget, the Legislative Analyst's Office demonstrated that over the past 11 years the average annual increases in General Fund spending by Developmental Services were higher than the average increases for all other program areas. Specifically, the analysis showed that, since fiscal year 1998–99, growth in overall state spending averaged 3.7 percent each year but growth in Developmental Services' spending averaged nearly 12 percent each year, with the growth in the budget category experiencing the next highest increase being just under 10 percent each year. As another point of comparison, we calculated the average growth in consumer caseload and inflation and found that, over the same time period, the average growth in these two cost factors combined was only 9 percent.¹ Facing this type of expenditure growth, the Legislature has enacted various cost-containment measures, as will be described throughout this audit report.

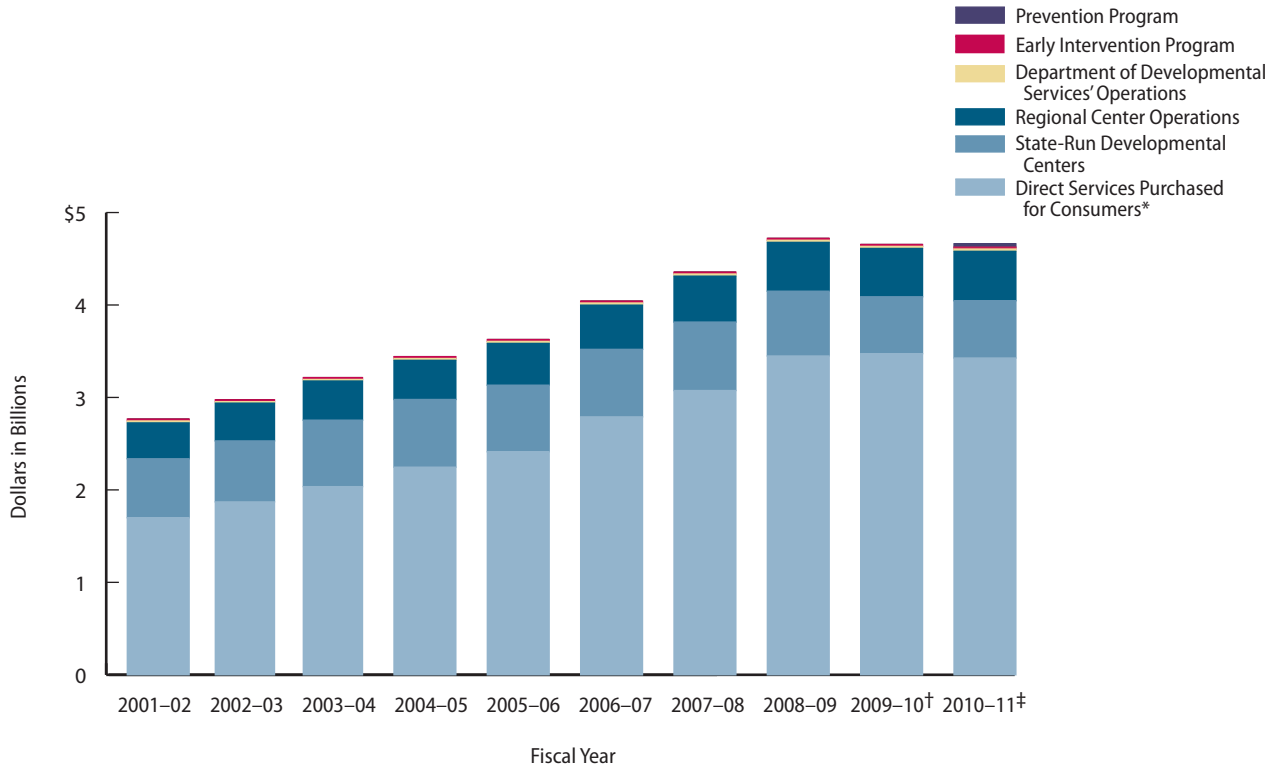
Purpose and Operation of Regional Centers

The Lanterman Act delegates a great deal of decision making to the regional centers. Regional centers assess individuals and determine whether they are eligible for services. If a person is eligible, the regional center's service coordinators work with a planning team consisting of the consumer and his or her family and advocates to choose the community-based services that will best meet the consumer's needs and preferences.² Specifically, the Lanterman Act requires the planning team to develop an individual program plan (IPP) that establishes the goals for the consumer and states how these goals will be met, including the use of specific service providers.

¹ We obtained caseload information from the Legislative Analyst's Office and inflation data from the Department of Finance.

² For a small number of individuals, the planning team may determine that the consumer's needs would be best met at a state-operated developmental center.

Figure 1
Expenditures at Department of Developmental Services and Regional Centers



Sources: Governor's Budget for fiscal years 2004-05 through 2010-11.

* Direct service expenditures include funds for habilitation, which were itemized separately in fiscal years 2001-02, 2002-03, and 2003-04.

† Fiscal year 2009-10 amounts are estimated expenditure amounts from the 2010-11 Governor's Budget.

‡ Fiscal year 2010-11 amounts are proposed budget amounts from the 2010-11 Governor's Budget.

Many services are available to consumers and their families, from community-based day programs that help consumers improve their social skills in community settings to early intervention services for at-risk infants and their families. Supported living services help adult consumers establish and maintain a safe, stable, and independent life in their own homes. In-home respite services provide temporary nonmedical care and supervision to consumers living with their families. Supportive employment services provide job coaches who help consumers learn or perform jobs at businesses in the community. In addition to referring consumers to services designed for people with developmental disabilities, case managers refer consumers to programs offered by school districts or to health and social programs operated by federal, state, or local government.

As shown on the map in Appendix A, the regional centers generally operate over large areas and typically serve one or more counties. However, Los Angeles County is divided among seven regional centers. The regional centers must serve the consumers within the

catchment area defined in their contracts. 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. Each advisory committee must designate one member to serve as a member of its respective regional center board. The regional centers operate under five-year contracts with Developmental Services, subject to annual appropriations by the Legislature.

Vendor-Provided Services

Title 17 of the California Code of Regulations (Title 17 regulations) requires that a business, organization, or individual wishing to provide services to consumers must first become a vendor of a regional center. This process, which is often called “vendorization,” requires the regional center to determine that the provider has obtained the necessary licenses, such as those required for a licensed community care facility, and meets other program requirements. For instance, to be approved as a behavior management consultant, the Title 17 regulations state that, among other things, the individual must have two years of experience designing and implementing behavior modification intervention services. When the regional center has received all necessary documentation, it has 45 days to approve or deny the service provider. Once approved, the service provider may be used by any regional center in the State. However, Title 17 regulations state that such approval does not obligate any regional center to use that vendor’s services.

Rate Structures and Contracts

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. The various types of services available to consumers are categorized and accounted for using numeric service codes. Under state law, Developmental Services sets certain rates, including rates for community living facilities. Additionally, Developmental Services sets rates for in-home respite care and community-based day programs by considering the vendor’s actual costs for salary and wages, staff benefits, and operating expenses, within an established range. New programs of this type receive a temporary payment rate until actual costs can be measured. For specified

health care services, such as dentistry, Title 17 regulations specify that the rates paid must conform to the rate schedule maintained by the Department of Health Care Services (Health Care Services). Rates for supported employment services are specified directly in statute.

For other types of services, the regional centers have greater discretion to set the rate of reimbursement for the vendor. If the vendor's rate is not determined using one of the methods previously described, Title 17 regulations require that the rate be negotiated between the vendor and the regional center. In certain circumstances, the vendor may charge its "usual and customary" rate for the service. For other services, such as supportive living services, the rates must be negotiated between the regional center and the vendor—a usual and customary rate is not an option. Further, if a vendor has a negotiated rate with one regional center, another regional center may either pay the same rate when using the vendor or negotiate its own rate. 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 service code category.

Title 17 regulations require a written contract containing specified provisions when regional centers obtain some services, including supported living services and many transportation services. Among the provisions that these contracts must include are the service provider's program design, including a description of the services to be provided and program methods; the method and time of payment for services rendered; a definition of the unit of service; and the fiscal and program-related documentation relied upon as the basis for establishing the rate of payment. For clarity, when referring to "contracts" in this report, we mean only these written contracts containing provisions required by Title 17 regulations, and not other agreements that could be considered contracts under the California Civil Code. Title 17 regulations do not require these types of written contracts for all services. Rather, the regional centers can, and often do, document negotiated or usual and customary rates in one- to two-page "rate agreements" that do not contain all the provisions outlined in Title 17 regulations.

State Oversight of Regional Centers

State law and certain federal program provisions require Developmental Services to oversee the 21 regional centers. Among other provisions, the Lanterman Act requires Developmental Services to monitor the regional centers' performance of contract objectives. To ensure that the regional centers comply with

requirements of the Medicaid Home and Community-Based Services Waiver (Medicaid Waiver), Developmental Services conducts on-site program reviews and fiscal audits of the regional centers. 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.

Performance Measures

The Lanterman Act requires Developmental Services to annually monitor the regional centers’ success in meeting annual contract performance objectives. Developmental Services accomplishes this monitoring by using data from a database it shares with the regional centers to generate reports that contain information regarding the regional centers’ consumer demographics and performance on goals established by Developmental Services, such as reducing the number of consumers living in facilities serving more than six individuals. Developmental Services also requires regional centers to provide data on measures related to basic compliance with contract terms. One such measure determines compliance with the requirement that regional centers receive an independent financial audit resulting in an unqualified opinion and no identified material weaknesses.

Medicaid Waiver Reviews

For certain eligible consumers, the regional centers can fund purchases of services from vendors using Medicaid funds made available to them through Developmental Services. Medicaid, known as Medi-Cal in California, is a jointly funded, federal-state health insurance program for certain low-income and needy people that includes long-term care benefits. The Medicaid Waiver allows Developmental Services and the regional centers to offer services not otherwise available through the Medi-Cal program to consumers in their own homes and communities. In alignment with the goal of the Lanterman Act, the Medicaid Waiver program recognizes that many individuals at risk of being placed in medical facilities can be cared for in their homes and communities, preserving their independence and ties to family and friends at a cost no higher than that of institutional care. Developmental Services operates the Medicaid Waiver program under an interagency agreement with Health Care Services.

In its Medicaid Waiver policy manual, Developmental Services commits to perform program monitoring reviews in collaboration with Health Care Services every two years at each regional center, with follow-up taking place in alternate years. These reviews are designed to ensure compliance with federal laws and regulations and to also ensure that consumers are receiving the intended services. As part of its monitoring reviews, Developmental Services reviews consumer records, including IPPs, for a random sample of Medicaid Waiver participants at each regional center to ensure that the individual is receiving the services and support identified in the IPP. During the reviews, Developmental Services also conducts interviews with consumers, service coordinators, and service providers to ensure that consumers are satisfied with the services and support they are receiving, that their needs are understood by their service coordinator, and that the facilities and services are safe and clean.

Fiscal Audits

The Lanterman Act also requires that Developmental Services audit the state funds provided to the regional centers. In its Medicaid Waiver policy manual, Developmental Services commits to visiting each regional center every two years to conduct a biennial fiscal audit, with follow-up audits occurring in alternate years. This audit ensures that the regional centers are complying with Title 17 regulations, Medicaid Waiver requirements, and contract provisions. Developmental Services' standard audit program directs its auditors to test a sample of the regional center's expenditures for services provided to consumers to ensure that they are allowable.

Oversight Limitations Imposed by Court Decision

Developmental Services has only a limited ability to control regional center operations, which can affect its ability to provide oversight. As determined by a 1985 California Supreme Court decision,³ the Lanterman Act and other state laws permit Developmental Services to "promote the cost-effectiveness of the operations of the regional centers" but do not allow the department to "control the manner in which the regional centers provide services or control their operations." Based on its conclusion, the court ruled that Developmental Services could not limit or restrict the types of services the regional centers provide to consumers. Plaintiffs representing consumers had sued various state entities

³ *Association for Retarded Citizens—California v. Department of Developmental Services* (1985) 38 Cal. 3d 384.

and officials, challenging directives issued to regional centers by the former director of Developmental Services to reduce costs to cover a budget shortfall during fiscal year 1982–83.

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) directed the Bureau of State Audits to examine Developmental Services' oversight responsibilities for the regional centers and to determine the extent to which Developmental Services performs oversight at the regional centers selected for review. We reviewed the Lanterman Act and department policies and procedures, and spoke to Developmental Services' internal auditors and program monitoring staff to determine the oversight activities the department performs. For the regional centers we visited, we then tested certain key activities.

The audit committee also directed us to survey past and current service providers to determine if these providers were reluctant to file complaints for fear of retaliation or believe they experienced retaliation from the regional centers. To locate service providers, we obtained data from Developmental Services' Uniform Fiscal System and then randomly selected approximately 3,000 past and current vendors that were not family members or consumers to receive our survey. Approximately 8.5 percent responded to at least one question. The questions we asked and the average responses are provided in Appendix A.

Because the audit committee directed us to visit a sample of regional centers, we used results from our vendor survey, in addition to other factors such as location and size of the population served, to select six regional centers to visit. We tabulated the survey results for the vendors' regional centers and then averaged the total score for each one. Those regional centers with the lowest scores were viewed most favorably by vendors responding to our survey. The matrix of factors used to select vendors is given in Appendix A. The regional centers that we selected to visit were Inland, Valley Mountain, San Andreas, Tri-Counties, Far Northern, and Westside. The regions served by these centers are shown in Figure A in Appendix A.

For this sample of regional centers, the audit committee directed us to select a sample of paid invoices from the past two fiscal years and determine whether the activities described were reasonable and/or allowable under the law. We reviewed 40 expenditures related to services provided to consumers by vendors at each regional center. We selected our sample invoices by obtaining data from Developmental Services regarding the purchase of

services, sorted by vendor, and then judgmentally selecting at least one invoice for each fiscal year from the vendors receiving the most money from the regional center. We determined whether the expenditure was allowable by determining if the vendor had received prior authorization from the regional center to provide the service to the consumer and by determining if the vendor had billed at the authorized rate and number of hours. We assessed whether expenditures were reasonable by selecting a subsample of rates from the invoices we tested. For this subsample, we determined whether the rate conformed to rates established by Developmental Services or Health Care Services, if required, or we determined whether the rate was properly negotiated by the regional center.

Additionally, for the regional centers we visited, the audit committee directed us to review a sample of service provider contracts over the past two fiscal years, evaluate the policies and procedures used to award contracts, and determine what factors the regional centers considered when awarding contracts. At each regional center, we spoke with staff and requested procurement policies if available. For a judgmental sample of vendors with written contracts, we reviewed the contracts and any other documentation available to determine how the vendor was selected. We also spoke with the various directors of case management and requested the policies and procedures used by the service coordinators, if available. For four judgmentally selected consumers at each regional center, we reviewed IPPs and case notes maintained by service coordinators. We then determined if the consumer's planning team conducted a comparison of available vendors when selecting a vendor to meet a consumer's IPP goal.

Further, for the regional centers we visited, the audit committee directed us to review procedures for allowing public access to information on operations and to determine whether these procedures complied with the law. Specifically, the audit committee directed us to determine if requests for public records made by service providers in the past two fiscal years were satisfied in a timely manner and within the requirements of the law. However, we determined that the information that regional centers are required to make public is limited to employment contracts and that the regional centers are not required to maintain, and do not maintain, logs of public information requests or track how such requests are fulfilled. As such, we could not perform tests of public or service provider requests for information.

Government auditing standards require auditors to have a sufficient understanding of relevant internal controls to plan an audit and to determine what kinds of tests to do in the audit to meet the stated audit objectives. Internal controls are the processes by which management provides reasonable assurance of the achievement of

the following objectives: effectiveness and efficiency of operations, relevance and reliability of information, and compliance with applicable laws and regulations. One of the components of internal control that we must examine is the control environment—the tone of the organization, which includes management’s philosophy and operating style. To gain an understanding of this aspect of internal control, we administered a survey that we sent to employees at each of the six regional centers we visited. The aggregate results of this survey for each regional center are located in Appendix B. When employees identified potential fraud or potential improper expenditures, contracts, or other actions related to favoritism or a potential conflict of interest, we conducted a risk assessment to determine whether the allegation should be addressed via one of our audit procedures. In certain instances, we added additional sample items to our contracting and expenditure testing as a result of a specific allegation.

We relied upon electronic data in performing this audit. The U.S. Government Accountability Office, whose standards we follow, requires us to assess the sufficiency and appropriateness of computer processed data. To identify the total expenditures for claims against purchase-of-service expenditures, we used information from Developmental Services’ Uniform Fiscal System (UFS). We assessed the reliability of the UFS data by performing electronic testing of key data elements, by testing the accuracy of the data, and by comparing the monetary totals from the data files against the audited financial statements for each audited regional center. In our electronic testing of key data elements, we determined that these data elements contained reasonable data. To test the accuracy of the data, we selected a random sample of 29 expenditures and traced them back to source documentation. We identified no errors in the accuracy testing. Finally, after comparing the totals from the data files against the audited financial statements for each regional center, we concluded that there were no material completeness errors. Thus, based on our testing and analysis, we determined that the data obtained from UFS was sufficiently reliable for the purposes of identifying the total expenditures for claims against purchase-of-service expenditures.

Additionally, we used other portions of Developmental Services’ UFS data to identify a sample of vendors for the vendor survey. We determined that a full data reliability assessment is not required because the purpose for which we are using the vendor data is to pull a statistically valid random sample of vendors from which a selected number of these vendors were surveyed by the audit team. We conducted data set verification procedures to ensure that the number of records we used in our analysis matched the number of records provided to us by Developmental Services. However, while we would normally test the completeness of data to be used for

this purpose, we did not in this instance. This decision was made because the source documents that would be used in completeness testing are located at 21 different regional center locations throughout the State, and a cost-effective way of obtaining these source documents was not available.

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Chapter 1

STATE OVERSIGHT ENSURES THAT SERVICES PURCHASED ARE ALLOWABLE BUT DOES NOT NECESSARILY ENSURE THAT THESE COSTS ARE REASONABLE

Chapter Summary

Provisions within the Lanterman Developmental Disabilities Services Act (Lanterman Act), and the regulations promulgated to carry this act out, specify how regional centers are to ensure that services purchased for individuals with developmental disabilities (consumers) are allowable. This statutory framework, combined with specific monitoring activities by the Department of Developmental Services (Developmental Services), provides adequate state oversight of the allowability of consumer services purchased by the regional centers. Consequently, although the regional centers could improve their documentation and written procedures in a few areas, most of the expenditures we reviewed for services appeared allowable and supported by proper vendor invoices. However, state law and regulations allow regional centers to establish many vendor payment rates through negotiation with the vendor, and Developmental Services' monitoring activities have provided only limited assurance that the payment rates established in this way are reasonable. Left to their own discretion, the regional centers have, at times, used some best practices when establishing rates, but more frequently they have not supported established rates with an appropriate level of analysis. At times, regional centers have established payment rates under circumstances that had the appearance of vendor favoritism or fiscal irresponsibility, or that did not comply with recent legislation intended to control the costs of purchased services.

State Law and Regulations Provide an Adequate Framework for Ensuring That the Services Purchased Are Allowable

The Lanterman Act, and Division 2 of Title 17 of the California Code of Regulations (Title 17 regulations) developed to carry out this law, set forth an adequate process for ensuring that the services purchased for consumers are allowable. The Lanterman Act provides that consumers shall receive services and support as their individual needs require. As discussed in the Introduction, the regional center service coordinators work with a planning team consisting of the consumer and his or her family and advocates to choose the community-based services that will best meet the consumer's needs and preferences. The law requires regional centers to develop an individual program plan (IPP) for each

consumer based on the results of these meetings. The IPP lists the services the regional center will provide for the consumer and identifies the vendors who will provide those services.

Title 17 regulations require vendors to obtain a written authorization from the regional center before starting to provide services to a consumer except in certain emergency situations, and also require regional centers to maintain copies of the authorizations. Developmental Services' contracts with the regional centers require the centers to maintain documentation to support expenditures for services provided by vendors. After a consumer receives a service and the vendor submits an invoice, the regional center pays the vendor for the service according to the vendor's preestablished rate for that service. Assuming that regional centers obtain sufficient support from vendors prior to paying invoices—and based on our testing, it appears that they generally do—the payment process outlined in statute and regulations would be adequate to ensure that the services purchased are allowable.

Laws and Regulations Delegate Significant Rate-Setting Responsibilities to the Regional Centers

Although a few rates are established in statute or are set by Developmental Services and the Department of Health Care Services (Health Care Services), state law and regulations allow regional centers to establish many vendor payment rates through negotiation with the vendor. The various types of services available to consumers are categorized and accounted for using a series of numeric service codes. Through methodologies that they often develop at their own discretion, the regional centers set the rates for 96 of the 155 active service codes under which they can claim expenditures for the purchase of services (regional-center-established rates). As indicated in Table 1, the types of services for which the regional centers set rates accounted for roughly \$2.9 billion (45 percent) of the approximately \$6.5 billion spent for the purchase of services in fiscal years 2007–08 and 2008–09.

In addition to approving a service provider as a vendor, the regional center determines the rate at which it will reimburse the provider for the services it will provide to consumers. As Table 1 reflects, the rate the regional center uses is either Developmental Services' rate, a statutory rate, a rate established by Health Care Services, or, if none of these apply, a rate established through negotiation between the regional center and the vendor. Under state law, Developmental Services sets most rates for community living facilities. It also sets day program rates and rates

Through methodologies that they often develop at their own discretion, the regional centers set the rates for 96 of the 155 active service codes under which they can claim expenditures for the purchase of services.

Table 1
Origins of Vendor Rates

RATES ESTABLISHED OR PUBLISHED BY:	NUMBER OF SERVICE CODES	TOTAL EXPENDITURES IN FISCAL YEARS 2007-08 AND 2008-09 FOR THESE SERVICE CODES (IN MILLIONS OF DOLLARS)
Department of Developmental Services	12	\$3,007
Regional centers	96	2,852
State statutes	4	283
Department of Health Care Services	33	263
Other*	10	46
Totals	155	\$6,451

Sources: State law and Division 2 of Title 17 of the California Code of Regulations, and purchase-of-service data provided by the Department of Developmental Services.

* The majority of these expenditures were related to transportation fares, such as taxi-cab fares, (\$30 million) and out-of-home respite care (\$10 million), which could not be classified in one of the other categories in the table.

for relief of in-home (typically family) caregivers by considering the vendor’s actual costs, within a certain range. For other services, such as supported employment services, the rate is established in statute. Meanwhile, for specified health care services similar to those covered by the Medi-Cal program, Health Care Services establishes rates that cannot be less than those established under the Medi-Cal program.

For other services, the regional centers have greater discretion to set the rate at which they will reimburse the vendor. As discussed in the Introduction, the regional center, in certain circumstances, pays a rate based on the “usual and customary” rate the vendor charges for the service. Otherwise, regional-center-established rates should be negotiated between the vendor and the regional center. The law and regulations do not prescribe the format, content, or quality of rate negotiations between vendors and regional centers, nor do they require the regional centers to document the negotiation process. Given the problems we found at the regional centers we visited, as described later in this chapter, increased oversight of these rate determinations appears to be warranted.

Developmental Services Generally Completes Required Monitoring Activities but Provides Little Oversight of Rate Establishment or Vendor Selection by Regional Centers

For those areas of oversight specifically tasked to Developmental Services by state law or federal requirements, the department generally performs its role adequately. Developmental Services broadly monitors the regional centers’ performance through annual

Developmental Services produces annual reports describing how well regional centers are meeting performance objectives and issues identified during its other oversight activities.

performance reports and examines consumer care during biennial Medicaid Home and Community-Based Services Waiver (Medicaid Waiver) reviews. It also examines the regional centers' expenditures for the purchase of services during fiscal audits required every two years. Each of these monitoring mechanisms adds value, but none have provided independent oversight of how service rates are negotiated or otherwise established by regional centers.

Developmental Services Completes Annual Reports Describing the Performance of Each Regional Center

As required by the Lanterman Act, Developmental Services produces annual reports describing how well regional centers are meeting the performance objectives outlined in each regional center's contract. We found that these reports contain information regarding each regional center's consumer demographics; performance on goals established by Developmental Services, such as reducing the number of consumers living in facilities serving more than six individuals; and compliance with state and federal requirements, such as passing an independent financial audit. Using data from a database it shares with the regional centers and from other sources, Developmental Services generates a draft performance report for each regional center. The regional centers review the data and contact Developmental Services if they have any feedback. The Lanterman Act requires that the reports be made available to the public. We confirmed that Developmental Services prepared reports for all 21 regional centers for the past fiscal year.

The performance reports for 2008 indicated that on average the regional centers had improved over the previous year on goals to increase the number of consumers living in the community. If a regional center did not meet the performance standards, Developmental Services indicated that it would, among other actions, follow up through its waiver monitoring section or audits branch or provide technical assistance as it deemed necessary. For instance, according to Developmental Services, Valley Mountain Regional Center (Valley Mountain) was not improving the speed with which it completed its intake and assessment of consumers. Developmental Services stated that it provided technical assistance and indicated that Valley Mountain had shown marked improvement.

Developmental Services' monitoring of the regional centers' performance reports is an overview that does not include an on-site examination of documentation. Rather, this review is a mechanism for summarizing performance data related to the regional centers and any issues identified during Developmental Services' other oversight activities described on the following pages.

Developmental Services Is on Schedule to Complete Required Medicaid Waiver Reviews

As indicated in the Introduction, Developmental Services conducts Medicaid Waiver reviews in collaboration with Health Care Services every two years at each regional center as a condition of receiving federal funds. Developmental Services has visited or is scheduled to visit all 21 regional centers to conduct these reviews as required. As of April 2010 Developmental Services had completed the reviews for 16 regional centers since October 1, 2008, and it was scheduled to complete the remaining five before September 30, 2010. We reviewed the reports for five of the six regional centers we visited and verified that they addressed required sections, including the following:

- Provided six specific assurances regional centers must provide as a condition of Medicaid Waiver approval.
- Conducted reviews of consumer records to identify written statements by consumers indicating that they were given a choice of living arrangements and for evidence demonstrating that IPPs are updated annually by regional centers.
- Conducted interviews with consumers to determine whether their needs are being met and choices are being respected.
- Conducted interviews with service coordinators and service providers to determine how well they know the consumer.
- Completed vendor reviews to ensure that consumers are served in a safe, healthy, and positive environment.

As seen in the elements above, the emphasis of these reviews is on consumer care. The monitoring team does not consider the cost of particular services or the cost-effectiveness of any vendor-selection decision. As discussed in Chapter 2, Developmental Services may want to use these reviews to ensure compliance with a July 2009 statutory amendment requiring the selection of “the least costly provider of comparable service.”

Developmental Services Completed Almost All Fiscal Audits Within the Required Time Frame

The Lanterman Act requires Developmental Services to audit state funds provided to the regional centers, and Developmental Services generally accomplishes this responsibility through the fiscal audits it conducts every two years as a condition of participating

Although not currently within the scope of these reviews, Developmental Services may want to use its Medicaid Waiver reviews to ensure that “the least costly provider of comparable service” is selected to provide consumer services.

in the Medicaid Waiver. During our review of its files, we found that Developmental Services completed 18 of the 21 fiscal audits required in fiscal years 2007–08 and 2008–09. According to the chief of Developmental Services’ Regional Center Audit Section (audit chief), the remaining three audits were completed in fiscal year 2009–10 and did not meet the two-year period required by Developmental Services’ Medicaid Waiver policies. The audit chief explained that Developmental Services did not complete these audits within two years because it did not have staff available to perform the reviews and because the lack of a timely budget resulted in no funds being available for travel. He stated that although Developmental Services indicates whether it completed the fiscal audits within the two-year period in a report submitted to the federal government, he is not aware of any repercussions if the audits are late. Even so, Developmental Services’ fiscal audits are a key monitoring mechanism that, if not completed at least every two years, could allow any fiscal problems at an unaudited regional center to continue unabated.

During these fiscal audits, Developmental Services’ auditors are to review a sample of expenditures for the purchase of services to determine if payments made to vendors are properly supported. Auditors are also to look for any unusual activities in a sample of regional-center-managed consumer trust accounts, which contain consumers’ social security benefits intended to pay for their regular living expenses. Finally, Developmental Services’ auditors also perform work in other areas, such as reviewing client trust holding accounts and other bank accounts.

In examining the content of the fiscal audits for the regional centers we visited, we found that they generally contained evidence of work performed in all the areas outlined in the previous section. With regard to expenditures for the purchase of services, the fiscal audits appeared to focus on whether the services were allowable and invoices were properly documented. Although Developmental Services’ audits examine whether a sample of invoices comply with the applicable rate methodology, they did not typically examine how regional centers established the applicable rate.⁴ The audit chief added that if Developmental Services were to become aware of allegations of improper rate negotiations, it could conduct a special audit. However, the audit chief could not provide any examples of instances in which Developmental Services looked into concerns over how a rate was established.

Until recently, Developmental Services’ fiscal audits did not typically examine how regional centers established vendor payment rates.

⁴ After we discussed our concerns with the department, Developmental Services revised its fiscal audit procedures to include a review of the regional center documentation establishing the basis for a sample of rates. Because these new procedures were not provided to us until July 2010, which was after the completion of our fieldwork, we were not able to determine the effectiveness of the procedures or the degree to which they have been implemented.

Although Expenditures Were Generally Allowable, the Regional Centers Could Improve Their Documentation and Written Procedures for Purchases of Services

Based on our review of a sample of 40 expenditures at each of the six regional centers we visited (240 expenditures total), we determined that the regional centers generally have controls in place to ensure that they purchase only allowable services for consumers. Specifically, we found in most instances that services paid for by the regional centers were requested by a service coordinator after completing the IPP for an eligible person; vendors received authorization to provide services before furnishing those services; and vendors provided appropriately supported invoices. Even so, we noted a few areas in which improvements could be made in the documentation of expenditures and in the written description of important control processes. Finally, at one regional center, we found that a vendor submitted monthly invoices that did not match attendance data.

Regional Centers Could Not Always Provide Required Authorizations for Expenditures for Purchase of Services

Although the expenditures we tested generally appeared to be allowable, there were instances in which the regional centers did not retain all of the documentation required by Title 17 regulations. Specifically, the San Andreas Regional Center (San Andreas) and Tri-Counties Regional Center (Tri-Counties) did not always retain copies of required purchase-of-service authorizations they sent to vendors. Although Title 17 regulations currently require the regional centers to retain copies of these forms, the processes used by these two regional centers do not follow this requirement. Specifically, San Andreas sends a written form to the vendor but does not retain a copy. Additionally, Tri-Counties has phased out sending these forms entirely. Instead, according to its purchase-of-service manager, it relies on telephone or e-mail notification.

San Andreas noted that Developmental Services' most recent audit of its purchase-of-service system, by which it sends written notices to vendors but does not retain copies of those mailings, was conducted in late 2009 and did not mention any findings involving this aspect of its process. Similarly, Tri-Counties said it had shared its plans for changing to a paperless authorization system with Developmental Services' auditors. However, neither regional center could provide us with written department approval of their unique processes. We spoke with Developmental Services' audit chief, who informed us that the department's audit branch looks at the fiscal aspects of each regional center's purchase-of-service process related to authorizations of service but indicated that Developmental

Two regional centers used processes to authorize services that were not approved by Developmental Services and were not in compliance with applicable regulations.

Services would not approve a system that does not comply with the regulation requiring retention of written authorizations. Sufficient documentation of authorization ensures that regional centers pay only for services they have authorized vendors to provide, as regulations require. Nonwritten methods of notifying vendors that they may begin service, such as telephone notification, are not as effective in creating a record that protects the regional center's interest in paying only for authorized services and the vendor's interest in being paid at a confirmed rate for all consumer services it provides.

Regional Centers Did Not Always Maintain Documentation of Their Processes for Purchasing Services

Regulations define certain requirements for documenting purchases, but state law does not prescribe the internal processes each regional center is to use in addressing these requirements. Of the six regional centers we visited, two could not provide up-to-date documentation of their procedures for approving and processing invoices for services. At San Andreas, the regional center's purchase-of-service manual was 20 years old, and the financial manager acknowledged that it needs to be updated. At Valley Mountain, the transportation coordinator processes monthly vendor data using a different process than the regional center uses for other purchases of services. Although Valley Mountain's usual process for purchasing services is well documented, its method of processing transportation invoices relies on one person's expertise, and no written guidance exists for vital steps in the process. This lack of an established process for invoice reviews appears to be one of the factors that allowed a vendor to be paid based on insufficiently supported invoices, as described in the section that follows.

Lack of an established process for reviewing transportation invoices appears to be one of the factors that allowed Valley Mountain to pay a vendor based on insufficiently supported invoices.

One Vendor Submitted Monthly Invoices That Did Not Match Attendance Data

Although the regional centers paid the vast majority of vendor invoices based on sufficient supporting documentation, one regional center paid a vendor for two invoices that were not appropriately supported. Although this issue did not necessarily result in inaccurate payments to the vendor, it called attention to a pattern of errors in its invoicing process that the regional center agrees it must address.

Valley Mountain contracts with transportation vendors when needed to bring consumers from their homes to their chosen service providers. The contract between Valley Mountain and

one of its transportation vendors requires the vendor to submit monthly invoices along with certain supporting documents, specifically, “[a] mileage report broken down by route and service day identifying vehicles used, a bus aide report reflecting hours by aide, and a monthly consumer attendance report indicating the number of trips and the actual days of service provided for each consumer.”

In practice, the regional center also requires transportation vendors to submit monthly documentation of services, broken down by consumer, through a billing spreadsheet. Each vendor is to populate this spreadsheet with the number of miles each consumer travels per round trip, the number of round trips the vendor provided to each consumer in the month, and the total number of miles each consumer traveled per month. The spreadsheet provides a total of all the miles the vendor provided to all its consumers for the month.

According to the manager responsible for transportation services, Valley Mountain developed this spreadsheet in response to a 2002 audit finding from Developmental Services. The audit recommended that the regional center establish separate authorizations for each consumer receiving transportation services, so these services could be properly billed to the Medicaid Waiver. As part of its response to this recommendation, Valley Mountain directed vendors to use the specialized billing spreadsheet, which allocates transportation service costs among consumers. Developmental Services’ next audit did not mention a repeat finding in this area, indicating that Valley Mountain’s process modifications had addressed the concerns raised in the prior audit.

We noted in our testing that one transportation vendor’s attendance records often did not match the attendance information it entered in its monthly billing spreadsheet. This led us to question the accuracy of the vendor’s billing for the months we reviewed. The transportation manager investigated this with the vendor, and the vendor explained that it intentionally entered inaccurate attendance data into its billing spreadsheet. According to the transportation manager, the vendor manipulated the data in the spreadsheet so that the mileage totals it computed would agree with the total number of miles the vendor was entitled to bill based on its monthly odometer readings. At our request, the vendor produced logs of its odometer readings that supported the total miles it billed for one of the months we reviewed. However, Valley Mountain did not require the vendor to submit these logs at the time the original invoices were submitted. Valley Mountain’s process for reviewing the vendor’s monthly billing records did not result in it identifying these inconsistencies in the invoices’ supporting documentation.

Although Valley Mountain did not require the vendor to submit logs of odometer readings to support the miles billed when the invoices were paid, eventually, at our request, the vendor produced them.

The vendor's choice to submit inaccurate billing spreadsheets and the regional center's failure to catch these inconsistencies indicate that the regional center's management needs to examine its controls and how transportation invoices are being paid. Valley Mountain agrees and has informed us of its intention to improve this process. It has developed a plan for a transition to new procedures in which its purchase-of-service unit will take on a more active role in processing these invoices. After Valley Mountain makes the necessary changes, Developmental Services should verify that Valley Mountain's improved invoicing process both collects accurate data and ensures that consumers remain eligible for coverage under the Medicaid Waiver.

Left to Their Own Discretion, Regional Centers Often Established Rates That Were Not Supported by an Appropriate Level of Analysis

As indicated earlier in this chapter, state law and regulations allow regional centers to establish the payment rates for many types of vendor services through negotiation with the vendor but do not prescribe how regional centers are to accomplish or document completion of this responsibility. Also, as indicated earlier, Developmental Services provided little direct oversight through existing monitoring efforts of how regional centers establish rates. Within this framework, we found—based on our review of a sample of regional-center-established rates—that the regional centers often do not retain support demonstrating that they established rates using an appropriate level of analysis. We also found that they sometimes established rates using inappropriate processes that gave the appearance of favoritism toward certain vendors or fiscal irresponsibility.

Regional centers established rates that often did not have support demonstrating an appropriate level of analysis and, at times, gave the appearance of favoritism or fiscal irresponsibility.

From the 240 expenditures for services in our sample (40 each at the six regional centers we visited), we selected and examined 61 rates established by regional centers. Because we wanted to focus our review on rates set at the higher end of the cost spectrum, we selected our sample from the regional-center-established rates that were higher than the respective median rates published by Developmental Services. Because the samples we chose varied in their use of regional-center-established rates and also varied in the number of rates that were above the respective medians, we ended up reviewing a different number of rates at each regional center.

As shown in Table 2, because we often could not determine from the regional centers' documentation how they established the rates they provided to vendors, we were unable to determine how the regional centers concluded that the rates were reasonable.

In many cases we found that the vendor file lacked any indication of how the regional center determined the rate. In other cases, we found contract language or rate agreements stating that the rate was negotiated, but no other records were available describing how this negotiation occurred. At times, we found explanations of how regional centers originally set rates for a service, but the records were too out of date to explain more recent changes to the rates. In these instances, because we could not determine how the rate was set, we marked them in the table as “Could Not Determine.”

Table 2
Basis for Vendor Rates Set by Regional Centers

REGIONAL CENTER	NUMBER OF RATES SELECTED FOR REVIEW	REGIONAL CENTER DOCUMENTATION DEMONSTRATES THAT THE RATE WAS ESTABLISHED VIA:				
		COST STATEMENT FROM VENDOR	NEGOTIATION BETWEEN VENDOR AND REGIONAL CENTER*	RATE TARGETED BY REGIONAL CENTER	RATE TRANSFERRED FROM ANOTHER REGIONAL CENTER	COULD NOT DETERMINE
Far Northern	15	11	2	–	1	1
Inland	4	1	–	1	–	2
San Andreas	9	2	1	2	–	4
Tri-Counties	10	1	–	2	–	7
Valley Mountain	9	3	4	–	1	1
Westside	14	–	–	2	1	11
Totals	61	18	7	7	3	26

Source: Analysis by Bureau of State Audits of information contained in the vendor files at the regional centers listed above.

* As we discuss later in this chapter, the term *negotiation* could involve cost statements and targeted rates. In this table, we separately identify these practices and reserve this column for instances in which we found evidence of rate-related dialogue (i.e., a vendor rate proposal and regional center counter-offer) between the vendor and regional center.

When documentation was available, a cost statement from the vendor was the most frequently used support for the rate determination. Analysis of cost statements—as exemplified by the process being implemented by the Far Northern Regional Center (Far Northern) and described in the next section—appears to be a potential best practice in rate setting. When we found at least some evidence of negotiation with the vendor regarding the rate (such as a vendor proposal and a counter-offer by the regional center), we categorized the rate within the “Negotiation Between Vendor and Regional Center” column in Table 2 above. Finally, when we observed that the regional center either targeted a specific rate that it wanted to pay the vendor or transferred a vendor rate from another regional center, we designated such instances in the appropriate column in the table.

The Use of Vendor Cost Statements Appears to Be a Best Practice in Establishing Rates

Although not always required to do so by regulation, statute, or contract, some regional centers have required vendors to provide them with statements displaying a cost breakdown of the vendor's proposed rate. This cost-statement approach provides regional centers an opportunity to examine the underlying costs or cost assumptions that form the basis of vendors' proposed rates. Although the most prolific user of cost statements in our sample—Far Northern—still needs to improve its process, it has demonstrated a commitment to doing so.

As indicated in Table 2, Far Northern used cost statements to establish 11 of the 15 rates we reviewed at that regional center. During the review, however, we noted that it did not appear from the file that Far Northern was systematically examining the costs built into the cost statements. For example, a vendor requested and obtained from Far Northern a 78 percent increase in its payment rate with only a very basic cost statement retained in the vendor file, and there was no discussion regarding why the regional center accepted this substantial rate increase. In discussions with regional center management regarding this example, Far Northern could not provide further explanation, other than to state that the rate increase was approved by one of its management committees.

Far Northern also indicated, however, that it was in the process of improving its use of cost statements for the rates it pays for supported living services, and that it would eventually extend this structure to other types of rates. As shown in Figure 2, Far Northern has developed new forms that will collect the same data providers currently submit in cost statements. Because the format is now standardized, the regional center believes it can more easily compare different vendors' cost statements. Far Northern stated that it has developed a plan to routinely review the actual costs underlying the rates paid for supported living services, and it indicated that it will start to recapture payments it makes based on overstated cost assumptions.

Far Northern's recently improved process of using cost statements to establish rates provides a good framework for establishing vendor rates.

While the process Far Northern previously used was as good as or better than those we saw at other regional centers, its recently developed process—should it be fully implemented—will offer a good framework for establishing rates. Should Developmental Services move to provide consistency in how regional centers establish rates, which we believe is warranted, it should closely examine Far Northern's recently developed process for its applicability across all service codes used by the regional centers.

Figure 2
New and Old Processes Used by Far Northern Regional Center for Creating and Reviewing Supported Living Services Rates

	Previously Used Process	Recently Developed Process
Step 1	The consumer's planning team prepares an individual program plan, identifying the vendor who will provide the consumer's supported living services.	
Step 2	The supported living services' vendor establishes a new rate for a new consumer.	
Step 3	The vendor submits a cost statement detailing its anticipated costs for each component of the supported living services it will provide.	The vendor submits a cost statement on a standardized form designed by the regional center detailing its anticipated costs for each component of the supported living services it will provide.
Step 4	(not part of previous process)	The regional center reviews vendor's cost statements and notes instances in which vendor costs are beyond the norm.
Step 5	(not part of previous process)	At least once a year, regional center staff audit vendor records and documents to ensure that all information on the cost statement reflects actual costs.
Step 6	(not part of previous process)	If information on the cost statement is found to be overstated, the regional center adjusts the rate downward and recaptures any overpayments.

Sources: Associate director of community services, Far Northern Regional Center, and cost statements provided by the regional center.

Regional Centers Often Did Not Document Rate Negotiations in Vendor Files

We often could not identify how a regional center negotiated a rate with a vendor. However, when documentation was available, we found examples of both good and bad business practices—sometimes at the same regional center. As previously mentioned, state law and regulations allow regional centers to establish many vendor payment rates through negotiation with the vendor. “Negotiation” is not defined in statute or regulation, but in the broadest sense, this statutorily undefined term could involve the cost statements just described, the regional center practice of targeting a specific rate described in the next section, or any other negotiation method a regional center wants to use. In our review of documentation, we specifically looked for at least some evidence of dialogue between the vendor and regional center regarding the rate, such as a vendor rate proposal and a regional

center's counter-proposal. We did not consider a form letter calling a rate "negotiated" to be stand-alone evidence of how the rate was actually determined.

We noted a best practice in rate setting at Valley Mountain. A vendor requested a rate of roughly \$39 per hour, which apparently was about 10 percent higher than the average rate for the same service in the local area. However, according to notes in the vendor file, the vendor could not fully support the proposal with actual cost data. Consequently, the regional center's assistant director for resource development (assistant director) counter-proposed an initial rate of roughly \$35 per hour, which she indicated was the local average for that service type. The assistant director expressed a willingness to increase the rate later if the vendor could provide justification for a higher rate. The vendor accepted this rate, and when it did not subsequently submit a rationale for an increase, the average rate became the vendor's permanent rate. This approach demonstrated a prudent approach to expending limited state resources.

However, also at Valley Mountain, we found evidence of failure to adequately preserve state resources. We found two rates for the same service, one of which was significantly higher (\$16 per hour) than the other (\$12.88 per hour). The lower rate had previously been set by another regional center and followed the vendor when it transferred into Valley Mountain. Meanwhile, Valley Mountain established the higher rate under circumstances suggesting the appearance of a conflict of interest.

An assistant director at Valley Mountain approved the rates of a vendor owned by her sister at a higher rate than the rate of a comparable vendor.

Although the regional center's assistant director would later recuse herself from any dealings with this vendor, which is owned by her sister, the assistant director approved the original rate of \$16 per hour that had been negotiated with this vendor. Her involvement was indicated by her signature on the rate-agreement form in the vendor file. Although the rate for this vendor is higher than the rate for a comparable vendor, the assistant director asserted that the additional value brought by this vendor (such as having local offices and speaking Spanish) justified the increased rate. However, she admitted that no formal comparison between the two rates was done at the time the rate was set. She also indicated that the vendor's cost breakdown was provided to her at the time the rate was established, but this breakdown cannot now be located. The assistant director's statements, along with evidence in the file showing that the vendor was submitting information to and asking questions of the assistant director, demonstrate the extent of her involvement in the analysis of this vendor's rate proposal.

Obviously, the existence of a relationship between the two negotiating parties suggests a conflict of interest (see the text box) and creates the potential for vendor favoritism. The fact that the regional center did not clearly demonstrate why the rate for one vendor was higher than the rate for the other further contributes to the appearance of favoritism and illustrates the need for regional centers to document their rationale for establishing rates at certain levels.

The Regional Centers' Targeting of Specific Rate Levels Has Potential Pitfalls

Targeting a specific rate to pay all vendors for the same service may be fair if the rate is based on an analysis of the average cost of providing the service in the regional center's assigned territory. However, a targeted rate is not cost-effective if—for example—it precludes vendors from offering to provide services at a lower rate, or is based solely on the amount of state funds potentially available to the regional center. As indicated earlier in Table 2, seven of the rates we reviewed were based on a target rate established by the regional center. Two of these instances related to a \$60 hourly rate that Tri-Counties paid its vendors for behavior management services during a particular period of time. However, we noted that one of these vendors offered to provide these services at a rate of \$55 per hour, but Tri-Counties ultimately paid the \$60 hourly rate it was targeting for that service.

We asked the regional center why this occurred, and Tri-Counties responded that, from the middle of 2006 to early 2007, it provided certain vendors the same \$60 rate "to be fair and consistent with all providers of that service." By disregarding the vendor's input into the negotiation process, the regional center stifled potential price competition among these providers and incurred an unnecessary cost to the State of \$5 per service hour. Any threshold rate that a regional center establishes should be a maximum rate that the regional center's vendors may not exceed; it should not be a minimum rate that eliminates price competition.

Meanwhile, at Inland Regional Center (Inland) we found expenditures for assessments of consumers' transportation needs totaling \$950,000 that, according to Title 17 regulations, should have been based on a negotiated rate between the vendor and the regional center. However, it appears that no true negotiation took place. Rather, Inland targeted a certain amount that it wanted to spend before the end of fiscal year 2007–08 and then established a specific rate to accomplish that goal by dividing the targeted

**Summary of Conflict-of-Interest Provisions
Within Title 17 Regulations**

A regional center employee has a conflict of interest when, for example, a family member is a provider or the regional center employee also works for a provider. In such situations, the regional center employee who has decision or policy-making authority is to file a conflict-of-interest statement with the regional center and to either request a waiver from the Department of Developmental Services or eliminate the conflict.

Source: Title 17 of the California Code of Regulations.

amount to spend by the number of consumer assessments it determined the vendor should perform. The rate—an assessment of \$314 for each consumer who used private transportation services—was ostensibly for a systemwide review of the route efficiency and regulatory compliance of certain transporters.

This systemwide review was conducted by the same company that Inland was also negotiating with to become the regional center's new transportation broker. A transportation broker provides central administration of consumer routing and transporter compliance. The systemwide review and its associated rate of \$314 per assessment, although never formalized in a written contract containing regulatory-required provisions, appears to have been a precursor to the company's eventual broker-service contract.

We asked Inland's financial and administrative sections about the development of the assessment rate, and they pointed us to calculations performed by an Inland auditor who was asked to assist in the analysis of the broker-service contract. Using profit-and-loss statements from roughly 50 transportation providers, the auditor calculated an aggregate rate increase of 40 percent that transporters needed to remain financially viable. Inland used this percentage to determine how much rates would increase under the eventual broker contract, but it also used the percentage to determine how much Inland believed it needed to spend prior to the end of fiscal year 2007–08. The administrative services chief added that any negotiation would have been performed by Inland's resource development and transportation unit. With regard to the \$314 rate, the program manager in charge of this unit directed us to calculations performed by the financial and administrative sections and did not recall ever discussing this amount with the vendor. We also spoke with a representative of the vendor, who stated that Inland determined the payment rate for the assessment.

Inland determined the rates it used to pay a transportation company based on how much Inland believed it needed to spend before the end of a fiscal year rather than determining the rates through negotiations.

Within the files of the resource development and transportation unit, we found a May 2008 e-mail related to the assessment from the regional center's former chief of community services that stated, "Based upon our calculations, if we want to capture 100 percent of a 40 percent increase for the last quarter, we need to be sure we spend approximately \$918,735 in May and June."

We asked the former chief of community services what this statement meant. She stated that, based on her recollection, she may have been clarifying how much money Inland had remaining in its purchase-of-service budget for transportation; she acknowledged that her choice of words in this instance might not have clearly stated this. The former chief added that her e-mail was not directing events to occur, but was rather summarizing decisions and calculations that predated her involvement (as she was on leave

prior to that time). Inland's administrative services chief indicated that the statement likely meant that, because Inland was expecting a 40 percent increase in costs as it moved to a broker-service contract in fiscal year 2008–09, it may have been trying to increase its fiscal year 2007–08 fourth-quarter expenditures in the hope of obtaining an increase to the following year's budget. Inland's auditor, who prepared the calculations supporting the need for a 40 percent increase, agreed that increasing expenditures to obtain a higher budget level in the next year was discussed in meetings he attended in spring 2008 related to the broker services.

Developmental Services indicated that if inflating costs for this reason was actually Inland's intent, it picked the incorrect quarter to do so—the fiscal year 2008–09 budget allocation was based on third-quarter expenditures from fiscal year 2007–08, not the fourth-quarter expenditures. Regardless of whether the assessment and its accompanying rate were designed to fully expend Inland's purchase-of-service budget before the end of the fiscal year, or whether they were intended to increase the following year's budget, it is clear that these actions do not represent an appropriate methodology for setting a “negotiated” rate with a vendor.⁵

The Regional Centers Did Not Always Comply With the Requirements of the July 2008 Rate Freeze

We found that the regional centers did not always conform to the requirements of legislation requiring them to freeze their negotiated rates for existing vendors or, for new vendors, to establish rates at or below the lesser of the regional center or statewide median rate for the pertinent service codes. These provisions, which were enacted in February 2008, specified that beginning on July 1, 2008, increases in payment rates for existing vendors were allowed only if required in contracts in effect on June 30, 2008, or authorized by Developmental Services in writing. In our review of 61 rates, we found four instances in which regional centers did not appear to follow the law requiring this rate freeze. As a result, these regional centers expended resources that the Legislature, in enacting the rate freeze, intended to preserve. We also found an additional instance of noncompliance with rate-freeze provisions in our review of regional center contracts. A summary of these five instances follows:

- Far Northern raised the hourly rate for a vendor providing supported living services after the rate freeze went into effect. For example, the rate for direct-care staff for one consumer was \$13.50 per hour in May 2008 and was raised to \$16.20 for another consumer in May 2009.

We found five instances in which regional centers did not appear to follow the law requiring a rate freeze, thus expending resources the Legislature intended to preserve.

⁵ We discuss additional issues related to Inland's transportation assessment in chapters 2 and 3.

- In January 2009 Tri-Counties effectively increased a transportation vendor's per-route rate, not by increasing the hourly rates but by increasing the minimum number of hours it paid per route. A data analysis provided by the regional center did not confirm that these increases were warranted.
- Inland entered into a rate agreement with a transportation vendor for broker services in June 2008—before the rate freeze took effect. However, in its October 2008 contract with the vendor, which finalized the rates, Inland added a provision allowing the transporter to double its rates for consumers in wheelchairs. Because these wheelchair rates were not in effect before the rate freeze, Inland should have complied with the structure of the broker-service rates published in the statewide median rates table, but it did not.⁶
- San Andreas provided a new vendor a rate of \$87 per hour, but the statewide median rate for the same service was roughly \$48 per hour. Available evidence indicates that this rate was not established until October 2008—well after the rate-freeze statutes went into effect.
- San Andreas entered into a contract on July 3, 2008, for intake assessments at a rate of \$150 per hour, while the statewide median rate for this service was only \$75 per hour. A regional center rate specialist indicated that, as soon as San Andreas received Developmental Services' memo containing the statewide median rates, the regional center corrected the contract. However, in the amended contract executed in November 2008, San Andreas modified the rate to a fixed amount of \$900 per intake assessment that has no basis within the statewide median rates table.

In the five instances just described, the regional centers disagreed that they violated the provisions of the rate freeze. In the first instance, Far Northern argued that instructions from Developmental Services allowed it to increase the hourly rates as long as its methodology for creating rates for supported living services remained the same. Our review of these instructions did not confirm this interpretation. In the second instance, Tri-Counties stated that its data analysis justified an increase in the minimum number of hours and the vendor providing

⁶ In Developmental Services' statewide median rates table, there is no specific wheelchair rate under the transportation broker service code. A reasonable approach would have been for Inland to request approval to use the median monthly allowance for wheelchairs under the transportation companies service code. However, the highest applicable allowance in the table is substantially less than what Inland paid.

transportation was not willing to continue providing the service without this increase. As we stated earlier, however, our review of Tri-Counties' data analysis did not support this conclusion.

In the third instance, Inland stated that it has always paid its transporters double the rate for consumers in wheelchairs; however, this arrangement is not reflected in Inland's median rate table and, as mentioned earlier, was not executed within Inland's agreement with its broker until after the rate freeze took effect. In the fourth instance, San Andreas argued that it essentially had a rate agreement in place with the vendor prior to June 30, 2008. However, it could not provide evidence of such an agreement. Finally, in the last instance, San Andreas stated that the fixed rate is "all inclusive" (that is, report writing and travel time are not charged separately). Even so, state law requires that the rate adhere to the statewide median rates table, and it does not.

Aware that it developed the statewide and regional center median rate tables and provided other guidance necessary to implement the rate freeze, we asked Developmental Services whether it reviews compliance with the rate freeze in its fiscal audits of the regional centers. The audit chief showed us that Developmental Services has procedures built into its fiscal audit process for reviewing compliance with the rate freeze within certain transportation service codes. The audit chief stated that the scope of the fiscal audits includes transportation, day programs, and residential programs but did not generally involve other service codes for which regional centers establish rates. Therefore, other than the services just mentioned, Developmental Services' audits division did not ordinarily review most regional-center-established rates for compliance with the rate freeze. In fact, four of the five rate-freeze violations we described are in service codes not typically reviewed during the fiscal audits.

The audit chief agreed that reviewing compliance with rate-freeze requirements holds value but added that the fiscal audits already require approximately four weeks of fieldwork for three auditors. Therefore, any additions to the fiscal audit procedures must be done in conjunction with efforts to streamline the existing program so as to ensure that audits of each regional center are performed every two years as required under the Medicaid Waiver.⁷ Because the five instances described earlier involve high-value contracts or rate agreements that the regional

Until recently, Developmental Services' audits division did not ordinarily review most regional-center-established rates for compliance with the rate freeze.

⁷ As we noted previously, Developmental Services provided us with revised fiscal audit procedures in July 2010. These new procedures include a review of compliance with rate-freeze requirements for a sample of rates established by regional centers. Because these additions were provided to us after the end of our fieldwork, we could not evaluate their efficacy or the degree to which they have been implemented.

centers no doubt believe are critical to the services they offer consumers, Developmental Services should review each instance of noncompliance that we identified and determine what actions the regional centers should take to remedy this noncompliance with statutory requirements.

Recommendations

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.

Developmental Services should require 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.

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.

To ensure that negotiated rates are cost-effective, Developmental Services should:

- 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.

If Developmental Services believes it needs statutory or regulatory changes to provide effective oversight of the regional centers' rate-setting practices, the department should seek these changes.

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.

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.

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Chapter 2

STATE OVERSIGHT OF THE REGIONAL CENTERS' SELECTION OF VENDORS IS LIMITED

Chapter Summary

Although state law has traditionally imposed few restrictions on how the regional centers are to select vendors to provide services to individuals with developmental disabilities (consumers), a recent amendment to the Lanterman Developmental Disabilities Services Act (Lanterman Act) would reduce this discretion by requiring the regional centers to select the least costly available provider of a comparable service. However, when we reviewed the files at the six regional centers we visited, we could not determine whether the regional center had selected the least costly provider, because they are not required to maintain documentation demonstrating compliance with this statutory requirement, and thus they do not do so.

Based on its interpretation of a California Supreme Court decision, the Department of Developmental Services (Developmental Services) generally provides little or no oversight of the regional centers' processes for referring vendors to consumers or selecting the vendors with which they contract. When we examined the regional centers' procurement practices, we did not find written policies indicating when they use vendorization and rate agreements (as described in the Introduction) and when they use contracts.⁸ Within this ambiguity, one regional center paid a vendor \$950,000 without adequately specifying what the contractor was to deliver. When regional centers entered into contracts, we found that they often established them without using a competitive procurement process. As a result of this lack of vendor competition, regional centers have difficulty demonstrating that their contracts with vendors are cost-effective and that the contract award process is free of favoritism toward particular vendors.

State Law Delegates Vendor-Selection Decisions to Regional Centers

State law places the responsibility for securing needed services for consumers on regional centers and has traditionally imposed few restrictions on how the regional centers select vendors to provide these services. Although a recent amendment to the law now

⁸ As described in the Introduction, we mean only those contracts defined generally by Developmental Services under Title 17 of the California Code of Regulations.

requires regional centers to select the least costly available provider of comparable services, Developmental Services has not adopted regulations or other requirements describing how regional centers are to demonstrate compliance with this amendment. Additionally, Developmental Services has adopted only limited regulations describing the manner in which regional centers are to procure contracts.

Statutorily Required Considerations for Selecting Service Providers

- A provider's ability and past success in delivering quality services.
- The existence of appropriate licensing, accreditation, and certifications.
- The cost of providing services of comparable quality.
- The consumer's choice of provider.

Source: Welfare and Institutions Code, Section 4648(a)(6).

As described in the Introduction, the Lanterman Act tasks the regional centers with purchasing the services determined necessary to carry out the consumer's individual program plan (IPP). The act specifies that a planning team consisting of a regional center representative, the consumer, and, when appropriate, the consumer's parents or representatives, determines the services and support to be provided to the consumer. These planning teams are required to consider various factors when selecting service providers (see the text box).

Although cost was already one factor that a consumer's planning team needed to consider, a July 2009 amendment to the law imposed a specific requirement that the least costly available provider of comparable services be chosen. With this amendment, the Welfare and Institutions Code, Section 4648(a)(6)(D), now states, "The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service . . . shall be selected" (the text in bold was added in July 2009).

This requirement applies only to the selection of vendors that will provide services to fulfill a particular consumer's IPP and not to the regional centers' selection of vendors for services not specifically tied to an individual consumer's IPP. Even so, it has the potential to save significant state resources. However, as we point out later in this chapter, IPP-related documentation at the regional centers is not currently such that an independent reviewer can determine whether the regional centers are selecting the least costly provider of comparable services. Further, Developmental Services has not adopted regulations, or issued other guidance, directing regional centers in how they should demonstrate compliance with this law.

Additionally, under the Lanterman Act and Title 17 of the California Code of Regulations (Title 17 regulations), the regional centers generally have discretion to execute a contract with a vendor or to pay the vendor pursuant to a rate agreement established during vendorization. Title 17 regulations address contracting

and vendor selection for only a small number of services. For example, the regulations require a contract and provide selection criteria for the regional centers to use when selecting family home agencies, which recruit, train, and monitor family home providers. Although Title 17 regulations generally require a written contract containing specific provisions for transportation services, the regulations allow regional centers to use, at their discretion, either competitive procurement involving a request for proposals (RFPs) or noncompetitive procurement when purchasing transportation services. Title 17 regulations also require a written contract when purchasing supported living services. Aside from these special cases, the regulations are silent with regard to the selection of vendors or execution of contracts by the regional centers.

Developmental Services Generally Does Not Regulate or Examine the Regional Centers' Selection of Vendors

Based on its interpretation of a California Supreme Court decision, Developmental Services generally provides little to no oversight of how regional centers refer vendors to consumers or select vendors with which they contract. However, this lack of oversight decreases its ability to promote cost-effectiveness in the developmental services system and to ensure that regional centers comply with a recent amendment to the Lanterman Act. As we discuss in a subsequent section, a more rigorous, documented procurement process would help to ensure that each regional center selects the best, most appropriate vendor and obtains the best price from that vendor.

Asked whether it has the authority to monitor vendor selection at the regional centers, Developmental Services stated that, based on the 1985 California Supreme Court decision (discussed in the Introduction), it does not have the ability under the Lanterman Act to control the manner in which the regional centers provide services or to control their operations. As such, it appears that Developmental Services allows regional centers to secure services from the vendors they deem necessary. No provision in the contracts between Developmental Services and the regional centers outlines vendor selection or uniform procurement practices for all service codes, such as requiring RFPs. Nor has Developmental Services issued regulations requiring the regional centers to document their contracting practices or how they select a particular vendor. Likewise, none of Developmental Services' fiscal audit procedures or other monitoring protocols include examining how particular vendors were selected for consumer services or regional center contracts.

Developmental Services' lack of oversight of how regional centers refer vendors to consumers or select vendors with which they contract decreases its ability to promote cost-effectiveness in the developmental services system.

Although the Supreme Court ruled that Developmental Services' authority was limited by law, the court also stated that Developmental Services could promote "the cost-effectiveness of services." By not reviewing the regional centers' selection of vendors and contract procurement, Developmental Services is missing an opportunity to identify and mandate practices found to be effective at containing costs. Furthermore, Developmental Services cannot currently ensure that the regional centers are complying with the "least costly available provider of comparable service" amendment to the Lanterman Act.

The Regional Centers Generally Do Not Document Their Reasons for Selecting Particular Vendors for Services Provided Under IPPs

As mentioned earlier, state law, regulation, and Developmental Services do not require the regional centers to document why they select particular vendors to provide services to individual consumers. Not surprisingly, when we attempted to review documentation at the six regional centers we visited, we found that they do not maintain information showing how they chose from among the available providers. Because they do not document why a consumer's planning team selected particular vendors, oversight entities—Developmental Services in particular—cannot currently ensure that planning teams select the least costly providers of comparable services as required by the Lanterman Act, nor can they examine whether the regional centers mitigate, as much as feasible, the appearance of favoritism towards certain vendors.

Our examination of the IPPs and case notes maintained by the service coordinators for a sample of consumers did not reveal any formal evaluation of potential vendors for each consumer's identified needs. Within the IPP, the Lanterman Act requires the regional centers to list the services and providers used to meet the consumer's objectives, but it does not specifically require regional centers to document an evaluation of other vendors or their costs. In addition, although Developmental Services instructs service coordinators to keep notes to document their contact with consumers, the regional centers do not require service coordinators to document the evaluation or selection of vendors, and therefore their notes generally include only discussions of the IPPs or consumers' desire to change vendors. Without a documented comparison between vendors in the IPP, it is currently not feasible for Developmental Services to monitor whether the least costly comparable provider is being chosen. Similarly, we cannot test this provision for the same reason.

Because regional centers do not typically document why particular vendors are selected, oversight entities cannot ensure that the least costly providers of comparable services are chosen.

Without documentation to review, we conducted interviews to determine how vendors are selected during the IPP process. Managers at most of the regional centers we visited generally explained that while the regional centers do not have a written policy, their service coordinators would recommend the closest, “most appropriate” vendor for the consumer. “Most appropriate” appears to be based on the service coordinator’s knowledge of the vendor’s strengths and weaknesses at providing the service and the consumer’s individual needs. Because vendor selections or referrals often depend on the knowledge of the service coordinator involved, a selection that might appear to result from favoritism may actually be due to a service coordinator’s desire to provide the highest-quality service to his or her consumer. When we questioned a program manager about the reason the regional center selected a particular vendor for a contract, the program manager stated:

I do not believe that our regional center treats this or any other vendor with any sort of bias. If anything, our regional center has a justifiable inclination toward awarding contracts and providing referrals to vendors who provide great service to our consumers. Based on my experience, [the vendor to which she was referring] is one of those vendors that cares for consumers and provides them with exceptional services.

Additionally, a referral made by the service coordinator is neither permanent nor absolute, nor is it the only source of information. Several of the regional centers we visited told us that their consumers can “try out” selected vendors in almost every instance. If the vendor is not to the consumer’s liking, and additional vendors are available, the regional center will facilitate the selection of a new vendor. As indicated in Chapter 1, Developmental Services’ Medicaid Home and Community-Based Services Waiver (Medicaid Waiver) reviews examine documents and interview consumers to ensure that their choices are being respected. Some of the regional centers indicated that consumers and their families may become aware of vendors through means other than just the service coordinator, such as by talking to other consumers. The Tri-Counties Regional Center (Tri-Counties) stated that it was planning to make available on its Web site a list of all service providers that currently have vendor status. Two other regional centers indicated a general willingness to accommodate requests from consumers for a particular vendor.

We conducted a survey of vendors and then performed additional research when a response indicated that certain vendors might be favored or disfavored by management at a regional center we visited. However, we did not uncover any systematic pressure to select favored, yet less qualified, vendors at any of the regional

We did not uncover any systematic pressure to select favored, yet less qualified, vendors at any of the regional centers.

centers. Further, although the aggregate results of our vendor survey showed that favoritism for, or bias against, particular vendors appeared to be of greater concern than other issues (see Section I, question 10 in Table A.2 of Appendix A, “Referrals to vendors are made free of favoritism or bias”), the average response for that statement (3.27) essentially hit the numerical midpoint of potential responses and therefore was neutral regarding the existence of vendor favoritism.⁹ Although we found that the vendor-selection process could be strengthened to more effectively mitigate the potential for favoritism by making it more transparent to outside reviewers, our principal concern is that there is currently no way to determine whether regional centers are selecting, from all comparable vendors, the one representing the lowest cost.

The Regional Centers Have Not Established Protocols for Determining When a Contract Is Prudent

Although state law requires the regional centers to submit to Developmental Services their policies for purchasing services for consumers, the Lanterman Act—and the Title 17 regulations designed to carry it out—does not require the regional centers to define when or how they will use contracts to procure services with vendors. Also, as indicated earlier, Developmental Services’ fiscal audit procedures and other monitoring protocols do not examine how particular vendors were selected for regional center contracts.

Because we were specifically asked to review the regional centers’ contracts, we asked the six regional centers we visited about the services and situations for which they would execute a contract. They explained that in general they execute contracts when specialized services are needed and when consumers have service needs that are not met by current vendors. However, except when awarding startup funds to develop new community resources, none of the regional centers we visited have policies indicating when a contract is required or when they would allow a vendor to operate under the more common vendorization and rate process. As mentioned earlier, Title 17 regulations generally require regional centers to obtain transportation services using a contract. Without protocols establishing when to use a contract for special instances, regional centers risk paying for specialized services that are ill-defined.

Except for awarding startup funds, none of the regional centers we visited have policies indicating when a contract is required.

⁹ Although none of the average responses to the scenarios in question 14 of Section I of Table A.2 approached a “likely to occur” ranking, it is notable that, of the scenarios listed, the scenario “Stop referring new consumers to my services” appeared to be the more likely form of retaliation believed to occur should a vendor express concerns regarding a regional center.

For example, as discussed in Chapter 1, Inland Regional Center (Inland) entered into a rate agreement with a startup transportation company to assess consumer transportation needs. Inland paid this company a total of \$950,000 in July and August 2008 to perform this service under a service code used for transportation broker services. The regulatory description of this service code would not be sufficient to hold this vendor accountable for a specific level of service. The only definition of the service the vendor was to perform was contained in the June 2008 rate agreement, which stated, "Contractor will assess, develop, implement and manage routing and time schedules to meet consumer transportation needs." The rate agreement contained no description of when or how the services would be performed, how the vendor would communicate the results of individual consumer assessments, or what form any end summary of results would take.

We asked Inland to provide us with the deliverables the vendor produced as a result of the rate agreement, and all it could provide was a six-page, high-level report that lacked the details necessary to identify how it could create a more efficient transportation system. Of particular concern was that a purpose of the assessment was to make transportation routing more efficient for individual consumers, but after repeated requests, Inland could not provide us a single example of a consumer rerouted as a result of the assessment. Furthermore, Inland's rate agreement was so general that we are not sure that it could have held the vendor to any specific level of performance.

Beginning in October 2008 Inland entered into a multimillion dollar broker-service contract with this same vendor that generally contained the provisions required by Title 17 regulations. When we asked Inland's former chief of community services (former chief) why the regional center entered into this contract with the vendor but did not enter into a similar contract with the vendor for assessment services, the former chief stated:

Although not required by law or regulation, we found it advisable to enter into a contract with [the vendor] for its services as broker primarily because we have never directly vendored a broker before. However, Inland did not enter into a contract with [the vendor] for services associated with the assessment simply because it was not required in law or regulation and it did not appear to be necessary, given the straightforward nature of the service being provided. Generally speaking, the services provided under the assessment were a systemwide examination of conditions related to transportation (i.e., consumer routing, vendor licensing and insurance, safety).

Inland paid nearly \$1 million over two months to a startup transportation company for services defined only by one brief sentence in the rate agreement.

Our review of Title 17 regulations related to transportation revealed that, contrary to the former chief's statement, the regional centers are required to use written contracts containing specific provisions when procuring transportation services, such as those paid for under the service code Inland used to account for the assessment expenditures. In addition, the assessment services, like the broker services, were new to Inland and consisted of an expansive and apparently expensive review that cost \$950,000 for ostensibly three months of work. Therefore, calling the assessment straightforward, and stating that no contract was necessary, does not seem like an appropriate conclusion. Specific contract language defining exactly what service the vendor was to perform would have helped Inland ensure that it received the assessment it desired. To prevent a situation such as this from occurring in the future, Inland—and other regional centers—needs to define and adhere to a policy that describes the situations in which a contract is necessary and when a simple rate agreement will suffice.

With respect to Inland's transportation assessment, Developmental Services stated that it has already provided specific information obtained from an allegation it received in 2009 (as described in Chapter 3) to its audit section for follow-up when the auditors conduct their next fiscal audit of Inland. Developmental Services also indicated that the fiscal auditors are scheduled to begin the audit of Inland at the end of August 2010 and complete the fieldwork by the end of September 2010.

The Regional Centers Do Not Consistently Require or Advertise Competitive Bidding for Contracts

When entering into contracts, the regional centers may have missed opportunities to contain costs or attract the highest-quality service providers because they did not advertise the contracting opportunity or evaluate bids competitively. Even so, we identified an advertising best practice at a regional center that could be adopted by other regional centers. Nevertheless, the lack of a consistent contracting process across the regional centers reduces transparency and can create the appearance of vendor favoritism.

The lack of a consistent contracting process across the regional centers reduces transparency and increases the risk of vendor favoritism.

Of the contracts we reviewed, most did not result from a competitive process. For instance, as shown in Table 3, the regional centers we visited issued RFPs or otherwise notified vendors about contracting opportunities for only nine of the 33 contracts we evaluated. In the nine instances when the regional centers issued RFPs, they evaluated some of the proposals competitively but, in two of these instances, one regional center—Westside—did not retain documentation of its reviewers' analysis of the proposals. Just as the regional centers did not establish a procedure for

determining when to enter into a contract, some also did not have written policies specifying a competitive procurement process. The lack of established procurement requirements resulted in inconsistent documentation among and within regional centers.

Table 3
Regional Centers’ Use of Requests for Proposals and Documentation of Competitive Evaluation

REGIONAL CENTER	CONTRACTS		
	TOTAL SAMPLE	NUMBER DEVELOPED THROUGH REQUESTS FOR PROPOSALS*	NUMBER FOR WHICH COMPETITIVE EVALUATION WAS DOCUMENTED†
Inland	4	0	0
Valley Mountain	4	4	2
San Andreas	6	2	1
Tri-Counties	1	1	1
Far Northern	8	0	0
Westside	10	2	0
Totals	33	9	4

Source: Analysis of regional center contracts and vendor files by the Bureau of State Audits.

* We included contracts developed through other processes for notifying vendors of contracting opportunities, even if they were not specifically referred to as requests for proposals.

† We did not include in this column two Valley Mountain contracts and one San Andreas contract that were not competitively evaluated because the regional centers obtained only one bid. Additionally, although Westside claimed it competitively evaluated bids for two of its contracts, we did not include these contracts because Westside did not retain documentation of the evaluations.

Although we determined that each regional center we visited entered into contracts with service providers, the number of contracts we tested varied. To select contracts that were likely to have procurement documentation available, we chose our sample from only those contracts that had been entered into on or after July 1, 2008. At several regional centers only a handful of contracts met our criteria, so we selected all of them.

Title 17 regulations generally do not require RFPs, but a best practice at one regional center highlights how their greater use might effectively ensure that potential service providers become aware of opportunities to bid on contracts to meet consumer needs at the regional centers. Specifically, we learned that Tri-Counties uses an RFP process twice annually to seek vendors that can meet the regional center’s identified service needs. The director of community and organizational development stated that Tri-Counties performs an ongoing needs assessment to ascertain needs as they arise. Twice each year, the RFP is announced on its

Web site, along with current service needs. All willing vendors are invited to attend an information conference that is held to answer questions and further clarify projects.

On the other hand, those regional centers that do not use RFPs or another advertised process, especially when contracting for services that will be provided to multiple consumers, decrease the transparency of their vendor selection process and can create the appearance of vendor favoritism. For example, as indicated in Table 3, Inland did not use an RFP, nor did it document a competitive evaluation of vendor proposals, for the four contracts we reviewed, including a five-year broker-service contract not to exceed roughly \$1 million per month. Additionally, Westside did not use an RFP or competitively evaluate proposals for eight of the 10 contracts we reviewed. According to Westside's director of community services, two of these contracts were entered into with individuals who had previously worked at Westside. Although it had previous experience working with these individuals, Westside risked creating the appearance of favoritism by contracting with these individuals using a noncompetitive process.

One contract we examined went beyond just the appearance of favoritism. While completing our rates review (discussed in Chapter 1) we found a Westside contract for which the vendor appeared to receive favorable treatment from a regional center employee. In reviewing the files associated with this contract, we found that a service coordinator employed by the regional center began providing documentation to the regional center's quality assurance staff (QA staff), who were responsible for vendorization, on behalf of a company that the service coordinator subsequently went to work for after leaving the regional center.

In addition, the former director of client services (director) instructed QA staff that the company was "to be vendored ASAP," despite the fact that the company had not provided the required insurance documentation. According to the QA staff member involved, the service coordinator later informed this staff member that the director had approved a 90-day waiver on the documentation. The QA staff member stated that this type of waiver was entirely unique and not discussed in Westside's policies. Although the QA staff member indicated that at the time Westside had consumers who were in need of supported living services, the manner in which the vendorization and selection of this company occurred suggests vendor favoritism. Westside's director of community services conceded:

I understood at the time that the situation had the appearance of vendor favoritism; however, I did not feel like I was in the position to do anything other than process

The manner in which Westside approved the vendorization and selection of one company suggested vendor favoritism.

the request from the former director of client services. Furthermore, I do not believe that this unique circumstance is reflective of how my unit generally functions. We strive to treat each vendor in a manner consistent with all statutory and [Westside] policy requirements.

Potential vendors and others in the vendor community may perceive the unadvertised awarding of contracts as favoritism, especially when unique circumstances—such as hiring a former regional center employee—cast doubt on the process. Further, regional centers invite concerns regarding vendor favoritism by not documenting their evaluation of proposals submitted for a contracting opportunity. Finally, by not encouraging competition among vendors, regional centers miss an opportunity to obtain price concessions that would preserve scarce state resources.

Recommendations

To ensure that consumers receive high-quality, cost-effective services that meet the goals of their IPPs consistent with state law, Developmental Services should do the following:

- 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.

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:

- 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.

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.

To deter unsupported and potentially wasteful spending of state resources by the regional centers, Developmental Services should determine the extent to which Inland needs to repay state funds it provided to a transportation vendor for an assessment of Inland's transportation conditions.

Chapter 3

THE WORKING ENVIRONMENT WITHIN SOME REGIONAL CENTERS IS A CAUSE FOR CONCERN

Chapter Summary

Our survey of employees at the regional centers we visited identified several problems in the working environment at the regional centers. Many of the survey questions were designed to elicit responses regarding the regional centers' control environment—that is, the tone set by management. Based on the aggregate responses to survey questions and an analysis of comments offered by employees, we found that many regional center employees do not feel safe reporting suspected improprieties. Furthermore, the Department of Developmental Services (Developmental Services) accepts complaints from regional center employees but only recently developed a written process for resolving these allegations. Employees also frequently indicated that communication with regional center management was not always positive and that rising caseloads resulting from a temporary change in the law inhibit their ability to effectively provide the highest-quality service to consumers.

Many Employees Do Not Feel They Can Safely Report Suspected Improprieties

Responses to a survey we conducted of regional center employees indicated that almost half of the roughly 400 employees who responded to this topic, especially those at Inland Regional Center (Inland) and Valley Mountain Regional Center (Valley Mountain), do not feel safe reporting suspected improprieties. These two regional centers have internal complaint processes, but most employees do not feel secure using them. We asked employees of the six regional centers we visited to complete a self-assessment of internal controls (employee survey) in which many of the questions were designed to elicit responses regarding the regional centers' control environments. The results of the employee survey for the six regional centers we visited can be found in Appendix B. Some of the survey results for certain categories and regional centers are notable. For example, roughly 60 percent (132 of 220) of the employees responding to our survey from Inland and Valley Mountain disagreed with the following statements: "Management has created safe mechanisms for employees to raise concerns about practices that may put the regional center's reputation at risk," and "Employees who report suspected improprieties are protected from reprisal."

Until recently, Developmental Services did not centrally track or have written procedures for handling allegations received from regional center employees.

These types of average responses point to potential weaknesses in the regional centers' control environments because they indicate that employees could be reluctant to report suspected inappropriate or fraudulent activity to regional center management. Until recently, Developmental Services did not centrally track or have written procedures for handling allegations received from regional center employees.¹⁰ In July 2010 Developmental Services formally documented procedures that describe how it accepts, tracks, and resolves complaints from regional center employees, and it also informed the regional centers of this process. This better-documented, more widely communicated complaint process could provide regional center employees another avenue for reporting suspected improprieties should they feel uncomfortable or dissatisfied with raising concerns involving regional center management.

Valley Mountain and Inland Employees Do Not Appear to Trust Complaint Procedures or the People Designated to Carry Them Out

Although Valley Mountain and Inland both have internal complaint or whistleblower policies, it is clear from the survey responses that their employees are uncomfortable reporting suspected improprieties internally. Valley Mountain's whistleblower policy, established in January 2010, directs employees to first discuss their concerns with their immediate supervisor. If the individual is uncomfortable speaking with his or her supervisor or, after speaking with the supervisor, continues to have reasonable grounds to believe a concern is valid, the policy directs the employee to report the concern to the director of human resources, who is then to report the concern to Valley Mountain's executive director. The policy states that the executive director has specific and exclusive responsibility to investigate all concerns and provides a general outline of the actions the executive director is to take. The policy provides assurances that no employee acting in good faith shall be subject to retaliation or adverse employment consequences for reporting a concern.

Nevertheless, 27 of 133 survey respondents commented that they would not feel comfortable raising concerns with Valley Mountain's human resources division, a step required by its whistleblower policy. Consequently, despite Valley Mountain's detailed

¹⁰ Assembly Bill 435, authored by the California Assembly Committee on Accountability and Administrative Review, is pending review in the California Senate as of August 2010. In its current form, this legislation would require Developmental Services to include in its regional center contracts provisions requiring regional centers to notify their employees that they may report complaints of improper regional center activities directly to Developmental Services and would specifically protect employees at regional centers from reprisal when they report wrongdoing to Developmental Services or the Legislature.

whistleblower complaint policy, the results of our employee survey indicate that, of the six regional centers we visited, Valley Mountain employees feel the least secure in raising concerns with their upper management (see Appendix B, particularly questions 20 and 37).

Inland's whistleblower policy provides similar instructions for employees to first contact their manager and to speak with human resources if they do not feel comfortable speaking with their manager or are not satisfied with his or her response. However, in contrast to the Valley Mountain policy, Inland's policy offers that, in addition to human resources, employees may approach anyone in management with whom they feel comfortable and specifically allows for complaints to be submitted confidentially or anonymously. The policy states that managers must forward suspected violations of Inland's code of ethics to human resources and empowers human resources to determine whether a referral to the audit committee of Inland's board is necessary. This audit committee is responsible for investigating and resolving all reported complaints. However, survey responses from Inland employees similarly indicated that, on average, they do not feel comfortable coming forward with allegations. Roughly 58 percent of the 106 employees responding to this question stated that they do not feel safe in reporting suspected improprieties, often referring to an employee who, in the survey respondents' opinion, was terminated because the employee expressed concerns about suspected improprieties.

Other Inland employees shared lesser-known instances in which they experienced or witnessed intimidation of those who had spoken out against suspected improprieties. An Inland program auditor stated that, until a widely distributed e-mail was sent out by a now-former employee, upper Inland management (two former officials in particular) believed that he was contacting Developmental Services regarding the \$950,000 transportation assessment discussed in the previous chapter. The program auditor stated that in spring 2009, Inland's controller—who was his immediate supervisor at the time but is no longer with Inland—told him that upper management believed he had been contacting Developmental Services regarding the assessment and that he should discontinue doing so. The auditor indicated that he asked to speak with the chief financial officer—the section chief the auditor worked for—and denied to him that he had ever communicated with Developmental Services about the assessment or any other issue. The auditor also stated that he was anxious to clear his name because of “the philosophy of Inland management, which has been retaliatory.”

We spoke with the chief financial officer for Inland, and he confirmed that until the May 2009 e-mail was sent out by a former employee, upper management at Inland did believe that

The results of our employee survey indicate that, of the six regional centers we visited, Valley Mountain employees feel the least secure in raising concerns with their upper management.

Senior management at Inland Regional Center instructed the chief financial officer to stop a suspected complainant from communicating with Developmental Services or the Attorney General's Office.

the program auditor who spoke with us was responsible for the allegations being sent to Developmental Services. The chief financial officer recalled that, during a senior management meeting at Inland in spring 2009, the former director and the former chief of community services stated that they believed the program auditor was contacting Developmental Services, and possibly the Attorney General's Office, with allegations regarding the transportation assessment. In a private meeting, the chief financial officer stated that these two individuals instructed him to question the program auditor about this contact and have him stop any further communication with outside entities. The chief financial officer had the controller speak with the program auditor about the issue, and he indicated that the program auditor subsequently met with him and flatly denied ever communicating with Developmental Services or anyone else about the assessment.

Regarding this incident, Inland's chief financial officer stated:

This is one example of a pattern I witnessed over the years in which Inland employees were discouraged from voicing concerns to management or, more especially, voicing concerns to outside parties. In another instance, certain employees had their laptops stolen and the police were called in to investigate. The police set up a confidential hotline for employees to call and share anything about the incident they might know. In a meeting with the chiefs, the former director laid an envelope on the table and stated that the envelope contained records of all the Inland employees that used the Inland phone system to call the confidential hotline. I felt at the time that this was an inappropriate display of intimidation and should not have been said. Further, if such a phone-call review was performed, I believe it undermined the police's efforts to establish a communication channel that was confidential. These two instances and other events have troubled me over the years and I feel that, with a new administration, Inland's upper management (which includes me) has an opportunity to do a better job of creating safe mechanisms for employees to voice concerns internally and, if need be, externally.

Survey results and statements such as these in which Inland officials—more than one of them high ranking—were willing to state that there exists a culture at Inland where employees do not feel safe expressing concerns highlights the need for a process by which regional center employees can discreetly report suspected improprieties to an external entity such as Developmental Services.

Developmental Services’ Processing of Allegations From Regional Center Employees Was Only Recently Defined

We asked Developmental Services about its process for receiving regional center employees’ complaints, concerns, or allegations (complaints) and its procedures for reviewing this information. Although Developmental Services indicated that it has a process for receiving and reviewing allegations from regional center employees, it had not documented this process, nor had it shared this process with regional center employees, until we brought our concern about this issue to its attention. Similarly, Developmental Services only recently began centrally logging allegations and tracking the status of its follow-up efforts and ultimate disposition of such allegations.

Developmental Services stated that it has several formal complaint processes established in law and pointed to two processes in particular—consumer rights complaints and citizen complaints—that regional center employees could use. However, given the stated purpose of the consumer rights complaint process (see the text box), this type of complaint does not appear to be an avenue that regional center employees would understand they could use to raise concerns regarding regional center practices.¹¹ Furthermore, the stated purpose of the citizen complaint process is “for general complaints or comments against a regional center, developmental center, or [Developmental Services] headquarters by a concerned citizen,” which may also not communicate to regional center employees that it is a mechanism they can use.

Consumer Rights Complaints

Required by the Welfare and Institutions Code, Section 4731, this process “is a mechanism to be used when an individual consumer, or any representative acting on behalf of a consumer, believes that any right has been wrongly or unfairly denied by a regional center, developmental center, or service provider.

Source: Consumer Complaint and Appeal Processes, the Department of Developmental Services’ Web site.

Assuming that regional center employees may, at times, view themselves as concerned citizens and therefore use the citizen complaint process, we asked Developmental Services’ Office of Human Rights and Advocacy Services (office)—the entity charged with handling these complaints—for the procedures it uses. The chief of this office stated that there are no other internal procedures for this process beyond what appears on Developmental Services’ Web site, which states: “If you send the form to [the office], it will be forwarded to the local level (regional center, developmental center, or appropriate [department] division) for a response, with a request to respond to the complaint and to forward a copy of the response to [the office].”

¹¹ State law requires Developmental Services to initially refer a consumer rights complaint to the applicable regional center director and requires this director to investigate the complaint and to send a proposed resolution to the complainant. If the complainant is not satisfied with the proposed resolution, he or she may refer the complaint to the director of Developmental Services, who then must issue a written administrative decision.

Developmental Services indicated it receives complaints via telephone calls and other correspondence but did not have written procedures that would allow us to systematically review the complaints.

Based on these instructions, it would appear that, if a regional center employee used this process, the allegation might simply get forwarded to the very regional center where the employee works. Further, it is unclear from this description whether Developmental Services would conduct its own independent review of an allegation that it directed to a regional or developmental center. Consequently, we question whether regional center employees would want to avail themselves of this avenue for filing allegations.

While these two processes do not appear to be particularly applicable to regional center employees, Developmental Services indicated that it received other complaints via less formal means, such as telephone calls and other correspondence. Although Developmental Services could not—during our fieldwork—provide us with written procedures for how it handles complaints from regional center employees that arrive through these informal channels, it stated that it treats them in a manner similar to the process the Bureau of State Audits (bureau) uses for whistleblower complaints it receives under the California Whistleblower Protection Act (whistleblower act). Specifically, Developmental Services stated that it determined the appropriate person or organization to respond and then, depending on its subject matter and nature, determined the appropriate division to handle the complaint, often in collaboration with Developmental Services' auditors, legal counsel, and executive management.

However, Developmental Services had not—up until July 2010—developed specific, written procedures that we could use to examine its process, nor had it established a central log of allegations it receives from regional center employees from which we could select a sample to review.

Although the informal nature of its process did not allow us to systematically review how Developmental Services handles allegations from regional center employees, one example of how it could have been more cautious and effective in handling an allegation related to Inland's transportation assessment, discussed in Chapter 2, helps illustrate why we believe a more formal process is necessary. Specifically, in an April 2009 e-mail summary of the complaint sent to Inland's now former executive director, Developmental Services provided unnecessary details regarding the complainant's previous interaction with members of Inland's management. Additionally, Developmental Services later forwarded directly to this same former executive director a Microsoft Word file containing a summary prepared by the complainant for an official within the Attorney General's Office. The written complaint summary contained more information than was necessary to obtain a response (for example, the employee's

position, the number of years employed at the regional center, and the specific number of transportation assessments performed for consumers within the employee's caseload).

When we shared our concerns with Developmental Services, it stated that because the complainant had indicated to an official within the Attorney General's Office, "Feel free to give [the Word attachment summarizing the allegation] to [a specific Developmental Services' official] or anyone else that you feel can do something about the situation," the department concluded that the complainant did not expect anonymity. Developmental Services added that, even so, it did not identify the complainant when transmitting the attachment and does not believe that there was sufficient information in the document to identify the complainant. Nevertheless, we believe that by communicating details such as these, Developmental Services inadvertently increased the chance that the complainant would be identified by Inland management.

Finally, rather than requesting documentation from the regional center, Developmental Services relied on assurances from Inland's management that it had documentation in its possession showing that the transportation assessments had, in fact, occurred. In response to our question about this, Developmental Services stated that it did not simply accept the assurances of Inland's community services director; rather it took follow-up actions that included conversations and e-mails with Inland's former executive director. In addition, Developmental Services stated that it performed its own independent data runs to determine purchases of services for transportation assessments, and that Inland's former executive director confirmed that these assessments were completed. Although Developmental Services believed that it appropriately followed up on the complaint, when we asked Inland to produce the assessments it asserted were completed, Inland could not provide them to us.

In July 2010 Developmental Services formally documented procedures that describe when and how it will investigate complaints from regional center employees, and it informed the regional centers of this process. This effort, if consistently followed, should provide regional center employees with assurance that Developmental Services has a process to appropriately handle their complaints.

Although Developmental Services believed it had appropriately followed up on the complaint, when we asked Inland to produce the assessments it asserted were completed, Inland was unable to do so.

Of the 490 employees responding to a survey, 54 percent indicated that the regional centers do not create an atmosphere of mutual trust or establish open communication.

Communication Between Regional Center Management and Staff Is Sometimes Strained

Many employees of the six regional centers we surveyed indicated that communication with regional center management is not always positive. Since such problems potentially affect each regional center's ability to effectively fulfill its contract with the State, the boards of directors at the regional centers may wish to examine these problems further and take corrective action. We noted that control areas related to communication scored lower than other control areas shown in Appendix B. For instance, 54 percent (267 of 490) of the employees responding disagreed with the statement "An atmosphere of mutual trust and open communication between management and employees has been established." Additionally, 47 percent (228 of 480) of the employees responding disagreed with the statement "Management is open to suggestions for improvement." Similarly, 47 percent (211 of 442) disagreed with the statement "The communication across organizational boundaries within the regional center enables us to perform our jobs effectively."

A retired employee from Inland contacted the audit team and provided the following comment that may explain some of this sentiment: ". . . there is not really any communication between staff and upper management. A lot of us are angry and hurt about the way the management seems to be unscathed by the budget, and yet they tell us to 'hang in there,' and they are 'sorry' we can't have a raise."

Separately, at the Far Northern Regional Center, an employee who did not reveal his or her name stated, "Management has NO interest in hearing what line staff thinks. Period." An employee at Valley Mountain stated:

Upper management has never made it feel as if the door was always open to communicate with them. It seems as if management is so worried about the paperwork and [does] not even understand what a [service coordinator] does. Importance has been taken away from helping consumers and put on things such as . . . having [the] correct zip code and place of birth on file.

In establishing the regional centers as separate, independent entities from the State, the Legislature clearly appears to have intended for them to manage their own relationships with their employees. Additionally, it would seem difficult for Developmental Services to oversee human resources at the various regional centers. However, that does not preclude the board at each regional center from examining how management is interacting with employees, and we believe the onus is on each board to seek ways to improve this interaction.

Service Coordinators Across All Regional Centers Are Experiencing Increased Caseloads

Employees we surveyed indicated that the regional centers expect them to manage increasing numbers of consumer cases, hindering their ability to provide effective case management. This condition may stem in part from budget reductions that suspended limits on the number of cases service coordinators could manage under the Lanterman Developmental Disabilities Services Act (Lanterman Act).

Survey responses revealed potential weaknesses in internal controls related to workload and a lack of resources. For example, 47 percent (216 of 453) of the employees responding disagreed with the statement “Personnel turnover has NOT impacted my unit’s ability to effectively provide case management to consumers and/or their families.” Further, 41 percent (203 of 488) of the employees responding disagreed with the statement “I have sufficient resources, tools, and time to perform my job” and 31 percent (154 of 483) disagreed with the statement “The objectives and goals of my work unit are reasonable and attainable.” Comments offered by employees revealed that increasing caseloads motivated much of their sentiment. For instance, a surveyed regional center employee wrote, “Our unit has lost several good employees. . . . Our unit has 80 cases each and another 20 for case coverage on average—this is not fair to those families which count on our intervention and assistance.”

A surveyed employee at another regional center noted that caseloads had “just increased by 20 percent.” Finally, a manager surveyed at a third regional center indicated that serious budget considerations had caused vacant positions to remain open for some time, necessitating “patchwork” case management. This manager also stated that these vacancies are affecting consumers, as some meetings cannot be attended, consultation is not as easy to provide, and the sense of relationship between worker and family is difficult to build and maintain.

State law established caseload standards, but many of these standards are currently not binding. Commencing in 2004, the Lanterman Act required the regional centers to maintain an average caseload of 66 consumers for each service coordinator, depending on the type of consumer. However, the Legislature passed, and the governor signed, amendments exempting the regional centers from this requirement effective February 1, 2009, through June 30, 2011. Although this exemption may have been necessary in light of particular budget reductions, survey responses indicated that it has placed a significant strain on service coordinators throughout the State.

Employees we surveyed indicated that the regional centers expect them to manage increasing numbers of consumer cases, hindering their ability to provide effective case management.

Recommendations

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.

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.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of the report.

Respectfully submitted,



DOUG CORDINER
Chief Deputy State Auditor

Date: August 24, 2010

Staff: Denise L. Vose, CPA, Audit Principal
Benjamin M. Belnap, CIA
Casey J. Caldwell
Richard W. Fry, MPA
Sean R. Gill, MPP
Jordan Wright, MPA

Legal Counsel: Scott A. Baxter, JD

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at (916) 445-0255.

Appendix A

REGIONAL CENTERS SELECTED FOR REVIEW AND RESULTS FROM THE SURVEY OF SERVICE PROVIDERS

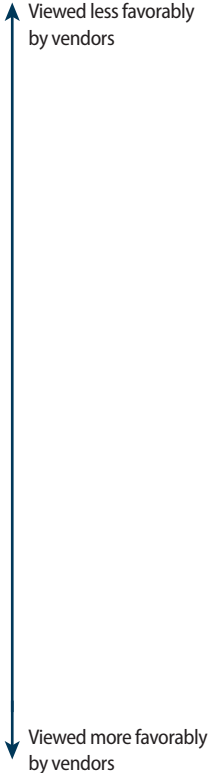
During the course of our audit, we visited the Inland, Valley Mountain, San Andreas, Tri-Counties, Far Northern, and Westside regional centers. We used results from the survey of service providers, in addition to location and size of the population served, to determine this sample.

As directed by the Joint Legislative Audit Committee, we surveyed past and current service providers to determine whether these providers were reluctant to file complaints for fear of retaliation, or whether they believe they experienced retaliation from the regional centers. To locate service providers, we obtained data from the Department of Developmental Services' (Developmental Services) Uniform Fiscal System and then randomly selected approximately 3,000 past and current vendors that were not family members or consumers to receive our survey. Approximately 8.5 percent responded to at least one question in our survey. We tabulated the survey results for the vendors' regional centers and then averaged the total score for each one. Those regional centers with the lowest scores were viewed most favorably by vendors responding to our survey. The regional centers are listed by score in Table A.1 on the following page; we also present the number of active consumers at each regional center. The names of the six regional centers we visited are shown in bold in Table A.1 and on the map in Figure A on page 65. It is important to point out that this ranking represents only the views of responding service providers and may not reflect the views of all service providers. Additionally, it does not represent the views of consumers and/or their families.

Table A.2 beginning on page 66 presents a selection of questions asked in the survey. Vendors completed Section I or II, based on when or if they had provided services. They were asked to complete Section I if they had provided services to any consumers between July 2007 and December 2009. They additionally were asked to complete Section I—Supplemental if they had provided services to consumers at another regional center for more than 25 percent of their time. Vendors who had not provided any services to any consumer between July 2007 and December 2009 were asked to complete Section II. Next to each question is the average response to each question from service providers at all regional centers.

Table A.1
Regional Centers Ranked by Vendor Survey Score

REGIONAL CENTER	MAIN OFFICE	ACTIVE CONSUMERS	SCORE
San Andreas	Campbell	10,862	32.17
Valley Mountain	Stockton	8,608	30.61
Inland	San Bernardino	20,564	29.95
Central Valley	Fresno	12,853	29.49
Tri-Counties	Santa Barbara	8,770	27.88
Harbor	Torrance	8,578	26.72
Alta California	Sacramento	15,284	23.73
East Bay	San Leandro	13,100	23.17
North Los Angeles County	Van Nuys	14,099	22.88
Golden Gate	San Francisco	6,635	22.80
North Bay	Napa	6,390	22.40
San Diego	San Diego	16,065	20.41
San Gabriel Pomona	Pomona	9,472	20.04
Frank D. Lanterman	Los Angeles	6,442	18.92
Kern	Bakersfield	5,844	17.78
Eastern Los Angeles	Alhambra	7,654	17.60
Redwood Coast	Eureka	2,736	16.85
Orange County	Santa Ana	13,498	13.87
Far Northern	Redding	5,617	13.23
South Central Los Angeles	Los Angeles	8,839	11.32
Westside	Culver City	6,113	10.16



Sources: Survey of service providers, April 2010; Department of Developmental Services' monthly consumer caseload report, January 2010.

Note: Regional centers shown in bold were selected for review. It is important to point out that this ranking represents only the views of responding service providers and may not reflect the views of all service providers. Additionally, it does not represent the views of consumers and/or their families.

Figure A
Map of Regional Center Service Areas



Source: Department of Developmental Services.

* Regional centers visited by the Bureau of State Audits.

Table A.2
Results From the Survey of Service Providers to Specific Questions

Section I—Service Provider Views About Their Primary Regional Center

Total Responses: Approximately 246¹²

Question 10: The following statements could be made to describe the regional center. Please indicate how true the statement is based upon your experiences by using the scale below. Use “1” to indicate statements that are always or almost always false and “5” to indicate statements that are always or almost always true.

STATEMENT	AVERAGE RESPONSE
The regional center has clear criteria for referring vendors to consumers	3.51
The regional center will provide vendor referral criteria when requested	3.81
Among vendors providing similar services, the regional center pays for services using established rate structures	4.27
Referrals to vendors are made free of favoritism or bias	3.27
Regional center employees abstain from participating in the individual program plan if they are personally related to a vendor or have a financial interest in one of the businesses that could provide services to the consumer	4.28
The regional center clearly explains why portions of my requests for payments have been denied	3.80

Question 11: How confident are you in the ability of the regional center to guide consumers to vendors that best meet the needs of the consumer, as identified in the consumer’s individual program plan?

RESPONSE	PERCENT RESPONDING
Highly Confident	35.37%
Somewhat Confident	37.80
Not Confident	19.92
Don’t Know or No Opinion	6.91

Question 12: How confident are you in the ability of the regional center to respond to complaints from vendors regarding regional center decisions in a fair manner?

RESPONSE	PERCENT RESPONDING
Highly Confident	30.89%
Somewhat Confident	32.11
Not Confident	24.80
Don’t Know or No Opinion	12.20

¹² This section represents the respondents’ views of the regional center with which they did most or all of their work. This section and the next section represent the views of respondents who indicated they had worked with at least one consumer after July 2007.

Question 13: How confident are you in the ability of the Department of Developmental Services to respond to complaints from vendors regarding regional center decisions in a fair manner?

RESPONSE	PERCENT RESPONDING
Highly Confident	25.20%
Somewhat Confident	25.20
Not Confident	21.14
Don't Know or No Opinion	28.46

Question 14: The following statements reflect hypothetical scenarios. Based on your opinion, please indicate the likelihood that such scenarios would occur if you or your staff were to express questions or concerns to or about the regional center. These scenarios refer to actions of the regional center. Rate the scenarios using the scale with “1” equaling “not likely to occur” and “5” equaling “very likely to occur.”

SCENARIO	AVERAGE RESPONSE
Stop utilizing my services entirely	2.16
Stop referring new consumers to my services	2.49
Remove some, but not all, consumers from my services	2.11
Indicate to consumers and/or their families that I could not accept new consumers or was no longer providing services	2.10
Spread misinformation about the quality of my services	2.11
Restrict my ability to bill certain codes or utilize higher paying rate structures	2.16
Cut my negotiated rate structure	2.02
Not pay for services provided	1.83
Demand increased and/or unnecessary documentation in order to make receiving payment for services more difficult	2.16
Subject me or my operation to audits	2.42
Subject me or my operation to increased supervision	2.37
Attempt to disqualify me as a vendor of services in the State of California (“de-vendorization”)	1.57

Question 15: Have you experienced any of the forms of retaliation described in question 14 or other forms of retaliation for expressing concerns to or about your primary regional center? If yes, please explain.

RESPONSE	PERCENT RESPONDING
Yes	23.65%
No	76.35

Question 16: Have you witnessed any of the forms of retaliation described in question 14 or other forms of retaliation because another vendor expressed concerns to or about your primary regional center? If yes, please explain.

RESPONSE	PERCENT RESPONDING
Yes	15.35%
No	84.65

Section I, Supplemental—Service Provider Views About Their Secondary Regional Center**Total Responses: 34¹³**

Question 19: The following statements could be made to describe the regional center. Please indicate how true the statement is based upon your experiences by using the scale below. Use “1” to indicate statements that are always or almost always false and “5” to indicate statements that are always or almost always true.

STATEMENT	AVERAGE RESPONSE
The regional center has clear criteria for referring vendors to consumers	3.52
The regional center will provide vendor referral criteria when requested	3.56
Among vendors providing similar services, the regional center pays for services using established rate structures	3.90
Referrals to vendors are made free of favoritism or bias	3.07
Regional center employees abstain from participating in the individual program plan if they are personally related to a vendor or have a financial interest in one of the businesses that could provide services to the consumer	4.12
The regional center clearly explains why portions of my requests for payments have been denied	4.25

Question 20: How confident are you in the ability of the regional center to guide consumers to vendors that best meet the needs of the consumer, as identified in the consumer’s individual program plan?

RESPONSE	PERCENT RESPONDING
Highly Confident	44.12%
Somewhat Confident	26.47
Not Confident	20.59
Don’t Know or No Opinion	8.82

Question 21: How confident are you in the ability of the regional center to respond to complaints from vendors regarding regional center decisions in a fair manner?

RESPONSE	PERCENT RESPONDING
Highly Confident	29.41%
Somewhat Confident	35.29
Not Confident	20.59
Don’t Know or No Opinion	14.71

¹³ If the respondent indicated that he or she worked with another regional center more than 25 percent of the time, he or she was directed to answer questions about his or her “secondary” regional center. Such responses are presented here.

Question 22: How confident are you in the ability of the Department of Developmental Services to respond to complaints from vendors regarding regional center decisions in a fair manner?

RESPONSE	PERCENT RESPONDING
Highly Confident	20.59%
Somewhat Confident	35.29
Not Confident	26.47
Don't Know or No Opinion	17.65

Question 23: The following statements reflect hypothetical scenarios. Based on your opinion, please indicate the likelihood that such scenarios would occur if you or your staff were to express questions or concerns to or about the regional center. These scenarios refer to actions of the regional center. Rate the scenarios using the scale with "1" equaling "not likely to occur" and "5" equaling "very likely to occur."

SCENARIO	AVERAGE RESPONSE
Stop utilizing my services entirely	2.35
Stop referring new consumers to my services	2.58
Remove some, but not all consumers from my services	2.12
Indicate to consumers and/or their families that I could not accept new consumers or was no longer providing services	1.96
Spread misinformation about the quality of my services	2.19
Restrict my ability to bill certain codes or utilize higher paying rate structures	1.93
Cut my negotiated rate structure	2.00
Not pay for services provided	1.59
Demand increased and/or unnecessary documentation in order to make receiving payment for services more difficult	2.08
Subject me or my operation to audits	2.67
Subject me or my operation to increased supervision	2.42
Attempt to disqualify me as a vendor of services in the State of California ("de-vendorization")	1.58

Question 24: Have you experienced any of the forms of retaliation described in question 23 or other forms of retaliation for expressing concerns to or about your secondary regional center? If yes, please explain.

RESPONSE	PERCENT RESPONDING
Yes	17.65%
No	82.35

Question 25: Have you witnessed any of the forms of retaliation described in question 23 or other forms of retaliation because another vendor expressed concerns to or about your secondary regional center? If yes, please explain.

RESPONSE	PERCENT RESPONDING
Yes	11.76%
No	88.24

Section II—Nonselected Service Provider Views About Their Regional Center

Total responses: 8¹⁴

Question 8: The following statements could be made to describe the regional center. Please indicate how true the statement is based upon your experiences by using the scale below. Use “1” to indicate statements that are always or almost always false and “5” to indicate statements that are always or almost always true.

STATEMENT	AVERAGE RESPONSE
The regional center has clear criteria for referring vendors to consumers	3.25
The regional center will provide vendor referral criteria when requested	3.25
Referrals to vendors are made free of favoritism or bias	3.25
Regional center employees abstain from participating in the individual program plan if they are personally related to a vendor or have a financial interest in one of the businesses that could provide services to the consumer	3.25

Question 9: How confident are you in the ability of the regional center to guide consumers to vendors that best meet the needs of the consumer, as identified in the consumer’s individual program plan?

RESPONSE	PERCENT RESPONDING
Highly Confident	0.00%
Somewhat Confident	37.50
Not Confident	25.00
Don’t Know or No Opinion	37.50

Question 10: How confident are you in the ability of the regional center to respond to complaints from vendors regarding regional center decisions in a thorough and fair manner?

RESPONSE	PERCENT RESPONDING
Highly Confident	25.00%
Somewhat Confident	0.00
Not Confident	37.50
Don’t Know or No Opinion	37.50

¹⁴ This section represents the responses from vendors who indicated that they had not worked with consumers after July 2007; these vendors were presented with a shortened form of the survey.

Question 11: How confident are you in the ability of the Department of Developmental Services to respond to complaints from vendors regarding regional center decisions in a thorough or fair manner?

RESPONSE	PERCENT RESPONDING
Highly Confident	12.50%
Somewhat Confident	0.00
Not Confident	25.00
Don't Know or No Opinion	62.50

Question 12: Why have you not provided services? If you have provided services in the past, why have you not provided services since July 2007? Select the answer that best describes why you are not currently providing services to any consumer with developmental disabilities.

RESPONSE	PERCENT RESPONDING
No longer in business	0.00%
Focused on providing services to a different population	14.29
Not utilized by the regional center and its consumers and their families	85.71

Question 13: Are your reasons for not providing services related to retaliation from the regional centers?

RESPONSE	PERCENT RESPONDING
Yes	14.29%
No	85.71

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Appendix B

RESULTS FROM OUR SURVEY OF REGIONAL CENTER EMPLOYEES

To gain an understanding of internal controls at the regional centers, we surveyed nonexecutive staff at each of the six regional centers that we visited. We administered this survey by asking the regional centers to distribute a survey form via e-mail to all of their employees and then collected responses by e-mail, fax, mail, or drop box at the regional centers. The aggregate results of this survey for each regional center are given in Table B. We asked employees to specify whether they strongly agree, agree, disagree, or strongly disagree with the following statements (respondents could also respond “don’t know”). We computed the average response by assigning a score of 4 to “strongly agree,” 3 to “agree,” 2 to “disagree,” and 1 to “strongly disagree.” The average response for each question, therefore, is roughly equal to these assessments.

The California State Auditor has the authority to hold certain documents—such as these employee surveys—confidential. We were aware that some regional center employees might be unwilling to submit surveys, or might be guarded in their responses, if we required them to identify themselves in the survey. Consequently, despite the potential difficulties that could be caused by not requiring employees to identify themselves, we allowed employees to submit anonymous surveys.

Table B
Results of Survey of Regional Center Employees

		INLAND	VALLEY MOUNTAIN	SAN ANDREAS	TRI-COUNTIES	FAR NORTHERN	WESTSIDE
Number of Responses*		148	133	73	62	61	26
SURVEY QUESTIONS		INLAND	VALLEY MOUNTAIN	SAN ANDREAS	TRI-COUNTIES	FAR NORTHERN	WESTSIDE
Section I—Control Environment							
1	The director’s office places sufficient emphasis on the importance of integrity, ethical conduct, fairness, and honesty in their dealings with employees, consumers, vendors, and other organizations.	2.5	1.9	3.4	3.2	2.9	3.6
2	My chief places sufficient emphasis on the importance of integrity, ethical conduct, fairness, and honesty in their dealings with employees, consumers, vendors, and other organizations.	3.0	2.5	3.3	3.2	3.4	3.7
3	My program manager (if applicable) places sufficient emphasis on the importance of integrity, ethical conduct, fairness, and honesty in their dealings with employees, consumers, vendors, and other organizations.	3.3	3.3	3.3	3.4	3.5	3.6
4	The director’s office strives to comply with laws, rules, and regulations affecting the regional center.	2.9	2.7	3.4	3.4	3.2	3.6

continued on next page...

SURVEY QUESTIONS		INLAND	VALLEY MOUNTAIN	SAN ANDREAS	TRI-COUNTIES	FAR NORTHERN	WESTSIDE
5	My chief strives to comply with laws, rules, and regulations affecting the regional center.	3.2	3.0	3.4	3.5	3.5	3.7
6	My program manager (if applicable) strives to comply with laws, rules, and regulations affecting the regional center.	3.4	3.5	3.5	3.4	3.6	3.8
7	An atmosphere of mutual trust and open communication between management and employees has been established.	2.2	1.5	2.9	2.7	2.7	3.4
8	The acts and actions of management are consistent with the stated values and conduct expected of all other employees.	2.3	1.8	2.9	2.8	3.0	3.2
9	Standards related to personal conduct are periodically discussed with employees by managers and/or supervisors.	3.1	2.6	2.8	2.7	3.1	3.3
10	My unit is committed to making decisions free of favoritism or bias.	3.0	2.9	3.4	3.2	3.3	3.5
11	Management is open to suggestions for improvement.	2.3	1.7	2.8	2.9	2.8	3.5
12	Personnel turnover has NOT impacted my unit's ability to effectively provide case management to consumers and/or their families.	2.2	2.3	2.8	2.4	2.9	2.7
13	Employees in my unit are treated fairly and justly.	3.0	2.5	3.2	3.0	3.4	3.5

Section II—Risk Assessment

14	I am accountable for defined, measurable objectives.	3.4	3.0	3.3	3.3	3.4	3.5
15	I have sufficient resources, tools, and time to perform my job.	2.5	2.4	2.5	2.5	3.0	3.1
16	The objectives and goals of my work unit are reasonable and attainable.	2.8	2.5	2.6	2.7	3.1	3.2
17	Management has given me an appropriate level of authority to accomplish my goals.	2.8	2.5	3.0	2.9	3.3	3.5
18	Generally, I do not feel unreasonable pressure to make decisions that contrast to the stated mission of the organization.	2.9	2.6	3.2	3.1	3.4	3.5
19	In my unit, we identify barriers and obstacles and resolve issues that could impact achievement of objectives.	3.1	2.8	3.0	3.1	3.3	3.3
20	Management has created safe mechanisms for employees to raise concerns about practices that may put the regional center's reputation at risk.	2.5	1.9	2.8	2.7	2.9	3.3
21	I hold my staff accountable for defined, measurable objectives.†	3.6	3.2	3.7	3.4	3.7	3.0

Section III—Control Activities

22	The policies and procedures in my work unit are clearly stated and allow me to do my job effectively.	3.0	2.7	2.9	2.9	3.3	3.4
23	Employees who break laws, rules, and regulations affecting the regional center will be discovered.	2.9	2.8	2.5	2.9	3.0	3.2
24	Employees who break laws, rules, and regulations affecting the regional center and are discovered will be subject to appropriate consequences.	3.0	2.8	2.4	2.9	3.0	3.2
25	Employees who steal from the regional center (physical property, money, information, time) will be discovered.	2.9	2.8	2.6	3.0	3.2	3.3
26	Employees who steal from the organization and are discovered will be subject to appropriate consequences.	3.1	3.0	2.7	3.1	3.1	3.3
27	My work is adequately supervised.	3.3	3.1	3.2	3.2	3.4	3.6

Section IV—Information and Communication

28	Our information systems provide management with timely reports on my unit's performance relative to established objectives.	3.1	2.8	2.9	2.9	3.3	3.1
29	There is a way for me to provide recommendations for process improvements.	2.6	2.1	2.8	3.0	2.9	3.2
30	The interaction between management and my work unit enables us to perform our jobs effectively.	2.7	2.1	2.9	2.9	3.1	3.3

SURVEY QUESTIONS		INLAND	VALLEY MOUNTAIN	SAN ANDREAS	TRI-COUNTIES	FAR NORTHERN	WESTSIDE
31	The communication across organizational boundaries within the regional center enables us to perform our jobs effectively.	2.4	2.0	2.4	2.8	2.9	3.1
32	I have sufficient information to do my job.	3.1	2.9	3.0	3.1	3.2	3.4
33	Management has clearly communicated to me the behavior that is expected of me.	3.3	2.9	3.2	3.2	3.4	3.5
34	Management is informed and aware of my unit's actual performance.	3.2	2.9	3.2	3.1	3.2	3.5
35	I know where to report employee misconduct.	3.2	2.8	3.1	3.2	3.3	3.5
36	If I report wrongdoing to my supervisor, I am confident the wrongdoing will stop.	2.7	2.4	2.7	2.6	2.9	3.2
37	Employees who report suspected improprieties are protected from reprisal.	2.2	2.0	2.7	2.9	3.0	3.1

Section V—Monitoring

38	Information reported to management reflects the actual results of operations in my work unit.	3.0	2.6	3.2	3.1	3.2	3.4
39	I have access to enough information to monitor vendor performance.	2.6	2.4	2.6	2.6	3.1	3.0
40	Internal and/or external feedback and complaints are followed up in a timely and effective manner.	2.6	2.4	2.8	2.8	3.0	3.5
41	We consider consumer complaints and feedback in order to identify quality problems.	3.0	2.7	3.1	3.2	3.3	3.5
42	Employees in my work unit know what actions to take when they find mistakes or gaps in what we are supposed to do.	3.1	2.9	3.1	3.1	3.3	3.4
43	My supervisor reviews my performance with me at appropriate intervals.	3.3	2.6	3.0	3.2	3.0	3.2
44	I know what action to take if I become aware of unethical or fraudulent activity.	3.1	2.8	3.2	3.2	3.3	3.4

Source: Bureau of State Audits' survey of regional center employees, June 2010.

- 4 = Strongly agree
- 3 = Agree
- 2 = Disagree
- 1 = Strongly disagree

* Not all respondents answered every question. Questions left blank or marked "don't know" were not counted in our calculations of the average response. We did not survey executive managers such as directors, assistant directors, or chiefs.

† Question for supervisors only.

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(Agency comments provided as text only)

Department of Developmental Services
1600 Ninth Street, Room 240, MS 2-13
Sacramento, CA 95814

August 16, 2010

Mr. Doug Cordiner
Chief Deputy State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Mr. Cordiner:

Response to the Bureau of State Audits (BSA) Draft Audit Report, "Developmental Services: A More Uniform and Transparent Procurement and Rate-Setting Process Would Improve Cost-Effectiveness of Regional Centers," dated August 9, 2010

Thank you for the opportunity to respond to the draft audit report. The Department of Developmental Services (DDS or Department) is committed to accountability and transparency and will continue to work with the BSA to strengthen and improve California's system that serves approximately 240,000 individuals with developmental disabilities (consumers).

As your report indicates, the State's developmental services system is very unique. While DDS provides oversight through a variety of monitoring and auditing functions, its ability to direct the service delivery activities of the 21 contracted not-for-profit regional centers is limited by statute and court order.

Specifically, the Lanterman Developmental Disabilities Services Act (the Lanterman Act) (Welfare and Institutions Code [WIC] Section 4500 et seq.) and the related court decision (*Association of Retarded Citizens v. DDS (1985) 38 Cal.3d 384* (ARC)) create an entitlement for consumer services and describe separate and distinct roles and responsibilities for DDS and the regional centers. This distinction is best summarized in an Attorney General opinion that concluded the responsibility of DDS is "basically limited to promoting the cost effectiveness of the operations of the regional centers, and does not extend to the control of the manner in which the regional centers provide services or in general operate their programs."

Within these parameters, and as noted in the BSA draft report, DDS provides significant oversight and monitoring of the regional centers. For example, DDS conducts biennial fiscal audits; reviews independent financial audits of the regional centers; conducts program monitoring reviews; performs federal waiver compliance reviews; audits vendors/contractors doing business with the regional centers; and reviews regional center purchase-of-service policies. DDS also provides statutorily-required oversight of regional center employee and board member adherence to conflict-of-interest laws.

Furthermore, through statute, regulation and practice, DDS has a variety of mechanisms for consumers, families, and other interested parties to raise concerns regarding the regional centers or vendors. These formal processes include, but are not limited to, Consumer Rights Complaints; Fair Hearings; Citizen Complaints; Whistleblower Complaints, and various appeal processes related to services and/or vendors.

* California State Auditor's Office comments begin on page 85.

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In addition to its oversight activities, DDS manages the system-wide Community Services budget for regional centers' operation and purchase of consumer services. As reflected in the report (Figure 1), the budget for developmental services since 2008-09 has remained relatively flat, while caseload in the community has increased by over 6 percent in the same period. Many of these new consumers have been diagnosed with autism and require costly services. Consistent with the federal Olmstead court decision, during this same time nearly 400 residents of developmental centers moved into the community, largely due to the closure of the Agnews Developmental Center and Sierra Vista Community Facility.

An independent review of departmental expenditures that occurred in prior years concluded that almost 25 percent of the growth in regional center costs is associated with serving former developmental center residents. In fact, the study concluded that 82 percent of all expenditures are related to services for approximately 25 percent of the population. These consumers have significant medical and other care needs and most would require higher cost services in more restrictive environments, such as a developmental center, if not for the regional center services.

The Department appreciates BSA's understanding of the oversight and accountability components of our program and takes seriously the issues raised in the draft report. In response to the audit, DDS is implementing system improvements to address the BSA recommendations. The Department's response is provided below:

Chapter 1

Recommendations:

- 1. 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.**

Response: DDS agrees. Due to staff turnover, extended vacancies and furloughs the Department was unable to finalize fiscal audit reports for 3 of the 21 regional centers within the two-year timeframe. DDS will be current on completing the biennial fiscal audits of the regional centers by December 2010.

- 2. Developmental Services should require 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.**

Response: DDS has issued a directive to regional centers requiring them to update their administrative policies and procedures for purchasing consumer services and retain required documentation for payment of invoices. Further, DDS will pursue a regulation governing the use of electronic documents and signatures consistent with federal and state law.

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3. 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.

Response: DDS is currently auditing Valley Mountain Regional Center and as part of the audit will ensure their corrective actions are in compliance with appropriate laws and regulations, including Medicaid Waiver requirements.

4. To ensure that negotiated rates are cost-effective, Developmental Services should:

- 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.

If Developmental Services believes it needs statutory or regulatory changes to provide effective oversight of the regional centers' rate-setting practices, the department should seek these changes.

Response: DDS has issued a directive to regional centers requiring them to maintain documentation on the process used to determine, and the rationale for granting any negotiated rate (e.g. cost-statements), including consideration of the type of service and any education, experience and/or professional qualifications required to provide the service.

DDS has expanded its fiscal audit protocols to include a review of negotiated rates during the biennial fiscal audits of regional centers to ensure adequate documentation exists. These audit protocols are in use for the regional center audits currently being conducted.

Various legislative actions have been taken in recent years to reduce and control the rate of expenditure growth in the regional center system, including rate freezes that have been in place for several years (e.g. community-based day program service rates). Further, effective July 1, 2008, the types of services covered by the rate freeze were expanded to include all services for which regional centers negotiate rates. Currently, rates determined through a negotiation between the regional center and provider cannot be established at a rate that is higher than the regional center's median rate for that service or the statewide median, whichever is lower. In the event the regional center does not have an applicable median, the associated statewide median rate is used.

Consistent with the intent of the Lanterman Act that services and supports are tailored to meet the needs of individual consumers, regional centers are authorized to submit to DDS consumer health and safety waiver exemptions from the applicable rate freezes (WIC §§ 4501, 4512, 4646, and 4648.) In these cases, a regional

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center is required to provide, among other things, documentation of the cost basis for the rate increase with an explanation of how it will mitigate the risk to consumer health and safety.

These statutory and administrative changes set parameters for rate negotiations and establish clear mechanisms for accountability.

5. **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.**

Response: DDS has amended its fiscal audit protocols to expand testing for compliance with the July 2008 rate freeze on negotiated rates beyond transportation, day program and residential programs. These audit protocols are in use for the regional center audits currently being conducted.

6. **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 payment 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.**

Response: DDS will audit the five instances of potential noncompliance identified by the BSA and will require corrective actions by the regional centers, as appropriate. Based upon the audit findings, DDS will determine the appropriate steps to take, including, but not limited to, seeking repayment of any inappropriately spent state funds.

While BSA did not include a specific recommendation regarding instances of apparent conflicts of interest at two regional centers cited in the report, DDS will remind regional centers of their responsibility under the Lanterman Act and corresponding Title 17 regulations that define regional center employee and board member conflict of interests and the process for requesting a waiver of the conflict (WIC §§ 4622 and 4626-4628 and California Code of Regulations, Title 17, §§ 54500-54529.).

Chapter 2

Recommendations:

1. **To ensure that consumers receive high-quality, cost-effective services that meet the goals of their IPPs consistent with state law, Developmental Services should do the following:**
 - Require the regional centers to document the basis of any IPP-related vendor selection and specify which comparable vendors (when available) were evaluated.

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- **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 – the July 2009 amendment requiring selection of a least costly available provider of comparable service, in particular.**

Response: DDS supports fiscal accountability and transparency. However, the Department does not believe it has the legal authority to implement the BSA recommendation, as it places DDS in a role inconsistent with the intent of the Lanterman Act. As stated earlier, DDS and the regional centers have separate and distinct roles and responsibilities as described in the Lanterman Act and affirmed in the *ARC v. DDS* decision.

②

The Lanterman Act requires that regional centers use a person-centered planning approach in making decisions as part of development, review, or modification the Individual Program Plan (IPP). In person-centered planning, an interdisciplinary team is formed that includes the consumer, family members, regional center staff and anyone else who is asked to be there by the consumer/family. The team joins together to identify service needs and ensure consumer choices are considered in the planning process (WIC §§ 4646-4646.5).

The responsibility of the regional centers and the planning team is to balance the various statutory and regulatory requirements associated with the development of each person's IPP. For example, the team must consider such things as the availability of generic resources (WIC § 4646.4); a family's responsibility (WIC § 4646.4); a provider's ability and success in delivering quality services or supports which can accomplish all or part of the consumer's IPP (WIC § 4648, subd. (a)(6)(A)); the cost of providing services or supports of comparable quality by different providers (WIC § 4648, subd. (a)(6)(D)); whether services or supports are provided in the least restrictive and integrated setting (WIC § 4648, subd. (a)(5)); and consumer choice (WIC § 4648, subd. (a)(6)(E)).

As stated in the BSA report, the Lanterman Act delegates a great deal of decision making to the regional centers. In determining vendor selection, the Lanterman Act contemplates a balancing of many factors through the professional judgment of the regional center and the individual planning team. 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. By design, DDS does not have a direct role in the IPP development. If DDS required extensive documentation of one factor and not all factors considered in the IPP process, the likely response would be litigation that DDS has overstepped its authority. If all factors are required to be documented, unnecessary delays in the provision of services could result. Additionally, this would exacerbate the issue cited by BSA of increased regional center caseloads.

③

While DDS does not believe it can intercede in the IPP, the Department will use its oversight authority to ensure adherence to the law. In response to the BSA recommendation, DDS has issued a directive to regional centers to update their internal review process and associated policies and procedures to

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ensure the regional centers' compliance with all current statutes, including recent Budget Trailer Bill language. The directive also required regional centers to inform their staff of the updates to its policies and procedures. DDS will also continue to review regional centers' purchase-of-service policies to ensure compliance with law.

2. To ensure that regional centers achieve the greatest level of cost effectiveness and avoid the appearance of favoritism when they award purchase-of-services contracts, Developmental Services should require regional centers to adopt a written procurement process that:

- 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.

Response: DDS will pursue contract amendments with regional centers to require development of procurement policies/processes approved by the regional centers' boards of directors. The procurement policies/processes will address circumstances under which requests for proposals will be issued, the applicable dollar thresholds, and how the submitted proposals will be evaluated.

3. To ensure that regional centers adhere to their procurement process, Developmental Services should review the documentation for a representative sample of purchase-of-service contracts during the department's biennial fiscal audits.

Response: DDS has drafted fiscal audit protocols for testing compliance with the regional centers' procurement policies/processes. These audit protocols will be used during the biennial regional center audits following implementation of contract amendments requiring the development of procurement policies/processes.

4. To deter unsupported and potentially wasteful spending of state resources by regional centers, Developmental Services should determine the extent to which Inland needs to repay state funds it provided to a transportation vendor for assessment of Inland's transportation conditions.

Response: The DDS audit of Inland Regional Center will commence on August 30, 2010. Following completion of the audit, DDS will determine the appropriate actions to take, including, but not limited to, whether the regional center must repay state funds it provided to the relevant transportation vendor for assessment of its transportation conditions.

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Chapter 3

Recommendations:

1. 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 continue to notify all regional centers that such an alternative is available.
2. 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 ultimate resolution of allegations, as required by its new procedures.

Response: DDS has already implemented this recommendation. DDS documented its existing process for receiving, logging and investigating whistleblower complaints and shared this process with BSA prior to the issuance of the draft audit report. The documented process extends beyond the BSA recommendation as it also addresses whistleblower complaints regarding vendors/contractors of regional center services. Consistent with DDS's policy, when DDS receives complaints about a regional center or vendor/contractor, it follows an intake and investigation process that is very similar to the BSA's process for investigating complaints received about improper governmental activities. DDS has included information about its process on the DDS website and has instructed regional centers to do the same on their websites. Additionally, DDS instructed regional centers to provide notification to employees, board members, consumers/families, and their vendor community of this complaint process and their right to make reports of improper activity to DDS.

Further, DDS will pursue contract amendments with the regional centers to require them to develop whistleblower policies/processes and ensure notification to employees, board members, consumers/families, and their vendor community of both the regional center and DDS whistleblower processes.

DDS is committed to accountability, transparency and ensuring services are provided in a cost-effectiveness manner while balancing the fundamental program imperative of appropriate and timely consumer services. The Department takes seriously the issues raised in the draft report and will work with the BSA to resolve the concerns through implementation of the recommendations.

Thank you for the opportunity to provide input. Please contact either me or Mark Hutchinson, Chief Deputy Director, at (916) 654-1897, if you have any questions or concerns.

Sincerely,

(Signed by: Terri Delgadillo)

TERRI DELGADILLO
Director

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Comments

CALIFORNIA STATE AUDITOR'S OFFICE COMMENTS ON THE RESPONSE FROM THE DEPARTMENT OF DEVELOPMENTAL SERVICES

To provide clarity and perspective, we are commenting on the response to our audit report from the Department of Developmental Services (Developmental Services). The numbers below correspond to the numbers we placed in the margin of Developmental Services' response.

As we indicate on page 57 of the report, Developmental Services stated that it has several formal complaint processes established in law and pointed to two processes in particular—consumer rights complaints and citizen complaints—that regional center employees could use. However, as we also point out on pages 57 and 58, these two processes do not appear to be particularly applicable to regional center employees. Further, as we state on page 57, although Developmental Services indicated that it has a process for receiving and reviewing allegations from regional center employees—presumably the whistleblower complaints process indicated in its response—until July 2010 after we brought this issue to its attention, it had not documented this process, nor had it shared this process with regional center employees.

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Throughout its response, Developmental Services appears to accept responsibility for ensuring regional center compliance with the Lanterman Developmental Disabilities Services Act (Lanterman Act); however, in regards to the amendment requiring selection of “the least costly available provider of comparable service,” Developmental Services claims that it does not have the legal authority to ensure statutory compliance. In support of its conclusion that ensuring compliance with the July 2009 amendment would be inconsistent with the intent of the Lanterman Act, Developmental Services cites a 1985 California Supreme Court decision, which was based on the court's reading of the Lanterman Act at that time. However, as we state on page 12, the court's 1985 decision provides Developmental Services the ability to promote the cost-effectiveness of providing services. Moreover, subsequent modifications to the Lanterman Act, such as the July 2009 amendment could not have been contemplated by this court decision. As a result, we believe that Developmental Services does have the legal authority to implement our recommendation.

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Although it is true that the Lanterman Act does describe other factors that should be considered when developing an individual program plan, for only one of these factors—the least costly available provider of comparable service—does it specifically state

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“shall be selected.” Thus, it is the Lanterman Act, as amended in July 2009, that expressly requires planning teams to consider the costs of comparable providers’ services and expressly requires selection of the least costly provider. Therefore, reviewing the costs of these providers is already required by the Lanterman Act; simply documenting that this review is actually occurring and that the intent of the Lanterman Act is being carried out, does not seem to be particularly onerous, especially given the amount—\$24 million—decision makers estimated this amendment would save the State’s General Fund. Additionally, because we do not believe our recommendation requires Developmental Services to intercede in the individual program plan process, we fail to understand how requiring regional centers to document a duty that current law already requires would result in litigation.

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press