

Department of Developmental Services

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

REPORT NUMBER 2009-118, ISSUED AUGUST 2010

This 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—nonprofit entities the Department of Developmental Services (Developmental Services) contracts with to coordinate services for Californians with developmental disabilities (consumers)—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.

In the report, the California State Auditor (state auditor) made the following recommendations to Developmental Services. The state auditor's determination regarding the current status of recommendations is based on Developmental Services' response to the state auditor as of August 2011.

Recommendation 1.1—See pages 23 and 24 of the audit report for information on the related finding.

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' Action: Fully implemented.

As of December 2011 Developmental Services appears to be on track to complete fiscal audits of each regional center every two years as required.

Recommendation 1.2—See pages 25 and 26 of the audit report for information on the related finding.

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' Action: Fully implemented.

Developmental Services issued a directive dated August 16, 2010, to regional centers requiring them to update their administrative policies and procedures for purchasing consumer services and retain required documentation for payment of invoices. Developmental Services revised its regulations to allow for electronic authorizations and record keeping for regional centers' purchase of services.

Recommendation 1.3—See pages 26—28 of the audit report for information on the related finding.

Developmental Services should ensure that the system the Valley Mountain Regional Center (Valley Mountain) implements to correct its transportation invoicing process collects individual consumer data as necessary to ensure compliance with Medicaid Waiver requirements.

Developmental Services' Action: Fully implemented.

Based on the results of a follow-up review Developmental Services performed in October 2010, Valley Mountain implemented a new invoicing process that is now in compliance with Medicaid Waiver requirements.

Recommendation 1.4.a—See pages 28 and 29 of the audit report for information on the related finding.

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. Developmental Services should encourage regional centers to use, when applicable, the cost-statement approach exemplified by Far Northern. 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.

Developmental Services' Action: Fully implemented.

Developmental Services issued a directive dated August 16, 2010, to regional centers requiring them to maintain documentation on the process used to determine and the rationale for granting any negotiated rate.

Legislative Action: Legislation enacted.

Chapter 9, Statutes of 2011 (Senate Bill 74), includes a requirement for regional centers to timely disclose requests for proposals, contract awards, and payment rates for service providers on their Web sites.

Recommendation 1.4.b—See page 24 of the audit report for information on the related finding.

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

Developmental Services' Action: Fully implemented.

Developmental Services expanded its fiscal audit protocols to include a review of negotiated rates during its biennial fiscal audits.

Legislative Action: Unknown.

The state auditor is not aware of any action taken by the Legislature as of January 5, 2012.

Recommendation 1.5—See pages 37 and 38 of the audit report for information on the related finding.

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' Action: Fully implemented.

Developmental Services expanded its fiscal audit protocols to include testing for compliance with the July 2008 rate freeze.

Recommendation 1.6—See pages 35 and 36 of the audit report for information on the related finding.

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.

Developmental Services' Action: Fully implemented.

Developmental Services completed its reviews of the five instances identified in our audit report and found over \$4.1 million in payments that violated rate freeze provisions (\$3.2 million at Inland Regional Center; \$742,000 at San Andreas Regional Center; \$146,000 at Tri-Counties Regional Center) and that must be repaid to the State.

Recommendation 2.1—See pages 44—46 of the audit report for information on the related finding.

To ensure that consumers receive high-quality, cost-effective services that meet the goals of their Individual Program Plans (IPP) consistent with state law, Developmental Services should require the regional centers to document the basis of any IPP-related vendor selection and specify which comparable vendors (when available) were evaluated. Developmental Services should then 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.

Developmental Services' Action: No action taken.

Developmental Services does not believe it has the legal authority to implement the recommendation, as it places the department in a role inconsistent with the intent of the Lanterman Act. Developmental Services asserts that to require documentation of all vendors considered and an explanation of why the vendor selected constitutes the least costly vendor, and presumably all other factors required by law, could delay needed services to consumers and their families. Finally, Developmental Services asserts that if it required extensive documentation of one factor and not all factors considered in the IPP process the likely response would be litigation claiming that the department has overstepped its authority. As outlined in the Comments Section of our August 2010 audit report (Notes 2 and 3), the bureau does not agree with Developmental Services' assertions or interpretation of the Lanterman Act.

Recommendation 2.2—See pages 46—49 of the audit report for information on the related finding.

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, request for proposals, and evaluations of competing proposals will be implemented, and 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.

Developmental Services' Action: Fully implemented.

Developmental Services' contract with each regional center now requires regional centers to have a board-approved policy specifying the circumstances under which the regional center will issue request for proposals, the applicable dollar thresholds, and how the submitted proposals will be evaluated.

Recommendation 2.3—See pages 43 and 44 of the audit report for information on the related finding.

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.

Developmental Services' Action: Fully implemented.

Audit procedures are now in place to review the procurement policies and processes of regional centers during the department's biennial fiscal audits.

Recommendation 2.4—See pages 47 and 48 of the audit report for information on the related finding.

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.

Developmental Services' Action: Fully implemented.

Developmental Services conducted a review of Inland in fall 2010 and found over \$4.2 million in payments to the transportation vendor (roughly \$1 million related to the transportation assessment and \$3.2 million related to how the regional center established transportation vendor's rate of payment) that were not appropriate and that must be repaid to the State.

Recommendation 3.1—See pages 57—59 of the audit report for information on the related finding.

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.

Developmental Services' Action: Fully implemented.

Developmental Services now has a formal intake and investigation process for complaints about regional centers and vendors. The department includes information about this process on its Web site and instructed the regional centers to do the same. All regional centers have posted Developmental Services' and their own whistleblower complaint policies on their Web sites.

Recommendation 3.2—See page 58 of the audit report for information on the related finding.

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.

Developmental Services' Action: Fully implemented.

In July 2010 Developmental Services formally documented procedures that describe how it accepts, tracks, and resolves complaints from regional center employees and others. We confirmed, as of December 2011, that Developmental Services continues to use a central log of allegations that documents complaints, follow-up actions, and ultimate resolutions.