

SUMMARY CHANGES INCLUDED IN BUDGET TRAILER BILL FOR 2009-2010 BUDGET

Trailer Bill Language as of June 29, 2009

Prepared for the Westside Regional Center Community

ABOUT THIS DOCUMENT

The Department of Developmental Services was required by the Legislature to work with a representative group of stakeholders to develop recommendations for changes to the Lanterman Act that would enable regional centers to save \$334 million dollars in Fiscal Year 2009-2010. The recommendations by the stakeholder group were used by DDS to draft Budget Trailer Bill language (used to implement the changes to the budget), and the Trailer Bill language was presented to the Legislature for final passage.

This document summarizes the changes that have to date appeared in Trailer Bill language. These changes are not official and may be subject to additional revisions in the Legislature, but we believe that the final versions will not be substantially different from what appears below.

As soon as final wording has been approved, we will announce it on our Web site and through an e-mail blast. We will also provide links to the final bills on Web sites of the Legislature and DDS.

GENERAL STANDARDS (APPLY TO ALL PURCHASED SERVICES AND SUPPORTS)

- Regional centers shall purchase services from the least costly provider when a client's needs can be met by more than one provider offering services of comparable quality. The cost of services shall include the cost of transportation to the service and shall also consider the availability of federal financial participation. The client shall not be required to use the least costly provider if it will result in moving to a more restrictive or less integrated service.
- Regional centers shall not purchase experimental treatments, therapeutic services or devices that have not been clinically determined or scientifically proven to be safe and effective and risks and complications are unknown. Experimental treatments or services include medical or nutritional therapy when the use of the product for that purpose is not consistent with general physician practice. For clients receiving such services as part of their IPP/IFSP on July 1, 2009, this prohibition shall take effect on August 1, 2009.
- At least annually, regional centers shall provide each client, the client's parents, legal guardian, conservator or authorized representative a statement of services and supports purchased by the regional center, for the purpose of ensuring that the services were delivered. The statement shall include the type of service, units, month and cost.
- Regional centers shall not purchase any service available from Medi-Cal, Medicare, TRICARE (formerly known as CHAMPUS), IHSS, CCS, or private insurance when a client

or family eligible for such coverage chooses not to pursue such coverage or pursue an administrative appeal of the denial of such services. When necessary, the client or family may receive assistance from the regional center, the Client's Rights Advocate funded by the department or area boards in pursuing such appeals. If, on July 1, 2009, the regional center has been purchasing such services, the prohibition shall take effect October 1, 2009.

- Effective July 1, 2009, the regional center shall not purchase medical or dental services for a client age 3 or older without proof of denial from Medi-Cal or private insurance and verification the family is pursuing an administrative appeal of such denial unless the regional center has determined the denial does not merit appeal. When necessary, the client or family may receive assistance from the regional center, the Client's Rights Advocate funded by the department or area boards in pursuing such appeals. If on July 1, 2009, the regional center is purchasing such services, the prohibition shall take effect on August 1, 2009.

CHANGES APPLYING TO SPECIFIC SERVICES

EARLY INTERVENTION

- Parents will be required to use private insurance for Early Intervention services before the regional center purchases a service or support, as is currently required for children over 3 and adults. This does not apply to evaluation and assessment services normally provided by regional centers for purposes of eligibility determination.
- Regional centers shall, with one exception, only purchase services required under the federal program. These services include assistive technology devices; audiology; family training, counseling and home visits; health services; medical services (not all health and medical services are required); nursing services; nutrition services; occupational therapy; physical therapy; psychological services; service coordination; social work; special instruction; behavior therapy; speech/language pathology; transportation and related costs; vision services; respite and diapers if the family can demonstrate a financial need and when doing so will enable the child to remain in the family home. The exception (non-required but regional centers may purchase) is durable medical equipment necessary to control or treat a medical condition.
- Eligibility for Early Intervention services will be limited. The revised criteria are as follows. To be eligible for Early Intervention services an infant or toddler must satisfy a or b, below:
 - a. An infant or toddler with a developmental delay has either
 - i. a 33% delay in one developmental area if younger than 24 months or
 - ii. a 50% delay in one area or a 33% delay in two or more areas if older than 24 months.
 - b. The infant or toddler has an "established risk condition." (This [b] is not changed.)
- The Department shall establish a new prevention program for infants and toddlers who are "at-risk" for a substantial disability. "At risk" means a child is younger than 24 months and

has a genetic, medical, or environmental history that is predictive of a substantially greater risk for developmental disability than that for the general population. The presence of this condition must be diagnosed by a qualified clinician.

- a. The program shall provide intake and assessment, case management, referral to generic agencies, and parent training and support.
 - b. Each regional center shall receive a limited allocation for this program and may only provide services out of this allocation for these services.
 - c. DDS will establish policies and procedures for implementation of the prevention program by regional centers. These policies and procedures shall define other services included in the program and the process for appealing the denial of eligibility for the prevention program.
- Effective July 1, 2009, the regional center “should consider” the purchase of neighborhood preschools and needed qualified personnel (e.g., support persons) in lieu of infant development programs.

BEHAVIOR SERVICES

- Effective August 1, 2009, for children requiring behavior management services (including applied behavior analysis and intensive behavior interventions), the regional center “should consider” the use of group training in lieu of some or all of in-home behavior intervention services. This applies to behavioral services for children served by Early Start (ages 0–3) as well.
- Requirements are specified for assessment, treatment planning, and continuation of behavior services, but these requirements are consistent with most regional centers’ current practices.
- Regional centers shall only purchase behavior services that are “evidence-based.” Evidence-based is defined as a decision-making based on the “best available scientifically rigorous research, clinical expertise and individual’s characteristics.”
- Regional centers shall only purchase behavior services when parents “participate in the intervention plan”. Participation is defined to mean ‘any of’ the following: completion of group instruction, collecting data on behaviors, implementing the intervention plan, and attending clinical meetings.
- Regional centers shall not purchase behavior services for purposes of providing respite, day care, or school services. (This is consistent with current practice.)
- Behavior services shall be reviewed and updated no less than every 6 months. Services may be discontinued when goals are met or new goals do not require behavioral services. The regional center shall not reimburse a parent for participating in a behavioral service program.

SOCIAL-RECREATIONAL ACTIVITIES AND NON-MEDICAL THERAPIES

- As of July 1, 2009 regional centers are prohibited from purchasing camp; “social recreation activities;” “non-medical therapies,” including but not limited to art, dance, music,

swimming, horseback riding, gymnastics, karate, and yoga; and educational services for children 3 to 17. For clients currently receiving such services, the prohibition shall take effect on August 1, 2009.

- An exemption may be granted on an individual basis in extraordinary circumstance when the regional center determines that the service is critical to ameliorating the physical, cognitive or psychosocial effects of the client's developmental disability, or the service is necessary to enable the client to remain in his/her home and no alternative service is available to meet the client's needs.
- This prohibition may be suspended upon implementation of the Individual Choice Budget and certification by the Director of DDS that the Individual Choice Budget will result in state budget savings sufficient to offset the costs of these services.

INDIVIDUAL CHOICE BUDGET

- DDS shall develop an alternative service delivery model that provide an Individual Choice Budget for obtaining quality services and supports and provides choice and flexibility within a finite budget. This budget model is expected to reduce regional center purchase of service expenditures, reduce reliance on the state general fund and maximize federal financial participation in the delivery of services. The individual budget will be determined using a fair, equitable and transparent standardized process.

PARENTAL FEES

- Effective July 1, 2009 and annually thereafter (if needed) DDS will adjust the fee paid by parents whose minor children live out of home.

RESPIRE

- Respite may only be purchased for care and supervision needs that exceed the needs of an individual of the same age without developmental disabilities.
- The regional center shall not purchase more than 21 days out-of-home respite in a year, nor more than 90 hours of in-home respite in a quarter. Services must be used in the fiscal year for which they are originally authorized.
- A regional center may grant exemptions to the days/hours limits in extraordinary circumstances such as 1) maintain the client in the family home or 2) an event that impacts the family member's ability to meet the care and supervision needs of the client.
- The regional center may not purchase day care services to replace or supplant respite.
- The regional center shall only consider IHSS a generic resource (for respite) when the IHSS meets the respite need as identified in the client's IPP/IFSP. This is being interpreted as the IHSS used for protective supervision.
- For clients currently receiving respite, these provisions shall take effect August 1, 2009 and shall remain in effect until the implementation of the Individual Choice Budget as certified

by the Director of DDS and determination that it will result in state budget savings sufficient to offset the cost associated with the repeal of this section.

- The responsibilities of in-home respite workers have been expanded. Workers who have been trained to do so by a physician or registered nurse may perform “incidental medical services” for regional center clients. These services include:
 - a. Colostomy and ileostomy: changing bags and cleaning stoma.
 - b. Urinary catheter: emptying and changing bags and care of the catheter site.
 - c. Gastrostomy: feeding, hydration, cleaning stoma, and adding medication per physician’s or nurse practitioner’s orders for the routine medication of patients with stable conditions.

Respite workers who are trained in these procedures will receive an increase of \$0.50 per hour wage and \$0.08 per hour benefit for the time they are actually doing this type of work. The regional center may reimburse the respite agency up to \$200 semiannually to provide the training necessary to carry out these new responsibilities.

TRANSPORTATION

- Regional centers shall be prohibited from funding “private specialized” transportation services for adults who are able to use public transportation when that transportation is available.
- Regional centers shall purchase the least expensive transportation modality that meets the client’s needs.
- When transportation to a vendored service is required for an adult, the regional center is only permitted to fund transportation from the client’s home to the “lowest-cost” vendor that provides the service which meets the client’s needs.” “Lowest cost” is determined by combining the cost of transportation and the cost of the program.
- Regional centers are prohibited from funding transportation for a minor child living at home unless the family provides “sufficient written documentation” demonstrating that it is unable to provide that transportation.

DAY PROGRAMS

- Vendors providing “behavior management, activity center, and adult development center day programs, social recreation programs, socialization training programs, community integration training programs, community activities support programs, creative art programs, and work activity programs shall offer an alternative senior program focused on the needs of ... individuals over the age of 50” at a rate that is the lesser of \$35 per day or the vendor’s existing daily rate. The following conditions apply:
 - a. The ratio of the program shall be no less than 1:8.
 - b. The program shall be offered within the provider’s existing vendored capacity.
 - c. The program should be offered to clients at the time of their IPP review.

- Vendors of behavior management, activity center, and adult development center day programs, community integration training programs, and community activities support programs shall offer an alternative customized program component that will meet “individualized client needs.” The program:
 - a. Shall be offered within the provider’s existing vendored capacity.
 - b. Shall be funded based on the vendor’s existing rate and only funded for hours provided.
 - c. Shall be offered to individuals who “want a program focused on their individualized needs and interests to develop or maintain employment or volunteer activities in lieu of their current program.”
 - d. Shall range between 20 and 80 hours per month, per person.
- Work activity and day programs are required to adhere to a uniform 14 day holiday schedule. The regional center may not purchase day services on the specified dates nor purchase transportation to any such service on those days. ***This will require families to plan ahead for holidays and vacations.***

SUPPORTED LIVING

There have been several changes to the regulations related to supported living:

- When planning for a client in or moving to supported living, the planning team shall ensure that all available sources of natural and generic supports have been utilized “to the fullest possible extent.” (This is consistent with current regional center practice.)
- When multiple supported living clients are sharing a home, the regional center shall use the same supported living provider for all clients, if appropriate.
- The regional center shall not make rent, mortgage or lease payments for a client in supported living. Limited exceptions are allowed at the discretion of the regional center executive director.
- If the regional center is contributing to rent, etc., all paid roommates and live-in support staff shall pay their share of this expense.
- Administrative costs for supported living services shall be limited to the categories listed in Title 17 for day programs.
- Regional centers shall pay supported living vendors using the most cost-effective rate method. (Title 17 gives three methods for figuring rates: hourly, monthly, and “other.”)
- The regional center shall not purchase supportive services that supplant IHSS.
- Supported living providers shall assist clients to apply for IHSS within five days of the client moving into a supported living arrangement.
- Between the time of application for IHSS and approval of the service, the regional center shall not purchase supportive services for a rate higher than the prevailing IHSS rate.
- The regional center shall not purchase supportive services for clients who meet the criteria to receive, but decline to apply for, IHSS.

MONITORING QUALITY

- By January 1, 2010, the department shall implement an “improved unified quality assessment system.” This activity will employ a “valid and reliable quality assurance instrument” that will provide “nationally validated, benchmarked, consistent, reliable and measurable data” and enable comparisons of the performance of the state’s developmental services system against other states’ systems. It will be used in place of the current Life Quality Assessments conducted by the Area Boards and the client surveys used to monitor quality of life of persons moved to the community as a result of the Coffelt settlement.
- As of July 1, 2009, regional centers will no longer be required to perform triennial evaluations of community care licensed homes. They will still be required to conduct two unannounced visits to every home on an annual basis.

LARGE RESIDENTIAL FACILITIES

- Effective July 1, 2009, a regional center shall not newly vendor residential facilities with a licensed capacity of 16 or more beds unless the facility qualifies for funds under the Medicaid program. Effective July 1, 2012, regional centers shall not purchase residential services from a facility licensed for 16 or more beds unless:
 - a. The facility has been approved for participation in the Home and Community Based Waiver program or
 - b. The service provider has a written agreement and specific plan either to downsize the facility by transitioning residents to living arrangements of 15 beds or less or to restructure the facility to meet Medicaid eligibility requirements on or before June 30, 2013.

STATE INSTITUTIONS

- The total number of residents in Porterville DC (DDS’s secure treatment facility) shall not exceed 297.
- DDS will close Sierra Vista, one of two smaller state facilities providing services to approximately 50 individuals with developmental disabilities and challenging behaviors. Closure will occur by 12/31/09.

STATE PLAN OPTION

- DDS and the Department of Health Care Services shall jointly seek approval from the Centers for Medicare and Medicaid Services for a 1915(i) state plan to expand federal financial participation for services to persons with developmental disabilities provided by regional centers. DDS will consult with stakeholders in the development of such a plan and may adopt regulations as needed to implement an approved plan.