



ARCA POSITION PAPER REGARDING THE CALIFORNIA BUDGET FISCAL CRISIS (Fiscal years 2002-2003, 2003-2004 and beyond)

I. BACKGROUND

California is in the midst of prolonged fiscal crisis which may be the worst in the state's history. This budget crisis will likely be long term and negatively affect all Californians to one degree or another.

Services to persons with developmental disabilities will be affected through proposed changes to the Lanterman Developmental Disabilities Services Act and regional center current and future budget deficits.

This document describes the budget crisis issues (current year and budget year), proposals that will impact services and ARCA's positions on these issues. Resolution to the current year regional center budget deficit is integral to the 2003-2004 fiscal year budget. Over the next six to eight months, the administration and Legislature will make significant decisions about the immediate future of developmental services in California. Additionally, other human service delivery systems that affect persons with developmental disabilities will likely see many changes. For example, ARCA is significantly concerned that the proposed reductions to optional Medi-Cal services and rate reductions to Medi-Cal providers will have serious consequences for persons served by regional centers.

Exacerbating the budget crisis are many chronic unresolved system problems including, but not limited to, the following:

- A regional center projected statewide purchase of service deficit of \$50 - \$100 million in the current (2002-2003) fiscal year
- Exploding autism case load and concomitant increase in service needs
- Unresolved system reform effort, including proposed higher wages for direct care staff and accountability of service provision
- Affordable housing shortage
- A growing forensic population

- Program closures
- Disparity in the quality of services

Resolution of the above issues is critical to resolving the fiscal crisis for the developmental services delivery system.

The following are proposals from the Governor and the Legislative Analyst that impact the regional center system:

In December, 2002, the Governor released his mid-year budget spending reduction proposals totaling \$10 billion over an 18 month period. Below are proposals that will affect persons with developmental disabilities:

- A \$100 million reduction to regional center purchase of service budget in the 2003-2004 fiscal year. These savings will be accomplished through proposed legislation requiring implementation of statewide purchase of service standards designed to give the Department of Developmental Services emergency regulatory authority to ensure regional centers spend within the dollars appropriated to them. The department will have the authority to develop regulations that will limit the time, frequency and duration of services.
- A \$142.7 million reversion to the general fund of federal financial participation
- A 10% reduction to selected Medi-Cal provider rates mainly affecting nursing homes and physicians
- Elimination of certain optional benefits to adult beneficiaries of the Medi-Cal program including dental care
- A 6.5% assessment levied on intermediate care facilities serving persons with developmental disabilities. This proposal will result in general fund savings in the budget year of \$10 million.
- Legislation to transfer the habilitation program from the Department of Rehabilitation to regional centers absent the administrative dollars to operate the program.
- A 5% rate reduction for work activity and supported employment programs for an estimated savings of \$1.4 million
- Legislation relating to work activity programs to suspend the statutory rate adjustment for three years

In addition, the Legislative Analyst in the document entitled “*Analysis of Mid-Year Budget Proposal*” suggests the following:

- Increase the Medicaid Waiver enrollment cap for regional center consumers
- Draw down federal funding for regional center services provided to ICF/DD residents including such services as day program and related transportation
- Establish a share of cost for regional center services provided to children under 18 years of age

GOVERNOR’S PROPOSED BUDGET FOR THE 2003-2004 FISCAL YEAR

In the January 10 submission to the Legislature for the 2003-2004 fiscal year budget, the Governor also proposed the following relating to the developmental services system:

2002-2003 Fiscal Year Regional Center Budget Deficit

- DDS is projecting a regional center budget deficiency of \$40 million made up of \$30 million in POS, \$6 million in Habilitation, \$1.8 million Operations, and \$2.2 million to roll back the 8/1/00 Medi-Cal increases. More recent data indicates that the \$30 million projected POS deficiency may be low.
- To fund the deficiency, the DDS is proposing to use \$26.3 million in additional reimbursements and \$13.7 million in General Fund.

2003-2004 Increases to the Budget

- A \$185 million increase in POS and \$19.1 million in Operations for updating the population, service utilization, and expenditure data and a \$38 million base increase in POS.
- A \$136 million POS increase for the transfer of the Habilitation Services Program to the Regional Centers. There are no additional funds budgeted in Operations for this purpose.
- A budget change proposal (BCP) for enhancing federal financial participation will increase the Operations budget by \$6.5 million and \$1.6 million in POS for a total of \$8.1 million. DDS estimated that this BCP will generate an additional \$137 million in reimbursements (\$100 million in 2003-2004, \$23 million in 2002-2003, and \$1.4 million retroactive to 2001-2002). These funds will be used to offset general fund expenditures.

A summary of the proposals included in the BCP are as follows:

- Increase in the Waiver cap will add \$1.4 million to the Operations budget.
- Add \$30,000 to Operations for additional eligibility and billing record collection and processing functions (recalculating the Targeted Case Management [TCM] rate).
- One-time funding of \$197,000 for a contract to identify regional center operations expenses that qualify for additional federal reimbursement.
- DDS proposes to increase Operations by \$4.4 million to support the expansion and retention of federal funding. There are two areas in which regional centers would receive additional capability including Contract management/fiscal documentation and Federal Program Compliance.
- \$500,000 for legal support for Waiver activities. DDS would retain specific legal counsel in Washington D.C. to assist and advocate on behalf of the State of California on issues related to the Waiver, TCM, and Nursing Home Reform.
- Rate increases for transportation providers in the amount of \$1.6 million due to increased documentation and billing responsibilities.

2003-2004 Decreases to the Budget

- DDS is proposing to implement statewide purchase of service standards that would decrease the budget by \$100 million general fund. The Standards would be effective July 1, 2003. It is likely that over \$100 million in savings would need to be achieved in order to meet the \$100 million reduction in the general fund. This is due to the amount of federal funds in the regional center budget.
- DDS will apply the federal standard for “substantial disability” to existing Lanterman eligibility criteria. This proposal assumes a \$2.1 million savings due to a slight decline in projected caseload growth. It is proposed that the new definition would apply prospectively.

2003-2004 Changes in Fund Sources

- Regional centers will receive an additional \$65 million in Title XX funds for a total of \$182 million. Title XX monies are 100% federal funds and are used to offset the general fund expenditures.
- Family co-pay assessment program will generate an estimated \$29.5 million in 2003-2004. Co-payments will be charged to families with children between the ages of 3 and 17 living at home and not receiving Medi-Cal. The 10% fee will begin on gross incomes

200% above the federal poverty level for a family of four. Currently, 200% of the federal poverty level is an annual gross income of approximately \$40,000 for a family of four.

Other Items of Significance

- A BCP labeled the “Bay Area Plan” in which DDS proposes to begin the process to close Agnews Developmental Center. DDS will receive funding for 5 positions that will develop a plan by April, 2004 in order to close Agnews by June 30, 2005.
- The operations budget unallocated reduction remains at \$10.5 million (same as 2002-2003).
- The regional center caseload is projected to increase 11,275 or 6.2% over the 2002-2003 fiscal year for a total of 193,505 consumers.
- DDS proposes an increase of \$50 million for capital improvements at Porterville Developmental Center over a multi-year period. These funds will be used to increase the forensic capacity and to provide active treatment in order to qualify for federal reimbursement.
- DDS proposes to continue the self-determination pilot projects. The proposed budget includes \$159,000 for two positions to continue with self-determination and to develop the Independence Plus Waiver. This waiver proposes to cap individual budgets at 90% of current expenditures. Approval of this waiver could result in the expansion of self-determination options.
- A transfer of \$32,000 from the developmental centers to the regional centers for the Foster Grandparent Program.

CURRENT FISCAL YEAR (2002-2003) REGIONAL CENTER PURCHASE OF SERVICE BUDGET DEFICIT

Discussion of the 2003-2004 fiscal year budget must be done in the context of the projected purchase of service deficit in the 2002-2003 fiscal year. Lack of resolution of the current year deficit will exacerbate the budget problems faced in the 2003-2004 fiscal year. Based on data provided to DDS from regional centers, ARCA believes that there is a statewide purchase of service deficit of \$50 - \$100 million in the current fiscal year. **A more definitive projection is difficult due to the following factors:**

- Only five months of actual expenditure data is available

- Late Billings - A uniform methodology is needed to estimate late bills. Late bills represent nearly \$28 million per month and can have a significant impact on monthly and annual projections. While most providers bill for services in a timely manner, there is currently no time limitation on the submission of billings for services provided. This unlimited time period makes it difficult for regional centers to project expenditures. **Legislation requiring timely submission of service provider bills may be helpful.**
- Unknown impact of regional center expenditure plans due to the \$52 million unallocated budget reduction in the current fiscal year. Plan implementation was delayed in most regional centers due to the 2002-2003 fiscal year budget impasse. Pending and possible service provider legal action regarding required day program closure days and discounted rates will have an impact on expenditure plan projected savings.

When and how this problem will be dealt with could have sufficient impact on services prior to the end of the current fiscal year. **Various scenarios are possible, including the following:**

- DDS and the Department of Finance advise the Legislature that regional centers have a statewide purchase of service deficit. The Legislature does not appropriate the additional funds necessary to avert a deficit. Under this scenario, most regional centers would be forced to terminate services prior to the end of the current (2002-2003) fiscal year.
- The administration and the Legislature agree to fund the deficit, but wait until the May Revision to the Governor's budget before they begin on this process. Under this scenario, legislation to deal with the deficit may be part of an omnibus deficiency bill which would include other departments with budget deficit programs. Omnibus deficiency bills typically are passed at the end of the legislative session. In any event, legislation that is not passed prior to June, at the latest, would likely result in the termination of services in many regional centers. This catastrophic event would occur because regional centers will simply run out of money. It is unlikely that regional centers would be able to get loans from their banks due to the possibility that the Legislature may not pass the legislation necessary to appropriate the funds. A budget impasse would further exacerbate the cash flow problem for regional centers similar to what occurred at the beginning of the current fiscal year.
- The more reasonable option is that the administration or ARCA sponsors legislation that tries to resolve this problem prior to April 15, 2003. In order to expedite the process ARCA assumes that such legislation could be introduced in the extraordinary session along with the Governor's mid-year budget reductions proposals.

II. ARCA POSITION REGARDING ENTITLEMENT AND MAXIMIZING FEDERAL FUNDS

It is ARCA's longstanding and unwavering position to ensure full funding of the entitlement feature of the Lanterman Developmental Disabilities Services Act.

It is also ARCA's position that regional centers take all necessary action, with appropriate resources, to maximize federal funds including the Medicaid Waiver program. Further, it is ARCA's position that all increased federal financial participation should remain in the regional center system and related systems (e.g., Habilitation services) and not be used to offset general fund expenditures.

These and other ARCA positions are contained in numerous ARCA documents, including its Strategic Plan approved by ARCA in March, 2002. These documents can be viewed on ARCA's website: www.arcenet.org.

Fiscal Realities vs. System Values

With a projected \$35.8 billion shortfall facing the state of California, it seems clear that regional centers will not receive the funding necessary to meet all consumer service needs and legal mandates. Additionally, regional center Purchase of Services (POS) budgets have increased from just over \$1 billion dollars in the 1998-1999 fiscal year to \$1.77 billion in the current (2002-2003) fiscal year. This represents a 65% increase over a five year period. Sustaining this level of budget growth is unlikely to continue in the next several years.

It is a fundamental responsibility of regional centers to ensure the continuation of necessary services and to protect the health and safety of the people they serve. It is within the context of the need to ensure services and the unprecedented statewide deficit that ARCA reaches the conclusion that it has no other reasonable options but to offer some solutions to the financial plight that faces the regional centers and related systems.

The major goal of these proposals is to preserve and protect the community system for persons with developmental disabilities and their families.

This document provides detailed information regarding statewide purchase of service standards. Additionally, it provides information as to ARCA's position if statewide purchase of service standards are mandated by the Legislature.

The ultimate resolution of the regional center funding crisis and the entitlement feature of the Lanterman Act may be determined by the 1985 ARC vs. DDS California Supreme Court decision. This 1985 decision requires the Department of Developmental Services to notify the Legislature if it projects a statewide purchase of service deficit. It is then up to the Legislature to decide whether or not to appropriate the additional dollars. Failure by the Legislature and the Governor to appropriate sufficient dollars to cover the system deficit would result in at least short term service termination and program closures.

III. ARCA POSITIONS AND RECOMMENDATIONS

ARCA POSITIONS REGARDING THE GOVERNOR'S MID-YEAR BUDGET REDUCTION SPENDING PROPOSALS

A. Statewide Purchase of Service Standards

ARCA is opposed to the implementation of statewide purchase of service standards as presented in the Governor's mid-year budget reduction spending proposal.

Major reasons for this opposition include the following:

- Proposed trailer bill language gives the Department of Developmental Services unlimited authority to develop statewide purchase of service standards and prohibitions.
- Limited time for implementation
- No assurance that the standards will achieve the desired savings

1. Priorities if Statewide Purchase of Service Standards are Mandated

If statewide purchase of service standards are required by law, they should include the following priorities:

- Family support to prevent placements into community residential care or state developmental centers
- Every person should have a safe and dignified place to reside

- Ensure consumers have the opportunity to engage in meaningful daytime activities, including participation in work, sheltered employment, and skills development programs
- Place a legislative time limit on statewide purchase of service standards
- Ensure early start services are consistent with federal mandates.
- An exception policy approved by DDS
- Suspend Section 4646(d) of the Welfare and Institutions Code requiring approval of services at the IPP meeting until resolution of the budget crisis.

2. **Statewide Purchase of Service Standards Implementation Issues**

If statewide purchase of service standards are to be implemented by July 1, 2003, major implementation issues exist including the following:

- Legislation to mandate the standards must be passed no later than January 31, 2003.
- DDS must have the emergency regulations to implement the standards no later than February 28, 2003.

Further, the following measures, which ARCA strongly opposes and finds unacceptable, would be necessary:

- Regional centers would need to have the authority to terminate services not consistent with the statewide purchase of service standards without a formal IPP meeting.
- The fair hearing process would need to be modified or suspended relating to service termination to ensure the required dollar savings.

B. Transfer of the Habilitation and Supported Employment Programs to Regional Centers

ARCA supports the eventual transfer of the Department of Rehabilitation's habilitation and supported employment programs to the Department of Developmental Services and regional centers. However, ARCA is opposed to the Governor's mid-year budget reduction proposal to transfer these programs for the following reasons:

- Regional centers would not receive any resources to manage the program
- At least one year lead time would be necessary to resolve system issues, including:
Payment and billing procedures

Rate setting methodologies and staffing ratios
Regional center approval of individual service plans
Regional center quality assurance responsibilities
Program accreditation issues
Determine the relationship of the Department of Rehabilitation's vocation rehabilitation program to the habilitation program
Methods to maximize federal financial participation including Home and Community-Based Waiver services.

C. Federal Financial Participation

Within available resources, maximize federal financial participation (FFP) within the regional center system. All FFP generated by the system should remain in the system to offset general fund reductions.

D. Other ARCA Positions and Recommendations

The following are ARCA positions on other related issues pertaining to delivery of services to persons with developmental disabilities

- Oppose reduction to Medi-Cal rates
- Oppose elimination of certain Medi-Cal optional benefits including adult dental care
- Oppose any reduction to intermediate care facility rates
- Oppose elimination of SSI/SSP cost of living adjustments

ARCA POSITIONS REGARDING THE GOVERNOR'S PROPOSED 2003-2004 FISCAL YEAR BUDGET (SUBMITTED TO THE LEGISLATURE JANUARY 10, 2003)

- Support \$185 million in POS and \$19.1 million in Operations for updating caseload growth and service utilization.
- Support a \$37.5 million purchase of service base adjustment based on expenditure data through March, 2002 and updated utilization projections.
- Support budget change proposals that would increase federal financial participation by \$137 million over a multi-year period. This revenue should be used to offset the \$100 million general fund reduction in the purchase of service budget as contained in the Governor's mid-year budget reduction proposal.

- Withhold recommendation regarding application of the federal standards for substantial disability relating to regional center eligibility termination until further review of this proposal is completed.
- Support the proposed increase of \$65 million in Title XX funds for the regional center budget.
- Oppose the administration's proposal to implement a family co-pay assessment program for families with children between the ages of 3 and 17 living at home and not receiving Medi-Cal. Families would be responsible for a 10% fee starting with gross incomes of 200% above the federal poverty level for a family of four (\$40,000 per year gross income). ARCA believes this proposal would dramatically reduce services to these children because families would not be able to afford the co-pay.
- Support the department's "Bay Area Plan" to close Agnews Developmental Center by June 30, 2005.
- Support the department's budget change proposal to continue the current regional center self-determination pilot projects and provide two positions to DDS to develop an Independence Plus waiver. Approval of this waiver could result in the expansion of self-determination options.
- Withhold comment on the proposed transfer of \$32,000 from developmental centers to regional centers for the Foster Grandparent Program until additional information is received.

IV. ARCA 2003-2004 LEGISLATIVE PLATFORM AND BUDGET ISSUES

Attached to this document is the ARCA Legislative Platform and Budget Issues. ARCA develops its legislative and budget platform on an annual basis. The attached document should be viewed as integral to this document.

Approved by the ARCA Board of Directors 1/25/03