

**BUDGET POSITION STATEMENT**  
**FISCAL YEARS 2008-09 AND 2009-10**



**ASSOCIATION OF REGIONAL CENTER AGENCIES**

**February 2009**

## BUDGET POSITION STATEMENT FISCAL YEARS 2008-09 AND 2009-10

### A. BACKGROUND

The Lanterman Developmental Disabilities Services Act (Lanterman Act) established a progressive and cost effective community-based system of services and supports as an alternative to very costly state-owned and operated institutions. This system has succeeded admirably despite the many challenges to date.

The purpose of this document is to set forth the position of the Association of Regional Center Agencies (ARCA) on the state's budget that supports the community-based service system for people with developmental disabilities living in the community. With a current-year budget of about \$3.9 billion and serving nearly 240,000 Californians with a developmental disability, regional centers are uniquely positioned to understand the implications of state budgetary actions and their effect on people with developmental disabilities. Recent action on the budgets for fiscal years (FY) 2008-09 and 2009-10 include significant reductions in both regional center Operations (OPS) and Purchase of Service (POS), as follows:

Budget Reduction Action	FY 2008-09 Reduction (millions)	General Fund (millions)	FY 2009-10 Reduction (millions)	General Fund (millions)
Reduce provider payments by 3 percent	\$40.4	24.1	\$100.8	60.2
Reduce regional center OPS by 3 percent	6.6	4.6	17.4	12.2
Additional regional center reductions	-0-	-0-	150.5 <sup>1</sup>	100.0
TOTAL	\$47.0	28.7	268.7	172.4

The reductions shown above represent an enormous challenge to the system. Because of past years' actions, including years of rate freezes, the system now has little capacity to absorb such reductions without significantly impacting most consumers, their families, and the providers who rely on regional-center-funded services.

The Trailer Bill Language accompanying these budget reductions directs the Department of Developmental Services (DDS) to work with stakeholders to develop proposals by April 1, 2009, to achieve the targeted savings while maintaining the

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<sup>1</sup> This figure is not specified in the budget but is an estimate of the amount that will have to be reduced to achieve the budgeted \$100 million General Fund reduction since General Fund dollars usually have matching federal funding.

entitlement and ensuring program and service integrity. DDS is conducting three stakeholder forums and one telephonic town-hall meeting to receive input. DDS is also convening workgroup meetings of representatives from statewide stakeholder groups, including ARCA, to discuss the merits and issues of specific proposals to achieve the required savings. All this input will lead to a plan that the DDS must provide to the Legislature by April 1, 2009. If the DDS plan does not achieve the required savings then regional center provider rates will be reduced an additional 7.1 percent for all services rendered on or after September 1, 2009.

ARCA offers this document in the hope that it will help inform the public policy debate and lead to the development of a budget reduction plan to the Legislature that reflects wise and progressive public policy and that achieves the required savings.

## **B. BUDGET POLICY POSITIONS**

The following are ARCA's positions on key issues that may be topics of discussion in the budget policy deliberations. This position statement does not address all the potential topics that may be involved in the deliberations, but it does set forth ARCA's position on what it perceives as those topics about which its members have particular concern.

1. The Entitlement to Services: ARCA stands unalterably opposed to any action that would eliminate the entitlement to services, as articulated by the California Supreme Court in its 1985 decision, *Association for Retarded Citizens v. California Department of Developmental Services et al.* ARCA can envision no public policy imperative to justify tampering with this legal bedrock of the developmental services system.
2. Eligibility for Regional Center Services: ARCA opposes further efforts to narrow the definition of 'developmental disability' to reduce the number of people eligible for regional center services. Any further restrictions are not likely to be cost-beneficial as those individuals who do not receive regional center services may have less long-term favorable developmental/health outcomes and be more dependent on publicly-funded services in the future.
3. Provider Rates: With some limited exceptions, most service provider rates have been frozen since FY 2003-04. Moreover, the limited cost-of-living and other rate adjustments granted by the Legislature for residential and day programs in the past two decades have been far outstripped by inflation. Therefore, ARCA opposes any efforts to reduce service provider rates.

4. Regional Center Operations Budget: Eighty-one (81) percent of the regional centers' operations (OPS) budget funds a unique set of direct services including service coordination, assessment/diagnosis, individual program planning, money/benefits management, clinical services, 24-hour emergency response, intake, assessment, family support, quality assurance, advocacy, training, special-incident reporting/investigation, etc. Therefore, reductions in the regional centers' OPS budget impact the provision of these direct services to consumers and their families. For a variety of reasons, the OPS budget is conservatively estimated to be underfunded by at least \$140 million, or about 30 percent.<sup>2</sup> ARCA opposes OPS reductions that will compromise the safety net for consumers and expose the state to the loss of significant federal funding due to noncompliance with federal requirements.
5. Rate Freezes and Caps: Enacted in FY 2002-03, the first program freeze restricted regional centers from using POS funds to start new programs. In FY 2003-04, "temporary" rate freezes were implemented to include most provider types. Subsequent actions have expanded these freezes to all major provider types, including negotiated rate programs. These freezes and new rate-setting caps, on top of depressed rates are adversely impacting consumers and their families as services and supports cease to exist or can no longer meet individuals' needs. ARCA supports the removal of these deleterious rate restrictions as soon as possible.
6. Parental Responsibility: The Lanterman Act and ARCA recognize the indispensable role and responsibility of families in caring for their minor children. The law, however, was not clear about the specific the type of care or services for which a family, versus the regional center, is responsible. ARCA supported recent amendments to the law that clarified this point.
7. Unallocated Reductions: On many occasions, the state has resorted to "unallocated reductions" to reduce the regional center budget. This budget reduction approach (1) unfairly places the burden of public policy making on regional center citizen boards, (2) leads to conflict among local stakeholders, (3) creates service inequities between communities, and (4) generates increased fair hearings, litigation and other negative consequences. For these reasons, ARCA strongly opposes the use of unallocated reductions as a budget reduction tool.

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<sup>2</sup> Department of Developmental Services, Administration Division, Estimates Section, "Core Staffing Cost of Doing Business," December 10, 2007.

## **C. ARCA RECOMMENDATIONS**

This section of the report includes three parts: (1) ARCA's position on cost-savings proposals contained in the DDS report entitled "Controlling Regional Center Costs," (2) additional cost savings proposals developed by ARCA, and (3) options for increasing federal revenue.

### **PART I: DDS's Report on "Controlling Regional Center Costs"**<sup>3</sup>

The DDS report includes a series of options for "*controlling or containing regional centers' growth in expenditures.*" The input sought by the DDS indicated that the cost containment options contained in the December 2007 should be reviewed. The reader should review the specific options in the report for an understanding of each of these options. Savings options contained in the report, but not addressed in this position statement, may be assumed to be (1) inconsistent with the values of ARCA, (2) wholly unworkable, (3) not cost beneficial in the short or long term, (4) draconian, (5) already implemented, (6) those on which ARCA could not obtain a consensus about including, and/or (7) lacking in detail but with a general direction such that taking a position would be imprudent without additional information.

Each of the following heading titles corresponds to the option titles used in the DDS' report.

1. Rate/Service Code Standardization Project: There are few guidelines or negotiating parameters for many provider types where the rates are set through negotiation with regional centers, and many service codes are not well defined. This option proposes to establish rate-negotiating parameters and to clarify many service code definitions. This project has been in process for several years but no proposed regulations have yet been issued. ARCA agrees that many regulations governing the services and supports purchased by regional centers should be more clearly defined and reorganized, and having negotiation parameters would be helpful. Having standardized negotiating parameters will also help ensure consistency for providers who work with multiple regional centers. Provision should also be made for regional cost differentials in the rate-setting parameters and/or processes that are developed. Though ARCA cannot take a definitive position on this option until draft

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<sup>3</sup> "Controlling Regional Center Costs: Report to the Legislature, Submitted to fulfill the requirements of Section 102.5, Chapter 188, Statutes of 2007," State Department of Developmental Services, December 2007.

regulations are issued and analyzed, the Association offers its experience and expertise to assist the DDS in crafting such policies and regulations. ARCA's upfront involvement will help ensure that the regulations achieve their intended outcomes. The Legislative Analyst's Office FY 2009-10 Budget Analysis Series recently addressed this issue.<sup>4</sup>

2. Self-Directed Services Waiver: ARCA communicated its most recent position on Self-Directed Services (SDS) to the DDS in early February of 2008. In that communication, ARCA noted that a lack of funding jeopardizes the successful implementation of the SDS program as it is currently designed. While acknowledging ARCA's strong support for programs that promote maximum independence for consumers, of which self-directed services is central, ARCA expressed specific concerns, including:

- Inadequate Funding for Service Coordination – As proposed, regional centers will receive funding for one service coordinator for every 62 SDS consumers. Other states with SDS programs have caseload ratios of 16-23 per service coordinator, depending on the level of involvement by the consumer's family.
- Inadequate Funding for the Federal Compliance Coordinator – The current SDS design funds one regional center Federal Compliance Coordinator for every 1,000 SDS consumer participants. The complexity of this program is such that ARCA believes that the allocation for the Federal Compliance Coordinator should be at least one per 500 SDS consumer participants.
- No Funding for Administrative Workload – There is no funding included in the SDS program for performing administrative activities associated with billing and other technical support activities required to manage this complex program.

SDS is a very administratively and programmatically complex service provision modality. Absent relief for additional staffing resources, ARCA recommends that participant levels in the SDS program remain consistent with the California Independence Plus Waiver application. Adopting this approach will ensure all participants will qualify for federal financial participation, thus increasing General Fund savings, and providing for a more manageable program until regional centers are provided the needed staffing resources. ARCA also recommends that the phase-in schedule provide for a six-month "pause" after the first five regional centers are phased in. During this "pause," the DDS, participating regional centers, and ARCA would evaluate workload and implementation issues, assess whether the cost savings assumption for the program is valid, and continue phasing in the remaining

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<sup>4</sup> [http://www.lao.ca.gov/analysis\\_2009/health/health\\_anl09.pdf](http://www.lao.ca.gov/analysis_2009/health/health_anl09.pdf), February 23, 2009.

regional centers, as appropriate. Moreover, this new service model's importance is such that ARCA recommends an independent evaluation be conducted 24 months after the last regional center has been phased in. Streamlining this complex program and resolving some of the expected implementation issues will likely require amending the enabling legislation.

3. Supported Living Services Regulations: Supported Living Services (SLS) has been an area of very high growth for most regional centers. Nearly four years ago, the DDS reviewed and analyzed the SLS program and subsequently crafted proposed regulatory changes. This draft package of regulations was reviewed publicly in several meetings but has not yet been scheduled for formal public hearings. ARCA found some of the proposed regulatory revisions favorable, such as employing a cap on individual costs as currently exists for other out-of-home living arrangements (Wel. & Insti. Code section 4682). ARCA recommends that this package of regulations be promulgated as soon as possible.
4. Autism Spectrum Disorders Best Practice Guidelines: The tremendous increase in the number and costs of serving children diagnosed with autistic disorders is a major cost driver for most regional centers. Essential for providing the most cost-effective and appropriate services to these children is the development of sound evidence-based best-practice guidelines. ARCA supports the DDS efforts to publish such a document provided it is made clear that a diagnosis of "autism spectrum disorder" alone does not confer eligibility for regional center services.
5. Consolidate Quality Assurance Evaluation Processes: ARCA believes that consolidating quality assurance processes has merit and could result in general fund savings and better outcomes. DDS, ARCA, and system stakeholders should discuss the implementation of the National Core Indicators (NCI), or other nationally recognized quality assurance processes as an alternative to the existing process.
6. Establish a Definition for "Cost-effective": Without a functional definition for "cost-effective," regional centers cannot effectively or consistently implement the cost effectiveness requirements of the Lanterman Act which were included with the passage of Senate Bill 1383 during the 1992 legislative session. The Legislature should define the term in statute or require the DDS to do so in regulations. The Legislative Analyst's Office FY 2009-10 Budget Analysis Series recently addressed this issue.<sup>5</sup>

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<sup>5</sup> [http://www.lao.ca.gov/analysis\\_2009/health/health\\_anl09.pdf](http://www.lao.ca.gov/analysis_2009/health/health_anl09.pdf), February 23, 2009.

7. Reconfigure and/or Downsize Large Residential Facilities: With the appropriate resources, this is an option that should improve the living situations of many consumers while saving state General Fund dollars. Expected outcomes can only be achieved, however, if the state adequately supports the effort.
8. Change Transportation Services: Numerous sub-options are contained in this proposal, and several appear to have merit for diversifying transportation services, increasing consumers' mobility, reducing ride times, and reducing costs. In past years, some regional centers achieved considerable savings by implementing some of these approaches and using alternative transportation service models. Given the wide geographic differences, generic services availability, and service diversity among regional centers, the specific proposal(s) implemented must be adapted to the varying circumstances of each regional center.
9. Update the Parental Fee Schedule: Existing law (Wel. & Insti. Code section 4784(a) already requires the DDS to “. . . *annually review, and adjust as needed, a schedule of parental fees . . .*” This is a common-sense requirement which could be implemented relatively quickly by updating the fee schedule in regulations. Without regular updating, the state may be creating a financial incentive or pressure for placing minor children out of their families' homes at greater state expense.
10. Increase Employment Opportunities for Consumers: The long-term fiscal and human benefits of increasing consumers' employment warrant the state making this among its highest priorities. Though this option lacks specificity, proposals advancing consumers' employment will receive ARCA's strong support provided sufficient resources are provided for implementation. The leadership of the Governor and the First Lady in initiating the “Employment Initiative for Californians with Developmental Disabilities” demonstrates a very significant commitment toward increasing employment opportunities for people with developmental disabilities.
11. Expand Availability of Affordable and Accessible Housing, and Leverage Developmental Center Land to Expand Housing for Consumers Living in the Community: These two options have long-term benefits for both consumers and the state General Fund. Therefore, creative proposals advancing consumers' housing options have ARCA's strong support provided sufficient resources are provided for implementation. Enactment of ARCA-sponsored **Senate Bill 1175 (Steinberg)** effective January 1, 2009, represents a significant step in promoting the creation statewide of housing that would be purchased only once and held in perpetuity for the exclusive use of persons with developmental disabilities.

12. Expand Access to Preventative Medical and Dental Services: The cost-benefits of providing appropriate preventative medical and dental care are well established, as footnoted in the DDS's report. Policymakers are encouraged to consider this option, which promises to enhance the health and well being of people with developmental disabilities while avoiding long-term General Fund costs.
  
13. Maximize Generic Services: This option is a priority, as reflected in legislation sponsored by ARCA last year (**Assembly Bill 1825, Beall**) that would have established an interagency dispute resolution process for children birth to age six. Existing law rightly requires regional centers to pursue funding through generic agencies (Social Services, Education, etc.) before expending state dollars. ARCA's proposed legislation would have advanced this option by providing a missing mechanism to effectuate the requirements of existing law, while generating General Fund savings. ARCA is sponsoring similar legislation this legislative session (Assembly Bill 140 - Beall).

## **PART II: Additional Cost Saving Ideas**

The following are additional ideas offered by ARCA that could generate additional General Fund savings:

1. Comprehensive Review of OPS Budget, Including Projects – Conduct a comprehensive review of all regional center mandates that drive the Operations budget, including the \$27 million earmarked for projects that are funded through the Local Assistance budget.<sup>6</sup> Most of the funding for projects is not allocated to regional centers. There are numerous state and federal requirements, including many contained in the Waiver, that impact the Operations budget. Given the state's very challenging budget climate, it would be appropriate to review the extent to which these many requirements are still necessary and whether some can be eliminated, consolidated, and/or modified in a way to achieve cost savings.
  
2. Family Cost Participation Program – Add additional services that would be subject to the Family Cost Participation Program.
  
3. Early Start Program – Restructure the Early Start Program, including evaluating the existing eligibility criteria for services. ARCA's November 3, 2008, letter to the DDS articulates some of the issues regional centers are experiencing with this program.

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<sup>6</sup> For a list of these projects, see pages E-3.3 through E – 3.6 in the DDS's November Estimate for Local Assistance for Regional Centers, 2009-10 Governor's Budget, dated January 10, 2009.

4. Individual Budget Model – Develop and implement an individual budget model that is separate from the proposed Self-Directed Service Waiver. Under this simplified program, a far greater number of consumers and their families could self-direct their services within an individual capped budget.
5. Adult Family Home Agency Program – Aggressively promote the Adult Family Home Agency program model as a less costly and less restrictive alternative to licensed living arrangements.
6. Flexibility in Contracting and Service Provision – Promote the use of creative contracting mechanisms, new service delivery models and administrative cost efficiencies as permitted under existing law.<sup>7</sup>
7. Vendor Audits – Reestablish the regional centers' authority and funding to perform vendor audits.
8. Transportation – Review and consider reducing the rates for transportation providers who received health and safety exemption increases within the past 30 months due solely to increased fuel costs.
9. Vendorization – Subject to federal approval or by using an approach that does not violate “freedom of choice” requirements, allow regional centers to vendor based on the need for the particular service type.
10. New Program Options – Identify and promote the use of more cost-effective approaches for serving older individuals for whom traditional day and employment programs may no longer be the most appropriate service option.
11. Group Modality – Give preference to purchasing a service or support using a group modality, in lieu of a more costly individual approach, if the consumer/family's needs could otherwise be met as well by using the group modality.
12. Statutory Clarification – Amend the law to clarify regional centers' role in purchasing services versus that of local education agencies (LEA), emphasizing that the regional centers' overall purchase of service obligation for school-age children is not greater than the LEAs obligation for jointly served children.

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<sup>7</sup> Welfare and Institutions Code sections 4669.2 - 4669.75.

13. Purchase of Health-Related Services – DDS should work with the state Department of Managed Health Care to ensure health plans assume responsibility for and are paying for all covered services for which regional center consumers are eligible. This is especially important for children with autism who require treatment services.
14. Service Coordination – Explore alternative regional-center-provided approaches for service coordination without compromising federal reimbursement under the TCM or Waiver programs.
15. Neighborhood Preschools – Expand the availability and use of neighborhood preschools. These programs provide services in a natural environment and have “usual and customary” rates set by the Department of Education which are less costly than segregated specialized services
16. Fair Hearings – Give the DDS authority to review, modify, and rescind administrative law judge fair hearing decisions.

### **PART III: Revenue Enhancement Recommendations**

Ideally, much of the required budget savings could be achieved by increasing federal financial participation (FFP). The DDS has been highly successful in increasing such revenues since 2001-02, but ARCA believes that the state’s dire economic circumstances call for a renewed effort to ensure the state is maximizing all federal funding sources. Key to past successes in increasing federal revenue has been the Legislature’s recognition of additional staffing resources for the DDS and regional centers to manage and implement the effort. Absent such resources, no significant increases in federal funding should be expected. The following are ideas ARCA believes would increase FFP for the developmental services system while commensurately reducing the need for state General Fund dollars:

1. Increase Waiver Enrollment - Ensure all consumers who meet the current eligibility requirements are enrolled on the Home and Community-based Services Waiver (Waiver).<sup>8</sup>

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<sup>8</sup> The Waiver is a way to fund certain services to support persons with developmental disabilities to live at home or in the community rather than having to live in a licensed health facility. Costs for these services are funded jointly by the federal government’s Medicaid program and the State of California. Certain federal Medicaid rules are “waived”, allowing the state to provide services to people with developmental disabilities in ways that are not available to other people who are enrolled in Medi-Cal.

2. Waiver Eligibility – To increase the number of individuals eligible for enrollment on the Waiver, expand the existing level-of-care Waiver-eligibility criteria to include all consumers who meet the state’s definition “developmental disability,” as well as children birth to age three who could meet the existing or a modified definition.
3. Administrative Costs – Ensure maximum billing for all Waiver and Targeted Case Management (TCM)<sup>9</sup> costs related to the administration of these two federal programs.
4. Waiver-Billable Service Codes – Review and ensure regional centers are using, as appropriate, Waiver-billable services codes. In some instances, a regional center may be using a service code that is not billable to the Waiver when another similar and equally appropriate service code exists which would allow such billing.
5. Review of Federally Billable Services – Engage a consultant specializing in federal revenue maximization to review and ensure that all state expenditures for developmental services that are potentially billable to the federal government are being billed.
6. Expeditious Waiver Enrollment – Establish management and funding guidelines that will ensure enrollment of Waiver-eligible consumers as quickly as possible to maximize federal reimbursements.
7. “Optional Benefit(s)” Reductions – Ensure that any Medi-Cal optional benefits that may be eliminated from the Medi-Cal State Plan are added to the Waiver as covered services to ensure continued receipt of FFP.
8. Institutional Deeming – Prohibit regional centers from expending POS funds on children who otherwise could obtain such services through Medi-Cal, if “institutionally deemed.”<sup>10</sup> This action would also increase federal funding under the TCM program and under the Waiver as these children become enrolled. Realizing

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<sup>9</sup> TCM consists of case management services provided by regional centers which assist Medi-Cal eligible regional center consumers to gain access to needed medical, social, educational and other services. The federal government shares in the cost of these services through the Medicaid (Medi-Cal) program.

<sup>10</sup> “Institutional Deeming” (ID) is a process to obtain full scope unrestricted Medi-Cal without a share of cost for consumers under age 18. Through ID, the child’s family income and resources are not taken into consideration; the child is assessed on his/her own merit. When approved for Medi-Cal via Institutional Deeming, children will have access to all Medi-Cal services including medical, dental and Early and Periodic Screening Diagnosis and Treatment (EPSDT) supplemental services, enrollment on the Waiver, and the state may also begin billing for case management services under the TCM program.

the benefits of this option will require making the application and renewal processes more user-friendly for both families and regional centers, or providing additional regional center resources to assist families.

9. Downsize or Reconfigure Large Community Care Facilities – See item #7 under the section, “ARCA Recommendations for Options Included in the Report on “Controlling Regional Center Costs.”
10. Ticket-To-Work – Expand consumers’ access to the “Ticket-To-Work” program.<sup>11</sup>

#### **D. CONCLUSION**

Through this document, ARCA has attempted to provide information to assist policy makers in their efforts to make informed decisions about the state’s options for achieving the savings required in the recently enacted budget. **As with any association consisting of many diverse members, however, ARCA’s position does not necessarily reflect the position of every regional center on each of the topics addressed.** Some regional centers may prepare their own position documents, which include additional recommendations that have merit.

Decision makers should be particularly cautious about taking actions that directly impact the ability of the developmental services system to meet federal funding requirements under the Waiver. The state is already exposed to the potential loss of federal funding due to a combination of rate freezes on underfunded providers and continued underfunding of the regional centers’ OPS budget. As an example of what can occur, the DDS noted that federal sanctions resulted in the loss of \$933 million in federal funds after an adverse federal Waiver review in 1997.<sup>12</sup> More important, however, is to ensure that no recommended budget reduction proposal jeopardizes the health, safety, or well-being of any regional center consumer.

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<sup>11</sup> The “Ticket-to-Work” and Self-Sufficiency Program is an employment program for people with disabilities who are interested in working. The Ticket Program is part of the Ticket-to-Work and Work Incentives Improvement Act of 1999 – legislation designed to remove many of the barriers that previously influenced people’s decisions about going to work because of the concerns over losing health care coverage. The goal of the Ticket Program is to increase opportunities and choices for Social Security disability beneficiaries to obtain employment, vocational rehabilitation (VR), and other support services from public and private providers, employers, and other organizations.

<sup>12</sup> “Controlling Regional Center Costs: Report to the Legislature, Submitted to fulfill the requirement of Section 102.5, Chapter 188, Statutes of 2007”, p. 29.