

Report to the Legislature

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Rate-Setting Alternatives  
for  
Community-Based Day and Residential Services

Community Services Division  
Department of Developmental Services

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## Contents

<b>I.</b>	<b>Executive Summary</b> .....	1
	a. <i>Purpose</i> .....	1
	b. <i>Residential Services Background</i> .....	1
	c. <i>Day Program Services Background</i> .....	1
	d. <i>Rate-Setting Option Alternatives</i> .....	2
	e. <i>Stakeholder Perspectives</i> .....	2
	f. <i>Department Recommendations</i> .....	2
<b>II.</b>	<b>Introduction</b> .....	3
<b>III.</b>	<b>Overview: Community-Based Residential and Day Program Services</b> .....	4
	a. <i>Residential Service Definitions</i> .....	4
	b. <i>Residential Service Rate-Setting History</i> .....	4
	c. <i>Day Program Definitions</i> .....	6
	d. <i>Day Program Rate-Setting History</i> .....	7
<b>IV.</b>	<b>Rate-Setting Alternatives</b> .....	9
	a. <i>Currently Available California Options</i> .....	9
	1. <i>Service Contracts</i> .....	9
	2. <i>Vouchers</i> .....	9
	3. <i>AB 637 Proposal Process</i> .....	10
	b. <i>Alternatives in Other States</i> .....	12
	1. <i>Adjusted Historical Costs</i> .....	12
	2. <i>Flat Rates</i> .....	12
	c. <i>Decentralization of Rate-Setting Authority</i> .....	12
<b>V.</b>	<b>Stakeholder Perspectives</b> .....	15
	a. <i>DDS should maintain central responsibility for rate setting.</i> .....	15
	b. <i>Underfunding is the major cause of current rate-setting system problems.</i> .....	15
	c. <i>Test the existing rate-setting systems before deciding to discard them.</i> .....	16
	d. <i>The current rate-setting systems are fundamentally sound.</i> .....	16
	e. <i>Reconcile the incongruity between program expectations and underfunded rates.</i> ..	17
<b>VI.</b>	<b>Department Recommendations</b> .....	18
	a. <i>Regarding granting greater authority to regional centers in contracting for         community-based day and residential services:</i> .....	18
	b. <i>Regarding modifying the existing rate-setting system for community-based day and         residential services:</i> .....	18

**VII. Appendices** ..... 20  
1: Invitations to Meeting on Rate-Setting Alternatives, November 22, 1996 ..... 21  
2: Agenda for Meeting, November 22, 1996 ..... 22  
3: Meeting Participants, November 22, 1996 ..... 23  
4: Report to Legislature on Day Programs and In-Home Respite Services, Spring 1996 24

## **I. Executive Summary**

### *a. Purpose*

Supplemental Report Language for Item 4300-001-0001 of the 1996 Budget Act requires the Department of Developmental Services to report to the Legislature on the "feasibility and desirability" of modifying the existing system for setting rates for community-based residential and day program services. This report contains findings and recommendations that are based on analysis of the existing rate-setting methodologies, a survey of the alternatives in California and elsewhere, and on the input from stakeholders, as gathered in a meeting held by the Department on November 22, 1996.

### *b. Residential Services Background*

For the purposes of this report, residential services are defined as those regional center-funded residential services provided to individuals with developmental disabilities in Department of Social Services' licensed community care facilities (CCF) or through family home agencies (FHA) in family homes. CCFs include Adult Residential Facilities, Group Homes, Small Family Homes, Residential Care Facility for the Elderly, Foster Family Homes, and Foster Family Agencies. FHAs are non-licensed agencies whose oversight is the responsibility of the Department of Developmental Services.

The ARM (Alternative Residential Model) rate system, fully implemented in 1991, uses a facility-based rate-setting system, with varying levels of care extending from Level 1 to Level 4I. These levels are assigned rates related to the level of care provided in the facility and are updated based upon funds appropriated for that purpose.

### *c. Day Program Services Background*

Day Programs include Activity Centers, Adult Development Centers, Behavior Management Programs, Independent Living Programs, Social Recreation Programs, and Infant Development Programs. Rate-setting regulations were adopted pursuant to a lawsuit brought against the Department by the California Association of Rehabilitation Facilities (CALARF) and others. Rate-setting is based on the submission of cost statements by vendors which utilize actual historical costs for similar programs statewide, to determine a range of rates that allow for local variances and program flexibility. Updating of individual rates is subject to funds appropriated for that purpose.

*d. Rate-Setting Option Alternatives*

Several alternatives to conventional rate-setting practices are presently available. Variations in rate setting are permitted for day programs through use of negotiated service contracts. Additionally, the AB 637 proposal process opens possibilities for other alternatives, including vouchers issued to consumers or family members for the purchase of services.

Other variations and alternatives to conventional rate-setting methodologies have been experimented with in other states, including Adjusted Historical Costs and Flat Rates.

*e. Stakeholder Perspectives*

Representatives of the service provider community, particularly, reached a general consensus in support of (1) retaining the current rate-setting systems, because their problems stem from chronic underfunding rather than systemic inadequacy; and (2) maintaining authority for rate-setting at the state level rather than decentralizing it locally through regional centers.

*f. Department Recommendations*

a. Maintain at this time the present level of authority regional centers have in contracting.

b. Reserve judgment at this time regarding modification to the existing rate-setting system for community-based day and residential services, pending consultation with the Department's constituent community regarding revisions to the CLAS regulations package, and pending the Department's assessment of AB 637 proposal innovations.

## II. Introduction

This report constitutes the response of the Department of Developmental Services to Supplemental Report Language requirements for Item 4300-001-0001 of the 1996 Budget Act. Specifically, the requirements are that:

*The Department of Developmental Services shall report to the Legislature by March 1, 1997 on the feasibility and desirability of adopting modifications to the existing rate system for community-based services, including the potential for greater authority for Regional Centers in contracting for community-based day and residential services. The department may, in developing its recommendations, consult with residential services provider organizations, advocacy groups, and the Association of Regional Center Agencies, or other individuals and/or organizations as the department sees fit.*

The findings and recommendations presented in the report are based on analysis of the existing conventional rate-setting methodologies established in California for both residential and day program services, as well as on a survey of the alternatives being practiced or advocated both in California and in other states. Further, on November 22, 1996, the Department convened a meeting of organizations and individuals with a significant stake in the rate-setting methodologies for these community-based services (see Appendix 1 for a list of organizations and individuals invited to this meeting; Appendix 2 for the meeting agenda; Appendix 3 for a list of meeting participants). The viewpoints of the meeting participants, who represented residential and day program service providers, the regional centers, consumer advocacy groups, and others, have been summarized and reviewed by the Department. The findings and recommendations in this report consider this input as well.

### **III. Overview: Community-Based Residential and Day Program Services**

#### *a. Residential Service Definitions*

For the purposes of this report, residential services are defined as those regional center-funded residential services provided to individuals with developmental disabilities in Department of Social Services' licensed community care facilities (CCF) or through family home agencies (FHA) in family homes. Pursuant to the Health and Safety Code, therefore, CCF facilities include the following licensed facilities:

- Adult Residential Facilities
- Group Homes
- Small Family Homes
- Residential Care Facilities for the Elderly
- Foster Family Homes
- Foster Family Agencies.

FHAs are non-licensed agencies whose oversight is the responsibility of the Department of Developmental Services. They are private, not-for-profit agencies that are vendored and certified by the regional center to do all of the following:

- Recruit, approve, train, and monitor family home providers.
- Provide services and supports to family home providers.
- Assist consumers moving to or relocating from a family home.

The term "family home" is defined in Title 17, Section 56076(e)(5) of the California Code of Regulations as "a home that has been approved by an FHA and is owned, leased, or rented by, and is the family residence of, the family home provider and in which services and supports are provided to a maximum of two consumers regardless of their degree of disability, except for those consumers who require continuous skilled nursing care ...."

#### *b. Residential Service Rate-Setting History*

Prior to the implementation of the current rate system, a prescriptive rate system was in effect for residential services. The rates under the prescriptive system were based on the service needs of consumers as identified on an instrument known as the Client Development Evaluation Report (CDER). Rates were set in accordance with minimum, moderate, or intensive levels of supervision. The Department also had "specialized services" and later "negotiated" rates to support added program services for behaviorally challenged consumers.

The Alternative Residential Model (ARM) rate system, fully implemented in 1991, is a facility-based system. The rates are based on elements specified in Welfare and Institutions Code (WIC) §4501.1. The resulting rates were assigned service levels which were used to differentiate among the levels of services provided. Service levels range from Level 1, which is basic, to Level 4I, which provides the most intensive level of services.

The Department is engaged in adopting new regulations for Community Living Management Services (CLMS). The CLMS regulations were proposed to implement 1993 revisions to the Lanterman Act, and the Cottel Settlement Agreement, both of which stress person-centered planning and assurance that the services provided meet the consumer's satisfaction and needs. The Department's intent is to bring the consumer into the decision-making process for residential services and provide the regional centers the tools to develop residential services that meet the needs of consumers.

However, the time of opinion voiced during the formal public review of the CLMS regulations package has persuaded the Department that more work is needed to achieve substantial consensus on the issues the package addresses. Such consensus will be essential to assure continued high quality services and supports to consumers, and to realize the Department's vision of working in partnership with its various constituencies. To achieve this goal, the Department is now planning meetings for discussing and seeking agreement on the final scope of the CLMS regulations.

The FRIA was established to provide a fair rate for the services to which individuals with developmental disabilities. The rates paid to an FRIA provider are negotiated between the regional center and the provider and contained in a contract entered into pursuant to Title 17, §35082.

Rate Setting Method and Program Type	
Rate Setting Method	Program Type
Contract	Family Home Agency (FHA)
Facility-based Rate	Alternative Residential Model (ARM) providers
Prevailing Rate	Providers serving individuals with developmental disabilities in a facility which primarily serves another population. The rate used is established by another governmental agency.

*c. Day Program Definitions*

Five varieties of adult day programs are defined in the Title 17 regulations, Section 54302. A sixth day program, serving infants and their families, is defined in WIC §4693.

- **Activity Center**  
Serves adults who generally have acquired most basic self-care skills, some ability to interact with others, who are able to make their needs known, and respond to instructions. Consumers work on self-advocacy skills, community integration and employment.
- **Adult Development Center**  
Serves adults in the process of acquiring self-help skills, and who generally need sustained support in interacting with others, in making their needs known, and responding to instructions. Consumers work on self-advocacy skills, community integration, employment, and self-care needs.
- **Behavior Management Program**  
Serves adults with severe behavior disorders, or with a dual diagnosis of developmental disability and mental illness, who do not meet entrance criteria for any of the other day programs.
- **Independent Living Program**  
Provides training for a self-sustaining, independent life for the consumer in the community. Alternatively, it provides support to a consumer to maintain skills. It focuses on consumers who generally have “acquired basic self-help skills and who, because of their physical disabilities, do not possess basic self-help skills, but who employ and supervise aides to assist them in meeting their personal needs.”
- **Social Recreation Program**  
Provides community integration and self-advocacy training as they relate to recreation and leisure pursuits.
- **Infant Development Program**  
Provides infants and their families an organized program of activity, designed to “encourage the development and adjustment of the infants in the community and their homes” and to prepare them for entry into local schools or “other appropriate facilities.” The term is synonymous with “Infant Day Program,” as defined in WIC §4693.

#### *d. Day Program Rate-Setting History*

The Department of Developmental Services established community-based day program standards and rate-setting procedures in response to the adoption of WIC §4691 in 1984. In 1987, the California Association of Rehabilitation Facilities (CALARF) and others took legal action seeking to compel DDS to promulgate regulations establishing standards and rate-setting procedures for nonresidential services, instead of relying upon the Department's "Rate Procedure Manual." A settlement of the case, along with additional legislation (AB 877, Chapter 1396, Statutes of 1989), eventually resulted in the adoption of rate-setting regulations for community-based day programs which are in use today.

Setting of rates is based on the submission of cost statements by the vendors. By using the vendors' actual costs and establishing reasonable limits, a reasonable range of rates would evolve over time. The reasonable limits, based on actual costs for similar programs statewide, would provide a range of rates which would allow for local variances and program flexibility. Based on these approaches, a rate-setting mechanism was developed and agreed to by the Department, CALARF, the Association of Retarded Citizens California (ARC-California), and others.

In the Spring of 1996, the Department reported to the Legislature regarding rate setting for Community-based Day Programs and In-Home Respite Service (see Appendix 4). In preparing the report, the Department convened a committee to revisit the rate-setting process and the approach taken to meeting the statutory reporting requirements. With respect to day programs, the committee included representatives from the California Rehabilitation Association (CRA - formerly CALARF); ARC-California; United Cerebral Palsy Association-California (UCPA-California); and the Association of Regional Center Agencies (ARCA). Representatives of infant development service providers also participated in the consultations.

While the current rate-setting methodology as established in regulations received support from provider organizations in these consultations with the Department, a number of concerns, including most prominently the following, were raised by service providers:

- Not funding the "gap" in rates between the current rate and updated cost statements
- Vendors below lower limit of allowable range of rates
- Temporary payment rate for new vendors
- Payment for absences in Infant Programs

The Department's Spring 1996 report to the Legislature did not recommend action be taken in response to the vendor concerns noted above, nor to any other major rate-setting changes. The reasons cited for this decision were the significant fiscal impact of the vendors' main concerns, and an agreement reached in the committee to review the structure of the entire community-based day program and

in-home respite services agencies system. However, some matters considered during consultations with provider groups, while not judged to have a significant impact on the existing rate-setting methodology, were noted by the Department as worthy of further consideration. These issues included amending the regulations dealing with the temporary payment rate, and to exclude interest on loans attributable to other than a program's activities, and payroll tax penalties, from the costs to be reported by vendors (see Appendix 4 for a more detailed discussion of the Department's recommendations).

#### IV. Rate-Setting Alternatives

California's residential and day program services rate-setting methodologies, and the experience of several other states, provide examples of alternative rate-setting concepts for day programs and residential facilities.

##### a. *Currently Available California Options*

##### 1. Service Contracts

Through a "service contract," the regional center and vendor may negotiate a level of payment for services for a specified period of time. The level of payment may be less than, but not exceed, the rate established by the Department, and is based on the units of service used by a vendor to bill a regional center. Negotiation of a service contract follows the establishment by the Department of a rate of reimbursement for the community-based day program. The agreement must set out the scope of services, terms and conditions, and the level of payment mutually agreed to between the vendor and the regional center. Service contracts must meet all applicable contracting standards and regulatory requirements and must be consistent with the provisions for all community-based programs. A service contract must be agreed to prior to the provision of services, and must be in writing.

The following listing of potential applications for service contracting suggests the range of flexibility available through this option:

- Providing day program services that include the cost of transportation.
- Negotiating with day program providers to flexibly define the scope of services, the range of consumers served, and the specified payments.
- Providing specific services to consumers with similar needs in community settings.
- Contracting with nonresidential service providers for outcome-oriented services.
- Negotiating to establish non-standard staffing ratios to meet specific needs of the consumers being served.
- Providing training for consumers receiving Independent Living Services to be offered in a group setting, rather than in accordance with more restrictive staff-to-consumer ratios required in regulations.

##### 2. Vouchers

WIC §4512(i) defines "voucher" as "any authorized alternative form of service delivery in which the consumer or family member is provided with a payment, coupon, chit or other form of authorization which enables the consumer or

family member to choose his or her own service provider." Vouchers have been available in the service delivery system since September 1992. Currently, vouchers are permitted in regulations for the purchase of diapers, nutritional supplements, day care, respite, nursing and/or transportation services. The rate of payment specified in the voucher can not exceed the maximum rate established for the type of service. An example of the application of vouchers to day program services would be those issued to families to enable them to purchase individualized day program services, as well as transportation, for the consumer. Vouchers may also be approved on a case-by-case basis for many other purposes, through the AB 637 proposal process.

### 3. AB 637 Proposal Process

WIC §4669.2 established a new procedure, known informally as the AB 637 proposal process, by which regional centers may receive approval from the Department to implement alternative approaches in eight general areas for delivering services. As abstracted from the statute, the permissible types of alternative approaches are:

- (a) Alternative service coordination for consumers.
- (b) Technical and financial support to consumers, and where appropriate, their families, to provide or secure their own services in lieu of services that regional centers would otherwise provide, purchase, or secure. These programs shall be cost-effective in the aggregate, and shall be limited to consumers who are at imminent risk of moving to a more restrictive setting.
- (c) Procedures whereby regional centers may negotiate levels of payment with providers for delivery of specific services to a group of consumers through a mutually agreed upon contract with a specific term and a guaranteed reimbursement amount. Contracted services may be for any specific service or combination of services across vendor categories.
- (d) Procedures whereby consumers, regional center representatives, area board representatives, and local service providers may jointly examine and make recommendations to the department for reduced reporting and recording requirements of regional centers.
- (e) Proposals to reduce reporting and record keeping requirements at a regional center.
- (f) Procedures whereby a regional center may lease a facility and contract for the provision of services in that facility for regional center clients.

(g) Procedures that encourage innovative approaches to the sharing of administrative resources between regional centers and other public and private agencies serving persons with developmental disabilities.

(h) Proposals for a regional center to purchase a facility for its own office space if it can be shown to be cost-effective.

Adopted in response to a fiscal crisis, the AB 637 proposal process opens new opportunities for creative divergence from standard practices. These include a broad range of inherent possibilities for service contracting opportunities (discussed above), rate-type flexibility, and the development of alternative service models. The Department considers WIC §4669.2 as a highly significant avenue for innovation. Implementation of all AB 637 proposals ceases at the end of 1997, according to current statute.

**Rate Type Flexibility.** This alternative would allow defining units of service in gradations or increments that differ from those established in regulations.

Potential applications include:

- Flexible daily attendance at day programs (i.e., part-time attendance) based on consumer needs.
- Different increments of service (hours, days or other agreed upon increments) for adult day programs when consumers attend less than full-time.

**Alternative Service Models.** This broad category of alternatives differs from established or conventional methodologies by introducing innovative, creative, efficient, consumer-centered ways of providing services. Potential applications include:

- Consumers receiving day program services from their residential provider.
- Funding for part-time aides to meet consumers' day program and transportation needs.
- Developing adult day "programs without walls" (non-center based).

## *b. Alternatives in Other States*

While California has begun experimenting with the use of vouchers, negotiated contracts, and the potential inherent in the AB 637 proposal process, these do not exhaust the range of alternatives. A brief survey of experience in other states reveals additional alternatives to conventional rate-setting methodologies, such as adjusted historical cost and flat rates.

### **1. Adjusted Historical Costs**

South Dakota uses a historical cost method to set reimbursement rates for agencies providing services. Such an alternative is based on the cost of the program in the past, adjusted for inflation, anticipated changes in the cost of doing business (i.e., raises in minimum wage), and establishment of new programs for which there is no historical data. In South Dakota's implementation of this approach, the previous year's per capita daily costs are calculated and then adjusted by a projected 2-year inflationary percentage, to establish a base reimbursement rate for the coming fiscal year. That base rate may be adjusted for costs associated with establishing new programs.

### **2. Flat Rates**

Montana's Adult Day Services are facility-based, vocationally oriented training programs funded at a flat rate per participant. A flat rate alternative features the pooling of all available funding streams into a single finite amount that is divided on a per capita basis for the procurement of services. Flat rate methodologies may provide payment adjustments in the event of extraordinarily high service need cases. In Montana's use of this approach, the flat-rate method reportedly provides a positive incentive to agencies to operate efficiently, because it allows agencies to retain the proceeds from sale of their products for reinvestment in their programs, rather than requiring a return to the state.

New Mexico also employs a system of flat rates. A private independent accounting firm sets the rates. In New Mexico the only exceptions to flat rates are for services to consumers with severe medical needs or very serious behavior problems.

## *c. Decentralization of Rate-Setting Authority*

The basic conventional rate-setting systems now in use in California for both residential and day programs are controlled by the Department through its regulations. This centralization of authority has obvious benefits. Accountability for the system is centralized along with the authority for setting rates. Statewide

Information about the operation of the system is available to the Department to help it assess and plan for the future. A rough equality in the treatment of service providers, where ever they are located, is assured. Also, centralization brings relative simplicity and uniformity to the vast system.

But centralising authority in the Department has some potential disadvantages. The system has trouble dealing with individual differences among workers, when these can not easily be quantified. It may have difficulty responding quickly to new situations. The rough equality that serves the system as a whole will may in some individual cases produce inequitable results. Also, there is always a danger that a centralized system might lose touch with the realities on the field, as it increasingly focuses on its own inner workings.

Restoring rate-setting authority from a centralized (Department) system to a decentralized one (regional centers) can help avoid some limitations of centralization. Regional centers deal with specific service providers, rather than with service providers in general, and so are more capable of assessing and dealing with unquantifiable factors. Regional centers are better able to respond flexibly to unusual situations. Finally, regional centers have a potential for experimentation, diversity, and innovation that a large centralized bureaucratic system would find difficult or even impossible to achieve.

But, in the absence of central oversight and leadership, local authority over the setting of rates may lack some of the benefits of centralization. It is more difficult to gather information and secure accountability when there are many centers of authority instead of just one. A flexible, decentralized system sometimes leads to inequitable treatment and unpredictability.

How is it possible to have the advantages of centralized and decentralized systems, while avoiding the disadvantages? The solution lies in finding a balance point between the two extremes, that would rely on the strengths of each system to counter the weaknesses of the other. The question to be answered then becomes: *What combination of centralized and decentralized authority would most likely lead to innovation with predictability, local initiative with equitable financing, dispersion of decision-making power to local authorities with accountability for the overall management of public funds?* Participants in the November 22 meeting raised the very question, during a discussion of the merits of subjecting the rate setting authority of regional centers.

Wherever the balance point may be, the fundamental question is not one confined to the developmental disabilities system. All levels of government are struggling with ways to devolve decision making from central to local authority. At the national level, the federal government is in the process of reversing a trend to federal control and responsibility that has shaped social policy for much of this century. Welfare reform legislation is the most recent evidence of this trend responsibly, with the devolution of responsibility to the state and lower levels. At the state level a similar movement to devolve authority to local governments has wide popular support.

Trends within California's developmental disabilities system follow a similar pattern. The original regional center concept was founded on the idea of local supervision over the delivery of services. Other approaches could have been chosen, but were not. For example, other large states such as New York, Texas, Massachusetts, and Washington, arrange community services directly through local state offices and staff.

In recent years, California's fiscal crisis has led to even greater responsibility being placed on regional centers, especially with regard to stretching the limited state funds for services as much as possible. The clearest evidence of this trend is WIC §4791(b). This addition to the Lanterman Act requires regional centers to "administer their contracts within the level of funding available within the annual Budget Act" so that the available funding lasts through the fiscal year. How regional centers are expected to accomplish this is suggested in WIC §4791(c), which requires the centers to "implement innovative, cost-effective methods of services delivery" that are not limited to the listing of examples contained in the legislation. :

Examined in the context of the tension between centralized and local regional center rate-setting authority, the alternative rate-setting methods that are available to regional centers through negotiated contracting, use of vouchers, and potentially through the AB 637 proposal process may be understood as constructive responses to the search for a balance between central (Department) and decentralized (regional center) authority.

## V. Stakeholder Perspectives

The meeting held on November 22, 1996 by the Department to gather the viewpoints of stakeholders generated a wide spectrum of viewpoints. The broad representation of the stakeholder community present at the meeting precluded an absolute unanimity of opinion, but a general consensus, concentrated among representatives of the service provider community, formed around five major assertions. Presented here in summary form, these assertions and viewpoints were taken into account in the formulation of the Department's recommendations, because the Department is committed to a partnership relationship with all segments of the stakeholder community.

### a. *DDS should maintain central responsibility for rate setting.*

**Summary of Providers' Argument:** A strong sentiment exists among vendors that the Department should not remove itself from the rate-setting process. A complete devolution of rate-setting authority from the Department (state) to the regional centers (private corporations) would hamper the ability of the government to exercise oversight over the spending of public funds on services. The vendors believe this is a state obligation to the public that can not be assigned to privately controlled regional centers without affecting accountability. Further, information on the operations of residential and day programs, along with information on cost data needed for the rational setting of rates, would significantly worsen were the system to be decentralized. Vendors expressed concerns that equity would suffer were the current system to be discarded in favor of rate setting completely under a decentralized system.

### b. *Underfunding is the major cause of current rate-setting system problems.*

**Summary of Providers' Argument:** The rate-setting systems for both residential and day programs were adopted to assure rates would both be affordable to the state and sufficient to maintain facilities or other service provider operations at a level commensurate with consumers' needs and state requirements. However, costs of providing services have outpaced the rates of payment to providers. Until the present fiscal year, residential providers had received no increase since the 1987-1988 fiscal year. The current 3 percent increase barely meets the needs of currently rising costs, and inadequately addresses the accumulating discrepancy between rates of payment and the real costs of services. The day program range of rates, initially set by cost statements, reflects rising costs but increasingly diverges from the actual rates paid to providers in the absence of state funding for increases. Further, the established rate range is being narrowed progressively, yet no funds have been

appropriated to assure that all vendors' actual rates are brought up to the lower limit of the established range of rates. The discrepancy grows with each adjustment of the range of rates to reflect the most recent cost statements.

Such chronic underfunding has affected not only the income of providers, but the operation of the system itself, as pressures on providers lead to distortions in system functioning. There is a widely perceived belief that, unable to maintain operations at current rates, programs choose to raise their level of service to qualify as a higher level of care or more intensive staff-client ratio, even when the programmatic need to do so is in question. This leads to an increasing emphasis on the facility and its program, instead of on the needs of individual consumers, including pressures to redefine consumer needs to justify the changes in service.

*c. Test the existing rate-setting systems before deciding to discard them.*

**Summary of Providers' Argument:** Much thought went into the creation of the current rate-setting system for residential and day program services. Contemplation of changing rate-setting methodologies has been based on the false premise that something is fundamentally flawed in the current system. Underfunding has prevented the efficacy of the existing system from being tested, except for testing how it functions when chronically underfunded. Before changes are proposed, or measured against the existing system, the existing system should be given a fair try. Until it is operated with adequate funding, there is no way to know whether the fundamental approach of the current system is appropriate or not.

*d. The current rate-setting systems are fundamentally sound.*

**Summary of Providers' Argument:** Despite the expression of opinions regarding failure to focus on the individualized needs of consumer, including person-centered planning, there was general consensus for presuming the fundamental viability of the present rate-setting systems for both residential and day programs. The preponderant viewpoint held that the deficiencies identified in both systems are amenable to correction through adjustments of the existing arrangements, rather than by being replaced with wholly new ones.

This consensus is somewhat clearer in the case of day programs, in which many of the deficiencies regarding focus on rigid program needs as opposed to building supports around consumers were attributed to the distortions and pressures induced by chronic underfunding.

In the case of residential programs, the consensus is more tentative. Many meeting participants held that underfunding was the cause of all major perceived deficiencies. But among the non-provider stakeholders, there was considerable discontent with the ARM rate-setting system itself, because it is structured as a

facility-based model. Such a model was believed essentially incompatible with the Department's professed focus on meeting each consumer's uniquely individualized needs.

e. *Reconcile the incongruity between program expectations and underfunded rates.*

**Summary of Providers' Argument:** The rate-setting methodologies are designed to work when rates are adequately funded. When rates are chronically underfunded, but program expectations are unchanged, an incongruity occurs that can not be sustained indefinitely. This is because the system is predicated upon rates that are related to service level needs of consumers. Eventually, the system must find a balance or collapse from its own contradictions (vendors leaving the business, refusing to respond to RFPs, or pressure to artificially upgrade program level). The correction can occur either in the expectations (programmatic demands) of a service, or at the funding end of the equation. If the state continues underfunding rates, the developmental disabilities service system will be forced to reformulate expectations of attainable goals. Better a less ambitious, but rationally functioning, system than one which promises far more than can be delivered.

This overall consensus of sentiment must be tempered by several other viewpoints to be noted. Infant Development Programs were noted as having special needs that argue for separating them from the other day programs. Consumer advocates expressed concern that the ARM system is conceptually flawed because it results in facility-based rates that are incompatible with the Department's adoption of person-centered planning and individualization of services. Further, some meeting participants expressed concern over regulatory and paperwork burdens, for which the present systems were held at least partially responsible. Finally, some participants spoke favorably of prudent experimentation, and of the benefits of innovation at the local (regional center) level.

## VI. Department Recommendations

Based on a consideration of the foregoing information, the Department makes the following recommendations to the Legislature regarding the issues addressed in this report.

### *a. Regarding granting greater authority to regional centers in contracting for community-based day and residential services:*

**Feasibility:** Increasing the authority of regional centers in contracting for services is feasible, and compatible with existing national and state trends towards decentralization of decision-making authority and responsibility. It is also consistent with the logic of recent changes to the Lanterman Act that have placed additional responsibility on regional centers to assure they will operate within budgetary constraints, and the trend towards greater flexibility in rate setting represented by the current ability for regional center contracting, use of vouchers, and particularly through the AB 637 proposal process.

**Desirability:** Increasing the contracting authority of regional centers at this time beyond current practices would engender strong opposition from the vendor community. This would be highly undesirable in consideration of the Department's mission to work towards cooperative partnership with all segments of the stakeholder community.

**Department Recommendation:** The Department recommends maintaining at this time the present level of authority regional centers have in contracting.

### *b. Regarding modifying the existing rate-setting system for community-based day and residential services:*

**Feasibility:** Modifying the existing rate-setting system towards devolution of additional rate-setting authority to regional centers is feasible. Such action would be consistent with the available and proposed alternatives to the basic conventional rate-setting practices that are intended to give regional centers opportunities for flexible and innovative responses to local needs and conditions: service contracting as permitted at present, and for residential services as permitted through the use of vouchers and the AB 637 proposal process. Thus, dependent on the degree of modification, additional legislation and implementing regulations may be required, but neither major disruptions of system operations nor the need for significant investment of resources should be necessary.

**Desirability:** Modifying the existing rate-setting system significantly is not desirable at this time. The present system in both residential and day programs evolved from long periods of study and consultation with the stakeholder community, and are generally supported statewide. Over the years, it has provided

consumers with needed services in a reasonable overall balance between supply and demand. The vendor community strongly supports its retention, while identifying lack of funding for implementation, not system inadequacy, as the root cause of most difficulties. Modifying the system at this time is inconsistent with the Department's recommendations in its Spring 1996 report to the Legislature, and the actions presently being pursued to achieve several minor adjustments to the day program and in-home respite services rate-setting system recommended in that report (see Appendix 4). Retaining the existing system would involve no disruptions of current practices and trends, and allows continued use and evaluation of the several alternatives, and particularly the AB 637 proposal process discussed above, that are designed to increase the flexibility and creativity of regional centers in meeting local needs. It is undesirable to alter the system before the efficacy of present and anticipated practices can be assessed.

**Department Recommendation:** The Department recommends reserving judgment at this time regarding modification to the existing rate-setting system for community-based day and residential services, pending consultation with its constituent community regarding revisions to the CLAS regulations package, and pending the Department's assessment of AB 637 proposal innovations.

## **VII. Appendices**

1. **Organizations and Individuals Invited to Meeting on Rate-Setting Alternatives, November 22, 1996**
2. **Agenda for Meeting, November 22, 1996**
3. **Meeting Participants, November 22, 1996**
4. **Report to Legislature on Day Programs and In-Home Respite Services, Spring 1996**

**Appendix 1: Invitations to Meeting on Rate-  
Setting Alternatives, November 22, 1996**

C: Invitation List for Meeting on Ratesetting Alternatives for Community-Based Residential and Day Program Services, November 22, 1996

Robert Baldo  
Executive Director  
Association of Regional Center Agencies  
910 K Street, Suite 300  
Sacramento, CA 95814

Joanne Bazer, Executive Director  
California Association of Residential Care  
Homes, Inc.  
295 Alder Street  
Arroyo Grande, CA 93420

Catherine Blakemore, Executive Director  
Protection and Advocacy, Inc.  
100 Howe Avenue, Suite 185N  
Sacramento, CA 95825

John Clay  
California Autism Society  
4175 Lakeside Drive  
Richmond, CA 94806

Peggy Collins, Consultant  
Senate Committee on Developmental  
Disabilities and Mental Health  
State Capitol, Room 3056  
Sacramento, CA 95814

Michael Everson  
Staff Advisor  
People First of California, Inc.  
120 I Street, 2nd Floor  
Sacramento, CA 95814-2213

Joyce Iseri  
Executive Director  
California Association of Children's Homes  
1431 Third Street, Suite 12  
Sacramento, CA 95814

Marion Karian  
Exceptional Parents Unlimited  
4120 N. First Street  
Fresno, CA 93726

Judy McDonald  
Executive Director  
State Council on Developmental Disabilities  
2000 O Street, Suite 100  
Sacramento, CA 95814

Marilyn Meredith  
Central California Residential Services  
Association  
34755 Highway 190  
Springville, CA 93265

Anna Newman  
President, People First of California, Inc.  
159 Pitt Street, Apt. K  
Jackson, CA 95642

Sarah Olsen  
Consultant  
Assembly Budget Committee  
State Capitol, Room 6025  
Sacramento, CA 95814

Joe Preston, President  
California Association of State Hospital  
Parent Councils for the Retarded  
570 Calle de Casa  
Anaheim, CA 92807

Jerry Reynolds  
United Cerebral Palsy Association  
1225 8th Street, Suite 225  
Sacramento, CA 95814

Carol Risley  
Executive Director  
Organization of Area Boards  
3000 S Street, Suite 210  
Sacramento, CA 95818-7055

Tamara L. Yates  
Consultant  
Minority Fiscal Consultants  
State Capitol, Room 2209  
Sacramento, CA 95814

Charles Skoien, Jr.  
Consultant  
Community Residential Care Association of  
California  
P. O. Box 163270  
Sacramento, CA 95816

O. V. Smith, President  
Society of California Care Home Operators  
1912-B S. Oxford Avenue  
Los Angeles, CA 90018

Maurine Stevens  
Director  
California Rehabilitation Association  
1121 L Street, Suite 103  
Sacramento, CA 95814

Nancy Sweet  
Director, Early Intervention Services  
Child Development Center  
Children's Hospital  
747 52nd Street  
Oakland, CA 94609

Gary Tonks  
Executive Director  
ARC-California  
120 I Street, 2nd Floor  
Sacramento, CA 95814-2213

Diane Van Maren  
Consultant  
Senate Committee on Budget and Fiscal  
Review  
State Capitol, Room 5013 E22  
Sacramento, CA 95814

Appendix 2: Agenda for Meeting, November 22,  
1996

## AGENDA

Meeting on Rate-Setting Alternatives  
for  
Community-Based Day and Residential Services

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Room 360  
Bateson Building  
1600 9th Street, Sacramento  
10:00 a.m. - 3:00 p.m.

November 22, 1996

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1. **Opening Remarks (10:00 - 10:15 a.m.)**
  - a. Introductions
  - b. Purpose of Meeting
  - c. Review of Agenda
2. **Review of Current Rate Setting Methodologies (10:15 - 10:45 a.m.)**
  - a. Residential Services and CLAS
  - b. Day Program Services
  - c. Report to Legislature, Spring 1996
3. **Ratesetting Modification Options (10:45 - 12:00 p.m.)**
  - a. Alternatives: Feasibility and Desirability
    - Adjusted Historical Costs
    - Alternative Service Models
    - Flat Rates
    - Negotiated Contracts
    - Rate Type Flexibility
    - Vouchers
    - Other
  - b. Greater Contracting Authority for Regional Centers
4. **Lunch Break (12:00 - 1:00 p.m.)**
5. **Ratesetting Modification Options (continued) (1:00 p.m. - 2:30 p.m.)**
6. **Closing Review and Comments (2:30 - 3:00 p.m.)**
  - a. Summary of Views
  - b. Next Steps

Appendix 3: Meeting Participants, November 22,  
1996

### Attendance List

Meeting on Rate-Setting Alternatives for Community-Based Day and Residential Services,  
10:00 a.m. - 3:00 p.m., November 22, 1996  
Room 360, Bateson Building

**Number of Persons Attending:** 31

**(Number from DDS:** 10)

**Organizations Represented:**

(ARC) - Association for Retarded Citizens

(ARCA) - Association of Regional Center Agencies

(CAF) - California Autism Foundation

(CASHPCR) - California Association of State Hospital Parent Councils for the Retarded

(CCRSA) - Central California Residential Services Association

(CH) / (IDA) - Oakland Children's Hospital / Infant Development Association

(CRA) - California Rehabilitation Association

(CRCAC) - Community Residential Care Association of California

(DDS) - Department of Developmental Services

(EPU) - Exceptional Parents Unlimited

(LasTrampas) - Las Trampas, Inc.

(NBRC) - North Bay Regional Center

(OAB) - Organization of Area Boards

(PAI) - Protection and Advocacy

(PFC) - People First of California, Inc.

(SCDD) - State Council on Developmental Disabilities

(SOCCO) - Society of California Care Home Operators, Inc.

(UCPA) - United Cerebral Palsy Association

### PARTICIPANTS BY ORGANIZATION

**(ARC) - Association for Retarded Citizens**

Peter Bowers  
ARC - California  
P.O. Box 610  
Camarillo, CA 93011

Laurie Shields

**(ARCA) - Association of Regional Center Agencies**

Robert Baldo  
Executive Director  
Association of Regional Center Agencies  
910 K Street, Suite 300  
Sacramento, CA 95814

Dale Sloss  
4024 N. Country Drive  
Antelope, CA 95843

**(CAF) - California Autism Foundation**

John Clay  
California Autism Foundation  
4075 Lakeside Drive  
Richmond, CA 94806

**(CASHPCR) - California Association of State Hospital Parent Councils for the Retarded**

Helen Hawkins

**(CCRSA) - Central California Residential Services Association**

Richard Adam  
Central California Residential Services Association  
162 N. Main  
Porterville, CA 93257

**(CH) / (IDA) - Oakland Children's Hospital /  
Infant Development Association**

Nancy Sweet  
Director, Early Intervention Services  
Child Development Center  
Children's Hospital  
747 52nd Street  
Oakland, CA 94609

**(CRA) - California Rehabilitation Association**

Dwight Hansen  
Legislative Advocate  
California Rehabilitation Association  
US Bank Plaza  
980 Ninth Street, Suite 420  
Sacramento, CA 95814-2724

**(CRCAC) - Community Residential Care  
Association of California**

Marty Hampton  
Consultant  
Community Residential Care Association  
of California  
P. O. Box 163270  
Sacramento, CA 95816

Charles Skoien, Jr.  
Consultant  
Community Residential Care Association  
of California  
P. O. Box 163270  
Sacramento, CA 95816

**(EPU) - Exceptional Parents Unlimited**

Marion Karian  
Exceptional Parents Unlimited  
4120 N. First Street  
Fresno, CA 93726

**(LasTrampas) - Las Trampas, Inc.**

Stephanie Chapralis  
Las Trampas, Inc  
P.O. Box 515  
Lafayette, CA 94549

**(NBRC) - North Bay Regional Center**

Ellen McBride  
North Bay Regional Center

**(OAB) - Organization of Area Boards**

Carol Risley  
Executive Director  
Organization of Area Boards  
300 S Street, Suite 210  
Sacramento, CA 95818-7055

**(PAI) - Protection and Advocacy**

Michael Kluk  
Attorney  
Protection and Advocacy, Inc.  
100 Howe Avenue, Suite 185N  
Sacramento, CA 95825

**(PFC) - People First of California, Inc.**

Robin Rhoades  
c/o Southside Art Center  
8001-B Fruitridge Road  
Sacramento, CA 95820

**(SCDD) - State Council on Developmental  
Disabilities**

Judy McDonald  
Executive Director  
State Council on Developmental  
Disabilities  
2000 O Street, Suite 100  
Sacramento, CA 95814

**(SOCCO) - Society of California Care Home  
Operators, Inc.**

Willie Hausey  
Society of California Care Home  
Operators, Inc.  
c/o Willie Hausey & Associates, Inc.  
1127-11th Street, Suite 321  
Sacramento, CA 95814

O. V. Smith (participated via telephone  
conference call)  
President  
Society of California Care Home  
Operators  
1912-B S. Oxford Avenue  
Los Angeles, CA 90018(

**(UCPA) - United Cerebral Palsy Association**

Jerry Reynolds  
United Cerebral Palsy Association  
1225 8th Street, Suite 480  
Sacramento, CA 95814

**(DDS) - Department of Developmental Services**

Marvin Bienes  
Shelton Dent  
Lindsay Grader  
Marva Hamilton  
Julie Jackson  
Mike Kulisek  
Lyman Lum  
Julia Mullen  
Cheri Schoenborn  
Dale Sorbello

**Appendix 4: Report to Legislature on Day  
Programs and In-Home Respite Services, Spring  
1996**

## REPORT TO THE LEGISLATURE

### REVIEW OF THE RATESETTING PROCESS FOR COMMUNITY-BASED DAY PROGRAMS AND IN-HOME RESPITE SERVICES AGENCIES

#### STATEMENT OF NEED

Welfare and Institutions Code, Sections 4690.2(b) and 4691(d)(3) (Appendix 1) requires the Department of Developmental Services, in conjunction with organizations representing community-based day program providers and in-home respite services agencies, to prepare and submit to the Legislature by April 15, 1996, a report which includes a review of the ratesetting process for in-home respite services agencies and community-based day program vendors and recommendations, if any, for their modification. This report is being submitted pursuant to the statutory requirement.

#### BACKGROUND

##### Statutory Requirement

Senate Bill 1112, Statutes of 1984 (Chaptered August 16, 1984), added Welfare and Institutions Code, Section 4691, which required the Department of Developmental Services (DDS) to establish, in regulations, community-based day program standards and ratesetting procedures. These regulations were to be developed in conjunction with various organizations, on an incremental program approach beginning with activity centers, by July 1986.

##### Initial Regulations Development

In response to this statute, the Department developed proposed regulations for activity center program standards only. These regulations were subsequently withdrawn in order to establish program standards and ratesetting procedures for all community-based day programs and in-home respite services agencies.

##### Legal Action (CALARF Lawsuit)

On October 13, 1987, the California Association of Rehabilitation Facilities (CALARF) along with other vendors and organizations, filed an alternative writ of mandate seeking an order compelling

the Director of DDS to promulgate regulations establishing standards and ratesetting procedures for nonresidential services; to cease using the Department's Rate Procedure Manual and to pay the vendors of nonresidential services their actual costs until regulations were promulgated. The parties entered into an agreement on June 7, 1988, which required the Department to immediately develop regulations for community-based day programs and in-home respite services agencies whose rates were determined by a cost statement and authorized the Department to continue to utilize the Rate Procedure Manual, with specified modifications, until regulations were promulgated. The agreement also resulted in rate increases to eligible providers totalling approximately \$6 million over a three year period beginning in fiscal year 1987-88.

### Existing Ratesetting Regulations

AB 877, Chapter 1396, Statutes of 1989 (Appendix 2), resulted in rate increases for fiscal years 1990/91 and 91/92 totalling approximately \$1.3 million and \$13 million, respectively. This statute also amended Welfare and Institutions Code section 4691 added sections 4690.2 and 4691.5 to reflect the statutory authority for the rate system for community-based day programs and in-home respite services agencies that now exists in regulations, Title 17, California Code of Regulations, sections 57422 through 57519 and sections 58020 through 58119 (Appendix 3).

In response to the legislation, DDS established a committee with the major vendor organizations that were petitioners in the CALARF lawsuit to develop a ratesetting mechanism which was acceptable to everyone. DDS and the vendor organizations participating in the discussions established the following goals for the development of the regulations. It was agreed that the regulations should:

- 1) Meet statutory requirements;
- 2) Be simple to administer;
- 3) Be easy to understand;
- 4) Be cost-effective; and
- 5) Provide flexibility

In addition to developing regulations which would meet the

established goals, the committee wanted to develop a ratesetting process based upon the vendors' actual costs which would provide the ability to establish rates within reasonable limits, would result in similar rates for similar programs, and would allow for local variances and program flexibility. It was believed that, by using the vendors' actual costs and establishing reasonable limits, a reasonable range of rates would evolve over time. It was also believed that the reasonable limits, based on actual costs for similar programs statewide, would provide a range of rates which would allow for local variances and program flexibility. Based on these philosophies, a ratesetting mechanism was developed and agreed to by the Department, CALARF, the Association of Retarded Citizens California (ARC-California), the Respite Service Association (RSA) for in-home respite services agencies, and the other vendor organizations they represented.

The regulations developed as a result of this process, which are currently in effect, are discussed in more detail in Appendix 4. A history of the allowable range of rates and a history of the gap and upper/lower limit adjustments is provided in Appendix 5 and Appendix 6, respectively.

It was agreed and included as part of AB 877, Chapter 1396, Statutes of 1989, that the committee would revisit the newly established ratesetting mechanism in fiscal year 1995/96 to determine if the original goals and intent were being met and to determine if any changes were needed. This report is a result of that statutory requirement.

### **OBJECTIVES**

To meet the legislative reporting requirements specified in Welfare and Institutions Code, Sections 4690.2(b) and 4691(d)(3).

### **STUDY METHODOLOGY**

The Department convened a committee to revisit the ratesetting process and the approach to be taken relative to meeting the statutory reporting requirements. The committee was comprised of Department staff, representatives from the major organizations who participated in the initial development of these regulations,

California Rehabilitation Association (CRA), formerly CALARF, ARC-California, and Respite Services Association (RSA). Representatives from United Cerebral Palsy Association-California (UCPA-California), Association of Regional Center Agencies (ARCA), and representatives for providers of infant development services also participated as members of the committee. Appendix 7 provides a listing of the committee members.

A consensus was reached among the members of the committee that all community-based day program and in-home respite services agencies vendors should also be given the opportunity to provide input into this report by providing their views of the ratesetting regulations and their suggestions, if any, for modification. It was agreed that each organization would be responsible for mailing, collecting, and summarizing the comments of their members. A standardized survey form (Appendix 8) was developed.

In order to ensure that every vendor was given the opportunity to participate, the Department sent a letter to all community-based day programs and in-home respite services agencies advising them of the survey. The letter advised that if the vendor wanted to participate in the survey, the survey form could be requested from any one of the community organizations identified in the letter.

The responses received from their members were summarized by the organization and submitted to the Department as a basis for this report.

Regional centers were also given the opportunity to provide comments/recommendations regarding the community-based day program and in-home respite services agencies ratesetting regulations.

### **FINDINGS/CONCLUSIONS**

The responses received contained not only comments and recommendations directly relating to the ratesetting methodology specified in regulations, but also contained general comments and recommendations regarding other aspects of the regulations. Only the most significant issues relative to the ratesetting

methodology are discussed within this report. However, all of the comments and recommendations regarding the ratesetting methodology and the Department's responses are included in Appendix 9. Appendix 10 contains the summaries and/or responses received from each organization, which includes those comments and recommendations not directly relating to the ratesetting process.

Following are the most significant issues addressed by the commentors:

#### Lack of Rate Increases

One of the primary issues addressed by all commentors is the lack of rate increases since fiscal year 1991-92. Although regulations provide the opportunity for rate increases through a gap adjustment, anticipated rate adjustment, COLA, or other Budget Act adjustments, they are dependent upon appropriation of funding in the Budget Act. Given the budget constraints faced by the State over the last several years, funding has not been appropriated in the Budget Act since fiscal year 1991-92 for these purposes. To "close the gap" of all community-based day programs and in-home respite services agencies based upon their fiscal year 1994-95 costs would result in a fiscal impact of approximately \$7.4 million.

#### Number of Vendors Below Lower Limit

Commentors also expressed concern relative to the number of vendors below the lower limit of the allowable range of rates and the inadequacy of funding available to increase those vendors to the lower limit. The regulations allow the Department to reduce the rates of those vendors who are above the upper limit. The amount of funds made available from these reductions is then distributed to those vendors below the lower limit. Funding from the upper limit reductions has never been sufficient enough to fully fund increases to the lower limit. To remedy this situation, it was suggested that all vendors below the lower limit receive an increase to the lower limit by fiscal year 1996-97. Increasing rates of those vendors who are below the lower limit up to the lower limit would result in a fiscal impact of approximately \$6.5 million.

### Temporary Payment Rate

The temporary payment rate (for new vendors) was another area of concern. The issues identified include: 1) the cost information utilized to determine the temporary payment rate includes vendors whose rates are below the lower limit, resulting in a temporary payment rate which is artificially low; 2) new programs are receiving rates which are higher than rates received by older established programs because the temporary payment rates are based on more recent cost data; and 3) the temporary payment rate does not account for geographic or inflationary differences. Recommendations received for alleviating these concerns include: 1) exclusion of vendors whose rate is below the lower limit from the calculations to determine the temporary payment rate; 2) develop a method to immediately increase rates for older programs with rates lower than the temporary payment rate; and 3) use a cost-of-living index to establish a percentage rate that is applied to the final temporary rate, adjusting the temporary payment rate for cost-of-living. These recommended actions would create an unfunded fiscal impact, the extent of which is unknown.

### Payment for Absences

Consumer absences was identified by infant program vendors as a source of concern. Many of the infants being served in infant development programs have numerous medical problems and are often sick and unable to be served, yet staff salaries continue to be paid. Their concern is that there is no policy to address the uniquely high absences experienced by infant programs.

Because each vendors rate is determined based upon the actual hours of attendance rather than the number of hours authorized, it is assumed that absences are built into each vendor's rate. However, because funding for rate increases has not been appropriated in the Budget Act since fiscal year 1991-92, community-based day programs, which includes infant development programs, and in-home respite services agencies are receiving rates of reimbursement based upon fiscal year 1989-90 cost and client attendance data. Therefore, any increases in absences since fiscal year 1989-90 would not be reflected in the vendor's rate. The recommendations proposed were: 1) change the funding base for infant development programs to cost per approved service delivery slot per year; and 2) explore the concept of excused

absences similar to the federal block grants for birth to three programs and the Department of Education (California Ed. Code 46010). These recommendations would create an unfunded fiscal impact, the extent of which is unknown.

#### Reduction in Hours of Service Authorized

Due to the change in how respite services are delivered (i.e., issuing vouchers to family members), in-home respite services agencies are experiencing a reduction in the number of hours authorized. Because the rates of reimbursement for the majority of vendors is based upon fiscal year 1989-90 cost and client attendance data, a reduction in the units of service authorized and actually provided could result in reimbursement to the vendor which is inadequate to cover the vendor's actual costs of operation. The recommended solution is to amend the regulations to allow a loss or gain of any vendor income, including regional center income, as a basis for an unanticipated rate adjustment, which does not require appropriation of funds in the Budget Act for that purpose. The recommended change would create an unfunded fiscal impact, the extent of which is unknown.

#### Other Concerns/Issues

Recommendations for additions and/or clarification to the listing of non-allowable costs, allocation of management organization costs, cost reporting for conversion from a temporary payment rate to a permanent payment rate, reporting of vendor cost reductions for in-home respite services agencies when serving more than one consumer, staffing, cost reporting, rate adjustments/appeals, non-mobile supplemental rates and service contracts were also received and are included in Appendix 9. Also included in Appendix 9 are the Department's responses to each comment/recommendation received.

In addition to the issues noted above, CRA and ARC expressed support of the current community-based day program ratesetting methodology by stating:

"The Rate Setting Mechanism supports consistent reporting of costs, uniformity of accounting methodology, a methodology that includes a minimum level of quality standards, a working mechanism for defining 'cost effective' and

'reasonable' by providing historical data to support those definitions, health and safety. Through use, it has become familiar and is simple in comparison to other systems."

"A change to the Rate Setting Mechanism would be both cost prohibitive and highly disruptive to the system."

"The methodology allows for the grouping of similar programs in conjunction with the establishment of windows for each grouping."

"CRA and ARC believe that the current rate methodology implements the intent of the legislature and meets the criteria as established by DDS and advocacy agencies. CRA and ARC believe the Department should continue to work with advocacy groups prior to initiating any changes to these regulations."

#### RECOMMENDATIONS

The committee established by the Department to review the current ratesetting methodology has agreed to review the structure of the entire community-based day program and in-home respite services agencies system. Therefore, major changes to the current ratesetting methodology would be premature until the committee determines how the system should be restructured.

Although major changes to the ratesetting system are not recommended, some of the recommendations submitted appear to be viable, can be implemented relatively quickly and easily, and do not appear to have a major impact on the ratesetting methodology currently in regulation. These recommendations are as follows:

1. Amend the regulations to clarify that only interest on loans attributable to the program's activities may be included in the costs reported. It was not the intent of the Department to reimburse vendors for interest on loans which are not attributable to the program.
2. Amend the regulations to exclude payroll tax penalties from the costs to be reported. It was not the intent of the Department to reimburse vendors for payroll tax penalties.

3. Amend the regulations to allow extension of the temporary payment rate for a period of up to six (6) months when a program is unable to provide twelve (12) months of representative costs due to a delayed enrollment. Also, amend regulations to specify that if a program which has been given an extension fails to submit the required cost information prior to expiration of their temporary payment rate, that vendor's rate shall be established at the lower limit of the allowable range of rates for like programs until the vendor's rate is converted to a permanent payment rate based on actual costs submitted by the vendor. Allowing the Department to extend the temporary payment rate period will enable programs to provide the required twelve (12) months of representative cost data and will allow the Department to establish a permanent payment rate which is more reflective of the ongoing costs of the program's operation. Establishment of the vendor's rate at the lower limit for failure to submit the required cost information prior to expiration of the extended temporary payment rate will encourage vendor's to submit costs in a timely manner.
4. Amend the regulations to allow in-home respite agencies to include any cost reductions implemented as a result of negotiating a lower level of payment when serving more than one consumer. It was not the Department's intent to prevent in-home respite agencies from reporting vendor cost reductions. Exclusion of cost reductions penalizes the vendor and discourages in-home respite agencies from negotiating a lower level of payment when serving more than one consumer.
5. Amend the regulations to specify that the staff-to-client ratio for services provided by in-home respite services agencies shall be 1:1 unless mutually agreed to by the regional center, vendor, and the consumer's family member.
6. Amend the regulations to require in-home respite services agencies to include in the cost statement submitted to the Department data regarding client attendance and direct services provided to enable regional centers to verify that the required staff-to-client ratio is being met by the vendor.

**IMPLEMENTATION PLAN/STRATEGY**

The Department will continue to explore the feasibility of modifying the regulations based upon the recommendations identified above.

**PROGRAM/FISCAL IMPACT**

None.

## **APPENDICES**

- Appendix 1      Welfare & Institutions Code, Sections 4690.2(b) and 4691(d) (3)
- Appendix 2      Assembly Bill 877, Chapter 1396, Statutes of 1989
- Appendix 3      Title 17, Sections 57500-57519 (Community-based day program ratesetting) and Sections 58100-58119 (In-home respite services agencies ratesetting)
- Appendix 4      Process for establishing rates
- Appendix 5      History of the allowable range of rates
- Appendix 6      History of the gap and upper/lower limit adjustments
- Appendix 7      Listing of the regulations committee members
- Appendix 8      Survey form
- Appendix 9      Comments received regarding ratesetting regulations and the Department's response
- Appendix 10     Survey responses submitted to the Department by each organization